



**Annual Report 2008**  
regarding its actions and  
the securities markets





**CNMV Annual Report regarding  
its actions and the securities markets.  
2008**

Comisión Nacional del Mercado de Valores  
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## Abbreviations

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

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

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## I Economic and financial situation



This chapter analyses the main characteristics of the economic and financial situation in which the securities markets operated in 2008. The purpose is not so much to give a detailed description of how the world, European and Spanish economy performed as to provide the necessary background for reading subsequent chapters.

The world economy experienced a severe, generalized deterioration in 2008, fundamentally as a result of the exacerbation of the financial crisis that commenced in August the previous year. Harsher lending standards, sizeable losses in the securities markets and the sharp deterioration in expectations all led to a major reduction in private sector expenditure, which negatively impacted growth in the advanced economies, including Spain. The economic crisis spread to the developing countries, basically as a result of a declining imports by the developed world.

Both monetary authorities and governments intervened in the economy with an intensity not seen since the Great Depression. The monetary authorities drastically cut interest rates and continued to inject liquidity into the financial system on a massive scale. And governments implemented support plans for the banking industry which, in some countries, involved partial or total nationalization of credit institutions in difficulties and with a high impact on systemic risk. In Spain, government support for the financial sector focused on the creation of the Fund for the Acquisition of Financial Assets (*Fondo de Adquisición de Activos Financieros*) with the aim of promoting the supply of credit by acquiring high-quality assets and providing guarantees for issues by financial institutions, as well as increasing the level of deposit insurance. Considerable importance was given to fiscal policies, including sizeable expenditure and tax refund plans financed by issuing public debt.

The securities markets were impacted by the difficulties in the economic and financial sphere, as reflected in a notable decline in trading, a slump in equity prices and a sharp increase in volatility. The public sector took on a major role in the bond markets due to the sizeable increase in issuing. Government bond yields began to fall notably after the summer as a result of growing investor appetite for these assets, but there was also a significant increase in the risk premium imposed on some sovereign issuers. Private-sector issuers, including financial institutions, faced a pronounced increase in risk premiums and their issuing volumes were sharply curtailed. Nevertheless, the volume of asset-backed issues in Spain remained high as they were retained by their originators for use as collateral in funding operations with the European Central Bank. Spanish equity prices declined in line with those of the other big European markets, with all sectors being affected.

Performance by the economy and financial markets in the early part of 2009 suggests that the coming months will continue to be very complicated for the economic agents, and there is persisting high uncertainty about the timing and intensity of the recovery, although there are some encouraging signs. Whereas the macroeconomic indicators are tending to confirm negative growth in the developed countries, there were more encouraging signs in March, such as a degree of revival in the US housing market and a deceleration in the decline of consumer expenditure in Spain. Equities experienced sharp losses once again in the first two months of the year, which were particularly intense in the banking industry; however, a significant recovery was observed in mid-March, fuelled by the upgrades of earnings estimates by some US financial institutions and additional massive injections of liquidity by the Federal Reserve. Also, issuing increased in the private sector bond markets, although risk premiums remained very high.

The international agencies generally expect the world economy to decline further in 2009, although some optimistic scenarios envisage initial signs of a recovery in the second half. In any event, the world economy's recovery will depend on restoration of an appropriate level of confidence in the financial system. That restoration will depend not only on government support for the financial sector but also on progress with the reforms proposed by international forums in the areas of regulation and supervision.

## **1.1 International economic and financial situation**

### **1.1.1. The world economy**

#### **The financial crisis shaped world economic performance**

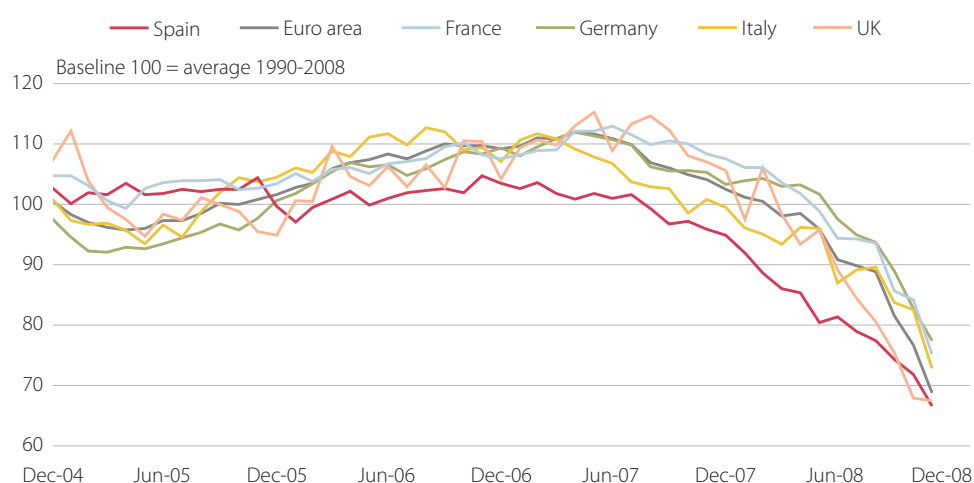
The financial crisis that commenced in August 2007 attained unprecedented depth and a global dimension in 2008, with a decisive impact on world economic performance. It influenced the economy basically in three ways: lending conditions to the private sector, the impact on wealth, and the formation of expectations. The succession of official interest-rate cuts and massive injections of liquidity by the central banks failed to avoid a notable increase in lending standards to the private sector during the year, particularly from September onwards, following US government intervention in the two big mortgage agencies and the collapse of Lehman Brothers. Faced with falling earnings and considerable difficulties with funding via the markets, financial institutions imposed stricter conditions on lending. At the same time, the high perception of risk in the capital markets made it more difficult for companies to raise funding by this avenue.

Mistrust of the financial sector also had a decisive influence on price performance of corporate financial assets. The drastic slump in financial asset prices, accompanied in some countries by a decline in real estate prices, greatly eroded private-sector wealth, which contributed to hampering access to finance on the part of consumers and companies, because of the negative impact on the value of collateral and on borrower solvency, while also fostering an attitude of great caution with regard to spending. The expectations of the economic agents, which had been clearly negative since the financial crisis began (Figure 1.1), worsened during the

year due to mounting difficulties with funding, declining wealth and the incessant flow of negative news with regard to companies and the financial markets, in addition to the general deterioration of economic activity.

### Economic sentiment

FIGURE 1.1



Source: Ministry of Economy and Finance.

### Trend towards recession in the industrialized countries

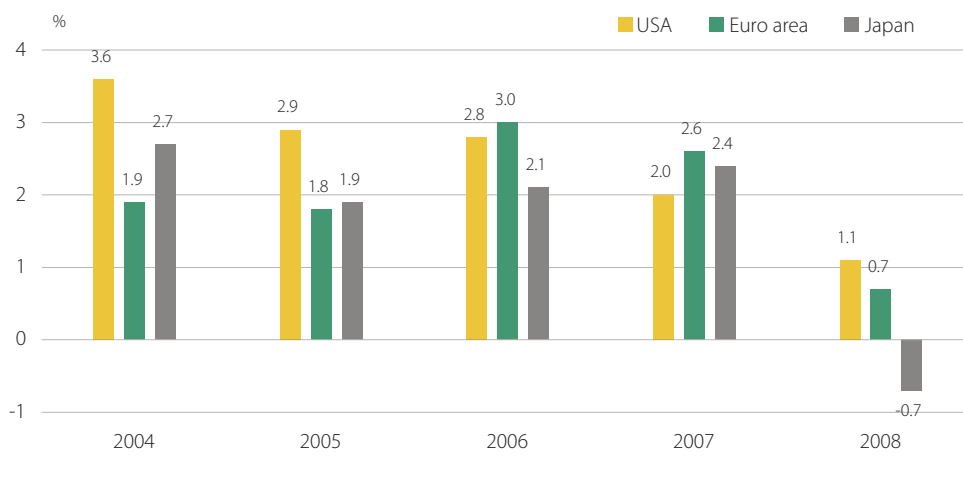
In this context of deep mistrust of the financial system and growing pessimism about the performance of the world economy, practically all the industrialized countries experienced a sharp reduction in economic growth in 2008. The International Monetary Fund estimated that the aggregated GDP of the advanced economies increased by 1% during the year, compared with 2.7% in 2007. With very few exceptions, the industrialized countries experienced a slowdown, if not a decline, in domestic demand. The exporting economies, such as Japan and Germany, were also impacted by a substantial decline in exports. The economic indicators of the industrialized countries experienced accelerated deterioration during the year which became particularly intense during the second half, coinciding with the exacerbation of the financial crisis. The available data show that the fourth quarter was particularly negative, with a sharp decline in GDP with respect to the same period of 2007 and sizeable increases in unemployment.

The US economy expanded by 1.1% in 2008, 0.9 points less than in 2007, but that was better than the decline experienced by its main competitors among the advanced economies (Figure 1.2). During the first half of the year, the US economy continued to grow due to the impact of tax rebates on private expenditure and to the growth in exports as a result of the weak dollar. However, in the second half, private consumption expenditure shrank, companies ceased to accumulate inventories, and exports slowed due to the intense deceleration in world trade. The decline in imports enabled the foreign sector to maintain a positive contribution to growth but could not avoid a decline in GDP, which was particularly acute in the fourth quarter: -0.8% with respect to the fourth quarter of 2007. The Japanese economy began to shrink before that of the US due to weaker domestic demand and greater dependence on the foreign sector. Year-on-year growth rates turned negative in the third quarter, but quarter-on-quarter rates had turned negative in the second quarter, reflecting the shrinkage in domestic demand. The foreign sector managed to attenuate the decline in GDP until the summer as a result of rapid growth in

exports; however, exports plummeted in the fourth quarter, leading to a 4.6% decline in GDP with respect to the fourth quarter 2007. Overall, the Japanese economy shrank by 0.9% in 2008.

Annual GDP growth rates

FIGURE 1.2



Source: Ministry of Economy and Finance.

The euro area's aggregated GDP increased by 0.7%, almost 2 points less than in 2007. All countries in the euro area experienced a decline in growth rates, but only two countries (Ireland and Italy) experienced a decline in GDP. The two largest economies in the area, Germany and France, expanded by 1% and 0.7%, respectively. Neither of the two economies experienced negative year-on-year growth until the fourth quarter, but Germany's GDP had begun to decline in quarter-on-quarter terms in the second quarter and France's in the third quarter, due to weak domestic demand and, above all, falling exports. In both cases, the economy declined as a result of weak domestic demand and falling exports. The decline in exports was particularly sharp in the fourth quarter, depressed GDP by 1.7% in Germany and 1% in France with respect to the same quarter of 2007. The Italian economy experienced negative growth in the full year of around 0.9%, again proving weaker than the other big European economies. The Spanish economy (discussed in more detail in section 1.2.1) saw an intense deterioration, even though the rate of change in GDP was again higher than the euro area average. Outside the euro area but still inside the European Union, the UK economy also flagged, with growth declining from 3% in 2007 to 0.7% to 2008. As in the case of Spain and Ireland, the deterioration in the real estate market contributed considerably to the deceleration. UK GDP declined by 1.9% in the fourth quarter of 2008 with respect to the same quarter of 2007.

### The crisis extends to the emerging economies

The decline in economic growth was also evident in the developing economies, particularly in the second half of the year. The rapid deceleration of economic activity in those countries, whose financial systems generally have little exposure to the assets that triggered the financial crisis, arose essentially from the sharp decline in imports by the developed countries. Additionally, from the summer onwards, commodity-exporting countries were affected by a decline in commodity



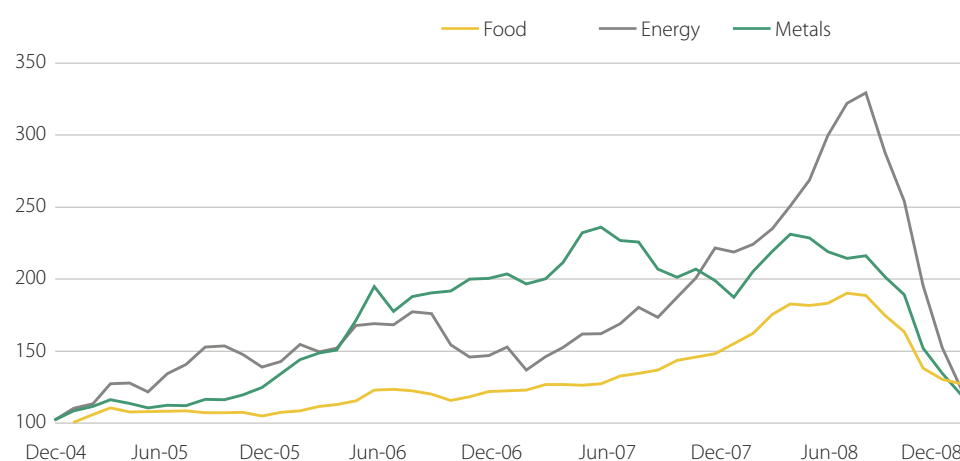
prices after a prolonged, intense rise in the preceding years. The IMF estimates that aggregated GDP of the emerging or developing economies grew by 6.3%, two points less than in 2007, with data from the fourth quarter evidencing a much sharper deterioration. China, one of the world's largest economies in terms of GDP, managed to attain 9% growth in 2008, but that was four points lower than in 2007. The Chinese economy, whose GDP is highly exposed to exports, was particularly hard-hit by negative performance in its foreign markets, particularly the European Union and the US. GDP growth in the fourth quarter is estimated at 6.8% year-on-year, compared with 11.2% in the same period of 2007. In Latin America, a region of particular interest for the Spanish economy, the main economies (apart from Mexico) maintained relatively high growth rates during the first three quarters, but all of them were affected by the adverse performance of the world economy from September onwards, particularly via the decline in exports and external capital flows. The economic situation also deteriorated in Eastern Europe, including most of the countries that have joined the European Union in recent years.

### Rapid decline in inflation in the second half

After a prolonged, intense increase in recent years, commodity prices slumped in the second half of 2008 (Figure 1.3). In the case of oil, the price of Brent slipped from over \$145 in July to around \$36 at the end of the year, a decline without precedent since the summer of 2004. At the end of March 2009, the price of Brent appeared to have stabilized below \$50. The decline in energy prices coupled with flagging consumer spending led to a turnaround in the trend of consumer prices,

Commodity price indices<sup>1</sup>

FIGURE 1.3



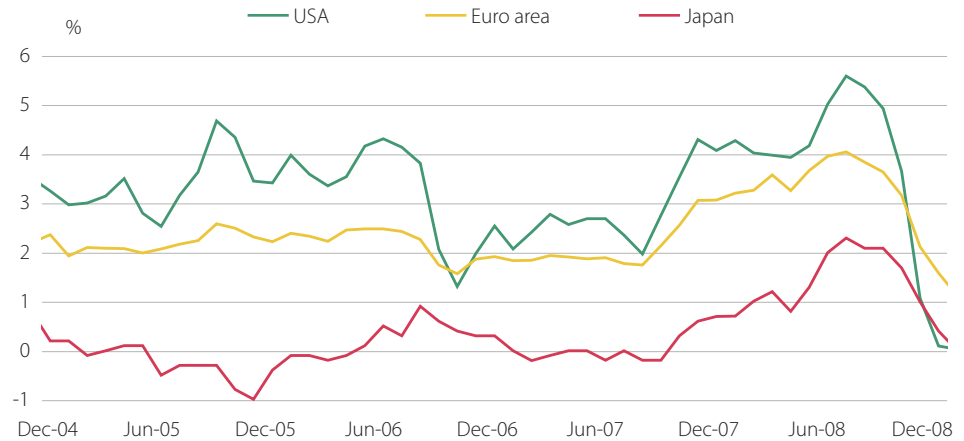
Source: Datastream.

1. Baseline 100: December 2004.

which had been rising rapidly since autumn 2007. The year-on-year inflation rate in the OECD, which includes most of the developed countries, fell from 4.9% in July to 1.5% in December. Available data from February 2009 confirm that inflation is continuing to fall. In particular, year-on-year inflation in February was 0.6% in the euro area, 0.2% in the United States and -0.1% in Japan.

**Year-on-year change in consumer prices**

FIGURE 1.4



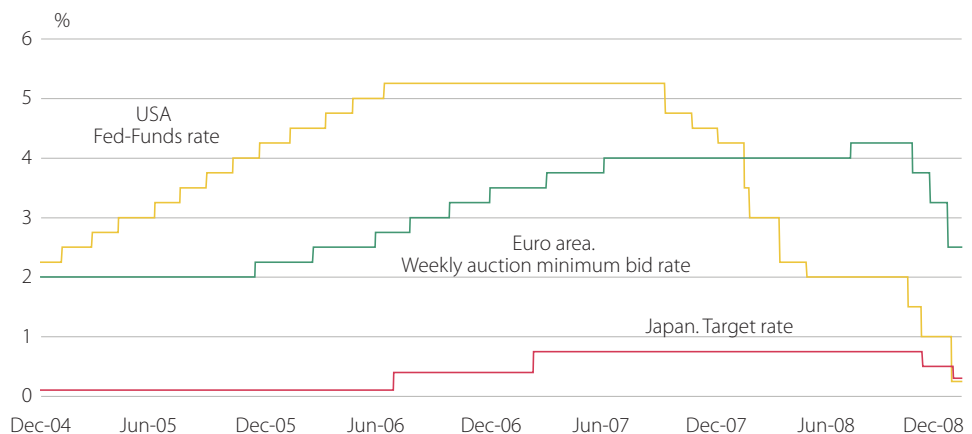
Source: Ministry of Economy and Finance.

### Sharp cuts in central bank base rates

Following the outbreak of the financial crisis in the summer of 2007, the monetary authorities in the industrialized countries moved quickly to attenuate liquidity tensions in the financial system and in the economy. In particular, both the European Central Bank (ECB) and the US Federal Reserve made massive direct injections of liquidity into financial institutions, and continued to do so more intensely and through a broader variety of mechanisms throughout 2008. However, as occurred in 2007, the Federal Reserve and ECB differed in their approach to interest rates throughout most of 2008 due to their differing priorities as regards price stability. A succession of interest rates cuts by the Federal Reserve brought the benchmark rate from 5.25% in September 2007 to 2% in May 2008, whereas the European Central Bank, more focused on controlling inflation, kept the benchmark rate stable at 4% until the beginning of July and then increased it by 25 basis points in order to offset the inflationary impact of rising energy prices (Figure 1.5). Only in October, when the Federal Reserve began to cut rates once again in view of the

**Central bank base rates**

FIGURE 1.5



Source: Datastream.

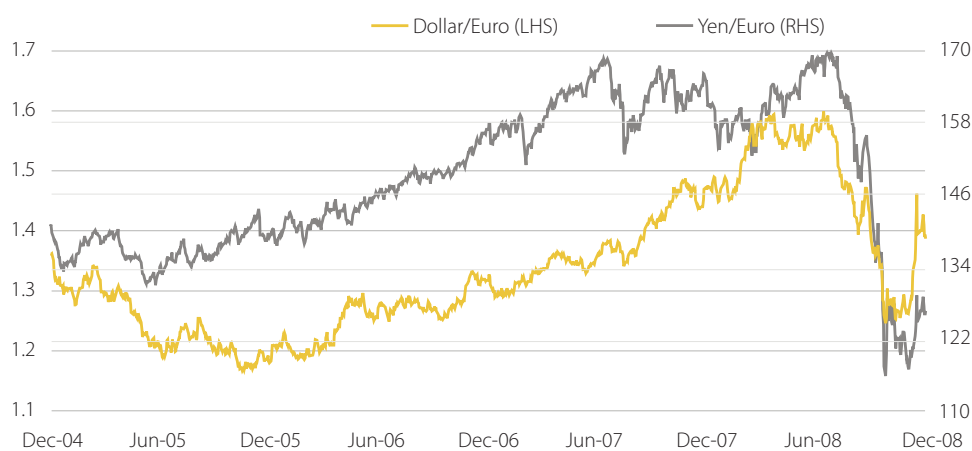
exacerbation of the financial crisis and the threat of recession, did the European Central Bank follow suit, spurred by falling inflation. At the end of the year, the benchmark rate was 2.5% in the euro area, 0.25% in the US, and 0.10% in Japan. In the early months of 2009<sup>1</sup>, the European Central Bank cut interest rates three times to bring its official rate to 1.25%.

### Downward correction of the dollar/euro exchange rate

The decline in short-term interest rates in the US coupled with the increase in Europe kept the euro strong against the dollar until July, in a phase of clear appreciation which lasted until April followed by a phase in which the exchange rate fluctuated within a wide range: between 1.54 and 1.60 dollars per euro. However, from July onwards the euro was affected more than the dollar by worsening expectations about the financial sector and the economy's fundamentals and, above all, by the prospect of a significant cut in base rates by the ECB. The exchange rate fell to 1.30 dollars per euro at the end of October. The rate was very volatile in the last two months of the year. Although the euro rallied in the second half of December, ending the year at 1.39 dollars, the general trend since then has been downwards. The yen/euro exchange rate followed a similar trajectory (Figure 1.6)

Euro exchange rate vs. the dollar and yen

FIGURE 1.6



Source: Datastream.

### The role of fiscal stimulus policies

The worsening financial crisis and the threat of a deep and lasting global recession drove the authorities to determined action on the economy in 2008. Whereas intervention had initially focused on containing financial problems, in the form of the central banks injecting liquidity and cutting interest rates, governments increasingly stepped in during the year not only to support the financial sector but also to provide fiscal stimuli to the economy as a whole. Numerous fiscal stimulus

1. Data through 2 April.

packages were adopted in the final months of 2008 and in early 2009 in view of the limited scope for monetary policy to reactivate the economy after the intense reduction in base rates. Because of their ambition and the scale of the funding potentially being deployed, these Keynesian policies were an unprecedented departure from the economic policy implemented by the developed countries since the 1980s, which was characterized by a tendency to limit public expenditure and the State's role in the economy.

The United States, a key country for the eventual recovery by the world economy, implemented its first big fiscal stimulus plan in February 2008. The plan, which amounted to an estimated 152 billion dollars, i.e. approximately 1.1% of GDP, focused primarily on tax reductions and refunds for consumers. One year later, the Obama administration designed a much larger plan: 787 billion dollars, equivalent to 5% of GDP, in a broader range of instruments. The Obama Plan will devote one-third of its funding to cutting taxes with the goal of boosting consumer spending in the short term; the remainder is allocated mainly to investment in infrastructure and alternative energy programs, and to beginning a profound reform of healthcare.

In December 2008, the European Union approved the European Economic Recovery Plan, conceived as a joint framework for action by the Member States and the European institutions. The European plan envisages action by the European institutions amounting to 30 billion euro, basically to finance investment in energy, transport and telecommunications infrastructure; it also envisages that national plans will total 170 billion euro, while emphasizing that the fiscal measures adopted in each country must take account of the situation of its public finances. In March 2009, most of the Member States had approved some form of fiscal stimulus package. The packages vary both in size and in approach. As regards size, Germany's plan amounts to 2.7% of GDP, the UK's to 1.2%, and Spain's to 2.4%. France's and Italy's fiscal stimulus plans amount to around 0.5% of GDP. As regards approaches, some countries such as the UK and Italy are focused on supporting households by cutting taxes and providing specific forms of aid, benefits, etc. whereas others, including Germany, France and Spain, place greater emphasis on public investment and on stimulating business. A large percentage of Spain's stimulus plan is allocated to investment in public infrastructure, much of that to be spent by municipalities.

China and Japan have also announced fiscal stimulus packages. China's plan amounts to approximately 5% of GDP, focused principally on investment in housing and infrastructure in rural areas, railways and airports. The measures announced in Japan amounted to 1.6% of GDP and focus, in large part, on supporting families and small businesses through tax exemptions for the former and tax benefits for the latter.

Because of their size, the announced plans will inevitably have a negative impact on government indebtedness in 2009. Most of the leading industrialized countries saw their government deficit increase significantly in 2008 (Annex I.1) as a result of rising expenditure and falling tax revenue caused by the deteriorating economic situation. In particular, the United States' deficit practically doubled with respect to 2007 in terms of GDP. According to estimates by the Obama Administration, the deficit could exceed 12% of GDP in 2009. Funding this and the other sizeable budget imbalances expected this year evidently poses a challenge for public finances and will have an indisputable impact on the financial markets.

### The economic deterioration worsened the situation of financial institutions

The negative interaction between the economy and the financial crisis led to a substantial increase in systemic risk. At the core of the problem, financial institutions saw earnings decline steadily during the year, affected by falling asset values and the negative impact of the economic situation on demand for credit and on delinquency. Financial institutions reported a total of 1.09 trillion dollars in writedowns in 2008, but the IMF's November estimates put the total figure at around 1.4 trillion dollars. Approximately half of reported losses were in the banking sector and the remainder in other financial institutions (insurance companies, pension funds, mortgage agencies, etc.). Institutions located in the United States accounted for 69% of the losses, while European institutions accounted for 28%, and Asian institutions for the remainder.

In view of the difficulties being experienced by financial institutions, the monetary authorities expanded and intensified measures designed to ensure liquidity, and governments deployed a broad battery of measures designed essentially to increase confidence in the financial system; they included increasing deposit insurance, buying financial assets from the institutions, providing guarantees for fixed-income securities issued by the latter, and even participating in recapitalization operations. The latter operations amounted to 987 billion dollars between the third quarter of 2007 and the fourth quarter of 2008, of which 572 billion dollars were injected into US financial institutions (less than their recognized losses) and 359 billion euro into European institutions (more than their recognized losses). Governments supplied 55% of total recapitalization funds in the United States and 46% in Europe. Equity was increased primarily in the form of preferred stock in the United States, and of common stock in Europe.

The performance of the financial sector in the first two months of 2009 suggests that the measures adopted to date may be insufficient to overcome the situation; therefore, further measures cannot be ruled out. In particular, since the lack of transparency about the composition and real value of assets held by financial institutions is seen as one of the main factors impairing confidence in the financial system, both United States and Europe are considering the creation of "bad banks", whose function would be to concentrate impaired assets held by financial institutions in order to enable the latter to return to a more normal form of operation. This approach is somewhat similar to the first design of the Paulson plan in the United States, which involved the government buying impaired assets but was finally discarded because of its complexity. As with the Paulson Plan, a bad bank must solve such complex questions as which damaged assets to choose, how to value them, how to fund the acquisitions, etc.

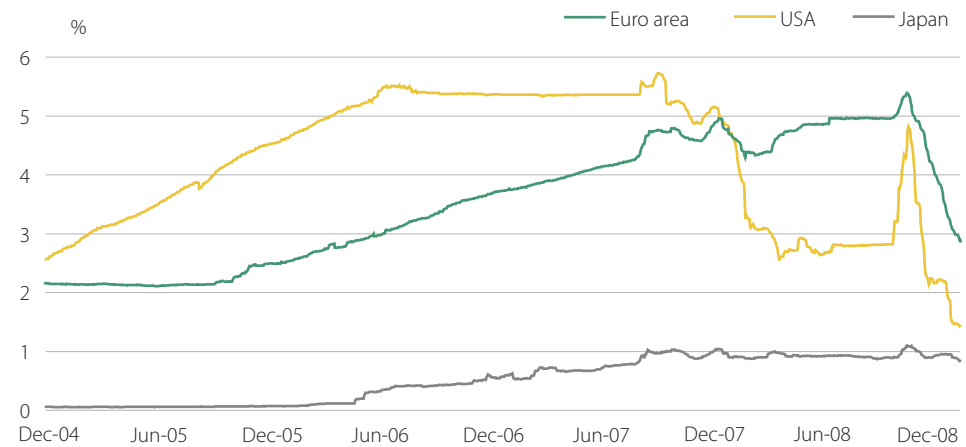
### Sharp decline in interbank interest rates from October onwards

Central bank interventions to ease liquidity tensions in the financial system temporarily put downward pressure on interbank market rates, a phenomenon which was more intense and longer lasting in the US than in Europe, in the first quarter of 2008 (Figure 1.7). In the following two quarters, US short-term interest rates remained relatively constant while European rates regained their December 2007 levels. The crisis at Lehman Brothers and other financial institutions triggered

an upswing in interbank rates that was particularly intense in the US; however, following the concerted rate cuts by the Federal Reserve, the ECB and other central banks in mid-October, interbank rates fell sharply for the rest of the year. Interbank rates continued to decline in the first two months of 2009.

### Short-term interest rates<sup>1</sup>

FIGURE 1.7



Source: Datastream.

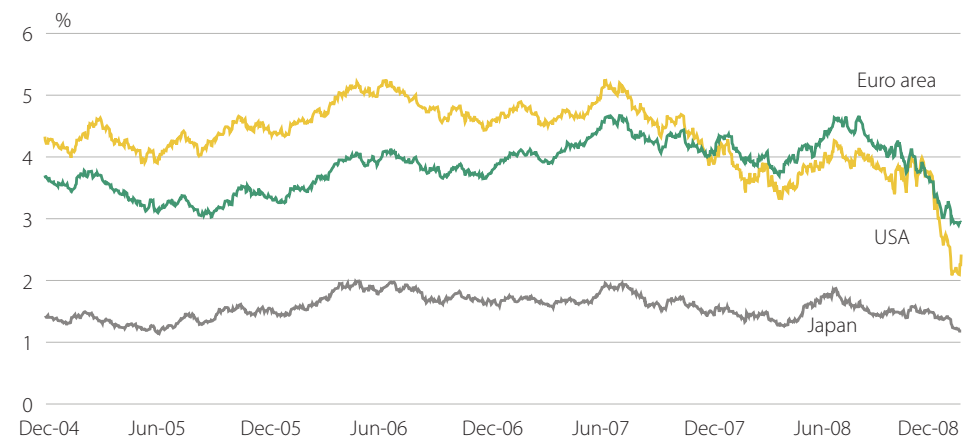
1. Libor 3 months Germany is taken as the reference for the euro area.

### Rising issues and falling yields in the government bond markets

Support for the financial sector, economic stimulus packages and, generally, rising public sector borrowing requirements led to a notable increase in governments' recourse to the bond markets in the main industrialized countries. Nevertheless, long-term government bond yields, measured in terms of secondary market spreads, fell substantially in the second half of the year as a result of expectations of a decline in both inflation and economic activity and of rising risk aversion,

### Long-term bond yields<sup>1</sup>

FIGURE 1.8



Source: Datastream.

1. 10-year bonds issued by the central government of the US and Japan. Germany is taken as the reference for the euro area.

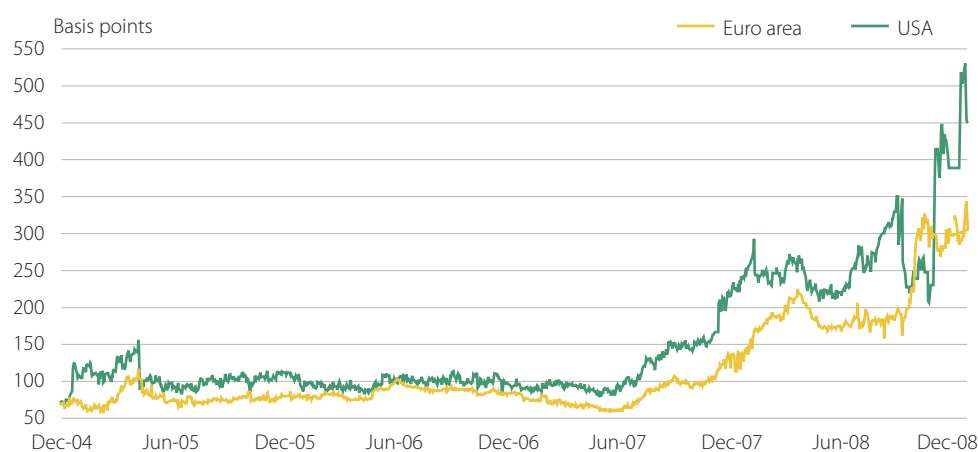
which led investors to prefer government bonds from countries with better credit ratings. At the end of the year, US 10-year bond yields were 2.25% while those in the euro area were 2.94%, i.e. 178 and 139 basis points less than in December 2007, respectively. In the first two months of 2009, yields rose moderately, reflecting overweighting of sovereign risk in view of the foreseeable significant increase in government indebtedness. Some countries' sovereign ratings were downgraded. At the end of March 2009, US bond yields were 2.7%, while euro area bond yields were 3.0%. A greater focus on credit risk assessment also led to a significant widening of the yield gap between different issuers.

### Shrinking issues and a sharp increase in yields in the private fixed-income markets

After several years of very intense activity, the private fixed-income markets experienced a notable slowdown in 2008. The primary markets, dominated by the financial sector, saw a substantial reduction in issuing as a result of the trend towards deleveraging, the adoption of cautious policies with regard to investment and increased investor risk perception. There was also a substantial decline in liquidity in the secondary markets. Yields demanded by investors in both the primary and secondary markets rose sharply as a result of increased risk premiums. In particular, the yield with respect to government bonds widened considerably (Figure 1.9).

Private bond yield gap (BBB-AAA)<sup>1</sup>

FIGURE 1.9



Source: Reuters.

1. 20-session moving average of the yield gap between 10-year issues at the bottom of investment grade (BBB) and top-rated issues (AAA, generally sovereign issues).

The trend in premiums traded in the credit derivatives markets is particularly illustrative of the difficulties that private issuers faced in raising funding in the bond markets. The price of a hedge for investment-grade issues (BBB or higher on the Standard & Poor's scale) increased substantially in the first quarter, in parallel with the turbulence in the equity markets during that period. Premiums eased somewhat in the second quarter but surged again in the summer, peaking in the fourth quarter in a context of high volatility. At the end of the year, premiums stood at 253 basis points in the United States and 233 in Europe, compared with 83 and 51 basis points, respectively, at the end of 2007. Risk premiums for US investment-

grade financial institutions rose particularly sharply, topping 600 basis points in November (Figure 1.11). Although premiums eased generally in December and the early days of January, corporate earnings and negative growth reports drove them upwards again. At the end of March 2009, risk premiums for investment-grade corporate bonds stood at 196 basis points in the US and 178 in Europe.

Corporate bonds: risk premium<sup>1</sup>

FIGURE 1.10

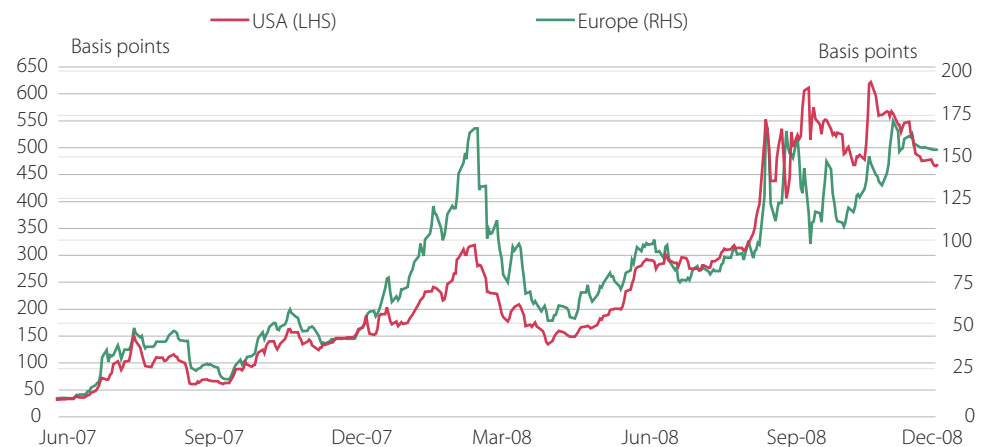


Source: Markit.

1. Credit derivatives market. Investment grade. 5-year maturity.

Financial sector: risk premium<sup>1</sup>

FIGURE 1.11



Source: Markit

1. Credit derivatives market. Investment grade. 5-year maturity.

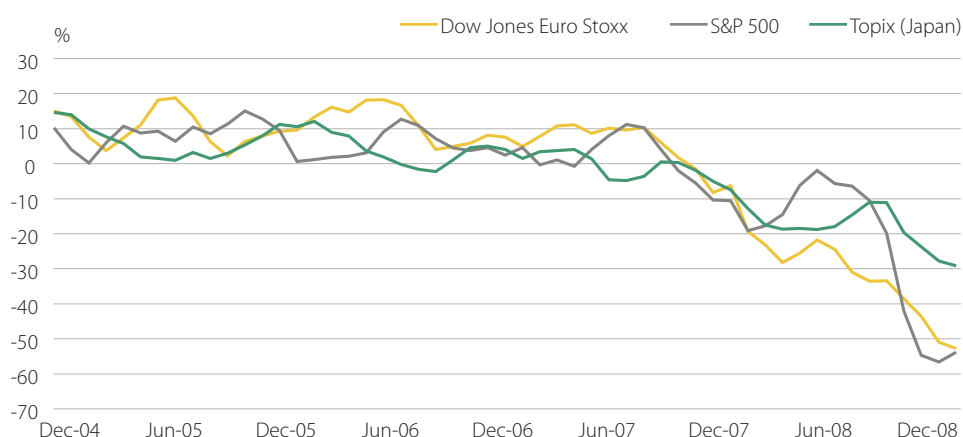
### Slump in equity prices

During 2008, equity prices experienced a widespread decline that was without precedent since the Great Depression. Problems in the financial sector and worsening economic expectations made investors extremely sensitive and triggered waves of mass selling at various points during the year. Corporate earnings reports tended to confirm analysts' negative projections, and the pessimism increased



**Analysts' projections: number of companies for which projections were upgraded less number of companies downgraded (% of the total number of companies)<sup>1</sup>**

FIGURE 1.12



Source: Datastream.

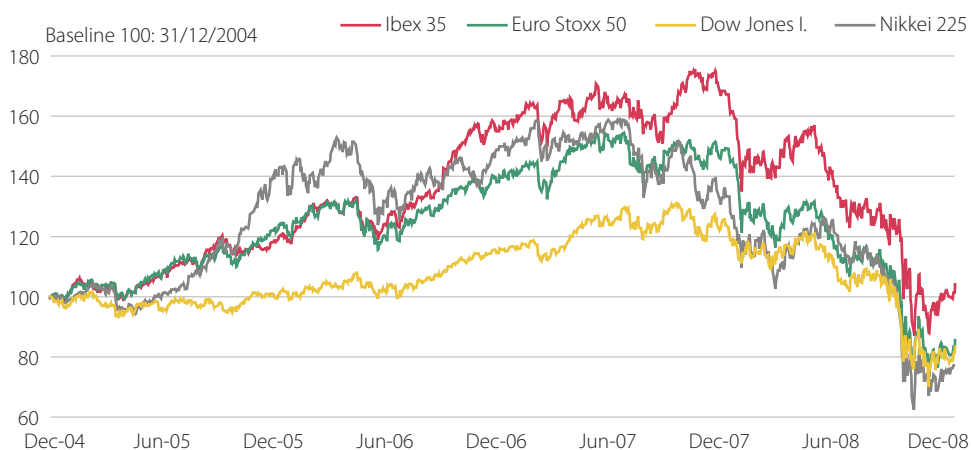
1. 12-month projections of earnings per share. Quarterly moving average.

steadily during the year as projections were downgraded frequently, particularly in the fourth quarter (Figure 1.12). Sales by institutional investors to reduce leverage and exposure contributed to maintaining bearish pressure on the market and may have exacerbated the declines in prices. Market performance led to a notable increase in bearish strategies either directly in the market, via short selling, or through the derivatives markets, which accentuated the downward trend in prices. Regulators in many countries took a range of measures with regard to short selling so as to increase market transparency and attenuate, as far as possible, its destabilizing effect in terms of systemic risk, particularly in the case of bank shares (see box in Chapter 10).

The best-known indices in the leading industrialized countries followed a similar trend (Figure 1.13). The sharpest declines in yields came in January, between mid-May and mid-July, and in October. The Dow Jones index lost nearly 34% of its value

**Performance by the world's main stock indexes**

FIGURE 1.13

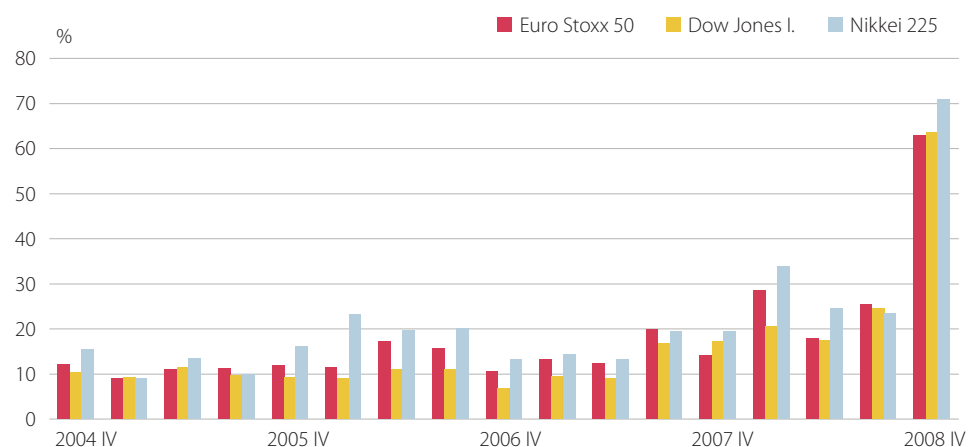


Source: Datastream

in 2008, the Japanese Nikkei index 42% and the Euro Stoxx 50 lost 44%. Within Europe, the top five markets (London Stock Exchange, Euronext, Deutsche Börse, Borsa Italia and the Spanish markets) lost between 31% (UK) and 48% (Borsa Italia). The Spanish Ibx 35 index lost 39%. Yields declined in a context of high volatility, falling fastest in October when share prices fell most sharply (Figure 1.14). Most emerging markets also experienced a decline in prices after providing investors with sizeable returns in recent years (Figure 1.1). The Chinese stock exchange loss 65% while in Latin America, the Brazilian exchange lost 41%.

Equity market volatility<sup>1</sup>

FIGURE 1.14



Source: Datastream

1. Quarterly average of annualised daily volatility (standard deviation of the last 20 days).

All segments of the stock market lost ground. As shown in Figure 1.15, which plots the return on the MSCI global sector indices, the greatest losses were in the financial sector, which lost 53% of its value worldwide in 2008. The other sectors most affected were those that are particularly sensitive to the economic cycle. For example, consumer discretionary, industrials, IT and materials lost close to or over 40%<sup>2</sup>. Energy was also particularly hard hit. In the first three months of 2009, returns fell again in nearly all sectors, particularly the financial sector, which lost another 20% in the period. The sector lost 67% of its value between August 2008 and the end of March 2009.

Equity markets also experienced a considerable decline in trading volume (Figure 1.1). The most significant exception was New York, whose two main markets (NYSE and NASDAQ) increased trading volume in 2008 as a result of outperforming in the first half of the year, when they may have been acting as safe havens, to an extent. In Europe, trading fell by between 16% (Germany) and 39% (Italy). Trading declined by 23% in the Spanish market.

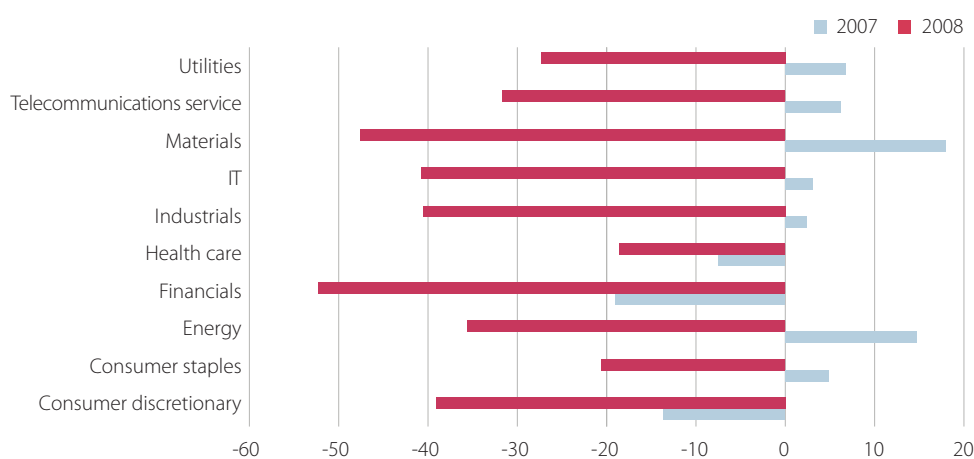
The worsening economic and financial situation and, in particular, the adverse trend of share prices led to a sharp decline in the number of initial public offerings worldwide. There were 338 IPOs in Europe in 2008, amounting to a total of 14.2 billion euro, i.e. respectively 58% and 82% less than in 2007. There were 57 IPOs in the United States, for a total of 19.4 billion euro, i.e. respectively 79% and 42% less than in 2007 (a single deal, the Visa flotation in the first quarter, accounted for 59%

2. Basically chemicals, construction materials, metals and paper.

## International sector equity indices<sup>1</sup>

FIGURE 1.15

Economic and  
financial situation



Source: Datastream.

1. MSCI All Country Sector (World) indices.

of the total). The number of IPOs also declined, although less intensely, in emerging markets, particularly Hong Kong and Shanghai, two of the most active markets in recent years.

## Equity markets: indices and returns

TABLE 1.1

| Stock exchange                  |                    | Index      |       | Trading volume |                       |
|---------------------------------|--------------------|------------|-------|----------------|-----------------------|
| Name                            |                    | Change (%) |       | Billion euro   | Chg. (%) <sup>1</sup> |
|                                 |                    | 2007       | 2008  |                |                       |
| <b>Developed countries</b>      |                    |            |       |                |                       |
| USA                             | Dow Jones Ind. A.  | 6.4        | -33.8 | 23,041.5       | 15.2                  |
| USA                             | Nasdaq Composite   | 9.8        | -40.5 | 25,064.1       | 29.6                  |
| Japan <sup>2</sup>              | Nikkei             | -11.1      | -42.1 | 3,975.3        | -24.1                 |
| UK                              | FTSE 100           | 3.8        | -31.3 | 4,374.3        | -33.0                 |
| Euro area <sup>3</sup>          | Euro Stoxx 50      | 6.8        | -44.4 | 9,475.5        | -17.0                 |
| Euronext                        | Euronext 100       | 3.4        | -45.2 | 3,027.6        | -26.2                 |
| Germany                         | DAX 30             | 19.2       | -40.4 | 2,648.5        | -15.8                 |
| Italy                           | MIB 30             | -6.5       | -48.4 | 1,029.1        | -38.8                 |
| Spain                           | Ibex 35            | 7.3        | -39.4 | 1,228.6        | -25.7                 |
| <b>Latin America &amp; Asia</b> |                    |            |       |                |                       |
| Argentina                       | Merval             | 2.9        | -49.8 | 4.5            | -8.5                  |
| Brazil                          | Bovespa            | 43.7       | -41.2 | 508.0          | 15.0                  |
| Chile                           | IGPA               | 13.8       | -19.6 | 25.0           | -25.6                 |
| Mexico                          | CPI                | 11.7       | -24.2 | 76.5           | -8.5                  |
| Peru                            | IGBL               | 36.0       | -59.8 | 4.3            | -47.2                 |
| South Korea                     | Korea Cmp Ex       | 30.1       | -40.7 | 991.7          | -14.3                 |
| Hong Kong                       | Hang Seng          | 39.3       | -48.3 | 1,107.0        | -23.9                 |
| China <sup>4</sup>              | Shanghai Composite | 96.7       | -65.4 | 2,591.5        | -43.0                 |

Source: International Federation of Stock Exchanges, Reuters and CNMV.

1. In local currency.

2. Tokyo and Osaka stock exchanges

3. Volume traded in euro area stock exchanges. Includes full OMX trading figures, though some markets do not trade in euro.

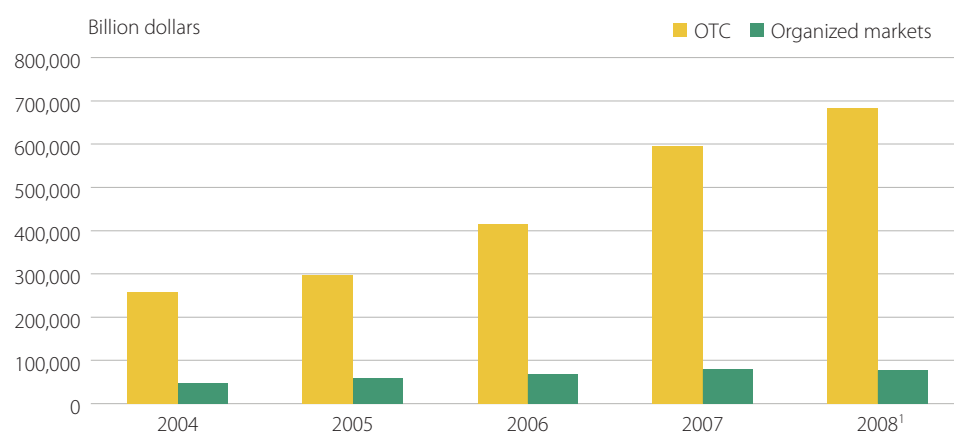
4. Shanghai and Shenzhen stock exchanges

## Slight reduction in the notional value of open interest in credit derivatives

According to the Bank for International Settlements, the notional value of open interest in OTC contracts in June was 32% higher than in the same month of 2007, and 15% higher than in December 2007, amounting to close to 684 trillion dollars. All segments clearly expanded with the exception of credit default swaps (CDS), whose notional value fell slightly with respect to December 2007 to somewhat over 57 trillion dollars, mainly as a result of the decline in fixed-income issues and, generally, of funding transactions. The most significant increase in notional value took place in the largest segment, i.e. interest rates: from 393 trillion dollars in December 2007 to 458 trillion dollars in June 2008. The notional value of open interest in exchange traded derivatives was considerably less than that of OTC products (Figure 1.16). They amounted to nearly 77 trillion dollars at the end of 2008, 2.5% less than at the end of the previous year, and were concentrated mainly in interest-rate futures.

**Derivatives: national value of open interest**

FIGURE 1.16



Source: Bank for International Settlements (BIS).

1. In 2008, the OTC figure is for June and the exchange-traded figure is for September

## 1.2 The economic and financial situation in Spain

### Sharp adjustment in the Spanish economy

In line with the other European economies, Spain experienced a sharp deceleration in 2008 fuelled by the performance of domestic demand. GDP growth was 1.2%, above the EU average. Internal demand, which had contributed decisively to economic growth in recent years, contributed just 0.1 point of GDP growth, hampered by the sharp deceleration of consumer expenditure and the decline in gross fixed capital formation. Conversely, external demand contributed 1.1 points of GDP growth, contrasting with its negative contribution in previous years. On the supply side, there was an evident adjustment to activity in nearly all sectors, particularly in industrials, whose added value shrank by 2%. Within industrials, construction experienced a 3% decline in added value. Services, the sector with the greatest contribution to added value, continued to grow rapidly, by 3.1%, though that was 1.5 points less than in 2007.

| Annual rate of change, unless indicated otherwise |      |      |      |       |      |
|---|------|------|------|-------|------|
|   | 2004 | 2005 | 2006 | 2007  | 2008 |
| GDP (at constant prices) <sup>1</sup>             |      |      |      |       |      |
| GDP   | 3.3  | 3.6  | 3.9  | 3.7   | 1.2  |
| Domestic demand <sup>2</sup>                      | 4.8  | 5.1  | 5.1  | 4.4   | 0.1  |
| Household spending                                | 4.2  | 4.2  | 3.9  | 3.4   | 0.1  |
| Government spending                               | 6.3  | 5.5  | 4.6  | 4.9   | 5.3  |
| Gross fixed capital formation                     | 5.1  | 7.0  | 7.1  | 5.3   | -3.0 |
| Net external demand <sup>2</sup>                  | -1.7 | -1.7 | -1.5 | -0.7  | 1.1  |
| Exports   | 4.2  | 2.5  | 6.7  | 4.9   | 0.7  |
| Imports   | 9.6  | 7.7  | 10.3 | 6.2   | -2.5 |
| Other indicators                                  |      |      |      |       |      |
| CPI. (year-on-year in December)                   | 3.2  | 3.7  | 2.7  | 4.2   | 1.4  |
| Employment growth <sup>3</sup>                    | 4.1  | 5.6  | 3.6  | 2.4   | -3.0 |
| Unemployment rate <sup>3</sup>                    | 10.6 | 8.7  | 8.3  | 8.6   | 13.9 |
| Current account balance (% of GDP)                | -5.3 | -7.4 | -8.9 | -10.1 | -9.6 |
| Government lending/borrowing (% of GDP)           | -0.4 | 1.0  | 2.0  | 2.2   | -3.8 |

Sources: INE, Bank of Spain and Ministry of Economy and Finance.

1. INE. National Accounts baseline 2000.
2. Contribution to GDP growth.
3. Labour Force Survey (LFS). Fourth quarter.

The Spanish economy maintained a clearly downward trend throughout the year due to the adverse impact of financing conditions and expectations about consumer and business performance. During the first three quarters, GDP growth was positive though declining. Then, in the fourth quarter, GDP shrank by 0.8% with respect to the same period of 2007. Rising unemployment and concerns about economic performance impacted consumer expenditure, which shrank by 2.8% year-on-year in the fourth quarter. Residential investment began to decline in the second quarter and investment in capital goods in the third; both registered negative growth rates, of 10.9% and 9.7%, respectively, in the fourth quarter. External demand made a positive and steadily rising contribution to economic growth during the year, primarily as a result of the deceleration in the first half and the slump in imports in the second half.

The intense adjustment in the economy had a major impact on unemployment and inflation. The two most negative outcomes of the adjustment were, undoubtedly, job destruction and the sharp increase in unemployment. The unemployment rate reached 13.9% in the fourth quarter, up from 8.6% in 2007. The deterioration in the labour market, which was initially confined to construction, spread to the other industrial segments and some segments of the services sector. Employment declined by 0.6% year on year. Inflation rose steadily up to the summer, when it reached 5.3%. However, falling energy prices and shrinking consumer spending triggered a rapid decline in the final months of the year and inflation was 1.4% in December. Inflation fell more sharply in Spain than in the euro area with the result that the differential between them was a negative 0.1% at year-end. In February 2009, annual inflation was 0.7%, confirming the downward trend and widening the negative differential with respect to the euro area.

The negative trend in the economy also had an impact on public finances. Following three years of surplus, the public administrations incurred a deficit amounting to

3.8% of GDP as a result of both falling revenue and rising expenditure. Discretionary fiscal stimulus measures to palliate the impact of the crisis on households and business contributed decisively to the increase in the deficit. The deficit is expected to expand once again in 2009 as a result both of the direct impact of the economic cycle on government revenue and expenditure and of all the extraordinary measures adopted by the government to revive the economy (see Section 1.1.1). However, in terms of indebtedness, Spain's public finances are in a better initial position than those of other countries. At the end of 2008, the public administrations' debt amounted to 39.4% of GDP, almost 30 percentage points less than the euro area average.

### Shrinking flows of finance and financial investment in the private residential sector

In contrast with the pattern of the preceding years, non-financial companies, financial institutions and households reduced external fund-raising intensely, while the public sector significantly increased borrowing. Non-residents continued to play an essential role in financing the Spanish economy, but they greatly reduced their net acquisition of financial assets issued by residents. There were also two particularly significant events for Spain's securities markets. The first was a sharp reduction in fund-raising via fixed-income securities by financial institutions after several years of intense issuing by this sector (particularly credit institutions and securitisation trusts). The second was the net divestment of mutual fund units by households, which commenced in 2007 and intensified in 2008, coupled with an increase in households' bank deposits.

Net financial liabilities acquired by non-financial companies fell by 60.2% in January-September 2008 compared with the same period of 2007. The decline was

#### Financial liabilities acquired by non-financial companies

TABLE 1.3

| Million euro                     |                |                |                |                |                   |                              |
|----------------------------------|----------------|----------------|----------------|----------------|-------------------|------------------------------|
|                                  | 2004           | 2005           | 2006           | 2007           | 2008 <sup>1</sup> | % chg.<br>08/07 <sup>2</sup> |
| Securities other than shares     | -219           | -242           | 1,212          | 1,792          | -283              | —                            |
| Short-term securities            | 418            | -422           | 1,272          | -235           | 158               | —                            |
| Long-term securities             | -636           | 180            | -316           | 2,171          | 445               | -79.6                        |
| Financial derivatives            | 0              | 0              | 255            | -144           | -887              | -725.4                       |
| Loans                            | 91,670         | 141,022        | 225,422        | 177,970        | 57,292            | -58.9                        |
| Short-term loans                 | 21,120         | 40,343         | 37,845         | 14,189         | 3,805             | -80.7                        |
| Long-term loans                  | 70,550         | 100,679        | 187,577        | 163,782        | 53,487            | -55.4                        |
| Shares and other equities        | 37,333         | 33,903         | 24,247         | 52,861         | 23,866            | -37.1                        |
| Listed shares                    | 934            | 2,252          | 4,545          | 24,749         | 2,229             | -85.4                        |
| Unlisted shares                  | 15,732         | 14,351         | 5,417          | 16,504         | 14,668            | 4.4                          |
| Other equities (excluding funds) | 20,667         | 17,300         | 14,284         | 11,608         | 6,969             | -18.9                        |
| Insurance underwriting reserves  | -81            | 532            | 4              | 0              | 0                 | —                            |
| Other accounts receivable        | 30,571         | 54,135         | 61,438         | 30,263         | 220               | -99.1                        |
| <b>Total</b>                     | <b>159,274</b> | <b>229,350</b> | <b>312,323</b> | <b>262,886</b> | <b>81,096</b>     | <b>-60.2</b>                 |

Source: Bank of Spain, "Financial Accounts of the Spanish Economy".

1. Figures for 9M08.

2. Percentage change in the first three quarters of 2008 with respect to the same period of 2007.

substantial (Table 1.3) both in instruments more related to funding investment projects (long-term loans and securities) and in those associated with financing working capital (short-term loans and other accounts receivable). Loans were again the sector's main funding source, accounting for 71% of total funds raised in the period. In the area of securities, share issues accounted for almost 21% of the net liabilities acquired by the sector, predominantly by unlisted companies, whereas net issuing of fixed-income securities was negative (repayments predominated).

In the first three quarters of 2008, financial institutions raised 43.1% less than in the same period of 2007. The reduction in net new liabilities was concentrated particularly in fixed-income securities because of the difficulties in the international markets in these instruments since the financial crisis began. As a result, funds raised through fixed-income issues fell by 67% in net terms during the period of reference, from 34.1% of the total to 22.3%. In contrast, funding through deposits was similar to the same period of 2007 and increased as a share of the total from 60.2% in 2007 to 81.9%.

Financial resources raised by households also declined significantly. Specifically, between January and September, they acquired 62% less net liabilities than in the same period of 2007. The trend was positive in the first two quarters of the year but turned negative in the third. The reduction in households' borrowing was reflected both in loans and in other forms of credit.

As for households' financial investments, the trend observed in 2007 was accentuated as net acquisitions of financial assets fell by 70% (24.7% in 2007). The composition of this flow reveals a substantial change in households' behaviour (Table 1.5). Net acquisition of fixed-income securities, which had been rising rapidly since 2004, declined in 2008, and acquisition of listed equities decelerated notably but remained positive. Selling pressure was accentuated in mutual funds, and net

### Net financial assets acquired by households<sup>1</sup>

TABLE 1.4

Million euro

|  | 2004          | 2005          | 2006           | 2007          | 2008 <sup>2</sup> | % chg.<br>08/07 <sup>3</sup> |
|--|---------------|---------------|----------------|---------------|-------------------|------------------------------|
| Cash and deposits                            | 42,497        | 50,152        | 82,457         | 59,839        | 50,380            | 21.4                         |
| Securities other than shares                 | 835           | 1,339         | 5,138          | 12,267        | -7,288            | —                            |
| Shares and other equities                    | 15,682        | 19,229        | -8,151         | -5,323        | -29,047           | -449.3                       |
| Listed shares                                | -404          | 2,039         | -4,278         | 11,453        | 5,730             | 209.4                        |
| Unlisted shares                              | 147           | -1,935        | -7,297         | -5,211        | -5,171            | -38.6                        |
| Other equities (excluding funds)             | 2,785         | 1,915         | 1,134          | 150           | 617               | 433.1                        |
| Mutual fund units                            | 13,391        | 17,510        | 2,344          | -12,725       | -29,099           | -598.6                       |
| Shares issued by investment companies        | -237          | -300          | -54            | 1,010         | -1,154            | —                            |
| Insurance underwriting reserves <sup>4</sup> | 15,675        | 18,136        | 17,281         | 10,801        | 6,054             | -25.6                        |
| Other accounts receivable                    | 5,282         | 5,935         | 10,844         | 3,464         | -4,558            | —                            |
| <b>Total</b>                                 | <b>79,970</b> | <b>94,792</b> | <b>107,568</b> | <b>81,039</b> | <b>15,540</b>     | <b>-70.1</b>                 |

Source: Bank of Spain, "Financial Accounts of the Spanish Economy".

1. Includes NPISH (Non-Profit Institutions Serving Households).

2. Figures for 9M08.

3. Percentage change in the first three quarters of 2008 with respect to the same period of 2007.

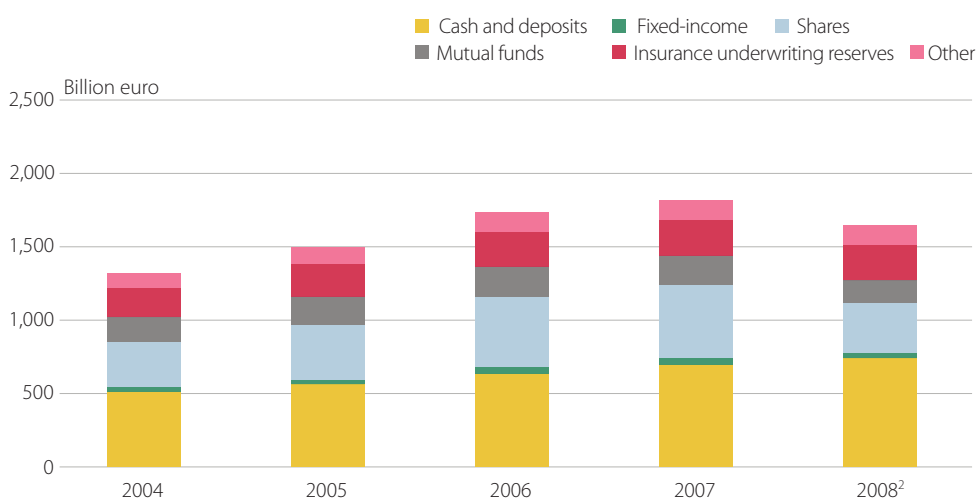
4. Includes pension plans.

redemptions amounted to more than double the previous year's figure. In contrast, deposits increased by 21.4%, which is very significant in view of the sharp decline worldwide in net financial investment by households. The shift towards deposits was favoured by rising yields on these instruments in contrast with alternative instruments and the rising perception of risk associated with the latter. The increase of the ceiling on deposit insurance to 100,000 euro in October contributed to maintaining deposits' appeal to investors.

Households' net investment in financial assets declined by 9.6% between December 2007 and September 2008, mainly as a result of the decline in asset prices. In particular, falling share prices accounted for 33% of the decline in the value of households' equity holdings<sup>3</sup>. As shown in Figure 1.15, the composition of households' financial assets has changed significantly: cash and deposits account for 45% of the total, compared with 38.1% in 2007, while equities and collective investment declined in importance from 38.9% to 29.8% of the total. The weighting of fixed-income securities and insurance underwriting reserves and pension funds were practically unchanged: 2.3% and 14.9%, respectively.

**Financial assets held by households<sup>1</sup>**

FIGURE 1.17



Source: Bank of Spain, "Financial Accounts of the Spanish Economy".

1. Includes NPISH (Non-Profit Institutions Serving Households).

2. The balances for 2008 refer to the first three quarters.

### The non-resident sector continues to play an essential role in financing the Spanish economy

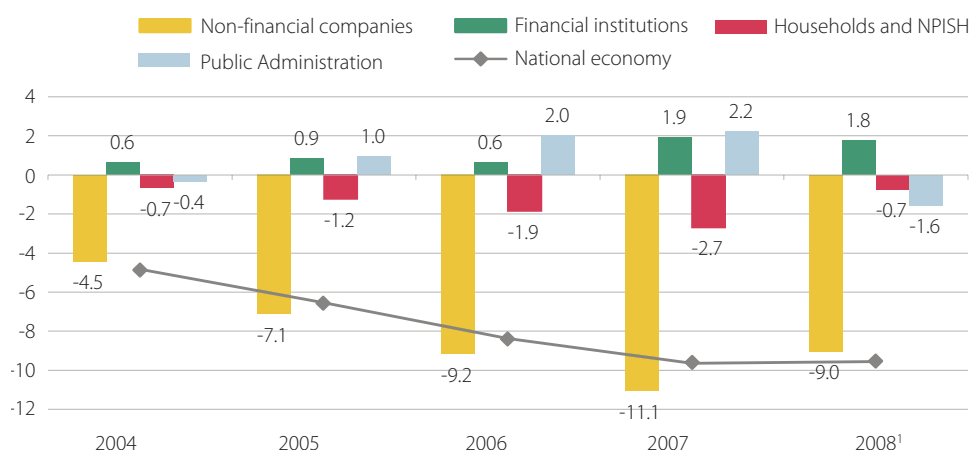
Overall, the Spanish economy is still heavily dependent on external borrowing since saving by resident sectors is insufficient. Nevertheless, the rising trend observed in the economy's borrowing requirement in recent years was curtailed (Figure 1.13), with the 2008 figure being similar to the 2007 figure (9.6% of GDP, compared with 9.7% in 2007). This trend was driven primarily by households and non-financial companies, whose borrowing requirements declined significantly due to greater



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

FIGURE 1.18

Economic and financial situation



Source: Bank of Spain, "Financial Accounts of the Spanish Economy".

1. The figures for 2008 are the sum of the figures for the first three quarters of that year plus the fourth quarter of 2007.

saving in both segments and to a significant decline in residential investment on the part of households.

In line with the behaviour of the private resident sector, the acquisition of domestic financial assets by the non-resident sector declined by 28.1% in monetary terms. And the composition of these holdings also changed substantially. Net investment in fixed-income continued the trend that commenced in 2007 and fell sharply, from 83% in 2006 to a mere 2% in 2008. In contrast, net investment in deposits gained ground; deposits accounted for 65% of the total, up from 1% in 2006 and 32% to 2007.

## Net financial assets acquired by the non-resident sector

TABLE 1.5

Million euro

|                                  | 2004           | 2005           | 2006           | 2007           | 2008 <sup>2</sup> | % chg.<br>08/07 <sup>3</sup> |
|----------------------------------|----------------|----------------|----------------|----------------|-------------------|------------------------------|
| Cash and deposits <sup>1</sup>   | 14,140         | 51,284         | 3,133          | 76,514         | 91,295            | 103.2                        |
| Securities other than shares     | 104,055        | 143,478        | 212,869        | 83,069         | 2,984             | -97.1                        |
| Loans                            | 10,593         | 20,806         | 35,026         | 29,864         | 15,093            | -15.4                        |
| Shares and other equities        | 22,866         | 7,870          | -1,230         | 45,326         | 31,143            | 11.5                         |
| Listed shares                    | 6,110          | -6,556         | -19,674        | 29,911         | 7,867             | -53.5                        |
| Unlisted shares                  | 9,473          | 11,984         | 12,839         | 10,288         | 19,551            | 183.7                        |
| Other equities (excluding funds) | 6,672          | 5,926          | 4,954          | 5,549          | 4,574             | 11.3                         |
| Mutual fund units                | 612            | -3,485         | 652            | -421           | -849              | —                            |
| Other accounts receivable        | 1,317          | 5,752          | 5,176          | 3,551          | 520               | -82.8                        |
| <b>Total</b>                     | <b>152,972</b> | <b>229,191</b> | <b>254,973</b> | <b>238,324</b> | <b>141,035</b>    | <b>-28.1</b>                 |

Source: Bank of Spain. "Financial Accounts of the Spanish Economy".

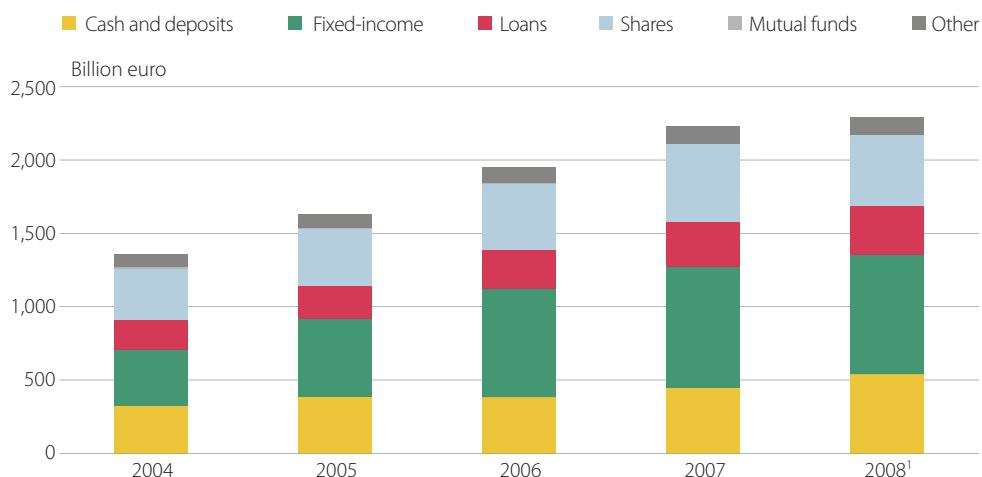
1. Includes monetary gold and special drawing rights (SDR).

2. Figures for 9M08.

3. Percentage change in the first three quarters of 2008 with respect to the same period of 2007.

## Financial assets held by non-residents

FIGURE 1.19



Source: Bank of Spain. "Financial Accounts of the Spanish Economy".

1. The balances for 2008 refer to the first three quarters.

### The banking sector withstood better than others both the financial crisis and the economic deterioration

In 2008, Spain's financial institutions operated in an increasingly adverse climate due to both funding difficulties in international markets and the deterioration of activity in the domestic economy. Credit institutions experienced the adverse trend in the economy primarily in two ways: a decline in business volume in their normal activities, and an increase in delinquency. Lending to companies and households increased by just 6.2% in 2008, contrasting with growth rates of between 10% and 30% in previous years, while borrower delinquency in the sector overall stood at 3.87% in January 2009, compared with 0.76% in June 2007, just before the international financial crisis broke.

Nevertheless, Spain's financial system did not experience such acute problems as those of other countries. Spanish credit institutions managed to obtain relatively comfortable liquidity conditions in 2008 as a result, among other factors, of loans from the ECB. The auctions under Spain's Financial Asset Acquisition Fund (FAAF) and the provision of guarantees for securities issued by financial institutions contributed to increasing the sector's liquidity in the early months of 2009. As regards capitalization, the regulatory capital figures for the month of June (the first to be calculated under the New Capital Accord – Basel II) revealed a capital ratio of 11.3% for the sector as a whole, whereas its Tier 1 ratio was 7.7%. Those ratios were well in excess of the regulatory minimum and greater than the figures 12 months before (10.6% and 6.9%, respectively).

#### Measures to support the financial sector (Financial Asset Acquisition Fund and guarantees): role of the CNMV

The financial crisis diminished financial institutions' ability to raise funds in the capital markets, which had a negative impact on lending to companies and households. In these extraordinary circumstances, the Spanish government, like other European governments, decided in October to take a

number of measures to restore confidence in the financial system and boost lending to companies and households by financial institutions.

The first measure was the creation, under Royal Decree-Law 6/2008, of the Financial Asset Acquisition Fund (FAAF), financed out of the Central Government budget for an amount of 30 billion euro, with the possibility of expanding to 50 billion euro. The acquisition of assets (either in the form of two-year repos or outright purchases of assets with a maturity of three years) took place in the form of a system of auctions; by mid-March, four auctions had taken place and the FAAF had acquired assets worth 19.3 billion euro from 54 institutions.

The second measure was the authorization, under Royal Decree-Law 7/2008, to grant guarantees for new funding transactions by credit institutions resident in Spain. The maximum amount of guarantees was 100 billion euro; by mid-March there had been eight guaranteed bond issues amounting to a total of 11.1 billion euro.

The CNMV advised the Directorate-General of the Treasury and Financial Policy on the practical implementation of these measures. The CNMV also provided support to the issuers of these securities by expediting approval and subsequent listing of the issues since one of conditions to qualify for a guarantee by the State or to be acquired by the FAAF is that the securities must be listed on an organized market. The CNMV is also present on the Technical Advisory Committee of the FAAF Executive Commission, where it has two representatives out of the nine members.

### Sharp increase in issues of public debt

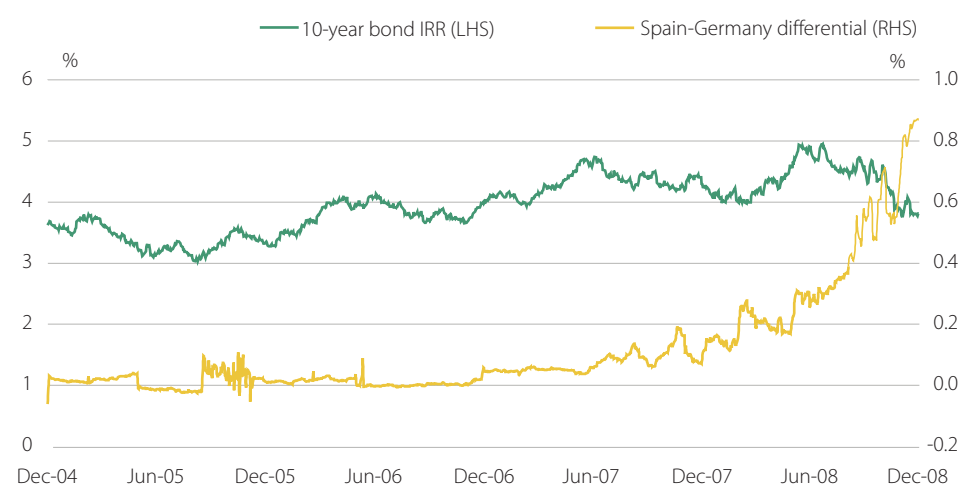
As in the other industrialized countries, the rising public sector borrowing requirement was reflected in a substantial increase in fixed-income issuing, particularly by the Central Government. Gross issues of public debt amounted to 124.4 billion euro, more than twice the 2007 figure, and net issues amounted to 51.5 billion euro (the net figure was negative in 2007). Gross issues by the Central Government, which accounted for slightly over 90% of the total, increased both in the short maturities (*Letras del Tesoro*) and in the long maturities (*Bonos* and *Obligaciones*), and issuing was particularly intense from September onwards. The increase in the outstanding balance of public debt combined with investors' preference for liquidity and low-risk assets led to a sharp increase in secondary-market trading in all forms of the short-term segment (held-to-maturity, cash, repos and sell/buybacks and buy/sellbacks). However, the long term segment (which represents the bulk of trading) saw a notable decline, particularly in cash transactions, in the final months of the year, coinciding with the sharp increase in issues in the primary market. The performance of the domestic public debt markets, both primary and secondary, is analysed in greater detail in Chapter 3.

Public debt yields generally followed the same pattern as in the main industrialized countries. Yields on *Letras* rose steadily until July, driven by inflation and expectations of greater recourse to the market by the public sector in the short term. However, after the summer, the change in the inflation trend and expectations that the ECB would cut base rates, coupled with rising risk aversion and a preference for liquidity on the part of investors, exerted strong downward

pressure on the yield on *Letras*. As for *Bonos* and *Obligaciones*, yields rose steadily until mid-year and then declined due to the downgrade of economic growth prospects. Overall, the yields on short-term assets fell more than those on long-term assets in 2008. At the end of the year, the yield on one-year *Letras* was 2.12%, whereas the yield on 10-year *Bonos* was 3.96%. The yield gap of long-term debt with respect to Germany continued to widen (Figure 1.20). The gap continued to expand during part of January 2009, peaking at 123 basis points when Standard & Poor's downgraded the rating of Spain's public debt (from AAA to AA+); from that point onwards, the gap eased and was slightly over 80 basis points at the end of March.

**Yield on Spanish long-term government debt**

FIGURE 1.20



Source: Datastream and CNMV.

### Decline in private fixed-income issues

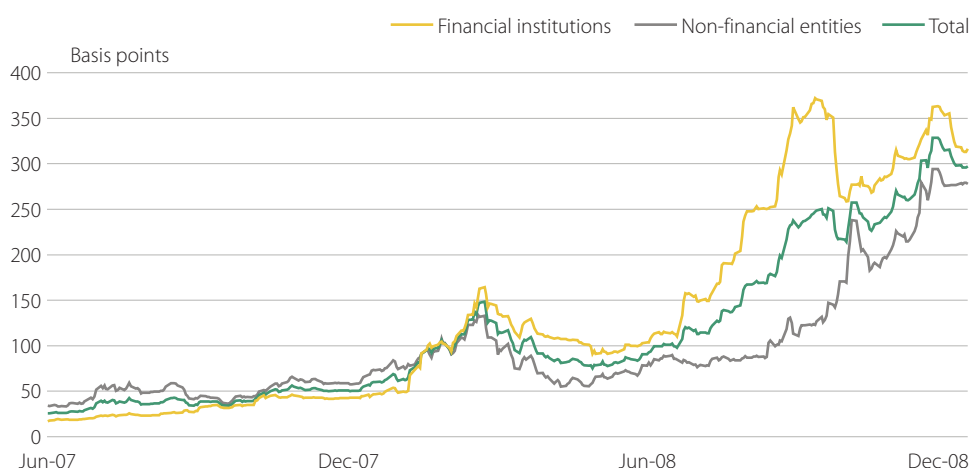
There was a substantial reduction in 2008 in fund-raising through new bond issues by the private sector. Overall, gross private fixed-income issues fell 21.7% to close to 589 billion euro, while net issuing fell by 64.5% to 80.5 billion euro. As usual, financial institutions accounted for the bulk of issues (almost 98% of the total). The decline in gross issuing, which affected both short and long-term instruments, including commercial paper, was considerably lower in the ABS segment than in other segments (see, for example, Table 3.3). Nevertheless, the bulk of new asset-backed securities were acquired by the financial institutions that originated them in order to accumulate assets that qualified as collateral for funding transactions with the ECB. The main feature of secondary market trading was a sharp increase in trading volume in AIAF, Spain's main private sector fixed-income market. Trading there increased by nearly 124% due to transactions by the Public Treasury from March onwards, basically very short-term sell/buybacks and buy/sellbacks of ABSs. The Financial Asset Acquisition Fund also began to trade as a member of that market in November (see Chapter 3 for more detail).

As occurred with public debt, yields on private fixed-income securities in the AIAF market rose until September in the case of commercial paper and until July in the case of bonds and debentures. Those yields fell sharply in the final months of the year. The higher risk perception led to a notable increase in the yield spread over Treasury securities, which was greater in the case of commercial paper than in the

case of bonds. The risk premiums of Spanish issuers traded in the credit derivatives market increased even more, particularly during the second half of the year, due to the weighting of the financial sector (Figure 1.21). The increase in premiums was accompanied by frequent rating downgrades of some financial institutions because of their exposure to the real estate market and of the economy's performance. Downgrades were also frequent in the first two months of 2009 and CDS spreads widened even more intensely.

### Risk premium of Spanish issuers<sup>1</sup>

FIGURE 1.21



Source: Markit

1. Credit derivatives market. All categories of credit risk. 5-year maturity. Simple average.

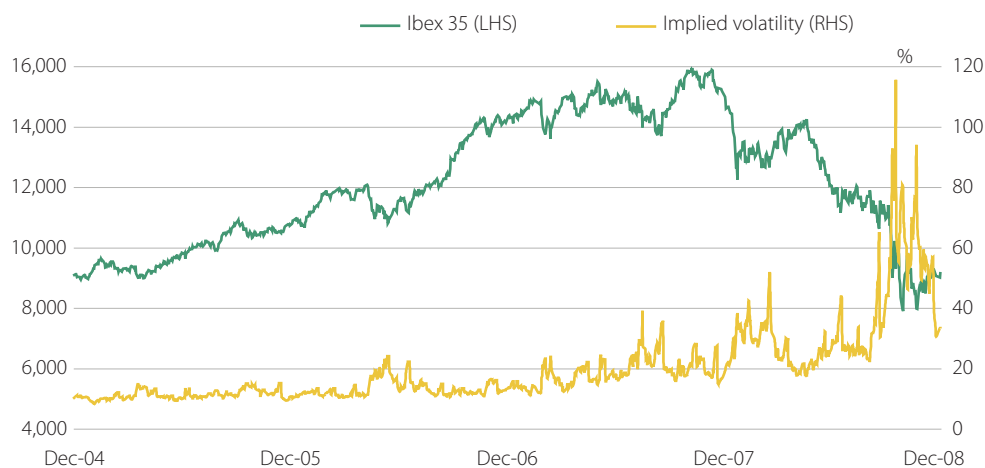
### Share prices fell in line with the main European bourses

The Ibex 35 index lost 39.4% in 2008, the largest year-on-year decline in its history. The index's performance over time was similar to that of other indices. Declines, which predominated during the year, were particularly intense in the periods when the international financial crisis was at its height (January, May-July, and October). In particular there was a drastic decline in October (close to 20%) in the context of a general slump by international equity markets as a result of deep distrust of the financial sector and uncertainty about its future following the collapse and government intervention of certain big US institutions. The October slump was accompanied by a very steep increase in the volatility of Ibex 35 contracts that are traded on MEFF; it actually exceeded 100% in one session, compared with an average of 36% in 2008 (Figure 1.22). The index performance continued to be clearly negative in the first three months of the year, in line with the big international markets, and the 15% decline essentially reflected persisting worldwide distrust of the financial system and the future of the economy.

All sectors of the stock exchange were affected by the declines, though not to the same extent (Figure 1.23). The sharpest losses were experienced by the financial sector and the non-financial sectors most exposed to the economic cycle, particularly construction, materials, industry, and certain consumer services, especially those related to hospitality and tourism. Small- and mid-cap stocks experienced a greater decline in price than did large caps, as reflected by the performance of the Ibex index for this segment and by the Barcelona Stock

### Ibex 35 performance and implied volatility<sup>1</sup>

FIGURE 1.22



Source: MEFF.

1. Implied volatility published by MEFF for the front derivative.

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

TABLE 1.6

|                         | 2007  | 2008  | 2008 (quarterly %) |       |       |       |
|-------------------------|-------|-------|--------------------|-------|-------|-------|
|                         |       |       | I                  | II    | III   | IV    |
| Ibex 35                 | 7.3   | -39.4 | -12.6              | -9.2  | -8.8  | -16.3 |
| IGBM <sup>1</sup>       | 5.6   | -40.6 | -12.4              | -9.8  | -9.5  | -16.9 |
| Barcelona               | 5.2   | -41.8 | -13.8              | -9.8  | -9.3  | -17.5 |
| Bilbao                  | 2.1   | -39.5 | -12.8              | -9.1  | -10.7 | -14.5 |
| Valencia                | 7.2   | -37.8 | -12.4              | -8.7  | -8.3  | -15.3 |
| Ibex with dividends     | 10.7  | -36.5 | -12.0              | -8.1  | -7.7  | -15.0 |
| Ibex Medium Cap         | -10.4 | -46.5 | -9.8               | -15.0 | -14.5 | -18.5 |
| Ibex Small Cap          | -5.4  | -57.3 | -13.6              | -11.6 | -23.1 | -27.4 |
| BCN-Mid 50 <sup>2</sup> | -11.7 | -53.1 | -10.7              | -13.1 | -20.6 | -23.8 |
| FTSE Latibex All-share  | 57.8  | -51.8 | -10.5              | 14.5  | -27.7 | -34.9 |
| FTSE Latibex Top        | 33.7  | -44.7 | -6.2               | 15.8  | -25.3 | -31.8 |
| FTSE Latibex Brasil     | 64.0  | -56.2 | -11.2              | 22.5  | -36.6 | -36.5 |

Source: Thomson Datastream. Reuters. Madrid Stock Exchange and Sociedad de Bolsas.

1. Madrid Stock Exchange General Index.

2. Index of the mid segment of the Spanish securities market. drawn up by the Barcelona Stock Exchange.

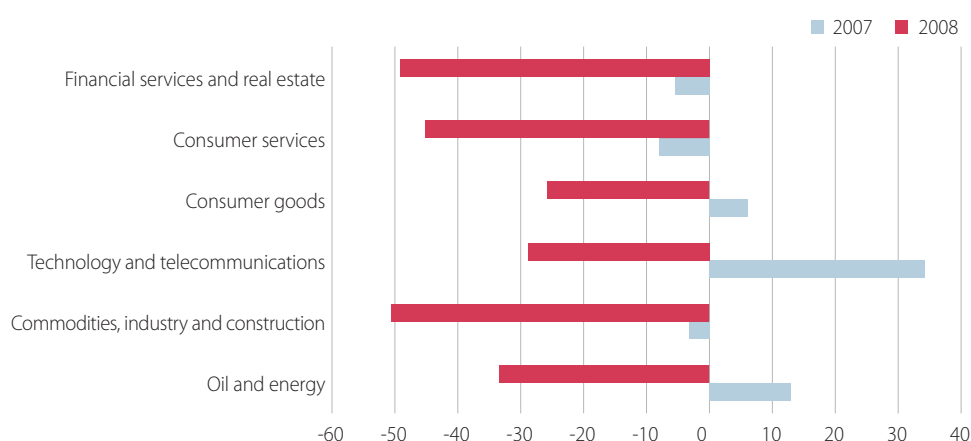
Exchange's Mid 50 index (Table 1.6). As regards the Latin American securities listed on Latibex, the broad index (FTSE Latibex All-share) fell 51.8%, contrasting sharply with slightly larger gain registered in 2007. These shares slumped very sharply in the second half of the year, reflecting a drastic worsening of prospects for the Latin American economies.

### Increased dividend distribution in a context of falling earnings

The adverse economic and financial situation had a clearly negative impact on the bottom line of listed companies. Aggregated income of the Ibex 35 companies decreased by 7% with respect to the previous year and that of all listed companies

## Madrid Stock Exchange sector yields

FIGURE 1.23



Source: Datastream and Madrid Stock Exchange.

by 28.3%, suggesting that larger companies performed better in terms of earnings. Outside the financial sector, earnings in 2008 increased in the energy sector (basically as a result of the gains on the sale of Endesa assets) but fell significantly in industrial and services sectors and turned negative in construction and real estate. The aggregated income of listed non-financial companies fell 38.2% with respect to 2007. The financial sector experienced a smaller decline in aggregated income: approximately 12%. Tables 5 and 6 of Annex I offer greater detail of earnings performance and the impact on returns, respectively.

Shareholder remuneration<sup>1</sup>

TABLE 1.7

Million euro

|      | Dividends | Issue premium refund | Reduction of par value and refund of capital contribution | Total    | Total/previous year's capitalisation (%) |
|------|-----------|----------------------|---|----------|--|
| 2001 | 8,474.4   | 42.0                 | 217.2   | 8,733.6  | 2.0                                      |
| 2002 | 8,446.8   | 28.8                 | 223.8   | 8,699.3  | 2.0                                      |
| 2003 | 9,411.5   | 2,480.8              | 273.0   | 12,165.2 | 3.7                                      |
| 2004 | 11,678.0  | 2,288.8              | 208.5   | 14,175.4 | 3.4                                      |
| 2005 | 14,435.7  | 4,463.8              | 224.0   | 19,123.5 | 3.8                                      |
| 2006 | 21,809.7  | 513.0                | 761.2   | 23,084.0 | 3.9                                      |
| 2007 | 23,338.9  | 126.6                | —   | 23,465.5 | 3.2                                      |
| 2008 | 28,065.0  | 346.6                | —   | 28,411.6 | 3.7                                      |

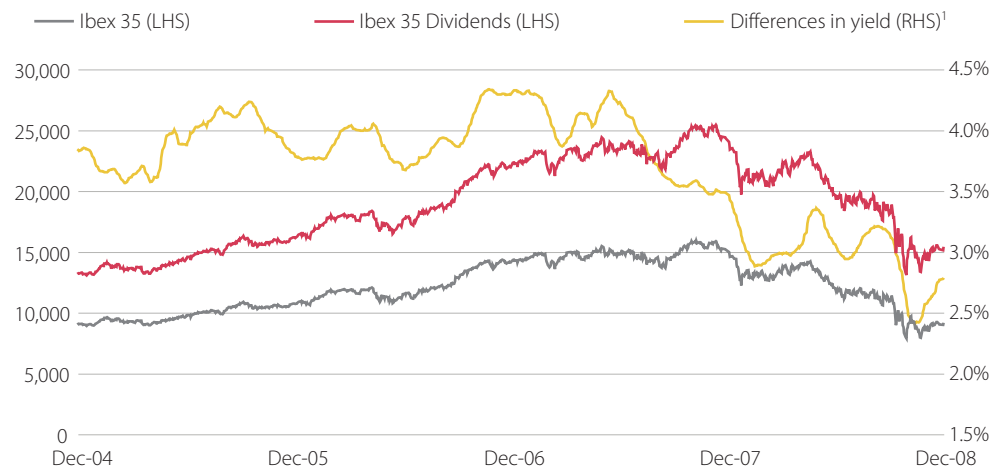
Source: Bolsas y Mercados Españoles (Madrid Stock Exchange magazine, January 2008) and CNMV.

1. Figures for companies listed on the Madrid Stock Exchange.

Despite a sharp decline in earnings, listed companies increased dividends significantly, by around 20%, probably in an attempt to compensate shareholders for the decline in share price while also giving the market a positive signal about their prospects. If the Ibex 35 companies had reinvested the dividend, this would have curtailed the decline in the index by about 2.8% at year-end (Figure 1.24).

### Dividends paid by Ibex 35 companies

FIGURE 1.24



Source: Sociedad de Bolsas and CNMV.

1. Difference in annual yield between the Ibex 35 with dividends and the Ibex 35. Monthly moving average.

### Decline in stock market trading, capitalization, capital increases and initial public offerings

The sharp reduction in prices had a negative effect on the volume of stock market trading, which fell 26% in monetary terms. However, other indicators, such as the number of securities traded (which increased by 8%) and the number of trades (+7%), reveal that activity in the secondary markets in equities remained very high, exceeding even that of 2007. The adverse price performance also depressed capitalization, which fell by 37.8% with respect to the previous year. This decline in capitalization was not offset to any great extent by capital increases and IPOs. In fact, there were no IPOs in 2008 and capital increases fell sharply in terms of both number and total amount.

### 1.3 Economic and financial outlook

The international agencies' projections for the world in 2009 involve economic recession, with varying degrees of intensity, in the industrialized countries, and weak (if not negative) growth in the developing countries. Some recent forecasts even point to negative growth by the world economy overall. The most optimistic scenarios suggest that the first signs of a recovery will be observed in the second half of the year as a result of the measures adopted by the monetary and fiscal authorities to support the economy and the financial system. In general, the current forecasts agree that growth will begin to recover, albeit slowly at first, from 2010 onwards.

In any event, recovery by the world economy would require a restoration of confidence in the financial sector, whose deterioration from August 2007 onwards was indisputably the main trigger of the current economic crisis. In the first two months of 2009, the markets displayed an intense negative reaction to the release of further adverse figures with regard to North American and European financial institutions and to the uncertainty about the scope of government intervention to support them, revealing that this serious problem, which generates systemic



instability and weighs on the real economy, is persisting. In the coming months, it may be necessary to maintain direct or indirect financial support by government to financial institutions (equity stakes, secured or unsecured loans, guarantees, etc.), but it will also be necessary to make progress with the reforms to regulation and supervision envisaged by the international bodies in order to guarantee long-term confidence in the financial system. Chapter 14 summarizes the main initiatives by international bodies in this area.

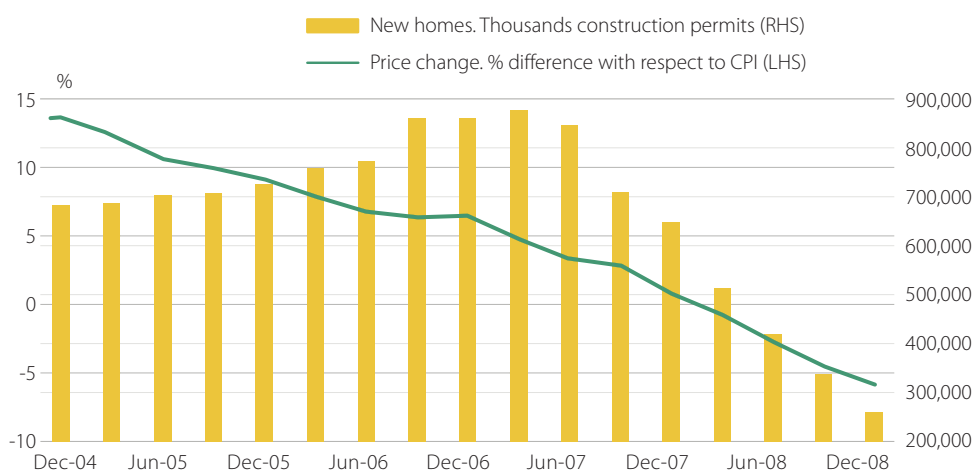
Fiscal policy is playing a central role in the strategies designed by governments in the industrialized countries to stimulate the economy. The goal is to impact economic activity in the short term by using public expenditure to offset the decline in expenditure by consumers and companies or to stimulate the latter by tax cuts and financial aid. Therefore, the efficacy of these measures in reviving economic activity should become visible in the next few months. However, they will also have longer-term effects. A growing number of analysts are drawing attention to the large simultaneous increase in public debt issues throughout the world. In particular, they are expressing doubts about the sustainability of government indebtedness in some countries and suggest that the market may significantly increase the costs of public debt in countries with a greater fiscal imbalance and less liquid debt markets. In the longer term, there is also uncertainty about the fiscal burden created by the current expenditure programs and the impact of public debt on private-sector funding.

As for the Spanish economy, the current projections are for a recession which, according to the European Commission, may be somewhat more intense and longer-lasting than in the rest of the euro area. A recovery by the Spanish economy depends necessarily on a recovery worldwide, but also on certain specific features of our economy. In particular, the Spanish economy already has a large number of unemployed, far more than in neighbouring countries, and the number will probably increase significantly in the coming months. This factor may continue to depress consumer expectations and favour a continuing cautious approach to expenditure while also contributing to an increase in loan delinquency.

Another characteristic that may delay the process of recovery in Spain is the performance of real estate prices, which are apparently more rigid than in other

Spain's housing market. Production and prices

FIGURE 1.25



Source: INE and Datastream.

economies. Although property prices have been falling steadily in the last few months, the decline has yet to match expectations (Figure 1.25). The delay in the adjustment of property prices may, in turn, postpone the correction of the surplus supply in the sector and have a negative impact on loan delinquency, on lending, and on job creation and value-added in the real estate sector and in the broad economy.

However, Spain has some strengths with which to address the economic difficulties in the coming months. One of these is the situation of the banking system, which has weathered the economic and financial difficulties in a better position than other countries' banking systems. To date, public-sector measures to support the financial sector have not included nationalization or direct equity stakes, and the amounts involved have been considerably smaller. A second factor that may favour the development of new active policies against the crisis is the public sector's low level of indebtedness, which would remain low in comparison with other countries even in the worst-case scenario for growth in public debt. This fact will make it easier for the Treasury to raise funding and will limit the negative impact of potential explicit or implicit downgrades of the sovereign rating.

## II Market and issuers



The performance of Spain's equity markets in 2008 reflected financial sector difficulties and the economy's downward spiral during the year. The Ibex 35 index accumulated the largest annual decline in its history, shedding 39.4%, in line with the performance of the principal market indices worldwide. This slump impacted all sectors, although the hardest hit were financials and those with the greatest exposure to the economic cycle. The year's most tumultuous moments were marked by falling prices accompanied by substantial upswings in volatility which, in the last quarter of the year, exceeded the record set in other episodes of turbulence, such as the 1998 financial crisis and the 2001 terrorist attacks.

Tumbling share prices pushed effective trading volume down from its 2007 record high; however, there was a significant increase in both the number of transactions and of securities traded, the latter rising for 24 of the 35 companies comprising the Ibex. The negative market performance was also visible in the number of initial public offerings: there was one IPO in all of 2008. Moreover, both the number and size of takeover bids declined substantially. The new regulatory framework for takeover bids was applied for the first time in 2008.

### 2.1 Market size

#### 2.1.1. Market capitalisation

The capitalisation of companies listed on Spanish stock exchanges amounted to 476 billion euro at 2008 year-end, a 37.8% decline, similar to that experienced by other leading national equity indices (Table 2.1). Domestic companies trading on the electronic and open outcry markets accounted for 98.7% and 1.2% of total capitalisation, respectively; the tiny remainder are foreign companies trading on the electronic market and on the second market.

As shown in Table 2.2, banks experienced the greatest loss in capitalization, followed by transport and communications (due to the size of Telefónica) and energy and water (losses by Iberdrola, Iberdrola Renovables and Endesa, though all three by less than the Ibex 35). However, construction and real estate were hit even harder in relative terms, losing over 50% of capitalisation in what proved to be a very difficult year. As regards real estate, six companies lost between 75% and 90% with respect to their peak capitalisation in January 2007. Table 2.2 also reflects a drastic reduction in the capitalisation of the food sector; however, this is broadly attributable to the delisting of Altadis, which was worth 12 billion euro at the time it was delisted.

## Market capitalisation<sup>1</sup> in Spanish stock markets

TABLE 2.1

| Million euro                |                  |                  |                  |                  |              |
|-----------------------------|------------------|------------------|------------------|------------------|--------------|
|                             | 2005             | 2006             | 2007             | 2008             | % chg. 08/07 |
| <b>All markets</b>          | <b>595,353.1</b> | <b>728,698.5</b> | <b>764,751.6</b> | <b>476,031.7</b> | <b>-37.8</b> |
| <b>Electronic market</b>    | <b>554,863.1</b> | <b>711,116.4</b> | <b>756,786.3</b> | <b>470,426.1</b> | <b>-37.8</b> |
| Spanish                     | 552,346.8        | 708,164.2        | 755,285.4        | 469,876.7        | -37.8        |
| Foreign <sup>2</sup>        | 2,516.3          | 2,952.2          | 1,501.0          | 549.4            | -63.4        |
| Open outcry <sup>3</sup>    | 40,045.9         | 17,189.4         | 7,678.4          | 5,495.7          | -28.4        |
| of which SICAV <sup>4</sup> | 33,171.1         | 9,284.1          | 245.4            | 155.0            | -36.8        |
| Madrid                      | 25,458.2         | 9,665.3          | 2,008.1          | 1,554.4          | -22.6        |
| Barcelona                   | 9,573.2          | 6,285.8          | 4,657.8          | 3,609.8          | -22.5        |
| Bilbao                      | 2,876.7          | 511.4            | 108.2            | 45.9             | -57.6        |
| Valencia                    | 4,772.1          | 1,653.6          | 1,229.3          | 786.1            | -36.1        |
| <b>2nd market</b>           | <b>444.2</b>     | <b>392.7</b>     | <b>286.8</b>     | <b>109.9</b>     | <b>-61.7</b> |

Source: CNMV.

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

## No. of listed companies and capitalisation by sector<sup>1</sup>

TABLE 2.2

| Capitalisation in million euro    |            |            |                  |                  |              |
|-----------------------------------|------------|------------|------------------|------------------|--------------|
| Sector                            | 2007       | 2008       | 2007             | 2008             | % chg. 08/07 |
| Oil                               | 2          | 2          | 48,762.5         | 36,523.1         | -25.1        |
| Energy & water                    | 12         | 11         | 140,260.4        | 112,084.8        | -20.1        |
| Mining & base metals              | 9          | 9          | 8,429.4          | 4,622.2          | -45.2        |
| Cement and construction materials | 5          | 5          | 5,138.7          | 2,535.2          | -50.7        |
| Chemicals                         | 6          | 6          | 5,993.0          | 2,603.5          | -56.6        |
| Textiles and paper                | 20         | 20         | 36,586.8         | 24,194.2         | -33.9        |
| Metal-mechanical                  | 17         | 17         | 16,527.6         | 9,299.0          | -43.7        |
| Food                              | 16         | 14         | 22,217.0         | 7,180.4          | -67.7        |
| Construction                      | 7          | 7          | 51,367.9         | 25,221.7         | -50.9        |
| Real estate                       | 31         | 28         | 23,949.3         | 10,487.8         | -56.2        |
| Transport and communications      | 6          | 6          | 129,732.9        | 90,680.5         | -30.1        |
| Other non-financial               | 23         | 22         | 39,347.4         | 15,138.4         | -61.5        |
| <b>Total non-financial sector</b> | <b>154</b> | <b>147</b> | <b>528,312.8</b> | <b>340,570.9</b> | <b>-35.5</b> |
| Banks                             | 13         | 11         | 202,851.2        | 114,506.5        | -43.6        |
| Insurance                         | 2          | 2          | 9,597.9          | 8,328.8          | -13.2        |
| Portfolio companies               | 12         | 12         | 23,715.3         | 12,447.6         | -47.5        |
| SICAVs <sup>2</sup>               | 8          | 4          | 274.3            | 177.8            | -35.2        |
| Finance houses                    | 0          | 0          | 0.0              | 0.0              | —            |
| <b>Total financial sector</b>     | <b>35</b>  | <b>29</b>  | <b>236,438.7</b> | <b>135,460.8</b> | <b>-42.7</b> |
| <b>Total</b>                      | <b>189</b> | <b>176</b> | <b>764,751.6</b> | <b>476,031.7</b> | <b>-37.8</b> |

Source: CNMV

1. Market capitalisation at end of year. Excludes Latibex, MAB and ETFs. The market capitalisation of foreign companies is based on the number of shares registered with Iberclear.
2. Includes exchange-traded SICAVs only.

The dearth of secondary public offerings, with the exception of Caja de Ahorros del Mediterráneo's participation share issue, eliminated this means of mitigating the decline in capitalisation resulting from falling prices and delistings. The contribution from capital increases was weak and smaller than the previous year (see section 2.2).

At year-end, Telefónica was still the Spanish leader in terms of market capitalisation, followed by Banco Santander and BBVA; the three companies together accounted for 34% of the total. Large companies' share of total capitalisation generally increased, reflecting a smaller decline in prices than registered by other companies. In 2008, six companies accounted for 50% and 16 companies for 75% of the market capitalisation, i.e. fewer companies accounted for a larger share of the total than in 2007 (Table 2.3). Companies in the Ibex 35 accounted for 85.3% of total market capitalisation, compared with 80.5% in 2007.

### Concentration of equity market capitalisation<sup>1</sup>

TABLE 2.3

No. of companies required to attain a given percentage of total capitalisation

|                          | 2007     |          |           |            | 2008     |          |           |            |
|--------------------------|----------|----------|-----------|------------|----------|----------|-----------|------------|
|                          | 25%      | 50%      | 75%       | 100%       | 25%      | 50%      | 75%       | 100%       |
| <b>All markets</b>       | <b>2</b> | <b>7</b> | <b>20</b> | <b>189</b> | <b>2</b> | <b>6</b> | <b>16</b> | <b>176</b> |
| <b>Electronic market</b> | <b>2</b> | <b>6</b> | <b>19</b> | <b>142</b> | <b>2</b> | <b>6</b> | <b>15</b> | <b>136</b> |
| Spanish                  | 2        | 6        | 19        | 137        | 2        | 6        | 15        | 131        |
| Foreign <sup>2</sup>     | 1        | 2        | 2         | 5          | 1        | 2        | 2         | 5          |
| <b>Open outcry</b>       | <b>1</b> | <b>2</b> | <b>5</b>  | <b>36</b>  | <b>1</b> | <b>3</b> | <b>7</b>  | <b>32</b>  |
| <b>2nd market</b>        | <b>2</b> | <b>3</b> | <b>5</b>  | <b>11</b>  | <b>1</b> | <b>2</b> | <b>4</b>  | <b>8</b>   |

Source: CNMV.

1. Market capitalisation at end of year. Excludes Latibex, MAB and ETFs.

2. The market capitalisation of foreign companies is based on the number of shares registered by Iberclear.

The Spanish stock market is still one of the largest with respect to the size of the economy, in terms of capitalization and trading volume as a percentage of GDP. In fact, in the last year, the only market to exceed those ratios was London (Table 2.4). Total losses in capitalisation by European markets between August 2007 and 2008 year-end are estimated at 16 trillion euro.

### Market capitalisation and trading as a percentage of nominal GDP

TABLE 2.4

%

|                       | Market capitalisation |      | Trading volume |       |
|-----------------------|-----------------------|------|----------------|-------|
|                       | 2007                  | 2008 | 2007           | 2008  |
| USA <sup>1</sup>      | 141.5                 | 82,7 | 320,9          | 497,7 |
| New York              | 111.1                 | 64,9 | 207,4          | 237,0 |
| Tokyo                 | 93.8                  | 64,0 | 147,4          | 114,8 |
| London                | 139.7                 | 65,9 | 372,0          | 228,5 |
| Euronext <sup>2</sup> | 99.9                  | 47,1 | 141,9          | 99,   |
| Germany               | 59.3                  | 30,4 | 129,5          | 106,2 |
| Italy                 | 47.4                  | 22,4 | 108,7          | 65,5  |
| Spain                 | 74.3                  | 56,3 | 157,6          | 144,9 |

Source: International Federation of Stock Exchanges, Datastream and CNMV.

1. The numerator is the combined total of the NYSE, Nasdaq and American Stock Exchange.

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

## 2.1.2 Listed companies

Excluding SICAVs, there were a total of 173 companies listed on Spanish stock exchanges at the end of December 2008, nine less than in 2007. There were 136 companies listed on the continuous market, six less than at 2007 year-end; just one company was admitted to trading on that market whereas seven were delisted. That admission was particularly important as it was the first IPO of participation shares issued by a savings bank, Caja de Ahorros del Mediterráneo. Altadis, Logista and Sogecable delisted as a result of the takeover bids by Imperial Tobacco for the former two and by Prisa for the latter. Additionally, at end of 2008, Banco Popular absorbed a significant number of subsidiaries, which led to the delisting of Banco de Castilla, Banco de Crédito Balear, Banco de Galicia and Banco de Vasconia. Table 2.5 reflects listings and delistings on the open outcry and second markets.

**Number of companies listed on the Spanish stock exchanges<sup>1</sup>**

TABLE 2.5

|                             | All markets |           | Electronic market |           |          | Open outcry |           | Second market |
|-----------------------------|-------------|-----------|-------------------|-----------|----------|-------------|-----------|---------------|
|                             | Total       | Ex SICAVs | Total             | Spanish   | Foreign  | Ex SICAVs   | SICAV     |               |
| Listed at 31/12/07          | 189         | 182       | 142               | 137       | 5        | 29          | 7         | 11            |
| Listed at 31/12/08          | 176         | 173       | 136               | 131       | 5        | 29          | 3         | 8             |
| <b>New listings in 2008</b> | <b>2</b>    | <b>2</b>  | <b>1</b>          | <b>1</b>  | —        | <b>1</b>    | —         | —             |
| New listings                | 1           | 1         | 1                 | 1         | —        | —           | —         | —             |
| Listed due to mergers       | —           | —         | —                 | —         | —        | —           | —         | —             |
| Change of market            | 1           | 1         | —                 | —         | —        | 1           | —         | —             |
| <b>Delistings in 2008</b>   | <b>15</b>   | <b>11</b> | <b>7</b>          | <b>7</b>  | —        | <b>1</b>    | <b>4</b>  | <b>3</b>      |
| Delistings                  | 8           | 6         | 3                 | 3         | —        | 1           | 2         | 2             |
| Delisted due to mergers     | 4           | 4         | 4                 | 4         | —        | —           | —         | —             |
| Change of market            | 3           | 1         | —                 | —         | —        | —           | 2         | 1             |
| <b>Net change in 2008</b>   | <b>-13</b>  | <b>-9</b> | <b>-6</b>         | <b>-6</b> | <b>0</b> | <b>0</b>    | <b>-4</b> | <b>-3</b>     |

Source: CNMV.

1. Totals do not include MAB, Latibex and ETFs.

## 2.2 Listings, issues and public offerings

The harsh economic and financial situation and the negative performance of share prices created an inauspicious scenario for IPOs. In 2008 there was only one transaction of this kind: a public offering and listing of Caja de Ahorros del Mediterráneo participation shares. The offering was comprised of three tranches: 65.6% for retail investors, 31% for qualified investors and the remainder for employees. The shares, each with a par value of 2 euro, were issued with a premium of 3.84 euro per share. The transaction raised 292 million euro.

In 2008, funds raised by companies via capital increases amounted to 16,339.7 million euro, vs. 67 million euro raised in 2007. Capital increases without cash payments barely exceeded 8,000 million euro, in contrast with 48,901 million euro in 2007. The largest such deal (over 4 billion euro) was the result of a merger of Itinere Infraestructuras (Sacyr subsidiary) into Europistas. As consideration, Itinere shareholders received newly-issued shares of Europistas with a nominal value of



267 million euro. The second-largest non-monetary capital increase was performed by Banco Santander to finance the acquisition of UK bank Alliance & Leicester and amounted to 1.4 billion euro. Capital increases with cash payments amounted to 7,474 million euro. Of special note is Banco Santander's 7,194.6 million euro capital increase, as it was the largest-ever new share issue for cash in the history of Spain's stock market.

### Primary and secondary public offerings<sup>1</sup>

TABLE 2.6

|  | Number of issuers |           |            | Number of issues |           |            |
|--|-------------------|-----------|------------|------------------|-----------|------------|
|  | 2007              | 2008      | Chg. 08/07 | 2007             | 2008      | Chg. 08/07 |
| <b>Capital increases</b>                   | <b>40</b>         | <b>25</b> | <b>-15</b> | <b>71</b>        | <b>34</b> | <b>-37</b> |
| of which primary offerings <sup>2</sup>    | 6                 | 1         | -5         | 8                | 1         | -7         |
| With Spanish tranche                       | 6                 | 1         | -5         | 8                | 1         | -7         |
| With international tranche                 | 2                 | 0         | -2         | 2                | 0         | -2         |
| <b>Secondary offerings</b>                 | <b>7</b>          | <b>1</b>  | <b>-6</b>  | <b>11</b>        | <b>1</b>  | <b>-10</b> |
| Spanish tranche                            | 7                 | 1         | -6         | 11               | 1         | -10        |
| International tranche                      | 2                 | 0         | -2         | 2                | 0         | -2         |
| <b>Total</b>                               | <b>44</b>         | <b>26</b> | <b>-18</b> | <b>82</b>        | <b>35</b> | <b>-47</b> |
| <b>Pro memoria: IPOs</b>                   |                   |           |            |                  |           |            |
| Primary or secondary offering <sup>2</sup> | 10                | 2         | -8         | 19               | 2         | -17        |
| Others <sup>3</sup>                        | 4                 | —         | —          | 4                | —         | —          |

Source: CNMV.

1. Includes only transactions that succeeded, excluding those that were not completed.
2. Public offering of warrants after shareholders waived their preferential subscription rights. 2008 data includes listing of Caja de Ahorros del Mediterráneo's participation shares and the exercise of the green shoe in the Laboratorios Rovi's transaction.
3. 2007 data includes listings of ArcelorMittal (ex Arcelor), Reyal Urbis, Martinsa-Fadesa and Vértice 360.

### Primary and secondary public offerings<sup>1</sup>: cash amount

TABLE 2.7

| Million euro                                |                 |                 |                |
|---|-----------------|-----------------|----------------|
|   | 2007            | 2008            | % change 08/07 |
| <b>Capital increases</b>                    | <b>67,581.8</b> | <b>16,339.7</b> | <b>-75.8</b>   |
| of which primary offerings <sup>2</sup>     | 8,502.7         | 292.0           | -96.6          |
| With Spanish tranche                        | 4,821.3         | 292.0           | -93.9          |
| With international tranche                  | 3,681.4         | 0.0             | —              |
| <b>Secondary offerings</b>                  | <b>2,068.5</b>  | <b>9.5</b>      | <b>-99.5</b>   |
| Spanish tranche                             | 1,517.1         | 9.5             | -99.           |
| International tranche                       | 551.4           | 0.0             | —              |
| <b>Total</b>                                | <b>69,650.3</b> | <b>16,349.2</b> | <b>-76.5</b>   |
| <b>Pro memoria: IPOs</b>                    |                 |                 |                |
| Primary or secondary offerings <sup>2</sup> | 10,571.2        | 301.5           | -97.1          |
| Others <sup>3</sup>                         | 74,207.1        | —               | —              |

Source: CNMV.

1. Includes only transactions that succeeded, excluding those that were not completed.
2. Public offering of warrants after shareholders waived their preferential subscription rights. 2008 data includes listing of Caja de Ahorros del Mediterráneo's participation shares and the exercise of the green shoe in the Laboratorios Rovi's transaction.
3. 2007 data includes listings of ArcelorMittal (ex Arcelor), Reyal Urbis, Martinsa-Fadesa and Vértice 360.

## 2.3 Trading

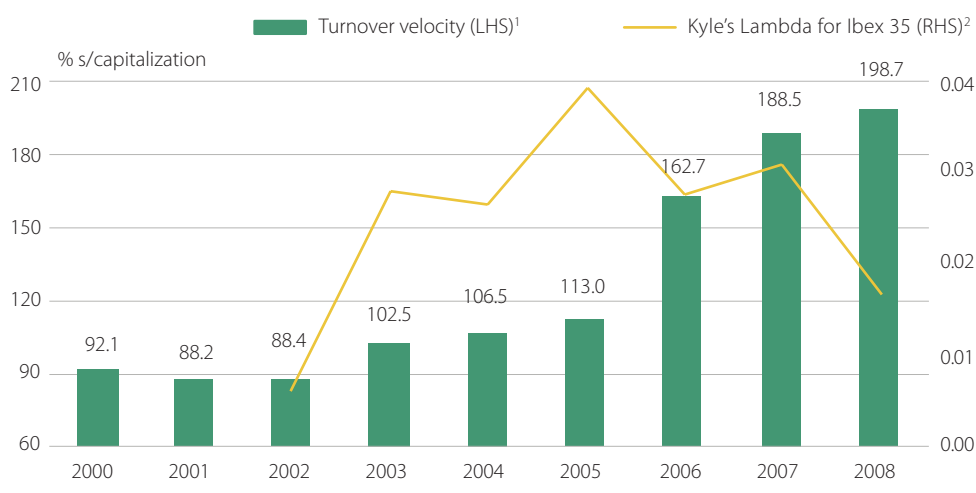
### 2.3.1. Spot trading

Trading amounted to 1.23 trillion euro in 2008, down 26% with respect to the previous year. Average daily trading dwindled during the year, from 8.3 billion euro in January to 3,209 million euro in December. The significant slump in trading essentially reflected the decline in prices. This is the conclusion that can be drawn from the fact that the number of securities that changed hands (120 billion) was 8% higher than in 2007, and that this figure increased in more than half of the Ibex stocks. Turnover velocity, i.e. trading/capitalisation, suggests a similar interpretation. This activity indicator rose moderately in 2008 (Figure 2.1). Data for the first few months of 2009 suggests that trading declined not only in monetary terms but also in volume. Trading volume fell 57% in monetary terms with respect to the same period of 2008, i.e. by significantly more than the decline in prices in the period.

Certain indicators, such as Kyle's Lambda (see figure 2.1) and the bid-ask spread, suggest that market liquidity worsened during the course of the year, especially in the last quarter; however, the most recent data indicates a slight improvement, in conjunction with a reduction in volatility.

#### Liquidity - electronic market

FIGURE 2.1



Source: Sociedad de Bolsas and CNMV.

1. Percentage of total annual trading volume / average monthly market capitalization.
2. Percentage of market capitalization needed to change the Ibex 35 index by 1%.

Practically all trading (99.8%) was conducted on the electronic market (Table 2.8). The average turnover per session fell from 6.5 billion euro in 2007 to 4.8 billion euro in 2008. However, the number of trades reached 36.9 million, up 7% on the figure for 2007. The average cash value per trade was 33,262 euro in 2008, down from 47,866 euro in 2007. This decline (30%) is primarily attributable to falling share prices.

There was another substantial decline in trading on the open outcry market and an increase in trading of exchange-traded funds (ETFs), in line with the trend in this segment since its creation in 2006.

## Equity trading in Spanish stock markets

TABLE 2.8

| Million euro                      |                   |                   |                     |                     |                     |                 |
|-----------------------------------|-------------------|-------------------|---------------------|---------------------|---------------------|-----------------|
|                                   | 2.004             | 2.005             | 2.006               | 2.007               | 2.008               | % chg.<br>08/07 |
| <b>All markets</b>                | <b>641,742.37</b> | <b>853,588.12</b> | <b>1,149,930.31</b> | <b>1,654,702.11</b> | <b>1,228,631.52</b> | <b>-25.75</b>   |
| <b>Electronic market</b>          | <b>636,527.38</b> | <b>847,663.72</b> | <b>1,144,562.88</b> | <b>1,653,354.83</b> | <b>1,228,392.36</b> | <b>-25.70</b>   |
| Spanish                           | 630,361.68        | 832,548.61        | 1,133,012.61        | 1,645,855.52        | 1,226,985.25        | -25.45          |
| Foreign                           | 6,165.69          | 15,115.11         | 11,550.28           | 7,499.31            | 1,407.11            | -81.24          |
| <b>Open outcry</b>                | <b>5,193.68</b>   | <b>5,898.46</b>   | <b>5,318.15</b>     | <b>1,154.43</b>     | <b>207.46</b>       | <b>-82.03</b>   |
| Madrid                            | 3,316.03          | 3,671.08          | 3,231.49            | 515.51              | 94.43               | -81.68          |
| Bilbao                            | 212.65            | 241.69            | 403.08              | 5.22                | 0.10                | -98.16          |
| Barcelona                         | 1,123.63          | 1,560.22          | 1,192.26            | 444.37              | 106.96              | -75.93          |
| Valencia                          | 541.38            | 425.47            | 491.32              | 189.33              | 5.97                | -96.85          |
| <b>2nd market</b>                 | <b>21.31</b>      | <b>25.94</b>      | <b>49.28</b>        | <b>192.85</b>       | <b>31.71</b>        | <b>-83.56</b>   |
| ETF                               | —                 | —                 | 1,827.06            | 4,664.48            | 6,938.09            | 48.74           |
| Alternative stock<br>market (MAB) | —                 | —                 | 1,814.19            | 6,985.21            | 7,060.34            | 1.08            |
| Latibex                           | 366.42            | 556.73            | 723.28              | 868.23              | 757.74              | -12.72          |

Source: CNMV.

The bulk of trading took place in the regular session, essentially through order-based trades and block-trading, a system which tends to be used by large foreign institutional investors (Table 2.9). There was a significant reduction in trading of secondary public offerings and an increase in hedging, most likely linked to futures on individual shares traded in MEFF Rent Variable.

## Trading on the electronic market by type<sup>1</sup>

TABLE 2.9

| Million euro                            |            |            |              |              |              |                 |
|---|------------|------------|--------------|--------------|--------------|-----------------|
|   | 2004       | 2005       | 2006         | 2007         | 2008         | % chg.<br>08/07 |
| Regular trading                         | 599,874.16 | 798,934.52 | 1,080,120.49 | 1,577,249.52 | 1,180,835.86 | -25.13          |
| Order-based                             | 353,532.04 | 488,416.30 | 658,891.08   | 985,087.62   | 774,718.09   | -21.36          |
| Put-throughs                            | 71,360.13  | 82,403.14  | 105,899.37   | 155,085.09   | 105,673.87   | -31.86          |
| Block trades                            | 174,981.99 | 228,115.08 | 315,330.05   | 437,076.80   | 300,443.90   | -31.26          |
| Off-hours                               | 26,037.32  | 27,863.00  | 11,648.76    | 18,301.45    | 10,175.15    | -44.40          |
| Authorised trades                       | 1,367.17   | 4,773.43   | 4,052.07     | 4,189.58     | 3,183.17     | -24.02          |
| Transactions under<br>Securities Market |            |            |              |              |              |                 |
| Act art. 36.1                           | 826.00     | 1.33       | 6,439.69     | 0.00         | 0.00         | —               |
| Takeover bids                           | 1,698.82   | 6,682.77   | 18,094.55    | 26,284.25    | 17,461.18    | -33.57          |
| Secondary offerings                     | 3,057.16   | 226.35     | 3,263.99     | 11,177.45    | 292.00       | -97.39          |
| Pre-registered                          |            |            |              |              |              |                 |
| off-market                              | 278.50     | 2,298.89   | 10,347.91    | 2,954.39     | 1,066.80     | -63.89          |
| Exercise of options                     | 3,388.25   | 5,268.01   | 8,279.81     | 10,240.38    | 9,661.89     | -5.65           |
| Hedging                                 | —          | 1,615.44   | 2,315.62     | 2,957.82     | 5,716.32     | 93.26           |

Source: CNMV.

1. Does not include figures for Latibex, MAB or ETFs.

### Concentration of equity trading on Spanish stock markets<sup>1</sup>

TABLE 2.10

No. of companies required to attain a given percentage<sup>2</sup>

|                          | 2007 |     |     |       | 2008 |     |     |       |
|--------------------------|------|-----|-----|-------|------|-----|-----|-------|
|                          | 25%  | 50% | 75% | 100%  | 25%  | 50% | 75% | 100%  |
| All markets <sup>3</sup> | 2    | 4   | 9   | 560   | 2    | 3   | 7   | 184   |
| Electronic market        | 2    | 4   | 9   | 151   | 2    | 3   | 7   | 143   |
| Spanish                  | 2    | 4   | 9   | 144   | 2    | 3   | 7   | 138   |
| Foreign                  | 1    | 1   | 2   | 7     | 1    | 2   | 2   | 5     |
| Open outcry              | 2    | 4   | 13  | 399   | 1    | 2   | 5   | 32    |
| 2nd market               | 1    | 2   | 4   | 10    | 1    | 2   | 3   | 9     |
| ETF                      | 2    | 3   | 4   | 21    | 1    | 2   | 5   | 34    |
| MAB                      | 22   | 94  | 293 | 3,241 | 21   | 104 | 329 | 3,274 |
| LATIBEX                  | 3    | 5   | 12  | 33    | 2    | 5   | 10  | 33    |

Source: CNMV.

1. Excludes Latibex, MAB and ETFs.
2. The total number of companies in which trading actually took place in the relevant market during the year.
3. The number of companies shown in the "All markets" total may be less than the sum of the numbers of companies in each market as there are companies which change from one market to another.

In parallel with the observed trend in capitalization, the largest securities increased their share of the total trading (Table 2.10). The three companies with the greatest trading volume (Banco Santander, Telefónica and BBVA) together exceeded more than half of the total volume, and just seven securities together accounted for 75% of the total.

### Securities lending (crédito and préstamo systems)

TABLE 2.11

Million euro

|      | Securities lending (crédito system) <sup>1</sup> |                | Securities lending (préstamo system) <sup>2</sup> |                |
|------|--|----------------|---|----------------|
|      | Outstanding balance                              | Trading volume | Outstanding balance <sup>3</sup>                  | Trading volume |
| 2000 | 4.4  | 151.4          | 12,102.0  | 87,406.4       |
| 2001 | 8.5  | 174.1          | 20,141.4  | 89,606.0       |
| 2002 | 7.8  | 161.2          | 14,125.3  | 106,983.2      |
| 2003 | 17.3   | 199.8          | 28,873.1  | 161,775.2      |
| 2004 | 18.2   | 139.2          | 54,518.5  | 306,056.7      |
| 2005 | 28.5   | 152.2          | 66,737.5  | 393,964.1      |
| 2006 | 73.6   | 379.9          | 62,058.2  | 550,850.4      |
| 2007 | 112.4  | 555.4          | 79,532.9  | 835,326.9      |
| 2008 | 20.7   | 624.9          | 43,647.8  | 583,950.8      |

Source: CNMV.

1. Transactions performed in accordance with Ministerial Order dated 25 March 1991 on the margin system in spot transactions.
2. Regulated by Article 36.7 of the Securities Market Act and Order ECO/764/2004.
3. The total balance less amount of re-lending.

**Margin trading<sup>1</sup>**

TABLE 2.12

Million euro

|      | Outstanding balance | Trading volume |
|------|---------------------|----------------|
| 2000 | 54.7                | 1,121,3        |
| 2001 | 43.1                | 534,1          |
| 2002 | 31.5                | 382,9          |
| 2003 | 32.8                | 346,1          |
| 2004 | 46.7                | 401,8          |
| 2005 | 52.3                | 465,0          |
| 2006 | 70.1                | 511,9          |
| 2007 | 59.4                | 411,3          |
| 2008 | 7.0                 | 154,7          |

Source: CNMV.

1. Transactions performed in accordance with Ministerial Order dated 25 March 1991 on the margin system in spot transactions.

**2.3.2. Margin trading and securities lending**

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

Margin trading using the *crédito* system shrank significantly in 2008 as a result of falling prices: 9.8 million shares were bought, a 49% decline. In contrast, and favoured by the decline in the Ibex 35, short selling using the *crédito* system increased significantly, from 27.3 million shares in 2007 to 49.3 million in 2008. The main stocks that were borrowed using this method were Banco Santander and BBVA.

Securities lending under the *préstamo* system totalled 584 billion euro and the outstanding balance at year end was 43.6 billion euro, a sharp decline with respect to 2007 in both cases (Table 2.11). However, this decline essentially reflects price performance, since the number of shares borrowed and returned was similar to last year's figure. The main stocks borrowed under the *préstamo* system were Telefónica, Banco Santander and BBVA.

One of the most noteworthy supervisory initiatives in 2008 was the adoption in a number of countries of a range of measures relating to short selling (see box in chapter 10), an activity which may be conducted by borrowing securities, among others. The CNMV reiterated the prohibited naked short selling, i.e. the sale of stocks without borrowing them or ensuring that they can be borrowed, and it temporarily required the disclosure of net selling positions greater than 0.25% of capital in financial sector companies.

**2.4 Takeover bids**

The steady decline in economic expectations and the difficulties in obtaining funding discouraged large mergers and acquisitions in 2008. The CNMV processed substantially fewer takeover bids than the previous year, and the average potential

| <b>Takeover bids</b>                        |       |       |        |        |                   |
|---|-------|-------|--------|--------|-------------------|
| Million euro                                |       |       |        |        |                   |
|   | 2004  | 2005  | 2006   | 2007   | 2008 <sup>1</sup> |
| <b>Authorised<sup>2</sup></b>               |       |       |        |        |                   |
| Number                                      | 9     | 13    | 21     | 16     | 6                 |
| Potential amount (takeover bids)            | 2,048 | 7,511 | 62,615 | 48,939 | 3,658             |
| Potential amount (total deals) <sup>3</sup> | —     | —     | —      | 49,215 | 3,781             |
| <b>Completed<sup>4</sup></b>                |       |       |        |        |                   |
| Number                                      | 9     | 9     | 16     | 16     | 6                 |
| Amount (takeover bids)                      | 1,973 | 6,822 | 18,997 | 43,179 | 3,319             |
| Amount (total deals) <sup>3</sup>           | —     | —     | -      | 43,455 | 3,442             |

Source: CNMV.

1. Does not include Aguas de Valencia's delisting bid, which was presented in 2008 but was not completed during the year, or the takeover bid for Inbesòs which was not accepted for vetting due to failure to post a bond.
2. Authorised during the year.
3. Potential amount of takeover bids plus cash volume of acquisitions preceding each bid. Until 2006, both figures were the same because a takeover bid had to be presented before attaining a controlling stake.
4. All bids authorised during the year, even if completed in the following year, except where the bid was unsuccessful or was withdrawn.

amount of bids fell dramatically. All bids presented were authorised and successfully completed. Their principal characteristics are detailed below (see also Annex II.8).

### Types of bids

In four transactions, the bidders had already gained control of the target listed companies, and therefore the takeover bids were compulsory. As a result, the bids were for cash, at a fair price determined by the regulation, for 100% of shares and without conditions precedent. Gepro 21 S.L. launched a takeover bid for Celo<sup>1</sup>. after having previously gained control of the company. Takeover bids for Metrovacesa and Sogecable were launched in compliance with Royal Decree 1066/2007, which establishes the obligation to make a takeover bid where a party that owned between 30% and 50% of a listed company on the date of entry into force of the current takeover regulation increases their stake by a specific amount. In the case of Metrovacesa, the shareholder which launched the bid had found itself with a larger stake following a capital reduction resulting from a different takeover bid; in the case of Sogecable, the bidding shareholder had increased its stake to over 50% via acquisitions. The fourth transaction resulting from a preceding acquisition of control was that of Logista, which was also triggered by a supervening increase in the bidder's stake.

The two other transactions involved Estabanell y Pahísa (delisting bid), and Plárrega Invest (voluntary takeover bid).

1. Spanish glass manufacturer using the Libbey-Owens proces.

Transaction amounts in 2008 were lower than in previous years. The largest transaction was Prisa's bid for Sogecable, which amounted to a potential total of 1.9 billion euro (2.03 billion euro including shares acquired before the takeover bid).

### Agreements between bidder and shareholders

The bids for Celso, Sogecable and Plárrega Invest included agreements by certain shareholders of the target companies to sell their shares to the respective bidders. An agreement in the bid for Celso was reached after the bidder acquired 92.05% from the controlling shareholder. In the case of Sogecable, the bidder increased its stake to over 50% through an agreement with a shareholder owning 2.95% of capital following presentation of the bid but before it was authorised. In the case of Plárrega Invest, several shareholders owning 94.02% of the capital reached an agreement to sell to the bidder.

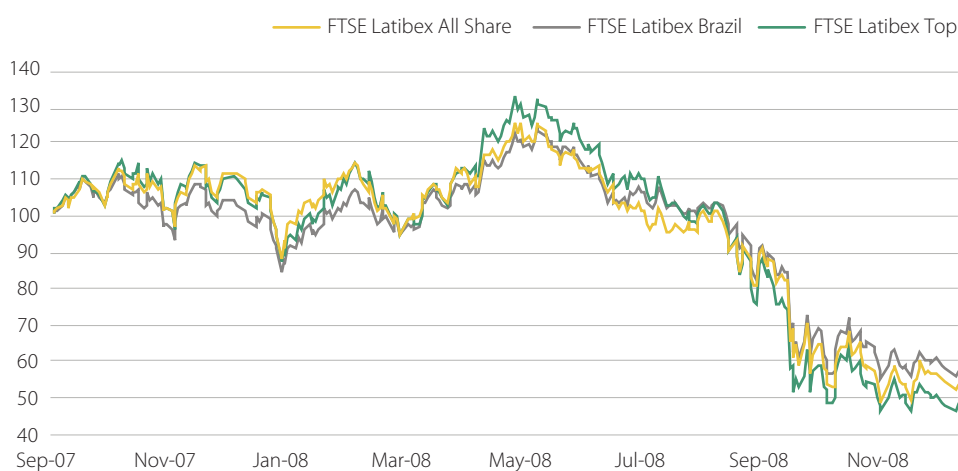
### Squeeze-outs and sell-outs and delisting

The bids for Logista and Sogecable attained more than 90% acceptance on the part of the target shares. This, together with previously-held stakes, enabled the bidders to obtain more than 90% of capital of the target companies and exercise the squeeze-out rights envisaged in the regulation. In both cases, the squeeze-out price was the same as the takeover bid price. Once the squeeze-out was completed, the companies were delisted.

Estabanell y Pahisa was also delisted as a result of a delisting bid, while Celso is currently in the process of delisting.

### FTSE Latibex All Share index performance

FIGURE 2.2



Source: Madrid Stock Exchange.

## 2.5 Multilateral trading facilities

### 2.5.1 Latibex

Trading performance on Latibex, where Latin American stocks are traded in euro, could clearly be divided into two different periods in 2008. From January to July, the market maintained its upward trend from 2007, supported by rising commodities' prices and economic growth, especially in Brazil and Mexico. From July onwards, Latin American economies experienced a sharp decline in imports on the part of developed countries and commodities prices dropped simultaneously, leading to pronounced divestment in regional markets, a trend that was also patent in Latibex.

At 2008 year-end, Latibex was comprised of 35 listed companies, the majority from Brazil and Mexico. Mexico's Telmex International was listed in 2008, and there were no delistings. Trading declined by 12.7% and capitalisation by 32.9%. Oil (Petrobras), communications (Telmex) and mining and base metals account for the bulk of the market's trading and capitalisation.

#### Companies listed on Latibex, by country

TABLE 2.14

Million euro

| Country      | No. of companies |           | Market capitalisation |                  |              | Trading volume |              |              |
|--------------|------------------|-----------|-----------------------|------------------|--------------|----------------|--------------|--------------|
|              | 2007             | 2008      | 2007                  | 2008             | % chg.       | 2007           | 2008         | % chg.       |
| Argentina    | 2                | 2         | 1,141.4               | 946.2            | -17.1        | 3.7            | 0.6          | -84.8        |
| Brazil       | 15               | 15        | 324,889.5             | 145,536.2        | -55.2        | 555.6          | 517.3        | -6.9         |
| Chile        | 4                | 4         | 20,395.9              | 17,451.0         | -14.4        | 72.9           | 56.4         | -22.6        |
| Costa Rica   | 1                | 1         | 0.0                   | 0.0              | 0.0          | 0.0            | 0.0          | 0.0          |
| Mexico       | 9                | 10        | 79,697.6              | 122,718.2        | 54.0         | 174.7          | 160.6        | -8.1         |
| Peru         | 1                | 1         | 987.0                 | 165.2            | -83.3        | 36.0           | 13.9         | -61.3        |
| Puerto Rico  | 1                | 1         | 283.6                 | 372.2            | 31.2         | 25.0           | 8.9          | -64.5        |
| Venezuela    | 1                | 1         | 378.6                 | 0.0              | -100.0       | 0.3            | 0.0          | -100.0       |
| <b>Total</b> | <b>34</b>        | <b>35</b> | <b>427,773.6</b>      | <b>287,188.9</b> | <b>-32.9</b> | <b>868.2</b>   | <b>757.7</b> | <b>-12.7</b> |

Source: CNMV.

### 2.5.2. The Alternative Stock Market

In 2008, the Alternative Stock Market (MAB) added a new segments: hedge funds. That segment joined those existing for SICAVs (3,347 companies listed at year-end), venture capital companies and funds (1 fund) and growth stocks (which contains no companies as yet).

The companies listed in the SICAV segment had a market capitalisation of 24.6 billion euro at year-end, a decline of 40.9% with respect to 2007. Trading in this segment totalled 7.06 billion euro, on par with last year's figure. In the year, 146 new SICAVs were listed. At the end of the year, only three SICAVs were still being traded on the open outcry market.

The regulations governing hedge funds were completed with the publication of the Stock Markets' Circular 5/2008. Hedge funds are now required to disclose their net asset value to MAB with the frequency stipulated in the prospectus, and the



possibility is provided of not making redemptions on all net asset value calculation dates. Additionally, MAB members are required to establish controls so that the minimum initial payment of 50,000 euro is respected in the subscription or acquisition of holdings.

As regards the rules for growth stocks, the goal for which is to facilitate SMEs' access to funding via the securities market, of special note is the creation of the registered advisor, whose objective will be to advise companies on complying with disclosure requirements for listing and remaining listed on the MAB. At the end of the year, a total of 20 advisors were registered in this segment, including broker-dealers, auditors, consulting firms and financial advisory firms. In 2008 the concept of liquidity provider was created to assist in the search for counterparties and contribute to more efficient price discovery.

## 2.6 Exchange-traded funds

ETFs have been on the Spanish market for two years now. Since their launch, both the number of funds and the assets under management have grown, although the number of management companies remains low. At the end of the year there were 30 listed funds, all belonging to management companies in the BBVA and Société Générale groups, with a wide range of underlying indices in terms of countries, sectors, securities and strategies. On 19 September, four funds were delisted at the request of Flame management company, which belongs to Banco Santander. Of special note is the launch of the first inverse ETF on the Spanish market, whose underlying is the DJ Stoxx 600. The first listed inverse ETF on the Ibex 35 is expected to begin trading in 2009.

Assets under management of the funds listed on the SIBE amounted to 10.6 billion euro at 2008 year-end, an increase of 65% with respect to the previous year. The bulk of those assets correspond to funds managed by Lyxor, in Société Générale group, which are also listed on other European markets. In Europe, total assets under management by ETFs amounted to 198.5 billion euro, 11% more than in 2007.

Trading totalled 6.9 billion euro, an increase of 48% compared with 2007. The two funds with the greatest trading volume were AFI Monetario Euro and Accion FTSE Latibex Top, both from BBVA, which accounted for 41% and 14% of the total, respectively. Six of the 30 listed funds account for approximately 94% of total trading.



Activity in the fixed-income market was affected by the financial crisis and by adverse economic performance. Issues from the private sector, where banks play a major role, declined noticeably (Table 3.1), reflecting both issuers' desire to reduce their debt and increased investor risk perception. However, the volume of asset-backed issues remained high, as they were generally retained by their originators for use as collateral in funding operations with the European Central Bank. In contrast with private fixed-income, public debt issues soared, the main issuer being the Spanish Central Government.

**Gross issues and outstanding balances: breakdown by issuer**

TABLE 3.1

Nominal amount in million euro

|                            | Amount <sup>1</sup> |                  | (% change)  |              | Pro memoria: EMU  |                   |
|----------------------------|---------------------|------------------|-------------|--------------|-------------------|-------------------|
|                            | 2007                | 2008             | 07/06       | 08/07        | 2008              | % change<br>08/07 |
| <b>Gross issues</b>        | <b>812,927</b>      | <b>713,265</b>   | <b>18.0</b> | <b>-12.3</b> | <b>14,088,500</b> | <b>3.3</b>        |
| General government         | 60,139              | 124,423          | -11.7       | 106.9        | 2,220,100         | 44.9              |
| Financial institutions     | 743,567             | 579,324          | 21.4        | -22.1        | 10,675,000        | -1.1              |
| Non-financial companies    | 9,221               | 9,518            | 12.2        | 3.2          | 1,193,400         | -8.9              |
| <b>Net issues</b>          | <b>222,374</b>      | <b>131,928</b>   | <b>-0.7</b> | <b>-40.7</b> | <b>1,133,100</b>  | <b>12.9</b>       |
| General government         | -4,362              | 51,474           | -59.5       | —            | 389,400           | 196.8             |
| Financial institutions     | 224,710             | 78,610           | -0.4        | -65.0        | 699,900           | -14.9             |
| Non-financial companies    | 2,026               | 1,843            | 104.0       | -9.0         | 43,800            | -11.5             |
| <b>Outstanding balance</b> | <b>1,291,346</b>    | <b>1,421,619</b> | <b>20.0</b> | <b>10.1</b>  | <b>13,140,200</b> | <b>8.9</b>        |
| General government         | 337,995             | 389,996          | -1.4        | 15.4         | 5,239,600         | 8.1               |
| Financial institutions     | 939,729             | 1,016,188        | 30.2        | 8.1          | 7,199,400         | 9.8               |
| Non-financial companies    | 13,622              | 15,435           | 17.4        | 13.3         | 701,200           | 6.1               |

Source: Bank of Spain, CNMV and ECB.

1. Includes issues in and outside Spain.

As for secondary markets, the public debt book-entry market continued to be the largest in terms of trading volume. Within that market, the short-term segment (*Letras del Tesoro*) registered significant growth in both outright trades and repos and sell-buybacks/buy-sellbacks, evidencing investors' preference for very liquid assets with high credit quality. In contrast, trading in the long-term segment (*bonos* and *obligaciones*) declined sharply, in parallel with a significant increase in the sovereign risk premium. S&P downgraded the rating of the Kingdom of Spain in January 2009; Fitch and Moody's, however, maintained the country's AAA ratings.

AIAF's secondary market in private fixed-income securities saw a sharp increase in sell-buybacks/buy-sellbacks, largely due to Treasury transactions in that market, which were concentrated in the asset-backed security segment. The volume of the other two classes of trade (outright trades and repos) shrank considerably. The Spanish government's Financial Asset Acquisition Fund (*Fondo de Adquisición de Activos Financieros* - FAAF) began to trade as a member of the AIAF in November. Fixed-income trading volume on AIAF exceeded that on the stock exchange (where the bulk of trading was concentrated in Barcelona, specifically in Catalan regional government bonds).

### 3.1 Public debt

#### 3.1.1. Primary market

Gross issues by public administrations amounted to 124.4 billion euro, i.e. more than double the 2007 figure (Table 3.1). The bulk of that increase is attributable to the Spanish Central Government, which issued 52.09 billion euro in 2007 and 112.6 billion euro in 2008. Gross issues by regional governments expanded 19.2% to 9.03 billion euro.

As a result of the acute disparity between revenues and expenses resulting from the negative performance of the economy and fiscal stimulus policies implemented to mitigate its effects, initial provisions for Central Government issues proved to be gross underestimates. Gross issues in the long-term segment (*bonos* and *obligaciones*) amounted to 59.9 billion euro, compared with an initial projection of 28.8 billion euro (i.e. slightly less than scheduled maturities). Net issues in the short-term segment (*Letras del Tesoro*) totalled 19.6 billion euro, compared with an initial projection of 1.3 billion euro. Net Central Government issues amounted to 48.9 billion euro, compared initial expectations of 800 million euro.

The increase in the outstanding balance of *Letras del Tesoro* was absorbed mainly by foreign investors, who increased their exposure by 6.7 billion euro. As regards investment in *bonos* and *obligaciones*, government holdings increased by 8.02 billion euro and holdings by the rest of the world increased by 28.1 billion euro; in contrast, UCITS reduced their holdings by 7.8 billion euro and pension funds by 5.01 billion euro.

Annexes II.11 and II.12 provide greater detail about gross and net issuing.

#### 3.1.2. Secondary market

The Public Debt Book-Entry Market continued to be Spain's largest organised securities market in terms of trading volume. This market is comprised of two large areas of trading: trading between market members and trading between registered dealers and third parties. There are two forms of trading between market members: via electronic platforms (SENAF, MTS-España, EuroMTS, etc.)<sup>1</sup> and bilateral trading. Trading between market members and with third parties may be outright (spot or

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1. SENAF and MTS-España are recognised as organised trading systems-a category expressly regulated by the Securities Market Law and supervised by the CNMV. EuroMTS is domiciled in the UK, in accordance with the authorisation and supervision requirements of that country.

forward) or temporary (repos and sell-buybacks/buy-sellbacks). Within the electronic platforms, SENAF provides spot trading in *Bono*, *Obligación* and *Letra* references, as well as sell-buybacks/buy-sellbacks in *bonos* and *obligaciones*. EuroMTS and MTS-España provide principally spot trading in the main *bonos* and *obligaciones*.

Total trading on the Public Debt Book-Entry Market fell 12.0% in 2008 with respect to 2007 (Table 3.2). However, trading in *Letras del Tesoro* followed a different trend to trading in *bonos* and *obligaciones*: trading in *Letras del Tesoro* expanded by 39.4% while trading in *bonos* and *obligaciones* declined by 15.9%. Growth in *Letras del Tesoro* trading was the result of investors' growing preference for short-term assets with top-flight credit quality; however, as the year progressed, the avalanche in the primary market issues reduced secondary market trading. Trading in *bonos* and *obligaciones* was affected by the sharp decline in yields and the increase in risk perception, which was especially patent during the fourth quarter of 2008 in the performance of sovereign risk premiums traded on CDS markets (Figure 3.1), as well as in the widening of the yield spread with respect to German debt. Although S&P downgraded Spain's public debt from AAA to AA+, Moody's and Fitch maintained its triple-A rating.

Trading in Central Government debt. Overall market

TABLE 3.2

| Million euro                  |                   |                   |                   |                   |                   |                |
|-------------------------------|-------------------|-------------------|-------------------|-------------------|-------------------|----------------|
|                               | 2004              | 2005              | 2006              | 2007              | 2008              | % change 08/07 |
| <b>Letras</b>                 | <b>2,273,364</b>  | <b>2,230,370</b>  | <b>1,695,552</b>  | <b>1,594,556</b>  | <b>2,222,226</b>  | <b>39.4</b>    |
| Outright                      | 115,549           | 116,478           | 93,332            | 57,925            | 115,260           | 99.0           |
| Spot                          | 114,951           | 116,087           | 92,831            | 57,363            | 114,581           | 99.7           |
| Maturity                      | 598               | 390               | 501               | 561               | 680               | 21.1           |
| Repos                         | 1,770,719         | 1,709,753         | 1,185,339         | 1,230,166         | 1,635,437         | 32.9           |
| Sell-buybacks/Buy-sellbacks   | 387,095           | 404,139           | 416,881           | 306,466           | 471,529           | 53.9           |
| <b>Bonos and obligaciones</b> | <b>20,560,318</b> | <b>19,989,574</b> | <b>20,919,806</b> | <b>21,069,771</b> | <b>17,712,257</b> | <b>-15.9</b>   |
| Outright                      | 2,133,892         | 2,531,614         | 3,137,244         | 3,413,112         | 2,342,943         | -31.4          |
| Spot                          | 2,021,747         | 2,222,121         | 2,810,314         | 3,120,022         | 2,086,558         | -33.1          |
| Maturity                      | 112,145           | 309,494           | 326,931           | 293,090           | 256,385           | -12.5          |
| Repos                         | 10,707,375        | 9,700,501         | 9,850,419         | 9,741,672         | 8,474,523         | -13.0          |
| Sell-buybacks/Buy-sellbacks   | 7,719,051         | 7,757,459         | 7,932,144         | 7,914,986         | 6,894,791         | -12.9          |
| <b>Total</b>                  | <b>22,833,682</b> | <b>22,219,944</b> | <b>22,615,358</b> | <b>22,664,327</b> | <b>19,934,484</b> | <b>-12.0</b>   |

Source: Bank of Spain.

The turnover velocity index calculated by the Bank of Spain, i.e. a ratio of outright trades in non-stripped debt to the value in circulation, declined sharply in the last few months of the year, reflecting both a reduction in trading and an increase in the volume of securities available in the secondary market. The index declined from 101 in 2007 to 67 in 2008.

Trading among market members, including outright trades and repos, declined by 6.5% with respect to 2007. However, while trading in *Letras del Tesoro* expanded by 57.3% (78.1% considering outright trades alone), trading in *bonos* and *obligaciones* fell 9.6% (13.5% in outright trades alone). Electronic platforms played a decisive role in trading in both segments. In the *Letras del Tesoro* segment, the platforms increased outright trades by 157% with respect to 2007 and accounted for 43.3% of total trading; the volume of platform trading in *bonos* and *obligaciones* shrank 47.8%.

5Y CDS premiums of sovereign debt

FIGURE 3.1



Source: Markit.

Annexes II.13 and II.16 provide more detail on trading in the Public Debt Book-Entry Market.

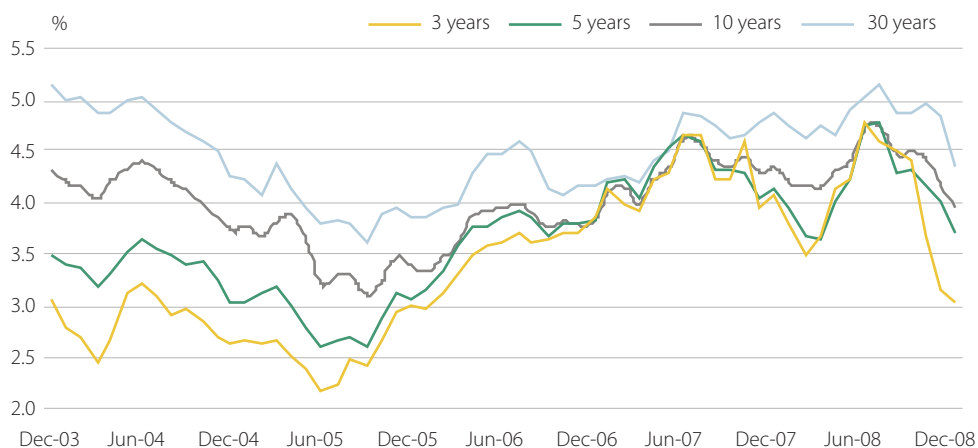
Yields on *Letras del Tesoro* and *bonos* and *obligaciones* rose until June, after which they plummeted during the rest of the year.

The higher yields on *Letras del Tesoro* in the first half of the year was the result of predominant expectations with regard to inflation, the fact that the ECB kept base rates unchanged, and the increase in government issuing, even when demand for them as a safe haven in the financial crisis was evident. Yields peaked in July at 73 basis points over December 2007 levels after the ECB raised interest rates. Yields on *Letras* slumped in the second half of the year after the shift towards a clearly expansive monetary policy. The 12-month *Letra* ended the year at 2.12%, 192 basis points lower than at the end of 2007.

Yields on *bonos* and *obligaciones* in all maturities peaked mid-year, with 5-year yields 65 basis points above their December 2007 level, and 30-year yields 25 basis

Yield on Spanish medium- and long-term government debt

FIGURE 3.2



Source: Bank of Spain.

points above that level. Later, worsening economic growth expectations drove yields down further despite the increase in sovereign risk premiums (Figure 3.2). At the end of the year, yields were 3.00% for the 3-year maturity (106 basis points lower than in December 2007), 2.07% for the 5-year maturity (43 basis points lower) and 3.96% for the 10-year maturity (39 basis points lower)

## 3.2 Private fixed-income

### 3.2.1. Primary market

Gross private fixed-income issues from Spanish issuers amounted to 588.8 billion euro in 2008, down 21.8% with respect to 2007 (Table 3.1). The decline almost exclusively affected issues in Spain, which accounted for 81% of the total and shrank by 26.6%, whereas issues abroad increased 8.4%. Commercial paper accounted for the bulk of the issuing volume, and the main issuers were in the financial sector.

Entities which issue fixed-income in Spain must submit a prospectus to the CNMV, or, if exempt, provide the documents required by regulation. Commercial paper accounted for the bulk of short-term issues registered with the CNMV in 2008, while asset-backed securities accounted for the lion's share of medium-long term issues (Table 3.3). Despite the reduction in both types of instruments (especially in commercial paper), they gained considerably as a percentage of total issues

#### Gross issues registered at the CNMV: detail by instrument

TABLE 3.3

Nominal amount in million euro

|                                      | 2004           | 2005           | 2006           | 2007           | 2008           | 2008           |                |               |                |
|--------------------------------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|---------------|----------------|
|                                      |                |                |                |                |                | 1Q             | 2Q             | 3Q            | 4Q             |
| <b>Long term</b>                     | <b>115,359</b> | <b>149,894</b> | <b>188,674</b> | <b>206,323</b> | <b>164,537</b> | <b>31,627</b>  | <b>48,350</b>  | <b>17,686</b> | <b>66,874</b>  |
| Non-convertible bonds and debentures | 38,094         | 41,907         | 46,688         | 27,416         | 10,490         | 604            | 3,744          | 4,215         | 1,927          |
| - subordinated debt                  | 4,395          | 1,905          | 6,555          | 2,381          | 1,545          | 200            | 125            | 300           | 920            |
| Convertible bonds and debentures     | 97             | 163            | 68             | 0              | 1,429          | 0              | 0              | 0             | 1,429          |
| Mortgage covered bonds               | 19,074         | 35,560         | 44,250         | 24,696         | 14,300         | 1,250          | 10,120         | 1,685         | 1,245          |
| Territorial covered bonds            | 1,600          | 1,775          | 5,150          | 5,060          | 1,820          | 1,020          | 0              | 0             | 800            |
| Securitisation bonds                 | 50,525         | 69,044         | 91,608         | 141,627        | 135,253        | 28,657         | 34,386         | 11,736        | 60,473         |
| - asset-backed (ABS)                 | 45,635         | 62,194         | 87,308         | 136,887        | 134,453        | 28,657         | 34,386         | 10,936        | 60,473         |
| - mortgage-backed (MBS)              | 4,890          | 6,850          | 4,300          | 4,740          | 800            | 0              | 0              | 800           | 0              |
| Preference shares                    | 5,542          | 1,356          | 911            | 225            | 1,246          | 96             | 100            | 50            | 1,000          |
| Other issues                         | 428            | 89             | 0              | 7,300          | 0              | 0              | 0              | 0             | 0              |
| <b>Short term</b>                    | <b>214,603</b> | <b>264,253</b> | <b>334,457</b> | <b>442,433</b> | <b>311,738</b> | <b>85,900</b>  | <b>86,118</b>  | <b>72,868</b> | <b>66,853</b>  |
| Commercial paper                     | 214,603        | 264,253        | 334,457        | 442,433        | 311,738        | 85,900         | 86,118         | 72,868        | 66,853         |
| - asset-backed                       | 3,724          | 2,765          | 1,993          | 465            | 2,843          | 133            | 48             | 94            | 2,568          |
| <b>Total</b>                         | <b>329,962</b> | <b>414,147</b> | <b>523,131</b> | <b>648,757</b> | <b>476,276</b> | <b>117,527</b> | <b>134,468</b> | <b>90,554</b> | <b>133,727</b> |

Source: CNMV.

registered: commercial paper accounted for 65.5% and asset-backed securities for 28.3%. Issuance of non-convertible bonds and debentures, mortgage covered bonds (*cédulas hipotecarias*) and territorial covered bonds (*cédulas territoriales*) continued the downward trend that began in the second half of 2007. Although issuing of

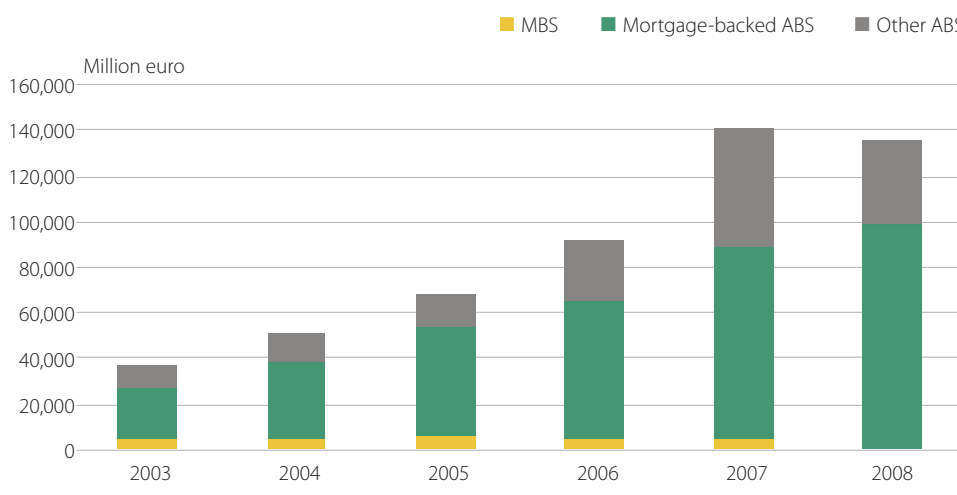
preference shares and convertible bonds and debentures rose, the overall amount was small (Table 3.3). Tables 18, 19 and 20 of Annex II provide greater detail about issues registered at the CNMV.

### Asset- and mortgage-backed securities

Contrasting with the major decline in issuance of other instruments, issuing of ABS and MBS shrank by just 4.5%, to 135.2 billion euro. Asset-backed securities accounted for the bulk of those issues and amounted to 134.4 billion euro, down 1.8% with respect to 2007. Issuing of mortgage-backed securities (MBS) shrank by 3.9 billion euro to 800 billion euro. Mortgage-backed securities again accounted for most of the issues, increasing their weight from 59.4% of the total in 2007 to 72.4% in 2008 (see Annex II.22 and Figure 3.3). The average size of the issues increased considerably. Of the 108 issues registered, 26 exceeded 1.5 billion euro, the average size being 3.5 billion euro, and they accounted for 68% of total securitisation bonds issues.

Asset- and mortgage-backed securities registered at the CNMV

FIGURE 3.3



Source: CNMV.

Most securitisation bond issues were retained by their originators for use as collateral in funding operations with the European Central Bank. Also, since the creation of the FAAF in November 2008, financial institutions have also been able to sell ABS and MBS to it in order to raise funding. Issuing of securitisation bonds peaked in the fourth quarter, when banks' financial difficulties increased notably following the collapse of Lehman Brothers and government intervention in various institutions in the United States and Europe (Table 3.3).

Tables 21 and 22 of Annex II provide additional information on securitisation bond issues registered at the CNMV.

### Issues in foreign markets

In 2008, issues in foreign markets by Spanish issuers increased to 112.3 billion euro, from 103.6 billion euro in 2007. The rising trend in issuing activity seen in recent years continued, although there was a significant change in its composition. While



long-term issues fell by 39.2% with respect to 2007, commercial paper issues rose 90.7%, accounting for 64.5% of the total amount issued in foreign markets. Although bond and debenture issues abroad fell sharply, they still exceeded issues in Spain (Tables 3.3 and 3.4).

**Gross private fixed-income issued by Spanish issuers in other countries** TABLE 3.4

Nominal amount in million euro

|                      | 2004          | 2005          | 2006          | 2007           | 2008           | % change<br>08/07 |
|----------------------|---------------|---------------|---------------|----------------|----------------|-------------------|
| <b>Long term</b>     | <b>10,349</b> | <b>44,159</b> | <b>73,257</b> | <b>65,629</b>  | <b>39,894</b>  | <b>-39.2</b>      |
| Preference shares    | 1,230         | 2,165         | 1,504         | 2,581          | 0              | —                 |
| Subordinated debt    | 2,250         | 1,487         | 5,758         | 8,984          | 70             | -99.2             |
| Bonds and debentures | 6,595         | 39,308        | 64,292        | 53,327         | 39,360         | -26.2             |
| Securitisation bonds | 274           | 1,199         | 1,703         | 736            | 464            | -36.9             |
| <b>Short term</b>    | <b>13,752</b> | <b>15,021</b> | <b>25,718</b> | <b>38,003</b>  | <b>72,472</b>  | <b>90.7</b>       |
| Commercial paper     | 13,752        | 15,021        | 25,718        | 38,003         | 72,472         | 90.7              |
| - asset-backed       | 13,045        | 12,367        | 16,517        | 12,119         | 425            | -96.5             |
| <b>Total</b>         | <b>24,102</b> | <b>59,180</b> | <b>98,975</b> | <b>103,631</b> | <b>112,366</b> | <b>8.4</b>        |

Source: Bank of Spain.

Financial institutions accounted for almost 90% of gross issues in other countries. Specifically, Santander Bank subsidiaries accounted for more than 50% and, among non-financial companies, the Telefónica group accounted for close to 10% of the total. Of the total, 51% were issued in London, and 46% in Luxembourg. Broken down by currency, 60% were issued in euro, 26% in US dollars, 10% in pounds sterling and the remaining 4% in other currencies (yen, Mexican pesos, Canadian dollars and Czech koruna). All the commercial paper and securitisation bonds were issued in euro.

### 3.2.2. Secondary market

Spain has two official secondary markets in private fixed-income securities: AIAF and the stock exchange. The largest in terms of the volume of securities listed and transaction volume is AIAF, where all kinds of private fixed-income instruments may be traded (except for convertible bonds and debentures, which may only be traded on the exchanges). AIAF allows for both outright trades and repos and sell-buybacks/buy-sellbacks, whereas the stock exchanges only allow for outright trades. Another significant difference between the two markets is that, just like the public debt book-entry market, AIAF contains two distinct trading segments: one between market members, and one between market members and clients; in contrast, there is only one trading segment in the stock exchanges.

The breakdown and trend in the number of issuers, the number of issues and the outstanding balance listed in both markets are shown in Tables 3.5 and 3.6, respectively. The majority of listed issues are traded on the AIAF, which accounted for 96.6% of the total outstanding balance at year-end. The outstanding balance of debt listed on AIAF grew 8% in 2008 (i.e. by less than the previous year, due to fewer new issues). Asset-backed securities (*ABS*, *cédulas hipotecarias* and *cédulas territoriales*) accounted for 73.4% of the outstanding balance on AIAF. The increase in the outstanding balance of issues listed on the stock exchanges (Table 3.5) is entirely attributable to the Barcelona Stock Exchange's move to list securitisation trusts backed by loans to SMEs guaranteed by the Catalonia regional government

(FTGENCAT trusts) and debt issued by the regional government itself. The outstanding balance on the other three stock exchanges declined.

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

TABLE 3.5

Nominal amount in million euro

|                           | No. of issuers |            | No. of issues |              | Outstanding balance |                | % chg.     |
|---------------------------|----------------|------------|---------------|--------------|---------------------|----------------|------------|
|                           | 2007           | 2008       | 2007          | 2008         | 2007                | 2008           | 08/07      |
| Commercial paper          | 73             | 72         | 2,493         | 2,489        | 98,468              | 71,762         | -27.1      |
| Bonds and debentures      | 456            | 523        | 1,673         | 1,964        | 491,574             | 567,321        | 15.4       |
| - securitisation bonds    | 316            | 383        | 1,157         | 1,436        | 328,925             | 422,011        | 28.3       |
| Mortgage covered bonds    | 14             | 22         | 111           | 146          | 150,906             | 162,466        | 7.7        |
| Territorial covered bonds | 7              | 11         | 19            | 26           | 16,375              | 17,030         | 4.0        |
| Matador bonds             | 15             | 12         | 18            | 14           | 1,238               | 1,059          | 14.5       |
| <b>Total</b>              | <b>492</b>     | <b>556</b> | <b>4,314</b>  | <b>4,639</b> | <b>758,560</b>      | <b>819,638</b> | <b>8.0</b> |

Source: AIAF and CNMV.

### Issuers, issues and outstanding balances of fixed-income in the stock markets

TABLE 3.6

Nominal amount in million euro

|                          | No. of issuers |           | No. of issues |            | Outstanding balance |               | % chg.      |
|--------------------------|----------------|-----------|---------------|------------|---------------------|---------------|-------------|
|                          | 2007           | 2008      | 2007          | 2008       | 2007                | 2008          | 08/07       |
| <b>Total<sup>1</sup></b> | <b>53</b>      | <b>58</b> | <b>249</b>    | <b>271</b> | <b>25.655</b>       | <b>29.143</b> | <b>13.6</b> |
| Regional government debt | 3              | 3         | 83            | 82         | 8,863               | 9,973         | 12.5        |
| Other                    | 50             | 55        | 166           | 189        | 16,792              | 19,170        | 14.2        |
| Barcelona Stock Exchange | 44             | 48        | 188           | 214        | 16,726              | 20,459        | 22.3        |
| Bilbao Stock Exchange    | 33             | 30        | 84            | 71         | 2,457               | 2,094         | -14.8       |
| Madrid Stock Exchange    | 28             | 26        | 74            | 63         | 8,965               | 8,678         | -3.2        |
| Valencia Stock Exchange  | 32             | 29        | 125           | 112        | 3,233               | 2,847         | -12.0       |

Source: Stock exchanges and CNMV.

1. Does not include book-entry debt.

Total private fixed-income trading on the AIAF and stock exchanges (including outright trades, repos and sell-buybacks/buy-sellbacks) increased by 113.5% to a total of 2.6 trillion euro. However, that increase was concentrated entirely among sell-buybacks/buy-sellbacks, resulting from actions by the Treasury as from March, when it joined the market as a member. The Treasury's trades on AIAF amounted to 1.2 trillion euro, the majority of which were one- and two-day sell-buybacks/buy-sellbacks on *bonos* and *obligaciones*. As from November, the FAAF also began operating on AIAF, where it had bought 3.2 billion euro in outright trades and 1.8 billion euro in sell-buybacks/buy-sellbacks by year-end. Trading on AIAF, including all categories, surpassed the 2.5 trillion euro mark, accounting for 97% of total private fixed-income trading.

Almost all trading on the AIAF consisted of bonds and debentures and commercial paper, even excluding the Treasury's transactions (most of which were in securitisation bonds). Retail banks conducted the bulk of trades in commercial paper between market members and their clients (Table 23 of Annex II). In contrast, securitisation bond transactions were concentrated in the wholesale segment (trading among market members).

**Total trading on AIAF** TABLE 3.7

| Nominal amount in million euro |                |                |                |                  |                  |                   |
|--------------------------------|----------------|----------------|----------------|------------------|------------------|-------------------|
|                                | 2004           | 2005           | 2006           | 2007             | 2008             | % change<br>08/07 |
| <b>Total</b>                   | <b>572,030</b> | <b>877,812</b> | <b>910,494</b> | <b>1,127,478</b> | <b>2,521,040</b> | <b>123.6</b>      |
| <b>By type of asset</b>        |                |                |                |                  |                  |                   |
| Commercial paper               | 291,903        | 408,185        | 489,069        | 568,010          | 591,944          | 4.2               |
| Bonds and debentures           | 227,127        | 404,410        | 344,698        | 469,533          | 1,788,946        | 281.0             |
| - securitisation bonds         | 171,725        | 313,778        | 257,629        | 378,005          | 1,704,342        | 350.9             |
| Mortgage covered bonds         | 46,014         | 60,061         | 70,113         | 80,811           | 129,995          | 60.9              |
| Territorial covered bonds      | 3,357          | 2,740          | 3,659          | 7,750            | 10,142           | 30.9              |
| Matador bonds                  | 3,629          | 2,416          | 2,954          | 1,374            | 13               | -99.0             |
| <b>By type of transaction</b>  |                |                |                |                  |                  |                   |
| Outright                       | 242,333        | 322,819        | 386,369        | 416,478          | 387,897          | -6.9              |
| Repos                          | 197,778        | 284,520        | 330,840        | 441,363          | 381,505          | -13.6             |
| Sell-buybacks/Buy-sellbacks    | 131,919        | 270,473        | 193,285        | 269,637          | 1,751,638        | 549.6             |

Source: AIAF and CNMV.

Including trades by the Treasury in this segment, trading on the AIAF increased seven-fold; excluding the Treasury, trading doubled. Trading shrank 11% in the retail banking segment, reflecting private fixed-income's lack of appeal among end investors. The retail trading segment on AIAF declined from 74% of total trading in 2007 to 29.5% in 2008 (or 56% excluding trades by the Treasury in the wholesale segment).

Only trading in sell-buybacks/buy-sellbacks increased. Excluding the Treasury's transactions, total trading in sell-buybacks/buy-sellbacks rose 104.1% with respect to 2007, whereas the volume of outright trades and repos fell by 6.9% and 13.6%, respectively.

**Fixed-income trading on the stock exchanges** TABLE 3.8

| Nominal amount in million euro        |               |               |               |               |               |                   |
|---------------------------------------|---------------|---------------|---------------|---------------|---------------|-------------------|
|                                       | 2004          | 2005          | 2006          | 2007          | 2008          | % change<br>08/07 |
| <b>Total</b>                          | <b>77,017</b> | <b>87,998</b> | <b>89,758</b> | <b>90,716</b> | <b>80,513</b> | <b>-11.2</b>      |
| Regional government debt <sup>1</sup> | 76,259        | 83,204        | 84,261        | 83,866        | 70,075        | -16.4             |
| Other                                 | 717           | 4,758         | 5,462         | 6,816         | 10,392        | 52.5              |
| Public debt book-entry securities     | 41            | 36            | 36            | 34            | 46            | 36.6              |

Source: Stock exchanges and CNMV.

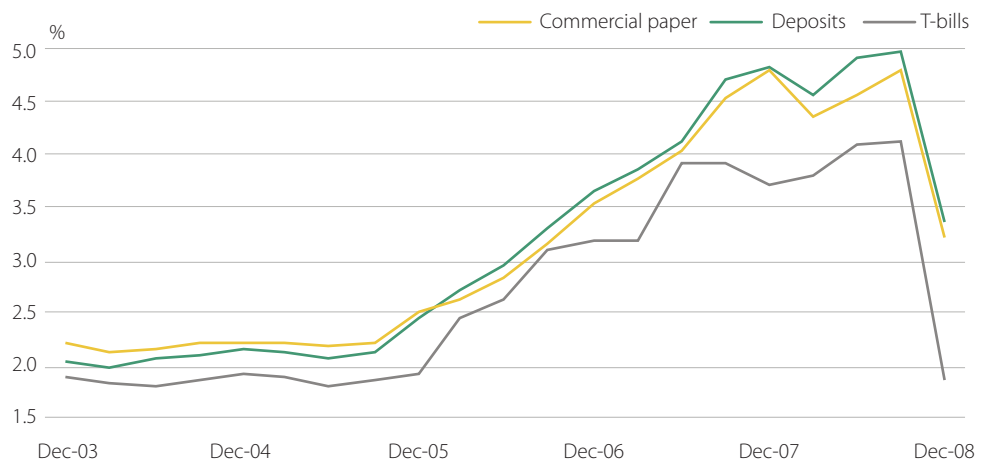
1. The regional governments of Catalonia, Valencia and the Basque Country. Does not include: Instituto Catalán de Finanzas, Diputación Foral de Vizcaya and Consorcio de Transportes de Vizcaya.

Trading of private fixed-income securities fell 11.2% with respect to 2007 (Table 3.8). Barcelona accounted for 96.2% of total trading on domestic stock exchanges, due primarily to Catalan government debt issues (68.7 billion euro) and asset-backed securities guaranteed by the Catalan government (7.6 billion euro).

Private sector issues of fixed-income securities experienced a sharp increase in the risk premium demanded by investors. The yield spread between commercial paper and repos on *Letras del Tesoro* was 148 basis points at year-end, the highest in 15

### Yields on three-month commercial paper, interbank deposits and repos

FIGURE 3.4

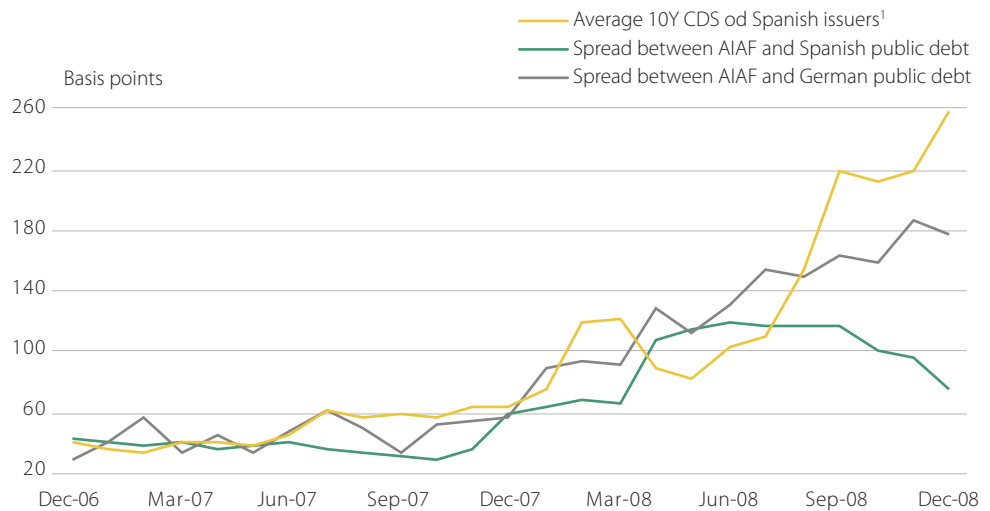


Source: Bank of Spain.

years. That spread was 48 basis points at the end of 2006. Nevertheless, yields on private commercial paper at year-end were much lower than at the end of 2007 due to the ECB's reduction of the base rate. The yield on 3-month commercial paper was 3.30% at the end of December, 147 basis points lower than at the end of 2007.

### Yield gap between private and public debt

FIGURE 3.5



Source: Bank of Spain, AIAF, Datastream and Reuters.

1. Average calculated using at least 18 CDSs on financial and non-financial issuers.

As for long-term private fixed-income, yields on 10-year corporate bonds traded on AIAF ended 2008 at 4.73%, 21 basis points below the 2007 year-end figure. Yields peaked mid-year at close to 6% and declined from then onwards. However, the risk premiums for Spanish issuers on CDS markets, where banks account for the bulk, increased significantly in the last few months of the year, reflecting the persisting high risk perception (Figure 3.6). Data for the first few months of 2009 show that, at mid-March, the yield on 10-year corporate debt traded on AIAF was similar to the yield at 2008 year-end, and risk premiums remained high.

## 4 Registry, counterparties, clearing and settlement

Spain has five technical platforms for clearing and settlement of securities traded on spot markets. Those five platforms are managed by four central securities depositories (CSD). Iberclear operates two platforms: CADE-Iberclear (for securities traded on the AIAF fixed-income market and the Public Debt Book-Entry market) and Iberclear-SCLV (for securities traded on stock exchanges, MAB and Latibex), while the Barcelona, Bilbao and Valencia Stock Exchanges have clearing and settlement services for securities traded exclusively on their exchanges (SCLBarcelona, SCLBilbao and SCLValencia, respectively). Iberclear and the three exchanges act as a central registry for securities settled via their platforms.

Until November 2002 when the Law on Measures to Reform the Financial System was passed, central counterparty services were confined to the realm of official markets in derivatives, where MEFF itself acts as the counterparty for registered contracts. Since 2003, MeffClear (governed by MEFF RF) has provided central counterparty services for trades in fixed-income transactions in the securities markets, electronic systems or by other means between settling members and/or clients.

The CNMV is responsible for supervising Iberclear, while the other three central depositories are monitored by their respective regional governments. The CNMV is also in charge of supervising MeffClear. This chapter summarises the activities of Iberclear (Section 4.1) and of MeffClear (Section 4.2) in 2008.

### 4.1 Iberclear

*Sociedad de Gestión de los Sistemas de Registro, Compensación y Liquidación de Valores, S.A. Unipersonal*, whose trade name is Iberclear, is in charge of registering, clearing and settling securities in Spain. Iberclear is 100% owned by the Bolsas y Mercados Españoles (BME) holding company and it mainly deals with securities traded in the stock exchanges, public debt market and AIAF.

At 2008 year-end, Iberclear had 208 members, eight less than at 2007 year-end (Table 4.1). In the year, eight participants deregistered from the public debt clearing and settlement system, and AIAF added six new members.

The activity indicators for the two platforms managed by Iberclear generally reflect the trends in trading in the corresponding markets (see Chapters 2 and 3).

| <b>Iberclear members</b>           |            |  | TABLE 4.1  |
|------------------------------------|------------|--|------------|
|                                    | 2007       |  | 2008       |
| <b>Total Iberclear<sup>1</sup></b> | <b>216</b> |  | <b>208</b> |
| <b>Members of:</b>                 |            |  |            |
| Stock exchanges                    | 93         |  | 90         |
| Latibex                            | 79         |  | 78         |
| AIAF                               | 74         |  | 80         |
| Public Debt Book-Entry Market      | 174        |  | 166        |

Source: Iberclear.

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

#### 4.1.1. Iberclear-CADE

At the end of the year, a total of 5,083 issues had been registered on this platform, with a nominal value of 1.2 billion euro; 94% were traded on the AIAF market, and the remainder on the public debt market. In terms of the nominal amount, 68% of the total were AIAF issues, and the remaining 32% were public debt market issues.

AIAF-traded issues saw moderate growth with respect to 2007, both in number and in nominal value. In contrast, the number of outstanding issues in the public debt market fell; however, the amount issued increased significantly due to the intense issuing activity in the last few months of the year.

| <b>Iberclear - CADE. Registry</b> |             |         |         |         |           |           |          | TABLE 4.2 |
|-----------------------------------|-------------|---------|---------|---------|-----------|-----------|----------|-----------|
| Million euro                      |             |         |         |         |           |           |          |           |
|                                   | Public debt |         | AIAF    |         | Total     |           | % change |           |
|                                   | 2007        | 2008    | 2007    | 2008    | 2007      | 2008      |          |           |
| <b>Registered securities</b>      |             |         |         |         |           |           |          |           |
| Number of issues                  | 345         | 327     | 4,493   | 4,756   | 4,838     | 5,083     | 5.28     |           |
| Nominal amount                    | 350,350     | 400,647 | 779,953 | 840,439 | 1,130,303 | 1,241,086 | 9.80     |           |

Source: CNMV.

CADE settled a total of 8,261,592 trades, of which 79% were done on the Book-Entry Debt Market, compared with 84% in 2007. Both the number of trades on AIAF and the volume settled increased considerably. Volume increased primarily due to significant growth in repos and sell-buybacks/buy-sellbacks. However, the bulk were outright trades, which increased in amount but not in number due to the greater presence of individual investors in the market.

In the public debt market, there was a sharp decline in all trade types and settlement volumes with respect to 2007, except for securities transfers as collateral. The latter are essentially related to Spanish institutions' applications for funding to the European Central Bank. The most numerous trades on the public debt market were repos and sell-buybacks/buy-sellbacks.

The incidents in 2008 had little impact on settlements: there were 414, accounting for 0.01% of total settled trades. Non-resident entities were responsible for 71% of the incidents, as short-sellers were unable to cover their positions at the end of the day due to the scarcity of paper in the system, especially government debt.

### Iberclear-CADE. Number of settled trades

TABLE 4.3

| Type of transaction  | Public debt      |                  | AIAF             |                  | Total            |                  | % change     |
|--|------------------|------------------|------------------|------------------|------------------|------------------|--------------|
|  | 2007             | 2008             | 2007             | 2008             | 2007             | 2008             |              |
| Outright trades  | 242,656          | 208,910          | 919,277          | 1,217,626        | 1,161,933        | 1,426,536        | 22.77        |
| Repos and sell/buyback and buy/sellbacks                   | 6,392,623        | 5,733,333        | 174,366          | 199,202          | 6,566,989        | 5,932,535        | -9.66        |
| Outright transfers (between accounts of the same owner)    | 179,748          | 144,600          | 209,382          | 215,808          | 816,814          | 360,408          | -55.88       |
| Temporary transfers (between accounts of the same owner)   | 160,242          | 108,354          | 0                | 119              | 160,242          | 108,473          | -32.31       |
| Transfers of securities to maturity (to a different owner) | 363,978          | 325,734          | 63,706           | 72,438           | 427,684          | 398,172          | -6.90        |
| Transfers for collateral (to a different owner)            | 1,454            | 2,684            | 32,953           | 30,776           | 34,407           | 33,460           | -2.75        |
| <b>Total</b>   | <b>7,342,708</b> | <b>6,525,623</b> | <b>1,401,691</b> | <b>1,737,977</b> | <b>8,742,392</b> | <b>8,261,592</b> | <b>-5.50</b> |

Source: CNMV.

### Iberclear-CADE. Amount of settled trades<sup>1</sup>

TABLE 4.4

Million euro

| Type of transaction  | Public debt       |                   | AIAF             |                  | Total             |                   | % change      |
|--|-------------------|-------------------|------------------|------------------|-------------------|-------------------|---------------|
|  | 2007              | 2008              | 2007             | 2008             | 2007              | 2008              |               |
| Outright trades  | 3,964,073         | 2,885,198         | 511,888          | 442,183          | 4,475,961         | 3,327,381         | -25.66        |
| Repos and sell/buyback and buy/sellbacks                   | 47,506,147        | 39,240,986        | 1,374,130        | 4,056,696        | 48,880,277        | 43,297,682        | -11.42        |
| Outright transfers (between accounts of the same owner)    | 14,190,191        | 2,025,069         | 3,449,720        | 2,202,459        | 17,639,911        | 4,227,528         | -76.03        |
| Temporary transfers (between accounts of the same owner)   | 740,198           | 701,347           | 0                | 1,116            | 740,198           | 702,463           | -5.10         |
| Transfers of securities to maturity (to a different owner) | 9,896,096         | 7,128,755         | 841,889          | 794,106          | 10,737,985        | 7,922,861         | -26.22        |
| Transfers for collateral (to a different owner)            | 40,147            | 82,664            | 858,270          | 888,093          | 898,417           | 940,934           | 4.73          |
| <b>Total</b>   | <b>63,536,539</b> | <b>52,064,013</b> | <b>4,797,824</b> | <b>8,354,830</b> | <b>68,334,363</b> | <b>60,420,857</b> | <b>-11.58</b> |

Source: CNMV.

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

### 4.1.2 Iberclear-SCLV

In 2008, a total of 7,153 issues were registered with Iberclear - SCLV with an aggregate nominal value of 110.1 billion euro. Issues increased in both number and nominal value compared with 2007 (Table 4.5).

### Iberclear SCLV. Registry

TABLE 4.5

Million euro

| Registered securities          | Stock exchange |         |          | Latibex |      |          |
|--------------------------------|----------------|---------|----------|---------|------|----------|
|                                | 2007           | 2008    | % change | 2007    | 2008 | % change |
| Number of issues               | 6,005          | 7,153   | 19.1     | 39      | 38   | -2.6     |
| Registered amount <sup>1</sup> | 106,589        | 110,127 | 3.32     | 258     | 195  | -24.6    |

Source: CNMV.

1. Nominal amount, in the case of the stock exchange; effective amount, in the case of Latibex.

Trading declined in 2008, and more sharply in the last few months of the year; this reduced the number of trades settled on SCLV (Table 4.6). On the stock exchanges and Latibex combined, the amount settled shrank by 24.7% and the number of transactions settled by 4.3%. In terms of daily averages, the effective amount settled exceeded 4.9 billion euro and the number of transactions was close to 47,500.

Total transfers settled on the platform (both delivery versus payment and free of payment) expanded by 4.4%, while deliveries versus payment fell by 29.8%

#### Iberclear SCLV. Trades settled

TABLE 4.6

Million euro

| Trades              | Stock exchange    |                   |                  |                  | Latibex       |               |              |              |
|---------------------|-------------------|-------------------|------------------|------------------|---------------|---------------|--------------|--------------|
|                     | No. of trades     |                   | Amount           |                  | No. of trades |               | Amount       |              |
|                     | 2007              | 2008              | 2007             | 2008             | 2007          | 2008          | 2007         | 2008         |
| Purchases and sales | 28.820.285        | 27.493.503        | 3.311.862        | 2.529.808        | 84.836        | 71.079        | 1.731        | 1.522        |
| Failed settlements  | 77.233            | 65.042            | 19.724           | 10.354           | 2.363         | 1.717         | 99           | 46           |
| Buy-ins             | 898               | 869               | 113              | 90               | 31            | 18            | 1            | 87           |
| Transfers f.o.p.    | 228.384           | 247.739           | 0                | 0                | 1.720         | 1.784         | 0            | 0            |
| Transfers v.p.      | 957.025           | 991.530           | 684.904          | 480.945          | 3.664         | 2.014         | 170          | 59           |
| <b>Total</b>        | <b>30.005.694</b> | <b>28.732.772</b> | <b>3.996.766</b> | <b>3.010.753</b> | <b>90.220</b> | <b>74.877</b> | <b>1.901</b> | <b>1.580</b> |

Source: CNMV.

Transfers f.o.p. = transfers free of payment. Transfers v.p. = transfers versus payment.

The system's efficiency, measured as the amount over the total number of trades, improved slightly, from 99.5% in 2007 to 99.7% in 2008; in terms of the number of trades, efficiency improved from 99.7% in 2007 to 99.8% in 2008. Failed settlements declined in number, by 16.1%, and in amount, by 47.5%. As a percentage of the total amount of trades, they shrank from 0.5% to 0.35%. Buy-ins fell by about 4.5% in number, but they amounted to 177 million euro, an increase of 55.2% with respect to 2007.

#### 4.1.3. European integration initiatives

Last year Iberclear continued participating in the various Europe-level private and public initiatives which were implemented in 2006 with a view to furthering financial market integration in Europe.

#### Code of Conduct

In 2008, the CNMV advanced towards the objectives established in the Code of Conduct for equity clearing and settlement systems in Europe. Iberclear's scale of charges along with a number of standard examples of how those charges are applied have been available on its website since 1 January 2008.

The Code of Conduct also focuses on service unbundling and accounting separation. Iberclear has complied with this principle since the beginning of 2008.



The third objective focuses on access and interoperability conditions for European infrastructures. In this vein, Iberclear and seven other European CSDs created the *Link Up Markets* joint-venture in April 2008. The initiative aims initially to establish a centralised tool for converting each CSD's instruction and messaging formats for processing at the other CSDs, facilitating the interchange of settlement instructions through a single CSD gateway.

Subsequently, the venture aims to enable each CSD to offer cross-border settlement and custody services for locally-registered securities to the other participants, providing a multilateral approach to interoperability between the CSDs which adhere to the Code. This will improve access while eliminating the need to develop and implement specific bilateral solutions. The venture also fosters direct competition in settlement and custody services among central securities depositories and big international custodians.

### Target2-Securities (T2S)

Having completed the consultation phase on user requirements and obtained a positive opinion from the majority of CSDs, in July 2008 the Governing Council of the European Central Bank (ECB) decided to advance to the next phase of T2S project development. Only a few depositories made participation conditional upon first considering, from a technical and legal standpoint, the possibility of enabling users to decide which platform to use in settling their trades. Therefore, T2S would not necessarily be the only option, as it would compete with other settlement systems.

Preliminary specifications for the general functioning of the project and its data model were drafted in the second half of 2008 and published on 22 January 2009; they will be validated over the course of 2009. The T2S advisory group already has specific subgroups working on the various aspects of this project. Iberclear and its main members continue to collaborate actively on this second phase.

The Eurosystem established a legal group in the fourth quarter of 2008 to specify the nature of future contractual mechanisms between the institution ultimately providing the settlement service and the CSD requesting it, together with the corporate governance mechanisms of T2S. CSDs wishing to participate in T2S are expected to submit individual declarations of interest in 2009. The formula will comprise a collaboration agreement which will include mutual contributions to the project by the Eurosystem and the CSDs, and establish parameters as regards the scope of future contractual mechanisms between the Eurosystem and the CSDs.

#### 4.1.4. Technical enhancements

As a part of ongoing process of compliance with the conclusions of the special group on loans, the procedure for disclosing to issuers of registered securities the cancellation of loans without returning securities entered into force on 13 October 2008. The procedure to update the special register of loans resulting from financial transactions that involve a distribution of shares or warrants entered into force on 17 November 2008.

The new methodology for calculating collective and supplementary security deposits regulated in Iberclear's Circular 7/2007 entered into force in April 2008. Complementing the improvements introduced by that Circular, Iberclear Instruction 1/2009 entered into force on 2 February 2008, postponing the calculation of the daily risk position of each clearing member by 30 minutes, from 7:30 to 8:00 every working day. This enables member entities to process the instructions received during the night and early in the morning, thereby reducing open risk positions and strengthening the potential capacity to reduce complementary security deposits.

## 4.2 MeffClear

In 2008, MeffClear registered 285 trades with a total market value of 43.8 billion euro, a significant increase with respect to 2007 (Table 4.7), but less than in 2006. All the transactions cleared on MeffClear consisted of SENAF repo trades. The average term of the transactions was 1.4 days (1.3 days in 2007).

### Activity in MeffClear

TABLE 4.7

| Million euro                             | 2007          | 2008          |
|--|---------------|---------------|
| SENAF platform: trades cleared           | 38,385        | 43,853        |
| Bilateral transactions: trades cleared   | 0             | 0             |
| <b>Total</b>                             | <b>38,385</b> | <b>43,853</b> |
| SENAF platform: number of trades         | 233           | 285           |
| Bilateral transactions: number of trades | 0             | 0             |
| <b>Total</b>                             | <b>233</b>    | <b>285</b>    |
| <b>No. of members</b>                    | <b>19</b>     | <b>15</b>     |

Source: MeffClear.

The number of members shrank to 15 after Barclays Bank Plc London, Citibank International Plc. Suc. en España, Caixa d'Estalvis de Catalunya and Bancaja left the clearing house last year.

In 2008, Spain's derivatives markets reflected the sharp increase in volatility in the cash markets, especially equities. There was no general trend in terms of trading volume, as the performance of different products varied.

### Trading on Spain's derivatives markets\*

TABLE 5.1

No. of contracts, except where otherwise stated

|                                       | 2005              | 2006              | 2007              | 2008              | Change (%)<br>2008/07 |
|---------------------------------------|-------------------|-------------------|-------------------|-------------------|-----------------------|
| <b>MEFF RF</b>                        | <b>46</b>         | <b>15</b>         | <b>13</b>         | <b>12</b>         | <b>-7.7</b>           |
| Debt futures                          | 46                | 15                | 13                | 12                | -7.7                  |
| Debt options                          | —                 | —                 | —                 | —                 | —                     |
| Euribor futures                       | —                 | —                 | —                 | —                 | —                     |
| <b>MEFF RV</b>                        | <b>35,219,874</b> | <b>40,775,643</b> | <b>44,176,717</b> | <b>55,055,028</b> | <b>24.6</b>           |
| Ibex 35 futures                       | 5,050,211         | 6,568,791         | 8,721,832         | 7,605,341         | -12.8                 |
| Ibex 35 Plus                          | 4,935,648         | 6,408,961         | 8,435,258         | 7,275,299         | -13.8                 |
| Ibex 35 Mini <sup>1</sup>             | 114,563           | 159,830           | 286,574           | 330,042           | 15.2                  |
| Ibex 35 options                       | 440,747           | 551,062           | 567,077           | 828,622           | 46.1                  |
| Stock futures                         | 18,813,689        | 21,229,811        | 21,294,315        | 46,237,568        | 117.1                 |
| Stock options                         | 10,915,227        | 12,425,979        | 13,593,493        | 18,317,249        | 34.8                  |
| <b>Total MEFF</b>                     | <b>35,219,920</b> | <b>40,775,658</b> | <b>44,176,730</b> | <b>55,055,040</b> | <b>24.6</b>           |
| <b>Electronic market</b>              | <b>2,129,643</b>  | <b>2,852,348</b>  | <b>5,085,503</b>  | <b>2,872,372</b>  | <b>-43.5</b>          |
| Warrants <sup>2</sup>                 | 2,129,643         | 2,852,348         | 5,085,503         | 2,872,372         | -43.5                 |
| <b>Pro-memoria:</b>                   |                   |                   |                   |                   |                       |
| <b>Total EuroMEFF</b>                 | <b>2,521,171</b>  | <b>2,541,397</b>  | <b>2,430,363</b>  | <b>2,038,164</b>  | <b>-16.1</b>          |
| European debt futures <sup>3</sup>    | 1,440,370         | 1,117,956         | 1,059,113         | 869,105           | -17.9                 |
| European index contracts <sup>4</sup> | 1,080,801         | 1,423,441         | 1,371,250         | 1,169,059         | -14.7                 |
| Other <sup>5</sup>                    | —                 | —                 | —                 | —                 | —                     |

\* Trading volume on MEFF and EuroMEFF is expressed in number of contracts. Differences in the value of the underlying instruments prevent direct comparisons between products, but inter-year comparisons are meaningful.

1. The number of Ibex 35 Mini futures (multiples of 1 euro) was standardised to the size of the Ibex 35 Plus futures (multiples of 10 euro).
2. Premiums traded, in thousand euro, in the electronic market.
3. Includes futures on German debt (Bund, Böbl and Schatz) traded on Eurex and futures on the notional 10-year bond traded on Euronext Paris (until the connection was suspended on 30 December 2003).
4. Includes futures on the DAX 30, DJ Eurostoxx 50 and DJ Stoxx 50 indexes traded on Eurex, futures on the CAC 40, DJ Eurostoxx 50 and DJ Stoxx 50 indexes traded on Euronext Paris (until suspension of the connection on 30 December 2003), and futures and options on the PSI 20 index traded on Euronext Lisbon (until suspension of the connection on 19 March 2004).
5. Includes futures on Euribor traded on Euronext Paris (until suspension of the connection on 30 December 2003) and futures and options on individual stocks (Portugal Telecom and EDP) traded on Euronext Lisbon (until suspension of the connection on 19 March 2004).

Trading of futures and options on individual equities increased considerably. Ibex 35 options trading also increased sharply, while Ibex 35 futures trading contracted.

On a number of occasions, the very high volatility increased the daily margin calls and extraordinary margin calls during the session. However, the collapse in September of Lehman Brothers, which was a trading member of MEFF, did not have a major impact on the Spanish market.

This chapter provides an overview of Spain's derivatives market performance in 2008. Section 5.1 discusses MEFF, section 5.2 covers the warrants market, section 5.3 explores other financial contracts and section 5.4 describes the olive oil futures market.

## 5.1 MEFF

Trading on MEFF (in terms of the number contracts) increased in 2008, outstripping Eurex and Euronext by 7.5 percentage points. The bulk of financial derivatives trading in Europe remained concentrated among the latter two, which are among the world's three largest derivatives exchanges (the other is CME Group).

Trading in MEFF's two largest segments performed differently in 2008: trading in Ibex 35 contracts declined by 10.9% overall, whereas trading in contracts on individual stocks increased by 85%, in line with the pattern of the last three years.

With regard to the latter, over 46.2 million Spanish individual equity futures were traded on MEFF, a 117.1% increase with respect to 2007. Futures on the most liquid and largest-cap stocks accounted for the bulk of trading (Table 5.3). Equity futures on Banco de Santander (15.9 million), Telefónica (13.0 million), BBVA (9.0 million) and Iberdrola (4.4 million) accounted for 92.2% of total trading.

Trading on Europe's derivatives markets\*

TABLE 5.2

Thousand contracts

|                             | 2005      | 2006      | 2007      | 2008      | Change (%)<br>2008/07 |
|-----------------------------|-----------|-----------|-----------|-----------|-----------------------|
| Eurex <sup>1</sup>          | 1,248,748 | 1,526,752 | 1,899,862 | 2,165,033 | 12.2                  |
| Euronext <sup>2</sup>       | 766,715   | 710,205   | 907,584   | 1,035,651 | 12.4                  |
| Euronext.Liffe <sup>3</sup> | 416,689   | 497,354   | 656,134   | 795,763   | 17.5                  |
| Euronext Paris              | 232,334   | 86,017    | 91,622    | 97,751    | 6.3                   |
| Euronext Amsterdam          | 117,692   | 126,834   | 159,828   | 142,137   | -12.4                 |
| OM <sup>4</sup>             | 113,705   | 139,233   | 161,509   | 160,216   | -0.8                  |
| MEFF                        | 35,219    | 40,775    | 44,177    | 55,055    | 19.8                  |
| IDEM/MIF5                   | 25,871    | 31,591    | 37,125    | 35,929    | -3.3                  |

Source: Eurex y CNMV.

\* Trading volume is expressed in number of contracts. Differences in the value of the underlying instruments traded on the various markets prevent direct comparisons between markets, but inter-year comparisons are meaningful.

1. Deutsche Terminbörse (DTB) and Swiss Options & Futures Exchange.
2. Comprising the Paris, Amsterdam and Brussels cash markets and the Liffe, Lisbon and Porto derivatives markets.
3. Formerly Liffe: London International Financial Futures Exchange.
4. Nordic & Baltic Exchange: Stockholm, Helsinki, Copenhagen, Iceland, Tallin, Vilnius and Riga stock exchanges.
5. Italian Derivatives Market/Mercato Italiano Futures.

**Trading in individual stock futures and options on MEFF RVs**

TABLE 5.3

 Markets and issuers  
 Derivatives markets

| No. of contracts   | Options           |                   |             | Futures           |                   |              |
|--------------------|-------------------|-------------------|-------------|-------------------|-------------------|--------------|
|                    | 2007              | 2008              | Change (%)  | 2007              | 2008              | Change (%)   |
|                    |                   |                   | 2008/07     |                   |                   | 2008/07      |
| ABENGOA            | 0                 | 72                | —           | 0                 | 42                | —            |
| ABERTIS            | 86,596            | 114,508           | 32.2        | 50,041            | 20,026            | -60.0        |
| ACCIONA            | 1,578             | 8,306             | 426.4       | 4,799             | 4,689             | -2.3         |
| ACERINOX           | 212,939           | 244,783           | 15.0        | 29,331            | 10,217            | -65.2        |
| ACS                | 25,825            | 28,800            | 11.5        | 11,911            | 43,707            | 266.9        |
| ALTADIS            | 300,946           | 300               | -99.9       | 120,098           | 0                 | -100.0       |
| ANTENA 3 TV        | 710               | 239               | -66.3       | 21,865            | 2,520             | -88.5        |
| B. SABADELL        | 103,978           | 109,789           | 5.6         | 76,746            | 203,614           | 165.3        |
| BANESTO            | 10,813            | 4,191             | -61.2       | 9,327             | 4,981             | -46.6        |
| BANKINTER          | 73,593            | 10,724            | -85.4       | 22,801            | 107,678           | 372.3        |
| BBVA               | 2,500,745         | 3,147,971         | 25.9        | 4,077,451         | 9,096,220         | 123.1        |
| BME                | 200               | 4,394             | 2097.0      | 813               | 46,666            | 5640.0       |
| CINTRA             | 7,107             | 29,545            | 315.7       | 8,694             | 1,855             | -78.7        |
| ENAGAS             | 34,740            | 43,601            | 25.5        | 53,082            | 44,859            | -15.5        |
| ENDESA             | 101,501           | 5,028             | -95.0       | 441,661           | 129,364           | -70.7        |
| FCC                | 21,439            | 10,642            | -50.4       | 27,527            | 16,766            | -39.1        |
| FERROVIAL          | 1,996             | 9,243             | 363.1       | 5,960             | 8,051             | 35.1         |
| GAMESA             | 3,467             | 3,451             | -0.5        | 9,782             | 3,847             | -60.7        |
| GAS NATURAL        | 104,001           | 42,281            | -59.3       | 31,654            | 8,626             | -72.7        |
| GRIFOLS            | 0                 | 1,273             | —           | 0                 | 180               | —            |
| IBERDR. RENOVABLES | 0                 | 92,887            | —           | 0                 | 1,057             | —            |
| IBERDROLA          | 1,650,628         | 3,907,945         | 136.8       | 1,143,885         | 4,454,310         | 289.4        |
| IBERIA             | 77,887            | 1,635             | -97.9       | 40,906            | 7,791             | -81.0        |
| INDITEX            | 124,372           | 124,341           | 0.0         | 90,952            | 30,180            | -66.8        |
| INDRA              | 32,749            | 18,356            | -43.9       | 2,005             | 8,484             | 323.1        |
| MAPFRE             | 997               | 7,087             | 610.8       | 21,612            | 18,792            | -13.0        |
| METROVACESA        | 6                 | 0                 | -100.0      | 357               | 0                 | -100.0       |
| NH HOTELES         | 56                | 0                 | -100.0      | 5,483             | 147               | -97.3        |
| POPULAR            | 415,405           | 1,161,600         | 179.6       | 270,861           | 562,960           | 107.8        |
| PRISA              | 71,612            | 0                 | -100.0      | 31,220            | 10,156            | -67.5        |
| RED ELECTRICA      | 15,186            | 11,329            | -25.4       | 28,300            | 35,283            | 24.7         |
| REPSOL             | 944,762           | 1,341,491         | 42.0        | 1,110,222         | 2,167,863         | 95.3         |
| SACYR VALLE.       | 4,972             | 2,893             | -41.8       | 16,454            | 12,818            | -22.1        |
| SANTANDER          | 3,972,744         | 3,741,252         | -5.8        | 6,431,387         | 15,974,776        | 148.4        |
| SOGECABLE          | 43,388            | 355               | -99.2       | 3,793             | 48                | -98.7        |
| TELECINCO          | 132               | 2,965             | 2146.2      | 9,645             | 13,384            | 38.8         |
| TELEFONICA         | 2,475,688         | 4,002,266         | 61.7        | 6,826,659         | 13,074,850        | 91.5         |
| U. FENOSA          | 170,735           | 81,706            | -52.1       | 201,672           | 91,294            | -54.7        |
| <b>TOTAL</b>       | <b>13,593,493</b> | <b>18,317,249</b> | <b>34.8</b> | <b>21,238,956</b> | <b>46,218,101</b> | <b>117.6</b> |

Source: MEFF.

Trading of equity options also increased sharply, by 34.8% with respect to 2007, to over 18.3 million contracts. The increased volatility in the cash price of the underlyings increased the use of options to hedge risk. Moreover, greater perception of counterparty risk after Lehman Brothers collapsed may have caused an increase in transactions using regulated markets with a central counterparty, to the detriment of OTC trading with bilateral settlement. As shown in Table 5.3, the most traded equity options were on Telefónica (4 million), Iberdrola (3.9 million), Banco de Santander (3.7 million), BBVA (3.1 million), Repsol (1.3 million) and Banco Popular (1.1 million). Equity options on the above-mentioned stocks accounted for 94.5% of all trading.

Trading in Ibex 35 options and futures registered a mixed performance. Trading in Ibex 35 futures declined 12.8% with respect to 2007, to slightly over 7.6 million contracts (Table 5.1). Whereas the Ibex 35 Plus future<sup>1</sup> was the principal derivative in Spain's securities market until last year, trading shrank 13.8% with respect to 2007, and it was eclipsed by futures contracts on individual stocks. In contrast, Ibex 35 Mini futures, which have a multiplier of 1 euro (vs. 10 euro for the Ibex 35 Plus) and are therefore aimed more at retail investors, saw trading increase by 15.2%.

In contrast with Ibex 35 futures, trading in options on the index grew by 46.1% to over 8 million contracts, the highest level in a decade.

The number of MEFF members in 2008 was on par with recent years. The number of MEFF RV members rose due to the inclusion of proprietary traders; in contrast, the number of MEFF RF members declined (Table 5.4).

Trading by MEFF members via EuroMEFF declined in 2008, as occurred in 2007. EuroMEFF is a securities company through which MEFF members and their clients can trade in some Eurex products. This company's purpose is to channel trading in foreign derivatives markets. Total trading via EuroMEFF fell 16.1% due to the decline of 17.9% in trading of European debt futures and of 14.7% in trading of European stock index futures.

#### MEFF membership figures

TABLE 5.4

|                             | 2007       | 2008       |
|-----------------------------|------------|------------|
| <b>MEFF renta variable</b>  | <b>110</b> | <b>114</b> |
| Settling custodian members  | 30         | 29         |
| Settling members            | 30         | 29         |
| Trading members             | 33         | 31         |
| Proprietary trading members | 17         | 25         |
| <b>MEFF renta fija</b>      | <b>52</b>  | <b>49</b>  |
| Settling custodian members  | 31         | 30         |
| Settling members            | 10         | 9          |
| Trading members             | 11         | 10         |

Source: MEFF and CNMV.

1. The underlying in Ibex 35 Plus futures contracts is the Ibex 35 index with a multiplier of 10 euro. These contracts are also referred to simply as Ibex 35 futures.

### 5.1.1. New developments in MEFF

The main new feature in MEFF in 2008 was the increase in its range of equity options. On 21 April 2008, MEFF launched new, European-style options (which may be exercised only upon expiration), in addition to the pre-existing American-style options (which may be exercised at any time before expiration). These new European options are settled by delivery of the underlying stock. Expiration dates are the third Friday of March, June, September and December, but contracts expiring in other months may be admitted to trading. The new contracts are available on 55 Spanish stocks.

MEFF improved its electronic platform in 2008, upgrading to version 8.01. Work has commenced on a newer version (9.0) with a view to standardising numbering for all groups of listed products, preparing for the launch of contracts with flexible expiration dates and strike prices and increasing listed equity option durations to 5 years. It implemented other technological improvements in its trading system and clearing house, tripling the central system's processing capacity.

MEFF collaborated with the Colombian market in 2008 to implement a central clearing house for Colombian derivatives using MEFF technology, just as it had done with the Mexican derivatives market (MEXDER).

### 5.1.2. MEFF and the electricity market

As part of its diversification strategy, MEFF improved its position in the electricity market by offering new services. As a result of a 2006 agreement with Red Eléctrica Española (REE), MEFF has been operating as central counter party by delegation from REE, managing the guarantees, collection and payments resulting from the new settlement functions assigned to REE as electricity system operator. The settlement functions are performed in connection with certain electricity system adjustment services for generators, distributors, marketers and other players in the wholesale electricity market. Since these settlements do not involve financial instruments, they are not subject to CNMV supervision. MEFF provided settlement services to more than 350 players in 2008.

MEFF continued to manage guarantees and payments for Endesa Distribución and Iberdrola Distribución in auctions for bilateral contracts for baseload supply at the bundled tariff (CESUR), which accounted for around 70% of the auction volume.

The National Energy Commission (CNE) appointed MEFF by public tender to manage the sixth and seventh virtual power plant auctions, together with IBM. These auctions are for options to buy electricity which may be settled by differences, in line with article 2 of Securities Market Law and subject to CNMV supervision. The strike price and volume are predetermined by the General Secretariat for Energy, while the premium is set by auction. In the sixth auction, held on 23 September, MEFF and IBM handled the registration and qualification of interested parties, and managed the auction and the associated settlement and guarantees. The seventh auction will be held in 2009.

## 5.2 Warrants and certificates

### 5.2.1. Issues

In 2008, the primary market in warrants expanded at a rapid pace in terms of both premiums and the number of issues, in line with the trend of recent years. Premiums

increased by 37.2% with respect to 2007, to 12.2 billion euro, slightly more than half of which were attributable to warrants on shares; that proportion was less than in 2007, due to the sharp increase in warrant premiums on other underlyings (Table 5.5). The number of issues rose 39.8% to 9,790, while the number of issuers increased by one to a total of eight at year-end<sup>2</sup>.

There were issues of certificates in 2008 (as in 2006 and 2007); however, the amount premiums declined sharply, by 71.3% from 418.4 million euro in 2007 to 120.1 million euro in 2008. Certificates on indices accounted for 73.7% of all premiums. The remainder were issued on stocks, and there were no issues of commodities certificates.

### Warrant issues registered with the CNMV

TABLE 5.5

Thousand euro

|                     | Number  |        |            | Amount of premium |                      |            |             |
|---------------------|---------|--------|------------|-------------------|----------------------|------------|-------------|
|                     | Issuers | Issues | Total      | Shares            | Indices <sup>1</sup> | Currencies | Commodities |
| 2004                | 7       | 1,600  | 1,525,250  | 929,005           | 554,887              | 31,710     | 9,648       |
| 2005 <sup>2</sup>   | 6       | 1,720  | 1,840,016  | 1,180,845         | 562,258              | 96,913     | 0           |
| 2006 <sup>2</sup>   | 8       | 4,063  | 5,144,333  | 3,697,600         | 1,070,119            | 320,015    | 56,600      |
| 2007 <sup>2,3</sup> | 7       | 7,005  | 8,920,269  | 6,215,075         | 2,313,222            | 163,201    | 228,772     |
| 2008 <sup>2,3</sup> | 8       | 9,790  | 12,234,336 | 6,914,044         | 4,552,107            | 425,336    | 342,850     |

Source: CNMV.

1. Includes baskets of securities and of indices.
2. Includes issues that do not require a prospectus, in accordance with the prospectus regulations.
3. The figures include turbo warrants.

### Certificate issues registered with the CNMV

TABLE 5.6

Thousand euro

|                   | Number  |        |         | Amount of premium |                      |            |             |
|-------------------|---------|--------|---------|-------------------|----------------------|------------|-------------|
|                   | Issuers | Issues | Total   | Shares            | Indices <sup>1</sup> | Currencies | Commodities |
| 2002              | 1       | 1      | 200,000 | 0                 | 200,000              | 0          | 0           |
| 2006 <sup>2</sup> | 1       | 2      | 95,650  | 75,650            | 20,000               | 0          | 0           |
| 2007 <sup>2</sup> | 2       | 8      | 418,390 | 0                 | 385,000              | 0          | 33,390      |
| 2008 <sup>2</sup> | 1       | 10     | 120,083 | 31,583            | 88,500               | 0          | 0           |

Source: CNMV.

1. Includes baskets of securities and of indices.
2. Includes issues that do not require a prospectus, in accordance with the prospectus regulations.

## 5.2.2. Trading

After reaching an all-time high in 2007, the secondary market in warrants contracted sharply in 2008. Warrant premiums traded in the stock exchange declined 42.6%, returning to around the 2006 figure. However, the number of warrants traded in the year expanded 24.7%.

2. The eight issuers and the amounts issued (in parentheses, expressed in million euro) in 2008 were: Société Générale Acceptance (4,596), Banco Santander Central Hispano (1,468), Commerzbank (1,420), BNP Paribas Arbitrage Issuance (636, of which 97.6 were turbo warrants), Bankinter (451), BBVA (194) and Caja de Ahorros y Pensiones de Barcelona (155).



## Trading in warrants on the electronic market

TABLE 5.7

Premiums traded, in thousand euro

|      | Number of issues <sup>1</sup> | Premiums traded, by type of underlying |           |            |             | Total premiums |
|------|-------------------------------|--|-----------|------------|-------------|----------------|
|      |                               | Indices <sup>2</sup>                   | Shares    | Currencies | Commodities |                |
| 2004 | 2,207                         | 550,716                                | 1,236,832 | 37,919     | 1,408       | 1,826,875      |
| 2005 | 2,698                         | 516,788                                | 1,587,593 | 25,262     | 12,734      | 2,142,377      |
| 2006 | 4,268                         | 727,918                                | 2,098,613 | 25,817     | 55,046      | 2,907,394      |
| 2007 | 7,837                         | 1,378,286                              | 3,674,848 | 32,369     | 44,123      | 5,129,626      |
| 2008 | 9,770                         | 1,066,510                              | 1,727,644 | 78,107     | 71,467      | 2,943,728      |

Source: CNMV.

1. The number refers to the number of issues which were traded in each period.
2. Includes baskets of securities and of indices.

## Trading in certificates on the electronic market

TABLE 5.8

Premiums traded, in thousand euro

|      | Number of issues <sup>1</sup> | Premiums traded, by type of underlying |         |            |             | Total premiums |
|------|-------------------------------|--|---------|------------|-------------|----------------|
|      |                               | Indices <sup>2</sup>                   | Shares  | Currencies | Commodities |                |
| 2004 | 16                            | 78,556.9                               | 0       | 0          | 0           | 78,556.9       |
| 2005 | 15                            | 69,760.1                               | 0       | 0          | 0           | 69,760.1       |
| 2006 | 14                            | 58,725.0                               | 87.2    | 0          | 0           | 58,812.2       |
| 2007 | 18                            | 48,494.6                               | 1,299.0 | 0          | 0.1         | 49,793.7       |
| 2008 | 26                            | 13,673.4                               | 1,617.3 | 0          | 1513.8      | 16,804.5       |

Source: CNMV.

1. The number refers to the number of issues which were traded in each period.
2. Includes baskets of securities and of indices.

The decline in warrant trading volume was due to the sharp downswing (slightly over 50%) in trading of warrants on individual stocks. Trading of warrants on indices also declined, although to a lesser degree. In contrast, trading of warrants on currencies and commodities grew sharply (by 141.3% and 61.75%, respectively), although they account for a much smaller volume than warrants on stocks and indices and, consequently, failed to offset the decline in the latter two. The sharp upswing in trading of warrants on currencies and commodities is attributable to the 2007 launch of turbo warrants<sup>3</sup>, which have been heavily concentrated in indices, currencies and commodities.

Certificate premiums dropped sharply, by 66.3%, in line with the downward trend that began in 2004. However, the number of issues traded increased by eight, from 18 to 26 (Table 5.8). The sharp reduction in premiums traded is attributable to the decline in the trading of certificates on indices (-71.8%). In contrast, there was an increase in trading in certificates on shares and commodities (especially the latter).

3. The features of turbo warrants mean that their premiums perform similarly to futures since they are not sensitive to changes in volatility of the underlying asset. Furthermore, they include a barrier which, if reached before maturity, terminates the warrant.

### 5.3 Other financial contracts

The registration of call and put option contracts (formerly called "atypical financial contracts") with the CNMV fell 49.0% in 2008 (Table 5.9). The nominal amount issued was 77.0 million euro, all of which were contracts on shares. Just one issuer<sup>4</sup> registered this type of contract in 2008, compared with three last year.

**Issues of call and put option contracts registered with the CNMV**

TABLE 5.9

Thousand euro

|      | Number  |        | Amount of premium |         |                      |             | Exchange rates |
|------|---------|--------|-------------------|---------|----------------------|-------------|----------------|
|      | Issuers | Issues | Total             | Shares  | Indices <sup>1</sup> | Commodities |                |
| 2004 | 8       | 31     | 247,717           | 195,305 | 52,412               | 0           | 0              |
| 2005 | 4       | 13     | 112,200           | 87,800  | 16,400               | 0           | 8,000          |
| 2006 | 4       | 12     | 206,840           | 196,240 | 10,600               | 0           | 0              |
| 2007 | 3       | 9      | 151,000           | 145,000 | 6,000                | 0           | 0              |
| 2008 | 1       | 4      | 77,000            | 77,000  | 0                    | 0           | 0              |

Source: CNMV.

1. Includes baskets of securities and of indices.

### 5.4 Olive Oil Futures Market (MFAO)

In 2008, trading on the olive oil futures market (MFAO) increased slightly to 60,141 contracts<sup>5</sup>, compared with 58,870 the previous year, i.e. an increase of 2.2%. However, open interest declined in 2008, both at year-end (3,925 contracts vs. 5,170 in 2007) and in average terms (6,713 contracts vs. 7,542). At all events, the MFAO consolidated its position in 2008, considering that there was an increase in the number of futures traded in a context of fewer cash transactions, and the market became a necessary benchmark for setting olive oil prices.

**MFAO membership figures**

TABLE 5.10

|                            | 2007      | 2008      |
|----------------------------|-----------|-----------|
| Settling custodian members | 5         | 5         |
| Settling members           | 7         | 6         |
| Trading members            | 2         | 2         |
| Industrial members         | 5         | 5         |
| <b>Total</b>               | <b>19</b> | <b>18</b> |

Source: MFAO and CNMV.

Of special note with regard to this market is that all maturities for which there is open interest are traded in session (not just the front maturity). This creates a reference for futures prices in all maturities, making it possible to plot a forward olive oil price curve over more than one year.

At year-end, MFAO had 18 members, one less than in 2007, due to the merger of two settling members, Caja El Monte and Caja de San Fernando (now Cajasol)

4. Banco Guipuzcoano.

5. Each olive oil future contract represents one tonne.

### III Financial institutions and investment services



## 6 Collective investment (UCITS)

Last year was particularly tough for the global collective investment industry. UCITS assets were eroded significantly as a result of the dip in prices, the sizeable increase in redemption and the decline in subscriptions. The latter were negative in net terms in almost all categories of mutual funds, including lower risk funds, due to the increase in risk perception and the appeal of other products such as bank deposits, which have been promoted strongly by credit institutions since the financial crisis began. The demise of Lehman and, subsequently, the Madoff fraud had a scant direct impact on Spanish UCITS (see Chapter 11), but they did help generate a climate of among investors extreme caution towards collective investment and all other forms of investment in securities.

Despite eroded assets, the collective investment industry remained a mainstay in channelling domestic savings. At the end of September, households held 9.4% of their assets in collective investment products (see Chapter 1). Furthermore, taking November 2008 as the baseline, i.e. the last month for which there are significant figures for UCITS, domestic UCITS<sup>1</sup> (including SICAVs) represented around 20.6% of Spanish GDP.

The broad majority of UCITS increased the percentage of cash in their portfolios substantially, especially from March onwards, following the release of a CNMV notification highlighting the importance of maintaining ample liquidity levels in the current market context of higher redemptions and difficulties in valuing certain assets, in particular real estate and private fixed income securities, as well as in selling them in the market. Nevertheless, some institutions (mainly hedge funds and REITs) encountered difficulties in this connection, due to the special nature of their investment assets. The CNMV helped manage these situations through a number of measures provided in the regulations. However, in some cases, liquidity difficulties triggered liquidations, especially in hedge funds; such liquidations were performed in an orderly manner.

This chapter describes the main characteristics of collective investment in Spain in 2008. Section 6.1 focuses on mutual funds and 6.2 on investment companies. Foreign UCITS marketed in Spain are discussed in section 6.3. The performance of UCITS management companies is described in section 6.4 and the final section, 6.5, overviews the action of UCITS depositories in 2008.

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1. At the time of completing this Report, the latest available accounting data for UCITS refer to November 2008 due to the entry into force of CNMV Circular 3/2008, dated 11 September, concerning accounting regulations, annual accounts and confidential filings of UCITS, amended in turn by Circular 11/2008, dated 30 December, which caused a delay in the submission of information from management companies.

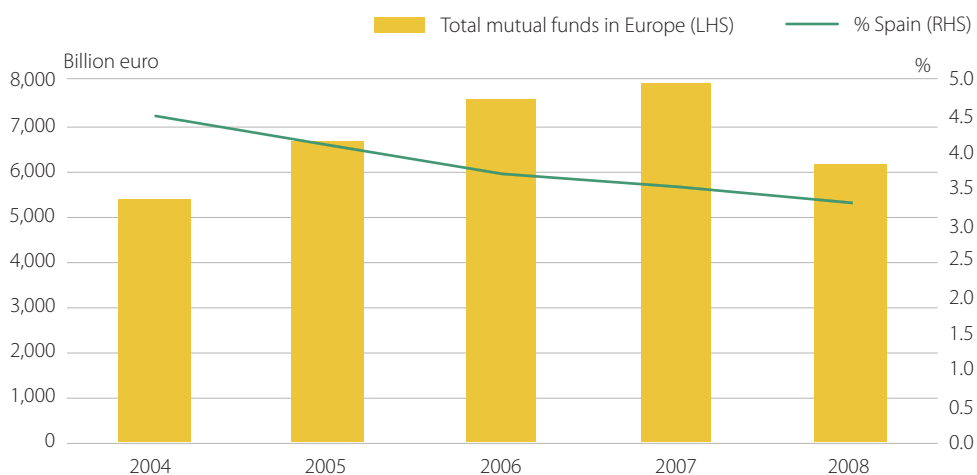
## 6.1 Mutual funds

The year 2008 was a difficult one for the mutual funds industry worldwide. In particular, assets managed by the European industry declined substantially across the board as a result of both falling prices and the fact that redemptions predominated over subscriptions. According to the European Fund and Asset Management Association - EFAMA, European mutual funds' net assets declined by 22.3%. In the seven countries with the biggest weighting in total assets (Luxembourg, France, Germany, Ireland, the UK, Italy and Spain, in that order), the decline ranged from 12.5% (Germany) to 39% (UK).

In Spain, mutual funds' assets totalled 188.9 billion euro in November 2008, i.e. down 28.7% from December 2007. Financial mutual funds accounted for 96% of this amount, and real estate funds accounted for the rest. The decline in assets affected both kinds of vehicle and, as in the rest of Europe, was due to the downturn in asset prices (especially significant in equities, private fixed income and real estate), as well as the increase in redemptions and the decline in subscriptions. Spanish funds have been reporting negative net subscriptions since 2006, initially as a result of changes in taxation on savings, and later because of the slump in yields and the increased risk perception. Last year, the gap between redemptions and subscriptions widened considerably, evidencing a substantial increase in risk perception with respect to collective investment products and the greater appeal of alternative products, such as bank deposits, as credit institutions vied to win deposits.

Mutual funds assets in Spain and Europe

FIGURE 6.1



Source: EFAMA.

Household investment impacted strongly on the mutual funds industry in 2008. In the first three quarters of 2008, households substantially divested from collective investment products, and their investment in bank deposits rose by 21.4%, against the backdrop of a 70% reduction in this sector's total investment in financial assets (see Chapter 1). As a result, collective investment products declined as a percentage of households' financial portfolios from 11.4% to 9.4%.

## Financial mutual funds

Financial institutions  
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Collective investment  
(UCITS)

Among financial funds, traditional securities funds accounted for 99% of total assets (179.6 billion euro) at the end of November 2008 and hedge funds accounted for the rest (1.8 billion euro). The assets of the former of these two categories fell by 29.6% vs. December 2007, considerably more than the decline throughout the entire previous year (5.6%), due to a faster pace of net divestment. In fact, during the first 11 months of 2008, net negative subscriptions accounted for 25% of the reduction in total assets, as compared to 8.5% in 2007. The net yield was also negative, as a result of a 4.3% depreciation in the assets' value. In 2007, the yield had been positive, contributing a 2.4% increase in asset value. Annex III.1 details the contribution of net subscriptions and yields to the change in assets in the various categories of financial funds, including hedge funds, whose performance will be discussed below.

All traditional securities fund categories saw assets diminish, except for guaranteed fixed income and money-market funds, although in this latter case the increase came on the back of the inclusion of a considerable number of short-term fixed-income funds which changed their profiles following the introduction of Circular 1/2007, dated 11 July, on the requirements regarding statistical information of European Union UCITS. The profiles accounting for the largest volume of assets were, in this order, short-term fixed income, guaranteed funds and money-market funds which, together, represented more than 78% of all assets in traditional securities funds at the end of November 2008 (Figure 6.2). The predominance of low-risk funds, even more noticeable than in 2007, reveals investors' highly conservative approach.

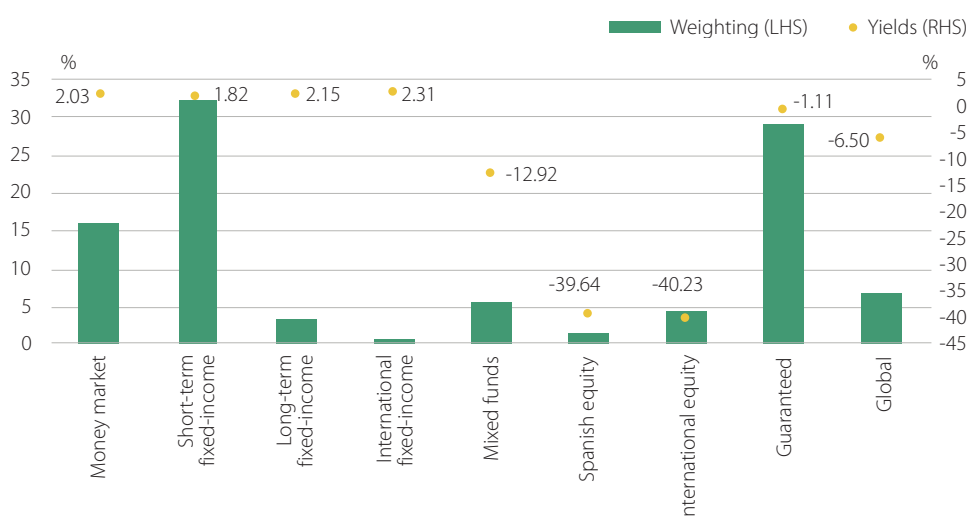
Only fixed-income categories managed to accumulate positive (albeit small) year-on-year yields in November. In equities, losses were about 40% of net asset value during the reference period. Annex III.6 shows the trend in yields for the various categories in the last few years, as well as the trend in net subscriptions.

As for investment portfolio performance, there was a significant increase in liquidity. Traditional securities investment fund increased liquidity to 10.9% of total assets in

### Financial mutual funds:

#### breakdown of assets and yields by profile<sup>1</sup>

FIGURE 6.2



Source: CNMV.

1. Excluding hedge fund categories. For each profile, the graph shows the weighting of assets over total assets in November 2008 and cumulative yields between November 2007 and November 2008.

November 2008, from 5.2% one year previously (Table 6.1). In March, the CNMV sent a communication to fund operators highlighting the need for an adequate liquidity policy in the current market context, especially because of the difficulties in realising certain private fixed-income assets at reasonable values and in a reasonable time-scale.

### Securities mutual fund asset breakdown<sup>1</sup>

TABLE 6.1

| Thousand euro                            |                    |               |                    |               |
|--|--------------------|---------------|--------------------|---------------|
|  | 2007 <sup>2</sup>  | %             | 2008 <sup>2</sup>  | %             |
| <b>Cash</b>                              | <b>13,414,003</b>  | <b>5.15</b>   | <b>19,589,770</b>  | <b>10.91</b>  |
| <b>Portfolio investments</b>             | <b>246,274,681</b> | <b>94.60</b>  | <b>158,981,824</b> | <b>88.52</b>  |
| <b>Spanish securities</b>                | <b>136,925,609</b> | <b>52.59</b>  | <b>97,159,700</b>  | <b>54.10</b>  |
| Shares                                   | 12,412,311         | 4.77          | 4,141,497          | 2.31          |
| Mutual fund units                        | 19,012,689         | 7.30          | 10,527,779         | 5.86          |
| Public fixed-income                      | 11,056,080         | 4.25          | 12,210,379         | 6.80          |
| Private fixed-income                     | 61,337,138         | 23.56         | 44,032,124         | 24.52         |
| Repos                                    | 32,431,830         | 12.46         | 26,011,784         | 14.48         |
| Unlisted securities                      | 356                | 0.00          | 957                | 0.00          |
| Other                                    | 675,205            | 0.26          | 235,180            | 0.13          |
| <b>Foreign securities</b>                | <b>109,349,072</b> | <b>42.00</b>  | <b>61,822,124</b>  | <b>34.42</b>  |
| Euro                                     | 98,047,627         | 37.66         | 58,493,333         | 32.57         |
| Other                                    | 11,301,445         | 4.34          | 3,328,791          | 1.85          |
| <b>Net balance (debtors - creditors)</b> | <b>656,999</b>     | <b>0.25</b>   | <b>1,033,027</b>   | <b>0.58</b>   |
| <b>Assets</b>                            | <b>260,345,683</b> | <b>100.00</b> | <b>179,604,621</b> | <b>100.00</b> |

Source: CNMV.

1. Excluding hedge funds and funds of hedge funds.

2. At 30 November.

Foreign assets decreased from 42% of the total (November 2007) to 34.4% (November 2008). Government fixed-income securities increased as a percentage of the domestic portfolio, as did repos and, to a lesser extent, private fixed-income; the weighting of units in other funds declined sharply.

### Hedge funds

Hedge funds, only recently introduced in Spain, totalled 1.8 billion euro in November, a 24.7% increase vs. December 2007. Despite this substantial increase, linked to the authorisation of new vehicles, 2008 was a difficult year for hedge funds. Liquidity problems, deriving from the nature of the investment assets, coupled with a large number of redemption requests, affected the viability of some funds and triggered the first deregistrations since this form of investment was introduced (overall it accounted for less than 1% of UCITS assets). Three hedge funds and four funds of hedge funds were deregistered in 2008. Several funds were in the process of deregistration or liquidation during the first few months of 2009.

The adverse market conditions led to fewer vehicles registering with the CNMV. Specifically, in 2008, five funds, one company and 13 funds of funds were registered, vs. 16 funds and 29 funds of funds in 2007. Of the 53 operators that were authorised to manage hedge funds at year-end, 12 had not yet launched any product of that kind. Furthermore, some hedge funds were found to be encountering difficulties in marketing or attaining and maintaining the minimum assets and investor numbers required by law.



Nordinvest, the first hedge fund company (SIL), which is managed by a broker-dealer, registered in early 2009. Until then, authorisation of hedge fund companies was pending regulation of the Alternative Stock Market (MAB) to include the requirements and procedures for the listing this class of companies in that market. These regulations were completed in 2008 (see Chapter 2).

### Real estate UCITS

Real estate UCITS' assets totalled 7.5 billion euro in November 2008, i.e. down 13% vs. December 2007. Real estate investment funds accounted for 95.4% of the total, and real estate investment companies for the rest. As in the case of financial mutual funds, subscriptions were negative in net terms, evidencing investors' perception of real estate market performance, although real estate mutual funds obtained a 1.6% positive yield from November 2007 to November 2008. Annex III.6 shows the trend in yields and net subscriptions for these vehicles in the last few years.

Some real estate funds experienced difficulties in attending to redemptions in the scheduled liquidity windows because of the adverse market conditions and the increase in redemption requests. Against this backdrop, some real estate UCITS asked the CNMV for approval, under the provisions of the regulations (see box in Chapter 11), to perform certain operations such as the early sale of buildings (prior to the 3 years established by law), reduction of the frequency of redemptions (from at least once a year to once every two years) or the performance of additional appraisals of buildings, in order to adapt the net asset values to property market performance. In the first few months of 2009, the CNMV authorised a two-year suspension of redemptions of two real estate UCITS at the request of management companies who were receiving reimbursement requests for very significant percentages of assets (see Chapter 11).

### Institutions and investors

In view of the marketing difficulties, management companies substantially cut the number of new collective investment products with respect to the previous year, while at the same time increasing the number of removals. There were slightly fewer financial funds (excluding hedge funds) at year-end than at 2007 year-end (Table 6.2). In the case of hedge funds, growth in the number of UCITS is explained by the initial inertia in this modality, which was only recently introduced. The total number of real estate investment vehicles did not change.

The number of investors in mutual funds fell by almost 2 million, to around 6 million in November 2008. Among the traditional securities funds, those with most investors were, in this order, guaranteed equity funds, short-term fixed-income funds, money-market funds, guaranteed fixed-income funds and global funds. These profiles together accounted for 73.5% of all investors (see Annex III.1 for a breakdown of the investors by fund category).

In November 2008, natural persons accounted for 97% of all investors in financial funds and for 77% of their assets. Average assets per investor for these collective investment institutions amounted to 30,000 euro, 1,800 euro less than in December 2007. Average assets per fund fell from 86 million euro to 60 million euro in the same period.

## Registrations and removals in 2008

TABLE 6.2

| Type of firm                           | UCITS                     |               |            | UCITS<br>registered<br>at 31/12/08 |
|--|---------------------------|---------------|------------|------------------------------------|
|  | registered<br>at 31/12/07 | Registrations | Removals   |                                    |
| <b>Total financial mutual funds</b>    | <b>6,296</b>              | <b>302</b>    | <b>244</b> | <b>6,354</b>                       |
| Mutual funds                           | 2,954                     | 147           | 158        | 2,943                              |
| Investment companies                   | 3,290                     | 136           | 79         | 3,347                              |
| Funds of hedge funds                   | 31                        | 13            | 4          | 40                                 |
| Hedge funds                            | 21                        | 6             | 3          | 24                                 |
| <b>Total real estate UCITS</b>         | <b>18</b>                 | <b>1</b>      | <b>1</b>   | <b>18</b>                          |
| Real estate mutual funds               | 9                         | 0             | 0          | 9                                  |
| Real estate investment companies       | 9                         | 1             | 1          | 9                                  |
| <b>Foreign UCITS marketed in Spain</b> | <b>440</b>                | <b>147</b>    | <b>24</b>  | <b>563</b>                         |
| Foreign funds                          | 225                       | 104           | 17         | 312                                |
| Foreign companies                      | 215                       | 43            | 7          | 251                                |
| <b>UCITS management companies</b>      | <b>120</b>                | <b>3</b>      | <b>3</b>   | <b>120</b>                         |
| <b>Depositories</b>                    | <b>126</b>                | <b>0</b>      | <b>1</b>   | <b>125</b>                         |

Source: CNMV

## Funds' holdings in the capital of listed companies

Article 81 of the UCITS Regulation<sup>2</sup> establishes the obligation for management companies to disclose, in their annual reports, their position with regard to exercising the voting rights associated with the securities acquired by the funds. In November 2008, 12 UCITS operators were managing funds with a stake of more than 1% in the share capital of companies listed in the Spanish stock market (Table 6.3).

## Significant shareholdings held by UCITS management companies

TABLE 6.3

| Management companies       | Number of companies<br>traded in the electronic<br>market | Range of holdings <sup>1</sup> (%) |          |
|----------------------------|---|------------------------------------|----------|
|                            |   | Largest                            | Smallest |
| BESTINVER GESTION          | 19  | 10.2                               | 1.1      |
| SANTANDER ASSET MANAGEMENT | 3   | 1.5                                | 1.1      |
| ESPIRITO SANTO GESTION     | 2   | 2.0                                | 1.1      |
| POPULAR GESTION            | 2   | 1.2                                | 1.0      |
| INVERCAIXA GESTION         | 1   | 2.5                                | 2.5      |
| RENTA 4 GESTORA            | 1   | 1.3                                | 1.3      |
| BANSABADELL INVERSION      | 1   | 1.0                                | 1.0      |
| PRIVAT BANK PATRIMONIO     | 1   | 1.2                                | 1.2      |
| IBERCAJA GESTION           | 1   | 1.2                                | 1.2      |
| AHORRO CORPORACION GESTION | 1   | 1.5                                | 1.5      |
| RIVA Y GARCIA GESTION      | 1   | 1.3                                | 1.3      |
| GESCOOPERATIVO             | 1   | 1.0                                | 1.0      |

Source: CNMV.

1. Largest and smallest holdings of funds managed by the management companies in the capital of the company listed on the electronic market. Data from November 2008.

2. Royal Decree 1309/2005, dated 4 November, approving the provisions of UCITS Law 35/2003, dated 4 November, and adapting the tax regime for UCITS.

Mutual funds owned significant shareholdings in 30 listed Spanish companies. Only one of them was listed on the Ibex 35; most were small- and mid-caps. At one company, Miquel y Costas & Miquel, the aggregate stakes held by mutual funds exceeded 10% of capital.

### Commissions

Commissions charged by traditional securities UCITS, excluding exchange-traded funds (ETFs), fell from 1.02% of average daily assets in December 2007 to 0.92% in September 2008 (see Annex III.3). This decline is attributable mainly to the reduction in assets in funds with the highest commissions (equity funds), which was sharper than in the rest of funds. The deposit commission remained stable at 0.09% of average daily assets in the same period.

ETFs also charged a lower management commission (down from 0.18% of average daily assets in December 2007 to 0.15% in September 2008, see Annex III.4). The management commission for ETFs is considerably lower than that of traditional mutual funds, because ETFs are passively managed products, with very low marketing costs.

At year-end, only 335 of the 2,943 traditional funds charged a combined commission (on both assets and yield), and another three charged a management commission based solely on yield. However, most hedge funds charged a combined commission.

Distribution costs still account for a significant proportion (around 70%) of funds' management commissions, since they are sold mainly through the branch networks of the banks in the groups. This weighting increased slightly in 2008.

## 6.2 Investment companies

Following the increase in the previous year, the number of SICAVs registered with the CNMV increased more moderately in 2008, to 3,347 (Table 6.2). The number of shareholders also increased slightly (Table 6.4), in particular among smaller investment companies.

Despite these increases, assets managed by investment companies fell by 20.7% in the first 11 months of 2008, to 24.9 billion euro. Average assets per shareholder fell by a similar proportion, as did average assets per SICAV, to 57,000 euro and 7.5 million euro, respectively. SICAVs increased as a proportion of financial UCITS' total assets (excluding hedge funds) to 13.7%.

As with the rest of UCITS, SICAVs considerably increased their proportion of cash in portfolio, especially from March 2008, after the CNMV released the notification highlighting some major concerns regarding liquidity. Specifically, in November 2008, cash represented 9.5% of assets, vs. 3.6% in December 2007. As for the rest of investments, domestic assets increased to 59.7% of total assets, while foreign assets declined to 30.2%. Within the domestic portfolio, the investment in shares fell significantly in favour of fixed income (especially private-sector) and repos, which represented more than 25% of the total.

## 6.3 Foreign UCITS marketed in Spain

The volume of foreign UCITS marketed in Spain in 2008 totalled 18.2 billion euro, a 51% decline on the previous year's figure (considerably sharper than the decline

| <b>Investment company asset breakdown<sup>1</sup></b> |                   |               |                   |               |
|---|-------------------|---------------|-------------------|---------------|
| Thousand euro   |                   |               |                   |               |
|   | 2007              | %             | 2008              | %             |
| <b>Cash</b>   | <b>1,139,506</b>  | <b>3.56</b>   | <b>2,367,426</b>  | <b>9.49</b>   |
| <b>Portfolio investments</b>                          | <b>30,684,091</b> | <b>95.84</b>  | <b>22,423,941</b> | <b>89.90</b>  |
| <b>Spanish securities</b>                             | <b>17,195,073</b> | <b>53.71</b>  | <b>14,879,242</b> | <b>59.65</b>  |
| Shares  | 6,522,785         | 20.37         | 3,292,865         | 13.20         |
| Mutual fund units                                     | 1,361,780         | 4.25          | 1,219,757         | 4.89          |
| Public money-market assets                            | 439,110           | 1.37          | 530,968           | 2.13          |
| Other public fixed-income                             | 684,213           | 2.14          | 493,928           | 1.98          |
| Private money-market assets                           | 1,360,655         | 4.25          | 1,820,478         | 7.30          |
| Other private fixed-income                            | 581,708           | 1.82          | 949,092           | 3.81          |
| Spanish warrants and options                          | 31,091            | 0.10          | 38,689            | 0.16          |
| Repos   | 6,209,593         | 19.40         | 6,528,783         | 26.18         |
| Unlisted securities                                   | 4,138             | 0.01          | 4,682             | 0.02          |
| <b>Foreign securities</b>                             | <b>13,489,018</b> | <b>42.13</b>  | <b>7,544,699</b>  | <b>30.25</b>  |
| Euro  | 9,726,532         | 30.38         | 5,856,312         | 23.48         |
| Other   | 3,762,486         | 11.75         | 1,688,387         | 6.77          |
| <b>Net balance (debtors - creditors)</b>              | <b>192,550</b>    | <b>0.60</b>   | <b>151,253</b>    | <b>0.61</b>   |
| <b>Assets</b>   | <b>32,016,147</b> | <b>100.00</b> | <b>24,942,620</b> | <b>100.00</b> |
| <b>Pro-memoria: No. of shareholders</b>               | <b>430,315</b>    |               | <b>439,395</b>    |               |

Source: CNMV.

1. Data at 30 November except for the number of shareholders, which is at 30 September.

in domestic UCITS). The decline in the volume of investment in foreign UCITS, which began in summer 2007 from the record high of 50 billion euro in June, was due mainly to divestment by investors and shareholders. The number of investors also dropped sharply (Table 6.5).

| <b>Foreign UCITS marketed in Spain</b>  |                  |                  |               |
|---|------------------|------------------|---------------|
|   | 2007             | 2008             | Change (%)    |
| <b>No. of UCITS</b>                     | <b>440</b>       | <b>563</b>       | <b>27.95</b>  |
| <b>No. of investors</b>                 | <b>850,931</b>   | <b>587,032</b>   | <b>-31.01</b> |
| <b>Investment volume (million euro)</b> | <b>37,092.70</b> | <b>18,181.36</b> | <b>-50.98</b> |
| Breakdown by country of origin          |                  |                  |               |
| Germany                                 | 15               | 16               | 7             |
| Austria                                 | 5                | 28               | 460           |
| Belgium                                 | 3                | 5                | 67            |
| France                                  | 122              | 161              | 32            |
| Netherlands                             | 1                | 1                | 0             |
| Ireland                                 | 52               | 63               | 21            |
| Luxembourg                              | 229              | 274              | 20            |
| Malta                                   | 1                | 1                | 0             |
| UK                                      | 12               | 14               | 17            |

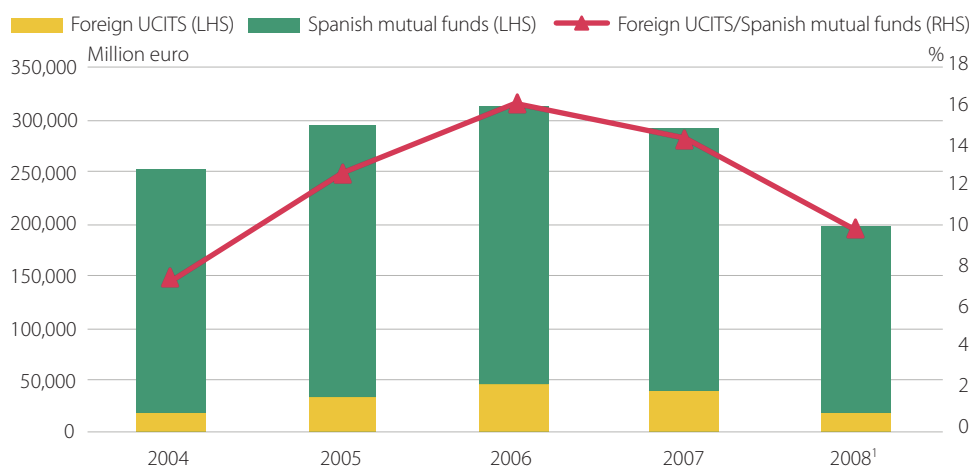
Source: CNMV.

Since the end of 2005, the number of foreign UCITS registered for marketing in Spain has increased at a rate of 30% per year. Most of these UCITS are from Luxembourg, France and Ireland, in that order. In the last few years, UCITS registered in Luxembourg and Ireland have lost ground to those registered in France and, to a lesser extent, Austria. It is notable that 20% of new registrations of UCITS from France in 2008 were ETFs.

Financial institutions  
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Collective investment  
(UCITS)

### Assets of foreign UCITS marketed in Spain

FIGURE 6.3



Source: CNMV.

1. In 2008, Spanish mutual funds' assets in November and foreign UCITS' assets in December.

Foreign UCITS are marketed mainly via major banks, although a broker ranked fifth by investment volume in 2008. In 2008, only four institutions had an investment volume exceeding 1 billion euro each (ten in 2007) (Table 6.6.).

### The top 10 marketers of foreign UCITS in Spain

TABLE 6.6

Million euro

| Marketer                                 | Financial group           | Investment volume |              |              |
|--|---------------------------|-------------------|--------------|--------------|
|  |                           | Amount            | Change       | Share (%)    |
| Banco Banif                              | Santander                 | 1,304             | -57.8        | 7.2          |
| Allfunds Bank                            | Santander                 | 1,170             | -76.3        | 6.5          |
| J.P. Morgan International Bank Limited   | J.P. Morgan Chase         | 1,110             | —            | 6.2          |
| Deutsche Bank                            | Deutsche Bank             | 1,043             | -55.7        | 5.8          |
| Sarasin Alén Agencia de Valores          | —                         | 996               | —            | 5.5          |
| Credit Suisse                            | Credit Suisse             | 962               | -21.3        | 5.3          |
| UBS Bank                                 | UBS                       | 813               | -48.7        | 4.5          |
| BBVA                                     | BBVA                      | 754               | -73.4        | 4.2          |
| Caja de Ahorros y Pensiones de Barcelona | La Caixa                  | 716               | —            | 4.0          |
| BNP Paribas España                       | Banque Nationale de Paris | 615               | -70.2        | 3.4          |
| <b>Subtotal top 10</b>                   |                           | <b>9,483</b>      |              | <b>52.6</b>  |
| <b>Total investment volume</b>           |                           | <b>18,014</b>     | <b>-51.4</b> | <b>100.0</b> |

Source: CNMV.

## 6.4 UCITS management companies<sup>3</sup>

In December 2008 there were a total of 120 UCITS management companies registered with the CNMV, the same number as in 2007 (Table 6.7). There were three registrations and three deregistrations in the year (Annex III.7). Of the three new registrations, two included the management of hedge funds in their programme of activities. During the year, 12 UCITS registered operators requested an extension of their programme of activities to include hedge fund management. At the end of 2008, 53 UCITS management companies, i.e. 44.2% of the total, were authorised to manage hedge funds.

UCITS management companies managed all mutual fund assets and 96.4% of SICAV assets at the end of November 2008. Assets under management slumped (Table 6.7), as discussed in previous sections.

**UCITS management companies. Number of companies and assets managed or under advice**

TABLE 6.7

|  | 2007               | 2008               | Change (%)   |
|--|--------------------|--------------------|--------------|
| <b>Number of companies<sup>1</sup></b>     | <b>120</b>         | <b>120</b>         | <b>0.0</b>   |
| <b>Number of UCITS managed<sup>1</sup></b> | <b>6,205</b>       | <b>6,265</b>       | <b>1.0</b>   |
| Mutual funds                               | 2,954              | 2,943              | -0.4         |
| Funds of hedge funds                       | 31                 | 40                 | 29.0         |
| Hedge funds                                | 21                 | 24                 | 14.3         |
| Investment companies                       | 3,181              | 3,240              | 1.9          |
| Real estate UCITS                          | 18                 | 18                 | 0.0          |
| <b>Assets<sup>2</sup> (thousand euro)</b>  | <b>302,033,980</b> | <b>213,273,948</b> | <b>-29.4</b> |
| Mutual funds                               | 260,345,683        | 179,604,621        | -31.0        |
| Funds of hedge funds                       | 984,469            | 1,210,058          | 22.9         |
| Hedge funds                                | 418,721            | 550,250            | 31.4         |
| Investment companies                       | 30,804,488         | 24,054,251         | -21.9        |
| Real estate UCITS                          | 9,480,619          | 7,854,768          | -17.1        |

Source: CNMV.

1. Data at 31 December.
2. Data at 30 November.

UCITS operators' earnings depend heavily on the performance of the assets they manage. During the first half of 2008, the latest period for which figures are available, management commissions, which accounted for 93% of revenues from services, fell by 22.2% vs. the same period of 2007, and were crucial in the performance of total net revenues, which fell by 16.1% (Table 6.8), despite an increase in other commissions<sup>4</sup> and a significant decline in marketing commissions paid to other intermediaries. The 3% increase in operating expenses, coupled with

3. The latest available accounting data with regard to UCITS management companies refers to the first half of 2008, due to the delay in receiving information because of the recent entry into force of CNMV Circular 7/2008, concerning accounting standards, annual accounts and confidential filings of investment services companies, UCITS management companies and venture capital firm operators.

4. The slight increase in front-end and back-end fees was due mainly to the increase in the latter. The "Other" heading in Table 6.8 includes mainly fees for discretionary management of portfolios and venture capital firms, as well as commissions for marketing foreign UCITS and providing advisory services.

the performance of total net revenues, helped push operating income down by 25.3%. Aggregate income before taxes at UCITS management companies fell by 27.7% in the reference period.

Financial institutions  
and investment services  
Collective investment  
(UCITS)

### UCITS management companies: profit and loss account<sup>1</sup>

TABLE 6.8

| Thousand euro                                      |                |                |              |
|--|----------------|----------------|--------------|
|  | 2007           | 2008           | Change (%)   |
| Financial income                                   | 32,355         | 28,459         | -12.0        |
| Net income from securities                         | 4,047          | 13,223         | 226.7        |
| Net commission revenues                            | 542,890        | 444,122        | -18.2        |
| Commission revenues                                | 1,674,631      | 1,349,227      | -19.4        |
| UCITS management                                   | 1,616,912      | 1,257,352      | -22.2        |
| Front-end and back-end fees                        | 38,015         | 39,521         | 4.0          |
| Other  | 19,704         | 52,354         | 147.7        |
| Commission expenses                                | 1,131,741      | 905,105        | -20.0        |
| Total net revenues                                 | 579,292        | 485,804        | -16.1        |
| Operating expenses                                 | 187,247        | 192,906        | 3.0          |
| Operating income                                   | 392,045        | 292,898        | -25.3        |
| Depreciation and amortisation and other provisions | 7,594          | 6,297          | -17.1        |
| Other income                                       | 10,835         | -660           | —            |
| <b>Income before taxes</b>                         | <b>395,286</b> | <b>285,941</b> | <b>-27.7</b> |
| Income tax   | 115,760        | 81,624         | -29.5        |
| <b>Income after taxes</b>                          | <b>279,526</b> | <b>204,317</b> | <b>-26.9</b> |

Source: CNMV.

1. Data at 30 June.

Pre-tax return on equity (ROE) in the sector was 18.5%, vs. 31% in the first half of 2007. This substantial reduction was due to both the sharp decline in income and the considerable increase in equity (22% vs. June 2007). There was a significant reduction in the number of UCITS management companies obtaining a high ROE (above 20%) as compared with June 2007 (Figure 6.4). These operators managed just over 50% of total assets, vs. 70% in the same month one year previously. The number of loss-making firms soared from 19 at the end of 2007 to 31 in June 2008. Assets managed by these firms increased from 2.6% to 7.0% in the period.

### Income before taxes, ROE and the No. of loss-making firms

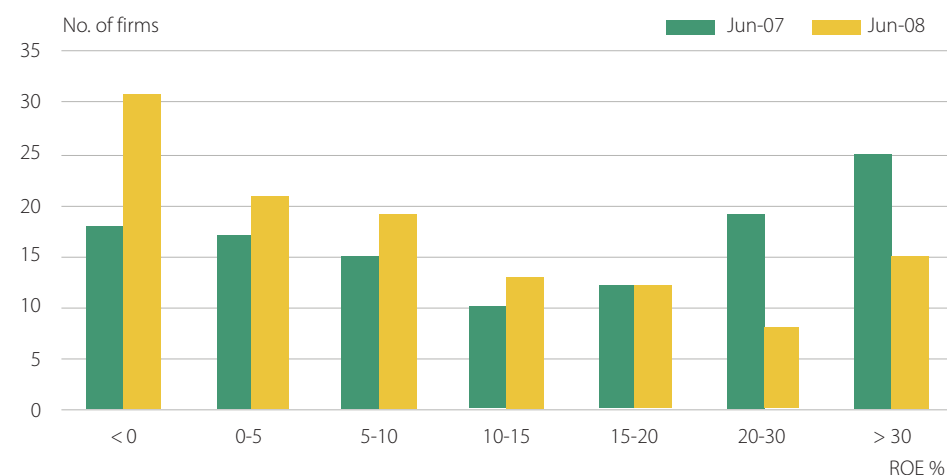
TABLE 6.9

| Thousand euro |                     |             |                          |
|---------------|---------------------|-------------|--------------------------|
|               | Income before taxes | Pre-tax ROE | No. of loss-making firms |
| 2004          | 512,288             | 49          | 17                       |
| 2005          | 622,779             | 53          | 16                       |
| 2006          | 743,961             | 69          | 12                       |
| 2007          | 770,649             | 61          | 19                       |
| June 2007     | 395,286             | 31          | 18                       |
| June 2008     | 285,941             | 18          | 31                       |

Source: CNMV.

**Histogram of pre-tax ROE at UCITS management companies**

FIGURE 6.4



Source: CNMV.

The sector is still highly concentrated, in terms of both assets and results. Two UCITS management companies (BBVA Asset Management and Santander Asset Management) accounted for 34% of total managed assets and contributed 33% of aggregate income before taxes in the first half of the year. Furthermore, ten operators accounted for 65% of managed assets. As regards earnings, the top ten firms concentrated 75% of the total.

## 6.5 UCITS depositories

Depositories are in charge of custody of the assets invested by UCITS, and are also obliged to perform a supervisory function, with respect to the action of management companies and other UCITS administrators<sup>5</sup>. Therefore, depositories perform custody and control tasks that are pivotal for investor protection. Banks, savings banks, credit cooperatives and brokers and broker-dealers may act as depositories. This activity is registered at the CNMV.

There were 125 UCITS depositories registered at the CNMV in December 2008, one less than at the end of 2007. In the last few years, the number of depositories has diminished, due mainly to mergers and acquisitions, although this year the decline was negligible.

Breaking down UCITS assets by type of depository, data for November 2008 show an increase in market share on the part of banks (67.6% of total assets in custody) and brokers and broker-dealers (3.5%), to the detriment of savings banks (27.3%) and credit cooperatives (1.6%).

5. Article 57 of UCITS Act 35/2003, dated 4 November.



## 7 Provision of investment services

Under Spanish law, investment services may be provided by credit institutions, broker-dealers, brokers, portfolio management companies, UCITS management companies and financial advisory firms (the latter introduced into the regulation only recently). Authorisation and prudential supervision of credit institutions is entrusted to the Bank of Spain, but their activities in connection with investment services are supervised by the CNMV. The other institutions listed above are supervised entirely by the CNMV. Additionally, firms authorised in other European Union countries may provide investment services in Spain under the European passport system, and firms from non-EU countries may provide such services if duly authorised by the CNMV.

Credit institutions are the main providers of investment services in Spain, since their extensive branch networks guarantee them access to retail investors throughout the country. In fact, they have a relatively stable 75% share of total revenues from investment services, well ahead of broker-dealers (20%) and brokers (5%). Examining the structure of investment services revenues obtained by those three classes of firms reveals a degree of specialization. Whereas credit institutions dominate the area of securities administration and custody and marketing mutual funds, broker-dealers and brokers stand out particularly in processing and executing equity trade orders.

In 2008, the economic and financial crisis had a significant impact on income at investment firms<sup>1</sup> that are subject to the prudential supervision of the CNMV. Revenues from order processing and execution and, generally, from brokering securities declined notably due to the reduction in trading in monetary terms. Other major revenue sources, such as UCITS and new issues in the primary market, were affected also by greater risk-aversion on the part of investors and the decline in securities trading generally. As a result, all classes of firms experienced a decline in earnings. Nevertheless, investment firms maintained a large volume of own funds, amply exceeding the regulatory requirements.

Some major regulatory changes affected this sector in 2008. Royal Decree 217/2008, which implements major aspects of regulation governing investment firms as a result of the transposition of MiFID, came into force in February. In particular, that Decree provided for the creation of a new class of investment firm, namely investment advisory firms, as a result of the recognition of advice as an investment service under MiFID. It also allows broker-dealers and brokers to manage multilateral trading facilities. Another major regulatory change was the approval, in November, of CNMV Circular 7/2008, which amended the accounting standards,

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1. The term "investment firm" covers broker-dealers and brokers, portfolio management companies and investment advisory firms.

financial statements and reserved disclosures of entities under the CNMV's supervision, which includes investment firms, to adapt them to the new accounting framework established in the General Accounting Plan approved by Royal Decree 1514/2007, of 16 November. Chapter 11 (Supervision of entities) and the legislation annex offer more detailed information about these new regulations.

This chapter reviews the activities of investment firms during 2008 in the context in which the CNMV has authority. Section 7.1 focuses on the provision of investment services by credit institutions. Broker-dealers and brokers are analyzed in section 7.2. And section 7.3 deals with portfolio management companies. The activity of UCITS management companies is covered in Chapter 6; no investment advisory firms had been established at the end of 2008<sup>2</sup>.

## 7.1 Credit institutions

### 7.1.1. Authorisation and registration

Credit institutions are allowed to provide all the investment services referred to in article 63 of the Securities Market Act, including ancillary services, provided that their legislation, articles of association and specific authorisation allow. The Bank of Spain is the body in charge of authorising them and of informing the CNMV about the credit institutions that are authorised to provide investment services. At 31 December 2008, a total of 195 domestic credit institutions (banks, savings banks and cooperatives) were registered with the CNMV, six less than in 2007.

Foreign credit institutions authorised to operate in Spain may also provide investment services provided that the rules governing their authorisation allow. They may operate with or without a physical establishment (branch). At the end of 2008, there were 414 foreign credit institutions in a position to provide investment services in Spain, 42 more than in 2007 (see Annex III.12). Most of those foreign credit institutions are authorized by another EU member state (405 in 2008, up from 363 in 2007). There was a notable increase in the number of UK institutions, with a strong preference for operation under the free provision of services. Of the 414 foreign credit institutions registered, 350 were under the free provision of services regime (38 more than in 2007) whereas 64 had a branch in Spain (4 more than in 2007).

### 7.1.2. Securities business at credit institutions

The figures for 2008 reveal a significant decline in the revenues obtained by credit institutions for providing securities services and marketing mutual funds, in contrast with the growth registered in the preceding years (Table 7.1). These fees also fell by proportionately more than other bank service fees, although they still account for a significant proportion of the total (19.8% in 2008).

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2. CNMV Circular 10/2008, of 30 December, on Investment Advisory Firms sets out the organizational requirements and the documents to be filed with the CNMV for authorization and registration as an investment advisory firm, and it clarifies the provisions applicable to certain amendments following registration with the CNMV. That Circular came into force on 15 January 2009.

**Credit institutions' revenues from the provision of securities services and marketing non-bank financial products**

TABLE 7.1

Million euro

|   | 2005         | 2006         | 2007         | 2008         | % of credit institutions' total fees |
|---|--------------|--------------|--------------|--------------|--------------------------------------|
| <b>Securities services</b>                      | <b>1,172</b> | <b>1,394</b> | <b>1,751</b> | <b>1,286</b> | <b>8.3</b>                           |
| Placement and underwriting                      | 97           | 143          | 340          | 124          | 0.8                                  |
| Securities trading                              | 365          | 472          | 608          | 467          | 3.0                                  |
| Administration and custody                      | 634          | 681          | 675          | 601          | 3.9                                  |
| Asset management                                | 76           | 98           | 128          | 94           | 0.6                                  |
| <b>Marketing of non-bank financial products</b> | <b>3,273</b> | <b>3,923</b> | <b>4,237</b> | <b>3,661</b> | <b>23.5</b>                          |
| Mutual funds                                    | 2,179        | 2,498        | 2,530        | 1,801        | 11.6                                 |
| Pension funds                                   | 371          | 433          | 483          | 482          | 3.1                                  |
| Insurance                                       | 676          | 935          | 1,131        | 1,291        | 8.3                                  |
| Other   | 47           | 57           | 93           | 87           | 0.6                                  |

Source: Bank of Spain and CNMV.

Credit institutions are by far the leading providers of investment services. In the last five years, credit institutions obtained between 73% and 77% of the total revenues generated by this activity, while broker-dealers obtained 17%-21% and brokers 5%-6%. As Table 7.2 shows, credit institutions concentrate the bulk of revenues from administration and custody and mutual fund marketing, and they also lead in asset management and issue placement and underwriting (although their share of the latter market has fallen by more than eight percentage points). Broker-dealers and brokers maintain their leading position in order processing and execution, where they accounted for 58.7% of total revenues in the first 11 months of 2008.

**Investment services commission revenues. 2008**

TABLE 7.2

Million euro

|                            | Broker-dealers and brokers <sup>1</sup> | Portfolio and management companies <sup>1</sup> | Credit institutions | Total | Credit institutions/ Total |
|----------------------------|---|---|---------------------|-------|----------------------------|
| Placement and underwriting | 41                                      | —   | 124                 | 165   | 75.2                       |
| Securities trading         | 664                                     | —   | 467                 | 1,131 | 41.3                       |
| Asset management           | 35                                      | 18  | 94                  | 147   | 63.9                       |
| Administration and custody | 20                                      | —   | 601                 | 621   | 96.8                       |
| Mutual fund marketing      | 114                                     | 1   | 1,801               | 1,916 | 94.0                       |

Source: CNMV and Bank of Spain.

1. Figures at November 2008.

## Securities deposited at credit institutions at 31 December<sup>1</sup>

TABLE 7.3

| Billion euro                          |         |         |         |                   |                                |
|---------------------------------------|---------|---------|---------|-------------------|--------------------------------|
|                                       | 2005    | 2006    | 2007    | 2008 <sup>2</sup> | % change<br>08/07 <sup>2</sup> |
| Fixed-income                          | 1,071.0 | 1,126.6 | 1,174.3 | 1,211.2           | 3.1                            |
| Debt securities                       | 982.1   | 1,026.3 | 1,051.3 | 1,093.5           | 4.0                            |
| Commercial paper and discounted notes | 88.9    | 100.3   | 123.0   | 117.7             | -4.3                           |
| Equities                              | 749.5   | 964.7   | 1,001.8 | 716.1             | -28.5                          |
| Listed shares                         | 702.1   | 918.5   | 947.0   | 661.8             | -30.1                          |
| Unlisted shares                       | 47.4    | 46.2    | 54.8    | 54.3              | -0.9                           |
| Total credit institutions             | 1,820.5 | 2,091.3 | 2,176.1 | 1,927.3           | -11.4                          |
| Total broker-dealers and brokers      | 61.9    | 78.3    | 91.5    | 68.6              | -25.0                          |

Source: CNMV and Bank of Spain.

1. Listed securities are counted at their market value and unlisted securities at their nominal value.
2. Figures for credit institutions at 30 June 2008, and for brokers-dealers and brokers at 30 November 2008.

## 7.2 Broker-dealers and brokers<sup>3</sup>

There were a total of 101 firms registered as broker-dealers and brokers with the CNMV at the end of 2008, two more than in 2007. There were 12 registrations and 10 deregistrations in the year (Table 7.4). In contrast with the slight increase in the number of Spanish firms, there was a substantial increase in the number of firms authorized in other EU member states that notified the CNMV of their intention to provide investment services in Spain. The number of foreign institutions availing themselves of the free provision of services system rose from 1,395 in 2007 to 1,781 in 2008, while the number of foreign institutions with a branch increased from 29 to 37. This increase is attributable basically to the entry into force of MiFID at the end of 2007 and the recognition of financial advice as an investment service; as a result, a large number of firms engaging in that activity which were also authorized in their home countries for other services such as order processing were able to avail themselves of the Community Passport.

Seven of the twelve newly-registered domestic firms (six broker-dealers and six dealers) are independent in that no other financial firm or insurance company controls a majority of their capital (see Annex III.9). Four of the new registrations arose due to conversion of brokers into broker-dealers. Another registration was due to the conversion of a portfolio management company into a broker.

There were 10 deregistrations, one of which was due to merger into a Spanish credit institution. Because banks are allowed to provide investment services, the search for cost savings has led to them to integrate the activities of their broker-dealers and brokers into the parent company, with the result that they are less interested in maintaining those subsidiaries.

There were also four changes of control: three at brokers and one at a broker-dealer (see Annex III.10). Two of the brokers were acquired by two foreign credit institutions and the third by a domestic broker-dealer. The broker-dealer which suffered a change of control was acquired by a domestic credit institution.

3. The latest accounting data available for broker-dealers and brokers and for UCITS management companies referred to November as a result of the delay in reporting caused by the entry into force in December of CNMV Circular 7/2008, on the accounting standards, financial statements and reserved disclosures of investment firms, UCITS management companies and venture capital firm management companies.

**Registrations and removals in the register of firms**

TABLE 7.4

| Type of firm               | Firms at<br>31/12/07 | Registrations | Removals     | Firms at<br>31/12/08 |
|----------------------------|----------------------|---------------|--------------|----------------------|
| <b>Domestic firms</b>      | <b>99</b>            | <b>12</b>     | <b>10</b>    | <b>101</b>           |
| Broker-dealers             | 46                   | 6             | 1            | 51                   |
| Stock exchange members     | 36                   | 2             | 1            | 37                   |
| Non-members                | 10                   | 4             | 0            | 14                   |
| Brokers                    | 53                   | 6             | 9            | 50                   |
| Stock exchange members     | 8                    | 0             | 1            | 7                    |
| Non-members                | 45                   | 6             | 8            | 43                   |
| <b>Foreign firms</b>       | <b>1,424</b>         | <b>431</b>    | <b>37</b>    | <b>1,818</b>         |
| With a branch              | 29                   | 8             | 0            | 37                   |
| Free provision of services | 1,395                | 423           | 37           | 1,781                |
| <b>Pro memoria:</b>        |                      |               |              |                      |
| <b>Representatives</b>     | <b>7,281</b>         | <b>466</b>    | <b>1,068</b> | <b>6,679</b>         |

Source: CNMV.

The number of agents or representatives of brokers and broker-dealers declined in 2008 but is still very large. There were 6,679 agents or representatives at the end of 2008, compared with 7,281 at the end of 2007. Much of the decline was due to the fact that a broker-dealer belonging to an insurance group deregistered its 516 representatives in order to transfer them to its UCITS management company. Only 46 firms had contracts with representatives at the end of the year, and the firms with the largest numbers of representatives were connected with insurance companies. Just one firm, Mapfre Inversión, SV, accounts for 84% of all representatives.

Broker-dealers and brokers continued to make little use of the Community Passport (see Annex III.11). Just two Spanish firms had branches in other countries of the European Union (the United Kingdom and Sweden) at the end of 2008, the same number as in 2007. The number of firms operating under the free provision of services regime, i.e. without a physical establishment, increased from 29 to 33. The main host countries where Spanish firms operate under this regime are Portugal (19), Germany (16), France (13), Belgium (12), the United Kingdom (12) and Italy (12).

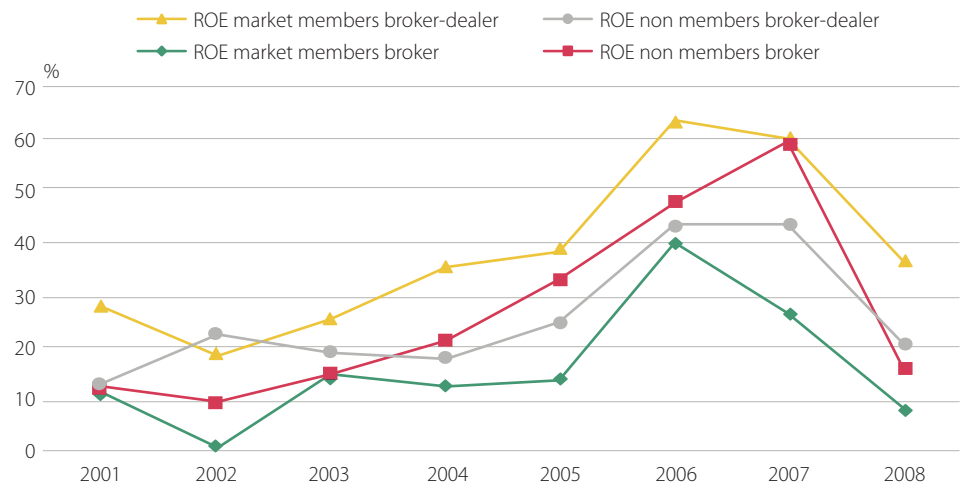
The number of foreign non-bank institutions authorized to provide investment services in Spain increased notably, mainly as a result of the recognition of advice as an investment service (see Table 7.4). The foreign investment firms established in Spain are predominantly from the United Kingdom. Of the 37 branches in Spain of foreign investment firms, 27 belong to UK firms; also, of the 386 notifications of the provision of investment services in Spain without a branch that were received in 2008, 348 were from the UK (see Annex III.8).

### 7.2.1. The industry's profitability and solvency

Broker-dealers and brokers display a broad dispersion in terms of specialization and revenue structure. Apart from proprietary trading, broker-dealers tend to be more specialized in order processing, which accounted for 71% of their fee revenues between January and November 2008. Brokers evidence a broader range of specialisation, although order processing still accounts for a significant proportion of their fee revenues (37%). During that period of 2008, UCITS subscription and

ROE before taxes of broker-dealers and brokers<sup>1</sup>

FIGURE 7.1

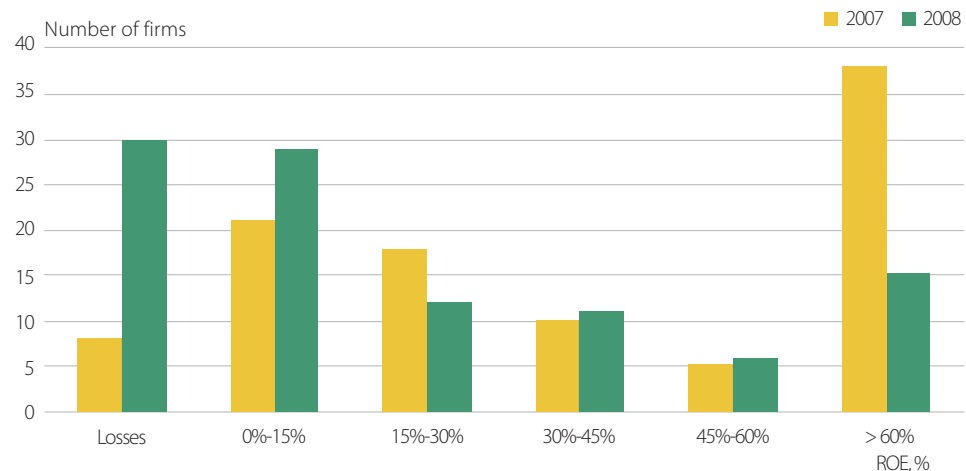


Source: CNMV.

1. Figures at 30 December.

Histogram of ROE before taxes of broker-dealers and brokers<sup>1</sup>

FIGURE 7.2



Source: CNMV.

1. Figures at 30 November.

redemption services accounted for 18% of total fee revenues and portfolio management for 12%.

With the data through November, aggregated income before taxes fell by 78% in the case of brokers and 34% in the case of broker-dealers. In both cases, adverse market performance had a pronounced negative impact on business activity and strongly eroded ordinary revenues. In particular, the decline in share prices had a direct negative impact on brokerage fees and also led to losses on proprietary trading at broker-dealers. The declining appeal of collective investment (Chapter 6) was another notable contributor to the decline in earnings as it resulted in a sharp reduction in fees from marketing those products.

The decline in earnings was reflected in a significant reduction in the return on equity (ROE) at the various categories of firms (Figure 7.1). A detailed analysis of the sector's performance reveals a decline in earnings at 83% of firms between January and November. There was a notable increase in the number of firms with

## Loss-making firms: number and amount<sup>1</sup>

TABLE 7.5

| Thousand euro   | No. of firms  |                   | Amount            |                   |
|---|---|-------------------|-------------------|-------------------|
|   | 2007 <sup>2</sup>                                   | 2008 <sup>2</sup> | 2007 <sup>2</sup> | 2008 <sup>2</sup> |
|   | Broker-dealers that are members of a stock exchange | 0                 | 6                 | 0                 |
| Broker-dealers that are not members of a stock exchange | 1   | 5                 | 1,816             | 13,258            |
| Brokers that are members of a stock exchange            | 0   | 3                 | 0                 | 2,075             |
| Brokers that are not members of a stock exchange        | 7   | 16                | 2,020             | 7,693             |
| <b>Total</b>  | <b>8</b>  | <b>30</b>         | <b>3,836</b>      | <b>29,043</b>     |

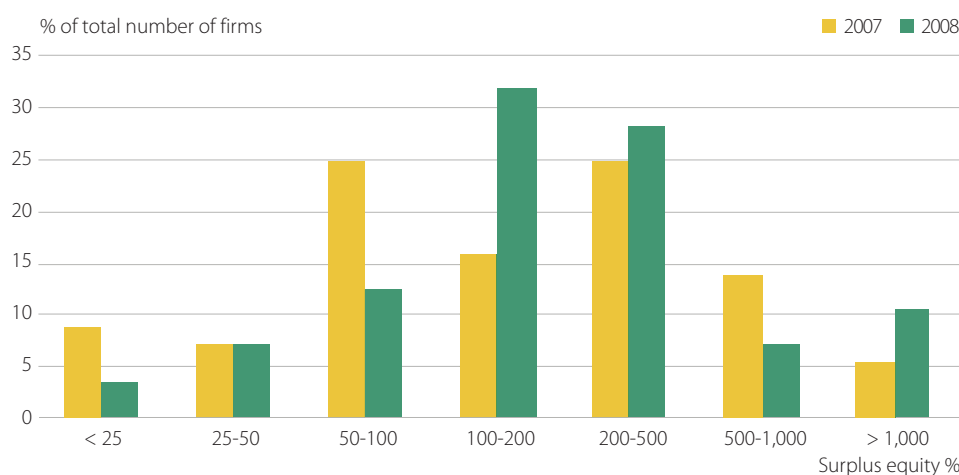
Source: CNMV.

1. Before taxes.

2. Figures at 30 November.

## Surplus equity over minimum requirements of independent brokers and broker-dealers

FIGURE 7.3



Source: CNMV.

relatively low ROE (under 15%) and a significant decline in the number of firms with high ROE (over 60%) in comparison with November 2007. The number of loss-making firms also increased notably, from 8 in 2007 to 30 in 2008. The increase in the number of loss-making broker-dealers that are market members and brokers which are not market members was particularly significant (Table 7.5).

Considering loss-making firms, the aggregate amount of losses increased notably, from 3.8 million euro in November 2007 to 29 million euro in November 2008 (Table 7.5). Despite the increase, losses still account for only a small percentage of the sector's aggregate income.

Adverse earnings performance did not prevent these firms from maintaining ample surplus own funds with respect to the regulatory requirements. Using 2008 year-end figures, the surplus was 4.6 times the minimum equity requirements in the case of broker-dealers (4.2 in 2007) and 2.1 in the case of brokers (the same proportion in 2007).

Broker dealers and brokers not owned by financial institutions increased their surplus equity notably<sup>4</sup>. In this case, broker-dealers' surplus equity increased from 2.7 times the minimum requirement in 2007 to 4.7 in 2008. In the case of brokers, that ratio fell from 1.9 to 1.8 in 2008.

Also, the number of independent firms with a smaller surplus equity (less than 50% of the minimum) declined from eight in 2007 to five in 2008 (Figure 7.3). All five were brokers.

### 7.2.2. Broker-dealers

#### Broker-dealers that are stock exchange members (SVB)

Broker-dealers and that are market members can trade for their own account and provide investment services to third parties; the main source of revenues for most of them is securities brokerage, primarily in the domestic equity market, of which they are members. This category of investment firm is the most important one in terms of business activity, revenues and earnings. They accounted for 78% of total computable equity of broker-dealers and brokers at the end of December 2008, and for 85% of total income before taxes in the first 11 months of the year.

Between January and November 2008, broker-dealers that are market members obtained 427.9 million euro of aggregated income before taxes, a decrease of 35.8% with respect to the previous year. It is worth noting that 39% of that aggregated total corresponds to one firm which obtained sizable earnings from proprietary trading in OTC derivatives. Excluding that firm, the rest of this sector obtained 260.6 million euro in income before taxes, i.e. 56.7% less than in 2007. The income statement shown in Table 7.6 excludes the aforementioned firm in order to give a more representative picture of the performance of this segment of broker-dealers. Also, except where otherwise indicated, the comments on this segment which follow exclude that firm.

The decline in earnings by broker-dealers that are market members was due to both recurring and non-recurring activities. Excluding extraordinary earnings, there was a 66% decline in income before taxes. The reduction in trading income and net fees for services to third parties led to a 39% decline in total net revenues. Operating expenses fell by less (10%), leading to a 57% reduction in operating income<sup>5</sup>. Nevertheless, not all companies followed the same trend. Six broker-dealers increased total net revenues, and seven increased operating income. Non-recurring income (other gains and losses) fell by 29% overall, although half of the broker-dealers actually increased this line item.

The bulk of total net revenues was from activities for third parties (net fees), which accounted for nearly three-quarters of the total<sup>6</sup>. Income in this area fell by 31%, while income from proprietary trading (financial income and net gains on securities) fell by 61%. Order processing and execution accounted for three-

4. There were 23 broker-dealers and 34 dealers in this situation at the end of 2008.

5. Including the figures for the firm referred to above, aggregated total net revenues of market members broker-dealers increased by 177% and operating income by 744%.

6. Including the market members broker-dealer referred to earlier, activity for third parties accounted for a little over one-third of total net revenues.



quarters of gross fee revenues. This item declined by 23% as a result of the sharp reduction in the size of Spanish equity brokerage deals (Table 7.6). Average brokerage fees declined slightly. The income from other non-proprietary activities by broker-dealers that are market members also declined. UCITS subscription and redemption fees fell by 58%, and placement and underwriting fees by 35%.

As usual, these firms' earnings were quite concentrated. For example, the five firms with the most profits accounted for 61% of total profits in this segment<sup>7</sup>, compared with 53% in 2007. In general, these firms' bottom lines worsened. Earnings declined at 89% of broker-dealers that are market members. Moreover, six of the 36 firms in this group reported losses, whereas only one reported losses in 2007 (Table 7.5).

### Broker-dealers: income statement<sup>1</sup>

TABLE 7.6

| Thousand euro                      |                                     |                                |                   |                                |
|------------------------------------|-------------------------------------|--------------------------------|-------------------|--------------------------------|
|                                    | Stock exchange members <sup>2</sup> |                                | Non-members       |                                |
|                                    | 2008 <sup>3</sup>                   | % change<br>08/07 <sup>4</sup> | 2008 <sup>3</sup> | % change<br>08/07 <sup>4</sup> |
| <b>Financial income</b>            | <b>118,307</b>                      | <b>13.28</b>                   | <b>29,972</b>     | <b>156.43</b>                  |
| Net income from securities trading | -38,029                             | —                              | -8,861            | —                              |
| <b>Net commission revenues</b>     | <b>440,166</b>                      | <b>-30.93</b>                  | <b>103,222</b>    | <b>11.48</b>                   |
| Commission revenues                | 625,702                             | -28.32                         | 156,450           | 30.80                          |
| Order processing and execution     | 468,801                             | -22.32                         | 78,144            | 74.99                          |
| Issue placement and underwriting   | 35,551                              | -34.66                         | 683               | 1,188.68                       |
| UCITS subscription and redemption  | 32,503                              | -58.00                         | 52,523            | 7.70                           |
| Portfolio management               | 10,225                              | -44.67                         | 5,919             | -11.05                         |
| Other                              | 78,622                              | -34.02                         | 19,181            | -1.52                          |
| Commission expenses                | 185,536                             | -21.26                         | 53,228            | 97.05                          |
| <b>Total net revenues</b>          | <b>520,444</b>                      | <b>-38.89</b>                  | <b>124,333</b>    | <b>13.31</b>                   |
| Operating expenses                 | 297,307                             | -10.32                         | 62,043            | 18.24                          |
| Personnel                          | 181,663                             | -10.77                         | 43,691            | 9.16                           |
| General                            | 115,644                             | -9.59                          | 18,352            | 47.43                          |
| <b>Operating income</b>            | <b>223,137</b>                      | <b>-57.10</b>                  | <b>62,290</b>     | <b>8.80</b>                    |
| Depreciation and other charges     | 68,672                              | 3.04                           | 6,326             | 308.39                         |
| Other gains and losses             | 106,179                             | -28.61                         | -4,699            | —                              |
| <b>Income before taxes</b>         | <b>260,644</b>                      | <b>-56.72</b>                  | <b>51,265</b>     | <b>-20.24</b>                  |
| Taxes                              | —                                   | —                              | —                 | —                              |
| <b>Income after taxes</b>          | <b>260,644</b>                      | <b>-56.72</b>                  | <b>51,265</b>     | <b>-20.24</b>                  |

Source: CNMV.

1. Includes information on all the firms that were on the CNMV's books at any time during the year, not just at year-end.

2. To ensure that this summarised broker-dealers' P&L account is more representative of the segment, one firm that accounted for 39% of aggregated pre-tax income of this segment (due to proprietary trading in OTC derivatives) is excluded.

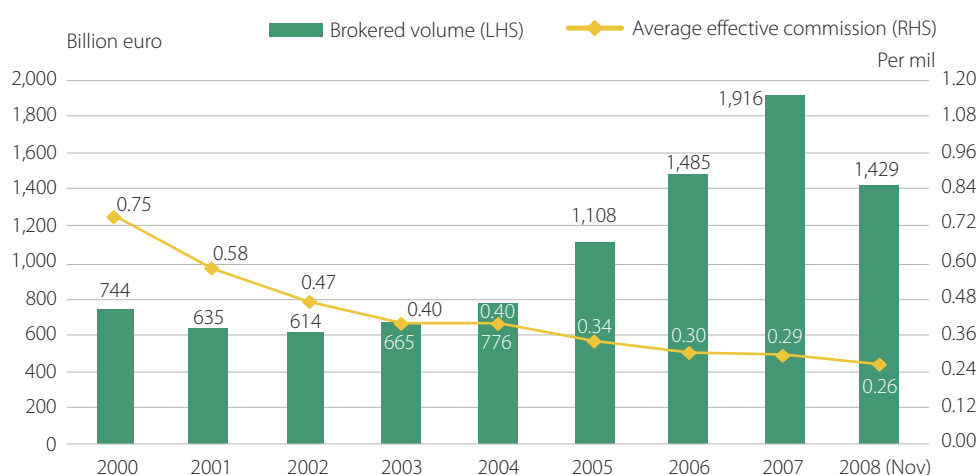
3. Figures at November 2008.

4. Change year-on-year (November 2007 to November 2008).

7. Including the firm that was excluded from the analysis earlier, the top five firms concentrate 73% of earnings.

### Broker-dealers that are stock exchange members: brokerage volume and average effective fee in Spanish equities

FIGURE 7.4



Fuente: CNMV.

### Broker-dealers that are not stock exchange members (SV)

Aggregated pre-tax income of broker-dealers that are not market members amounted to 51 million euro between January and November 2008, i.e. 20.2% less than in the same period of 2007 (Table 7.6). As in the case of market members, the income was very concentrated. Just two firms accounted for 89% of aggregated pre-tax income. Five of the fourteen firms that are not market members were loss-making at the end of November (contrasting with just one firm at the end of November 2007).

The decline in aggregated pre-tax income in this segment through November was due basically to recurring activities and to a sizeable increase in depreciation and provisions (Table 7.6). In contrast, their aggregated total net revenues increased by 13.3% up to more than 124 million euro, although that was due to the addition of two firms that had previously operated as brokers. Excluding those two firms, aggregated total net revenues fell 21.2%, and pre-tax income fell 52.9%.

Net fee revenues from activities for third parties increased by 11.5%. However, excluding the aforementioned two firms, aggregated net fee revenues of the other broker-dealers that are not market members declined by 23%, in line with the overall sector's fee revenues. Most fee revenues were for UCITS subscription and redemption and order processing and execution (83.5% of the gross total). Net income from proprietary trading in securities was negative, while financial income increased sharply. Services to third parties made a much larger contribution to total net revenues than did proprietary trading, as they accounted for 83% of the total in the period from January to November 2008.

### 7.2.3. Brokers

#### Brokers that are market members (AVB)

Unlike broker-dealers, brokers (*agencias de valores*) may not trade for their own account; accordingly, the bulk of their ordinary revenues come from providing investment services to third parties. In particular, the main source of revenues in this segment is equity brokerage.

The aggregated income of brokers that are market members amounted to 3.6 million euro in the first eleven months of 2008, i.e. 70% less than in the same period of 2007. The sharp decline in income was due basically to a 20.2% reduction in net service fees. Gross order processing and execution fees, which accounted for 90% of total revenues, declined by 23%.

### Broker-dealers that are non-market members (AV)

Most brokers which are not market members are small and specialise in providing specific services. Their contribution to the aggregated income of broker-dealers and brokers is small: 4.3% of the total between January and November 2008.

Brokers that are not market members obtained 21.5 million euro in income before taxes in the first eleven months of the year, i.e. 79% less than in the same period of 2007. Earnings were not uniformly distributed, since seven firms increased earnings in the period and 16 were loss-making at the end of November 2008 (compared with just six at the end of November 2007). Those losses amounted to 35% of aggregated income before taxes (2.8% in 2007).

As in the case of brokers that are market members, the sharp decline in pre-tax income was due basically to a 45% reduction in fee revenues between January and November with respect to the same period of 2007 (Table 7.7). In particular, gross

### Brokers: income statement<sup>1</sup>

TABLE 7.7

Thousand euro

|   | Stock exchange members |                                | Non-members       |                                |
|---|------------------------|--------------------------------|-------------------|--------------------------------|
|   | 2008 <sup>2</sup>      | % change<br>08/07 <sup>3</sup> | 2008 <sup>2</sup> | % change<br>08/07 <sup>3</sup> |
| <b>Financial income</b>                   | <b>2,745</b>           | <b>31.72</b>                   | <b>6,083</b>      | <b>-48.50</b>                  |
| <b>Net income from securities trading</b> | <b>-2,003</b>          | <b>1,290.97</b>                | <b>-1,345</b>     | <b>—</b>                       |
| <b>Net commission revenues</b>            | <b>18,818</b>          | <b>-29.19</b>                  | <b>119,533</b>    | <b>-35.95</b>                  |
| Commission revenues                       | 23,555                 | -28.39                         | 135,667           | -45.35                         |
| Order processing and execution            | 21,281                 | -23.10                         | 37,648            | -57.85                         |
| Issue placement and underwriting          | 0                      | —                              | 4,745             | 99.29                          |
| UCITS subscription and redemption         | 562                    | -36.85                         | 28,118            | -58.62                         |
| Portfolio management                      | 211                    | -85.69                         | 18,747            | -17.89                         |
| Other                                     | 1,501                  | -47.50                         | 46,409            | -29.43                         |
| Commission expenses                       | 4,737                  | -25.05                         | 16,134            | -73.82                         |
| <b>Total net revenues</b>                 | <b>19,560</b>          | <b>-31.40</b>                  | <b>124,271</b>    | <b>-37.56</b>                  |
| Operating expenses                        | 18,538                 | -3.74                          | 106,575           | -8.86                          |
| Personnel                                 | 9,994                  | -4.25                          | 68,102            | -7.65                          |
| General                                   | 8,544                  | -3.14                          | 38,473            | -10.92                         |
| <b>Operating income</b>                   | <b>1,022</b>           | <b>-88.96</b>                  | <b>17,696</b>     | <b>-78.44</b>                  |
| Depreciation and other charges            | 381                    | -12.61                         | 5,207             | -25.36                         |
| Other gains and losses                    | 2,976                  | -6.06                          | 8,998             | -66.32                         |
| <b>Income before taxes</b>                | <b>3,617</b>           | <b>-69.83</b>                  | <b>21,487</b>     | <b>-78.90</b>                  |
| Income tax                                | —                      | —                              | —                 | —                              |
| <b>Income after taxes</b>                 | <b>3,617</b>           | <b>-69.83</b>                  | <b>21,487</b>     | <b>-78.90</b>                  |

Source: CNMV.

1. Includes information on all the firms that were on the CNMV's books at any time during the year, not just at year-end.
2. Figures at November 2008.
3. Year-on-year change (November 2007 to November 2008).

revenues from the two main activities—order processing and execution, and UCITS subscription and redemption— fell by 58% and 59%, respectively. Brokers (both market members and otherwise) experienced a moderate decline in operating expenses, but it was not enough to curtail the intense reduction in operating income.

### 7.3 Portfolio management companies<sup>8</sup>

Portfolio management companies essentially provide discretionary management of securities portfolios, although they are also allowed to market UCITS and provide financial advice. Financial institutions and all other investment firms except financial advisory firms are also allowed to engage in portfolio management. The number of portfolio management companies has declined notably in recent years as a result of the process of restructuring by subsidiaries of finance groups and the increased competition from other firms. At the end of 2008, there were ten portfolio management companies registered with the CNMV; one firm deregistered during the year due to conversion into a broker.

#### Assets managed by portfolio management companies

TABLE 7.8

| Thousand euro                      |            |            |                |
|------------------------------------|------------|------------|----------------|
|                                    | 30/11/2007 | 30/11/2008 | % change 08/07 |
| <b>Total</b>                       |            |            |                |
| Number of portfolios               | 4,239      | 2,941      | -30.6          |
| Assets                             | 4,637,379  | 3,107,628  | -33.0          |
| <b>Breakdown by portfolio type</b> |            |            |                |
| <b>SICAV</b>                       |            |            |                |
| Number                             | 38         | 34         | -10.5          |
| Assets                             | 298,772    | 185,197    | -38.0          |
| <b>Other managed portfolios</b>    |            |            |                |
| Number                             | 4,201      | 2,907      | -30.8          |
| Assets                             | 4,338,607  | 2,922,431  | -32.6          |

Source: CNMV.

Between January and November 2008, assets managed by portfolio management companies declined by 33% as a result of both depreciation and a reduction in the number of managed portfolios. The latter effect was basically the result of two portfolio management companies which are subsidiaries of banking groups transferring part of their business to the parent company or other subsidiaries. As a result, portfolio management fees (the main revenue source) fell by 20.6% in the period of reference, while total net revenues fell 18.5% (Table 7.9). A 12.2% increase in operating expenses and the aforementioned trend in ordinary revenues led to a 61.9% decrease in operating income. Income before taxes amounted to 1.5 million euro, a 66.9% decline on the same period of 2007.

Despite the decline in earnings, most portfolio management companies increased their computable equity and, overall, they amply exceeded the minimum capital requirements. At the end of 2008, portfolio management companies had an overall equity surplus amounting to 150% of the minimum requirements, compared with 40% at the end of 2007.

## Portfolio management companies: income statement<sup>1</sup>

TABLE 7.9

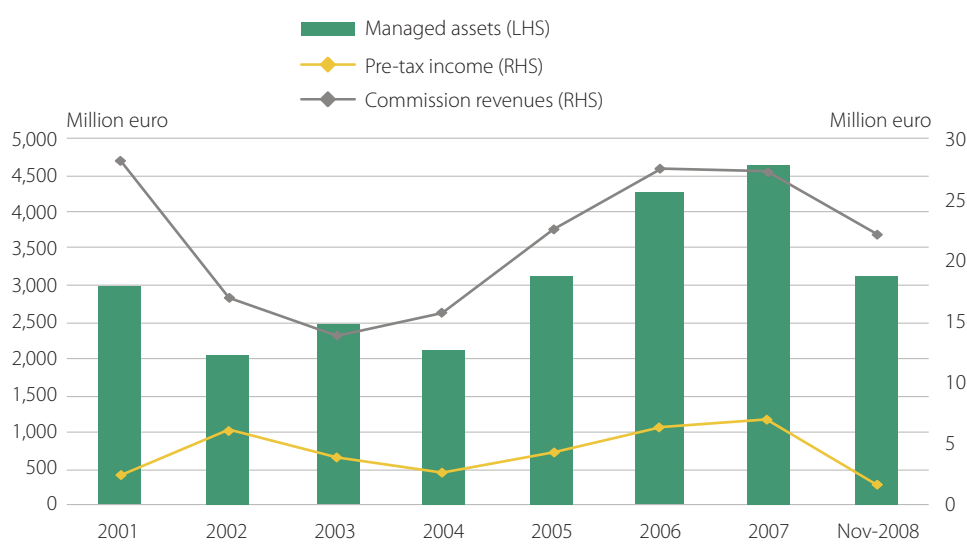
| Thousand euro                             |                   |                   |                             |
|---|-------------------|-------------------|-----------------------------|
|   | 2007 <sup>2</sup> | 2008 <sup>2</sup> | % change 08/07 <sup>3</sup> |
| <b>Financial income</b>                   | <b>1,324</b>      | <b>1,412</b>      | <b>6.65</b>                 |
| <b>Net income from securities trading</b> | <b>68</b>         | <b>-218</b>       | <b>—</b>                    |
| <b>Net commission revenues</b>            | <b>14,188</b>     | <b>11,506</b>     | <b>-18.90</b>               |
| Commission revenues                       | 27,118            | 22,240            | -17.99                      |
| Portfolio management                      | 23,156            | 18,394            | -20.56                      |
| UCITS subscription and redemption         | 1,582             | 1,079             | -31.80                      |
| Other                                     | 2,380             | 2,767             | 16.26                       |
| Commission expenses                       | 12,930            | 10,734            | -16.98                      |
| <b>Total net revenues</b>                 | <b>15,580</b>     | <b>12,700</b>     | <b>-18.49</b>               |
| Operating expenses                        | 9,136             | 10,247            | 12.16                       |
| Personnel expenses                        | 4,931             | 5,206             | 5.58                        |
| General expenses                          | 4,205             | 5,041             | 19.88                       |
| <b>Operating income</b>                   | <b>6,444</b>      | <b>2,453</b>      | <b>-61.93</b>               |
| Depreciation and other charges            | 1,923             | 832               | -56.73                      |
| Other gains and losses                    | 47                | -107              | —                           |
| <b>Income before taxes</b>                | <b>4,568</b>      | <b>1,514</b>      | <b>-66.86</b>               |
| Taxes                                     | —                 | —                 | —                           |
| <b>Income after taxes</b>                 | <b>4,568</b>      | <b>1,514</b>      | <b>-66.86</b>               |

Source: CNMV.

1. Includes information on all the firms that were on the CNMV's books at any time during the year, not just at year-end.
2. Figures at November.
3. Year-on-year change (November 2007 to November 2008).

## Assets under management, commission revenues and income before taxes of portfolio management companies

FIGURE 7.5



Source: CNMV.

Financial institutions  
and investment services  
Provision of investment  
services



### 8.1 Venture capital firms registered with the CNMV

The venture capital sector saw a slowdown in 2008, which was even more manifest after two years of spectacular growth, during which time the total number of registered firms expanded by 66%.

There were 55 applications to the CNMV to register venture capital firms in 2008, up 19% with respect to 2007. Seventy per cent of the firms that registered did so in the first six months of the year, exemplifying the reduction in venture capital activity due to the exacerbation of the crisis.

There was also a considerable increase in deregistrations, particularly as a result of the tough market situation and difficulties in finding new investors.

In net terms, the number of firms registered with the CNMV increased by 46 in 2008, to 322. In 2008, 21 venture capital funds and 25 venture capital companies were registered<sup>1</sup>, and there were 95 funds and 154 companies on the books at year-end (Table 8.1). The number of registered management firms also increased by 9, to a total of 73 at year-end<sup>2</sup>.

**Registration and removal of venture capital firms in 2008**

TABLE 8.1

|   | Situation at<br>31/12/2007 | Registrations | Removals | Situation at<br>31/12/2008 |
|---|----------------------------|---------------|----------|----------------------------|
| <b>Entities</b>                             | <b>276</b>                 | <b>55</b>     | <b>9</b> | <b>322</b>                 |
| Venture capital funds                       | 76                         | 21            | 2        | 95                         |
| Venture capital companies                   | 134                        | 25            | 5        | 154                        |
| <b>Venture capital management companies</b> | <b>66</b>                  | <b>9</b>      | <b>2</b> | <b>73</b>                  |

Source: CNMV.

The main characteristics of the venture capital firms in 2008 were as follows:

- Most registered firms adopted the simplified system (more than 82%), partly because of the simplicity of the obligations imposed in this category and also because of the possibility of granting special shares to promoters and founders.
- Almost all registered firms' investment policies are pronouncedly domestic in scope. The number of firms confined to one autonomous community has grown

1. At 31 December 2008, there were 12 venture capital firms pending registration with the CNMV and in the authorisation process.

2. At 31 December 2008, there were 4 management firms pending registration and in the authorisation process.

rapidly due to establishment of firms owned by regional governments and agencies whose aim is to increase productivity in their region.

- New entities' investment policies are more specialised and focus on more traditional sectors, such as services, and on low-risk opportunities which offer regular predictable returns. The technology sector, especially renewable energies, continues to attract significant investment.
- Investment was concentrated primarily in early-stage projects (seed and start-up capital) and in expansion capital, while the number of leveraged deals declined due to the lack of funding and tougher borrowing conditions.
- The size of the investments also contracted: 90% were less than 5 million euro.

## 8.2 Sector data

The sector has been very hard hit by the crisis. According to preliminary data from ASCRI<sup>3</sup>, which includes the majority of venture capital firms in Spain, venture capital firms invested approximately 2.9 billion euro in 2008, i.e. 32% less than the record high figure venture capital investment in Spain registered in 2007. The number of deals completed in 2008 totalled 805, i.e. 5.7% less than in 2007 (854).

Seventy-five per cent of funds raised in 2008 were obtained in the first half of the year, as funding contributions were very limited from summer onwards. Around 2.6 billion euro were raised in the year, almost 50% less than in 2007; however, the sector has ample liquidity due to funds raised in previous years. In fact, there were 6 billion euro available for investment at the end of 2008.

Divestments declined sharply to 604 million euro, a reduction of more than 62% with respect to 2007. The principal method of divestment was repurchases by the original shareholders, followed by sales to third parties.



## **IV Regulation and supervision of the securities markets**



## 9 Issuers' financial and corporate governance disclosures

This chapter discusses listed companies' obligations with regard to disclosures to the market, new regulations in this area and the CNMV's actions to improve compliance. Section 9.1 discusses financial disclosures, which are divided into two large blocks: annual reports (particularly auditors' reports) and interim reports (half-yearly and quarterly). A box in this section addresses the international debate that has arisen during the ongoing financial crisis about the pro-cyclical nature of current accounting regulations. Section 9.2 deals with disclosures of significant holdings. Section 9.3 summarises the main aspects of corporate governance reporting. And Section 9.4 deals with regulatory disclosures of significant events.

### 9.1 Financial disclosures

#### 9.1.1. Auditors' reports and financial statements<sup>1</sup>

Issuers of securities that are listed on an official secondary market or another regulated market that is domiciled in the European Union which have Spain as their home country are obliged to file an auditors' report with their financial statements, directors' report and declaration of liability for their content<sup>2</sup>.

In 2008, the CNMV received 875 auditors' reports on separate and consolidated financial statements and 34 special auditors' reports<sup>3</sup>. Consequently, there was a 3.6% increase in the number of auditors' reports, basically due to the increase in the number of reports on securitisation trusts.

The percentage of unqualified auditors' reports increased slightly with respect to 2007 (Figure 9.1). The increase in the proportion of securitisation trusts within the sample played a decisive role in this context since their auditors' reports were 100%

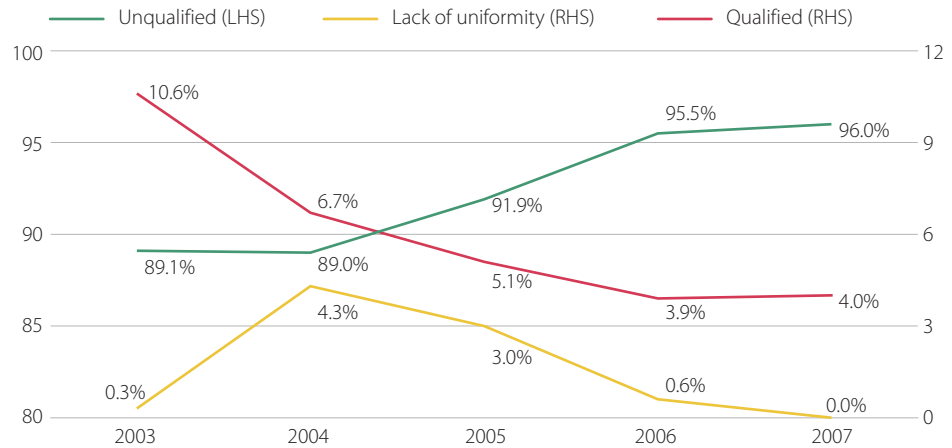
- 
1. This information is available in the Spanish area of the CNMV website ([www.cnmv.es](http://www.cnmv.es)) in the section "Registro Oficial de las Cuentas Anuales Auditadas", under "Entidades emisoras", "Informes de Auditorías y Cuentas Anuales".
  2. Article 35 of Act 24/1988 on the Securities Market. This obligation does not apply to "[...] Member states of the European Union, autonomous regional governments, local corporations and other analogous entities [...], international public bodies of which at least one Member State of the European Union is a member, the European Central Bank and the national Central Banks of the Member States [...], and issuers which only have outstanding issues of debt securities listed in an official secondary market [...] whose unit nominal value is at least 50,000 euro [...]"
  3. The purpose of special auditors' reports is to update the information in qualified auditors' reports. The update is done as of the end of the first half of the year after the one to which the qualified auditors' report refers.

unqualified. Excluding securitisation trusts, the percentage of unqualified auditors' reports was the same as in 2006 (93.1%).

Four companies presented an auditors' report with a qualified opinion or denial of opinion with respect to their 2007 financial statements and trading is halted in two companies for which the auditor denied an opinion.

### Opinions in the auditors' report (% of total)

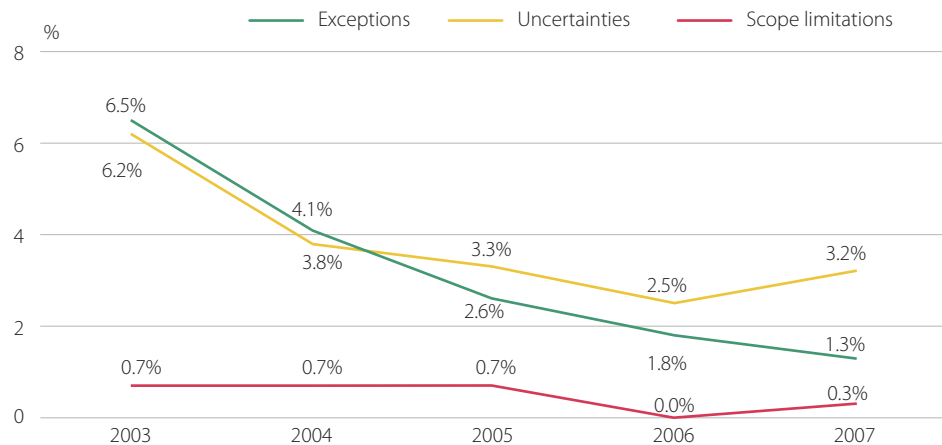
FIGURE 9.1



Source: CNMV.

### Types of qualifications

FIGURE 9.2



Source: CNMV.

Figure 9.2 shows the trend in qualified auditors' reports in the period 2003-2007, grouped by type.

Scope limitations are the type of qualification that is of greatest concern since the auditor is stating that he/she was unable to apply the Audit Technical Standards because the reporting entity failed to supply sufficient information for a solid opinion to be formed. In these cases, the CNMV immediately issues a written subpoena demanding the immediate resolution of scope limitations that are attributable to the issuer itself.

Initially, eight auditors' reports (relating to five securities issuers) from 2007 registered with the CNMV contained scope limitations. However, in response to demands issued by the CNMV, and once the procedures required by the Audit Technical Standards were applied, explicit communiqués were received from the auditors eliminating the scope limitations in five of the reports (relating to three issuers). Trading is halted in the securities of one of the issuers which has failed to remove the scope limitation. In another of the cases, following audit work to overcome the scope limitation, the auditor registered an exception due to lack of information.

### Audits of issuers filed with the CNMV

TABLE 9.1

|   | 2005       |              | 2006       |            | 2007       |            |
|---|------------|--------------|------------|------------|------------|------------|
|   | Number     | %            | Number     | %          | Number     | %          |
| <b>Audits filed with the CNMV</b>               | <b>766</b> | <b>100.0</b> | <b>845</b> | <b>100</b> | <b>875</b> | <b>100</b> |
| Separate financial statements                   | 553        | 72.2         | 621        | 73.5       | 671        | 76.7       |
| Consolidated financial statements               | 213        | 27.8         | 224        | 26.5       | 204        | 23.3       |
| Special reports under Ministerial Order 30/9/92 | 35         |              | 30         |            | 34         |            |
| <b>Auditors' report</b>                         |            |              |            |            |            |            |
| Unqualified opinion                             | 704        | 91.9         | 807        | 95.5       | 840        | 96.0       |
| Opinion with uniformity exception               | 23         | 3.0          | 5          | 0.6        | 0          | 0.0        |
| Opinion with other qualifications               | 39         | 5.1          | 33         | 3.9        | 35         | 4.0        |
| <b>Types of qualifications<sup>1</sup></b>      |            |              |            |            |            |            |
| Reports with exceptions                         | 20         | 2.6          | 15         | 1.8        | 11         | 1.3        |
| Reports with uncertainties, etc.                | 25         | 3.3          | 21         | 2.5        | 28         | 3.2        |
| Reports with limitations                        | 5          | 0.7          | 0          | 0.0        | 3          | 0.3        |
| <b>Effects of exceptions</b>                    |            |              |            |            |            |            |
| Effects of exceptions on earnings               |            |              |            |            |            |            |
| Reports with positive effects                   | 2          | 0.3          | 0          | 0.0        | 2          | 0.2        |
| Reports with negative effects                   | 16         | 2.1          | 14         | 1.7        | 7          | 0.8        |
| Effects of exceptions on equity                 |            |              |            |            |            |            |
| Reports with positive effects                   | 5          | 0.7          | 8          | 0.9        | 0          | 0.0        |
| Reports with negative effects                   | 5          | 0.7          | 2          | 0.2        | 1          | 0.1        |
| <b>Nature of uncertainties, etc.</b>            |            |              |            |            |            |            |
| Going concern                                   | 6          | 0.8          | 4          | 0.5        | 12         | 1.4        |
| Tax contingencies                               | 4          | 0.5          | 3          | 0.4        | 1          | 0.1        |
| Asset recovery                                  | 13         | 1.7          | 11         | 1.3        | 8          | 0.9        |
| Litigation                                      | 9          | 1.2          | 8          | 0.9        | 5          | 0.6        |
| Other uncertainties                             | 5          | 0.7          | 2          | 0.2        | 4          | 0.5        |
| Denial of opinion or adverse opinion            | 1          | 0.1          | 1          | 0.1        | 5          | 0.6        |

Source: CNMV. Refers to auditors' reports on financial statements and to special reports filed with the CNMV through 31 December each year. Percentages calculated with respect to the total number of auditors' reports filed.

1. Excludes uniformity exceptions.

The CNMV reviews and publishes all auditors' reports and also supervises the audited financial statements. The purpose is to check whether the accounting and valuation standards have been applied appropriately, check that the financial statements contain sufficient information for their proper interpretation and comprehension, and ensure that they are published and disseminated by the deadline established by current legislation.

All audited financial statements received by the CNMV undergo a review of formal aspects and compliance with the requirements of current legislation. The review of issuers' interim financial disclosures makes it possible to anticipate issues that may raise doubts with regard to the application of the accounting standards.

A specific number of audited financial statements also undergo a more substantive review. Entities are chosen for this review using a mixed model in which a risk based approach is combined with a random rotation approach, in line with the principles set out in Standard no. 1 of the Committee of European Securities Regulators (CESR).

The formal review of the financial statements and directors' reports for 2007 focused particularly on: (i) the application of IFRS 7: *Financial Instruments: disclosures* with respect to financial risks; (ii) disclosures about companies' capital management (IAS 1.124A-C); and (iii) inclusion in the directors' report of the disclosures<sup>4</sup> envisaged in article 116 bis of the Securities Market Act. As a result of these checks, the CNMV issued subpoenas to 30 companies.

Additionally, the substantive review of issuers' financial statements and directors' report led to the issuance of subpoenas to 75 companies in connection with audit exceptions, omitted disclosures, and clarifications of the accounting and valuation standards which they applied.

Reasons for subpoenas as a result of the substantive review

FIGURE 9.3



Source: CNMV.

All the information about securities issuers which the CNMV reviews is made public on its website; specifically: the full texts of the issuer's financial statements, directors' report and auditors' report, both separate and consolidated; a summary of audit exceptions; and responses to subpoenas, together with special auditors' reports. In accordance with CESR recommendations, an annual report is published on the content of the auditors' reports received by the CNMV and the main issues detected in the audit of annual and interim financial statements.

4. Capital structure, restrictions on share transfer, significant holdings, restrictions on voting rights, shareholder agreements, rules on director appointments, and directors' powers.

Measurement problems were a significant cause of non-compliance. Several issuers were found to be in breach of the recognition and measurement principle contained in the current legislation which were not so material as to require the financial statements to be restated but which must be remedied in the 2008 financial statements by restating the comparative information. In these cases, the issuers are required to present the corrected 2007 financial statements for information purposes and to remedy the error in the annual report for 2008, in accordance with the provisions of IAS 8: *Accounting policies, change in accounting estimates and errors*.

The review of one issuer's financial statements revealed a breach of the recognition and measurement principles required by current regulations which, because of its materiality, led the CNMV to demand the restatement of the 2007 consolidated financial statements and the rectification of the consolidated public disclosures for that year. Specifically, the company had not registered the accounting effects of its exchange insurance transactions properly.

### Recommendations and comments on the application of accounting standards

As a result of the review of audited financial statements, subpoenas issued and meetings with issuers and their auditors, the CNMV has identified the following aspects of the applicable accounting regulations that it considers relevant with regard to improving the quality of financial disclosures:

#### A. Presentation of the financial statements:

- It is recommended that a note be included providing sufficient information about the cash flow statement.
- Where relevant, additional line items should be included in the financial statements in addition to the minimum requirements.
- The normal cycle of operations should be applied to all assets and liabilities with regard to their classification as current or non-current.
- If a loan covenant is breached on or before the balance sheet date, the entity must classify the loan as current even if it arranged a waiver with the lender after the balance sheet date.

#### B. Measurement and disclosure of financial instruments:

- Issuers should take account of the guide published by the IASB on 31 October 2008 on measuring and disclosing the fair value of financial instruments in markets that are no longer active.
- Where issuers choose to apply the amendments to IAS 39 approved by the IASB in 2008 to allow the reclassification of certain financial assets, they must make the disclosures required by IFRS 7 to enable the impact to be measured.
- Where refinancing agreements are made, the new conditions must be examined to ascertain whether they differ substantially from the original conditions.

- On each balance sheet, reporting entities should consider whether there is objective evidence of impairment of an asset or a group of financial assets. In the case of listed equity instruments, a prolonged or significant reduction is an indication of impairment and requires an exhaustive analysis of all other relevant factors.
  - The information disclosed about credit, liquidity and market risk is general and qualitative and fails to comply sufficiently with the requirements of IFRS 7.
  - Considering the potential effect of structured products, it appears to be necessary to disclose information about holdings of such products, their characteristics, fair values and impact on equity and profit or loss.
  - Information should be disclosed to make it possible to evaluate the reporting entity's capital management objectives, policies and processes.
- C. Recognition of revenues: the criteria established in IAS 18 should be applied rigorously, particularly when: (i) the contracts are subject to milestones or conditions precedent or subsequent; (ii) the amount collected from the transaction is not representative of the total transaction amount; and (iii) the sales are financed by the reporting entity itself and recovery is not reasonably assured.
- D. Sale and lease-back: The transaction should be analysed carefully in order to ensure that the conditions for recognising the profit are met.
- E. Impairment of non-financial assets: reporting entities should provide a convincing explanation in the notes to financial statements of how they conducted the impairment tests.
- F. Real estate investments and inventories:
- The valuation standards and main assumptions made to determine the fair value should be disclosed.
  - Where management is aware of major uncertainties about the entity's continuance as a going concern, it must disclose them in the financial statements together with any factors that mitigate such uncertainties.
  - With regard to hiring appraisers for real estate, listed companies should take account of the recommendations which the CNMV published on its website on 1 July 2008.
- G. Business combinations: entities should be rigorous in applying IFRS 3 to calculate the cost of a business combination where the payment includes equity instruments. Disclosures in this area should also be improved.
- H. Application of the new General Accounting Plan (NGAP): Two issues merit attention in this connection: (i) entities that decide to reverse part of the reserve for the portfolio of equity instruments of group, multigroup and associated undertakings should justify their approach to measurement and impairment; and (ii) entities not obliged to present consolidated financial statements should analyse the impact of the recognition and measurement rules for financial instruments contained in the NGAP.



#### I. Other relevant disclosures:

- It is necessary to improve disclosures about taxes in notes to financial statements, particularly with regard to recognition, changes in deferred tax assets and liabilities, etc.
- Entities should disclose all transactions and outstanding balance with related parties, breaking items down where necessary.

These recommendations were contained, in more detail, in the Report on the Audits of 2007 Financial Statements, published on the CNMV's website in December 2008<sup>5</sup>, which was sent in January 2009 to all the firms that audit listed companies and to the three professional associations of auditors.

#### 9.1.2. Half-yearly and quarterly reports

Issuers of securities that are listed on an official secondary market or another regular market domiciled in the European Union, where Spain is their home country, must file financial information with the CNMV every three and six months<sup>6</sup>.

The CNMV constantly reviews these interim disclosures to detect any issues that might contain or raise doubts about the application of the accounting standards. However, the review of periodic public disclosures has a smaller scope than that of the annual financial statements because the interim financial statements contain abridged information.

In 2008, the CNMV reviewed and supervised financial disclosures for the second half of 2007, the first half of 2008, and the interim reports for the first and third quarters of 2008.

The new half-yearly and quarterly established in Circular 1/2008<sup>7</sup> on periodic disclosures by issuers came into force; the main new features it introduced are as follows:

- Annual and half-yearly financial reports must include a declaration of liability for the content, which must be signed by the directors.
- Issuers of shares and debt securities, listed on stock exchanges and on the AIAF, must publish a preliminary half-yearly financial report that will include, among other information, summarised financial statements drafted on a consolidated basis in accordance with the International Financial Reporting Standards adopted by the European Commission (IAS 34: *Interim Financial Reporting*) and an interim directors' report.
- Issuers of shares must also publish a second half-yearly financial report and interim directors' reports in place of the current quarterly disclosure. The

5. The report is available (in Spanish only) by following this route on the CNMV website: [www.cnmv.es / Publications and other documents / CNMV Publications / Annual report and other reports / Summary of company auditors' reports registered at the CNMV](http://www.cnmv.es/Publications%20and%20other%20documents/CNMV%20Publications/Annual%20report%20and%20other%20reports/Summary%20of%20company%20auditors'%20reports%20registered%20at%20the%20CNMV)

6. Article 35 of Act 24/1988 on the Securities Market.

7. Under the powers granted by Royal Decree 1362/2007, on 30 January 2008 the Board of the CNMV approved the half-yearly and quarterly reporting forms through Circular 1/2008.

publication of a second half-yearly report will not be obligatory when the issuer publishes the annual financial report in the two months following the end of the year in question.

- Issuers of shares which publish their annual financial report in the two months following the end of the year in question and issuers of debt must submit to the CNMV the following financial information regarding the second half of the year: (i) main financial statements; (ii) dividends paid; (iii) average workforce; and (iv) net revenues by geographic area.

Following a review of this information, the CNMV wrote to 34 entities asking for clarifications or for the correction of errors in the financial statements for the second half of 2007; in the case of the report for the first half of 2008, it wrote similar requests to 88 entities. That increase is due to the application of the new reporting forms contained in Circular 1/2008 and the greater volume of information that must be disclosed. Another 13 subpoenas were issued for a variety of reasons.

Issuers are not required to perform a full audit or limited review of their half-yearly financial disclosures. However, if they voluntarily commission a full audit or limited review, the auditors' report must be published in full. A total of 37.7% of issuers commissioned an audit or limited review of their summarised annual financial statements for the first half of 2008. That percentage rises to 64.7% considering just the companies in the Ibex 35 index.

In the case of a full audit (11 entities), the auditors' report offers reasonable assurance about the interim financial statements that are presented; in the case of a limited review (82 entities), the degree of assurance is more moderate. The auditors' report and reports on limited review with regard to interim financial disclosures contained a clean opinion in 90.3% of cases.

### 9.1.3. New regulation

Limited reviews of half-yearly financial statements by an external auditor fall outside the scope of the current Audit Act. Therefore, an auditor is subject to the discipline of the ICAC (Spain's accounting regulator) and the Audit Technical Standards when conducting an audit of half-yearly disclosures, but not when conducting a limited review.

Given the absence of a Technical Standard on limited reviews, the CNMV took the initiative of drafting a series of recommendations about the scope of the procedures and tests to be performed by the auditor and the standard forms of the report on limited review and in July 2008 it published a guide<sup>8</sup> that was drafted by consensus with the professional associations of auditors. The guide is based on the International Standards on Review Engagements (ISRE) issued by the International Auditing and Assurance Standards Board (IAASB), and it distinguishes between the case where the limited review is conducted by the company's auditor (ISRE 2410) or by another auditor (ISRE 2400).

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8. "Modelos de informe y guías de actuación para trabajos de revisión limitada sobre estados financieros intermedios", available at [www.cnmv.es](http://www.cnmv.es).

Using professional judgement, the auditor determines the scope and nature of the procedures to be applied and the need for additional work where there are doubts about material adjustments. The guide identifies certain issues which, because of their materiality, and in conformity with the ISRE, should be addressed by an auditor in a limited review: reasonable knowledge of the industry and business, of the organisation structure, accounting systems and the methods for drawing up the financial statements, as well as the accounting policies and the estimates and assumptions that are made. The auditor should also review the explanatory notes and analyse material and/or complex transactions.

The guide sets out a number of important clarifications to be taken into account by the auditor when issuing a report on limited review, including: the issuance of a report under the ISRE entails compliance with the code of ethics of the International Federation of Accountants (IFAC); some considerations about the report on limited review where there are uncertainties, with a view to avoiding discrepancies between the auditors' reports on the annual financial statements and the report on limited review of the interim disclosures, and a statement as to whether the accounting principles applied in the interim financial statements are consistent/uniform with respect to those applied in the preceding period, as required by IAS 34 and the General Accounting Plan.

Another new feature of the regulation affects securitisation trusts as a result of changes in accounting regulations. Under the powers granted by Royal Decree 926/1998, of 14 May, regulating asset securitisation trusts, and Order EHA/3536/2005 of 10 November, the CNMV drafted a circular adapting the accounting standards, annual accounts, public financial statements and reserved statistical reports, which was approved by the CNMV Board in March 2009 and will be applied for the first time to the financial statements for 2008.

The circular was based on the Code of Commerce and respects the principles established in the General Accounting Plan approved by Royal Decree 1514/2007, of 16 November. That adaptation also took account of the special legal and operating characteristics of securitisation trusts, including the fact that they have no equity and no legal personality. The main features of the draft circular are as follows:

- The fact that trusts have no equity means that:
  - Any gain from their activity is generally paid to the party that ceded the securitised assets, and any loss is allocated to the trust's liabilities, respecting the hierarchy of precedence in payment on each payment date that is established in the trust's articles of constitution.
  - The statement of changes in equity envisaged in the Commercial Code is replaced by a statement of recognised revenues and expenses, which will present the items that, under the NGAP, should be recognised directly in equity. At the end of each period, the net balance of all the amounts recognised directly in that statement will be recognised in the balance sheet.
- The establishment of a set of principles for determining impairment losses on securitised financial assets, based on the criteria contained in the NGAP.
- Greater disclosures are required, for two purposes: to provide greater transparency vis-à-vis the market, and to allow the performance of these structures to be tracked

and monitored at European level. Consequently, disclosures are required half-yearly, the first half-year applying only to securitisation trusts required to present a prospectus. Reserved statistical reports must be filed each quarter by all trusts, whether or not they are subject to a prospectus.

### International debate about the financial crisis and accounting standards

The international financial crisis has led to an intense debate about the application of accounting standards worldwide and to the publication of numerous reports recommending changes of varying scope in order to correct errors that have been detected and to continue to provide users of financial information with relevant, comparable information. Some of the proposed modifications seek to address the difficulty of measuring certain financial instruments when market liquidity declines sharply. Others have arisen in the debate over the role of fair value as a pro-cyclical factor in entities' behaviour. In particular, the SEC issued a report on 30 December 2008 in which it opposed the suspension of fair value accounting under FASB 157 *Fair Value Measurements* on the grounds that it is a very relevant metric for investors, although it did propose some improvements.

In order to mitigate the effects of the crisis and reduce the risk of new episodes, on 11 April 2008 the Financial Stability Forum published a number of recommendations for strengthening markets and institutions; three of them refer to accounting improvements: reform of financial reporting on off-balance sheet entities, drafting of guides for measuring financial instruments in markets that are not active, and the adoption of financial disclosures on the measurement of financial instruments.

The response from the IASB with regard to the consolidation of special-purpose entities is at a very advanced stage. In December 2008, a draft standard was released which combines the current IAS 27 and SIC 12, and a draft on the derecognition of financial assets is expected in the second half of 2009.

A number of additional guides have been issued regarding measurement of listed financial instruments in inactive markets. Firstly, there was a joint SEC-FASB communiqué on 30 September 2008 with clarifications on fair value measurements. This was followed by communiqués from the IASB<sup>1</sup> declaring those clarifications to be compatible with IFRS. There was also a declaration from the CESR on fair value measurements of illiquid financial instruments and their associated disclosures (CESR 08-713b), which served as a contribution to the production of guides by the IASB Panel of Experts<sup>2</sup>, an essential tool for facilitating consistent application of the fair value accounting rules. As a result, the CESR<sup>3</sup> recommended that they be applied immediately for financial statements issued in or after the third quarter of 2008.

Moreover, the IASB and the FASB<sup>4</sup> have made a joint commitment to work together on the necessary accounting reforms so as to correct and avoid the deficiencies detected during the crisis. To that end, they announced the creation of a Financial Crisis Advisory Group (FCAG), on which the Vice-President of the CNMV sits as an observer on behalf of CESR.

In response to the request from ECOFIN on 7 October that the IASB act rapidly to mitigate the effects of fair value accounting on certain financial instruments, an amendment to IAS 39 and IFRS 7 was issued to permit, in the context of the current liquidity crisis, certain trading instruments formerly measured at fair value to be transferred to portfolios that are measured at amortised cost, thus reducing the impact on profit or loss and or equity of fair value measurement in the third quarter of 2008 and thereafter. This eliminated the competitive disadvantage with respect to issuers that applied US GAAP, which already allowed that reclassification.

There are other proposals for improvement in accounting standards, as set out in a letter from the European Commission to the IASB dated 27 October which are still being analyzed; they include the possibility of reclassifying instruments initially designated as being at fair value through profit or loss, the consideration of whether synthetic CDOs contained an embedded derivative, and an evaluation of the rules for impairment of available-for-sale financial assets.

On 7 January 2009, CESR published a statement (CESR 08-937) focused on those three issues that were highlighted by the European Commission, and surveying the practical application of the reclassification of financial instruments in the third quarter (although somewhat over half of the selected European financial institutions made use of that option, none of the Spanish institutions included in the analysis did so). The impact of fair value recognition of securitised assets and other similar structured instruments was very limited in Spain. In its report, the CESR supports the adoption of a global set of accounting standards and notes the need to respect the procedures established for issuing such standards, including an appropriate consultation period, which may be shorter in situations of particular urgency.

The CNMV considers that, although the current economic situation has imposed unprecedented stress on the entire accounting conceptual framework, it has also brought to light certain deficiencies and weaknesses whose correction will contribute to more consistent application of accounting standards and, consequently, improve the transparency and relevance of regulated financial disclosures.

It would therefore be desirable to have additional guides for determining the fair value of unlisted financial instruments and those which are listed in markets that are no longer active. Such guides should also address the disclosures to be provided to investors regarding the main assumptions and hypotheses used and the uncertainties associated with the estimates.

The crisis has also revealed the need for accounting regulators to have firm, clear principles while retaining sufficient flexibility in their application in order to respond to specific situations that may arise.

As regards fair value, one of the lessons of this crisis is that much work remains to be done on the theoretical foundations and with regard to the context and type of assets and liabilities where its application is most appropriate. Joint development by the IASB and the FASB of a new Conceptual Framework may be the appropriate context for this type of

analysis so as to provide the necessary theoretical and conceptual foundations for measurement methods.

The CNMV shares the goal of global convergence on a single set of high-quality accounting principles applicable in all securities markets so as to facilitate comparison and contribute to efficiency in investment decisions. To that end, it is fundamental that the accounting regulators (IASB) maintain their independence while taking on greater responsibilities; a move in this direction is the recent decision to create a new Monitoring Board within the structure of the International Accounting Standards Committee Foundation, entrusted with appointing the trustees and ensuring the established procedures are complied with and that the IASB operates, and is viewed, as an independent body.

1. 2 October and subsequent dates.
2. 31 October 2008.
3. 5 November 2008.
4. 20 October 2008.

## 9.2 Information about ownership structure

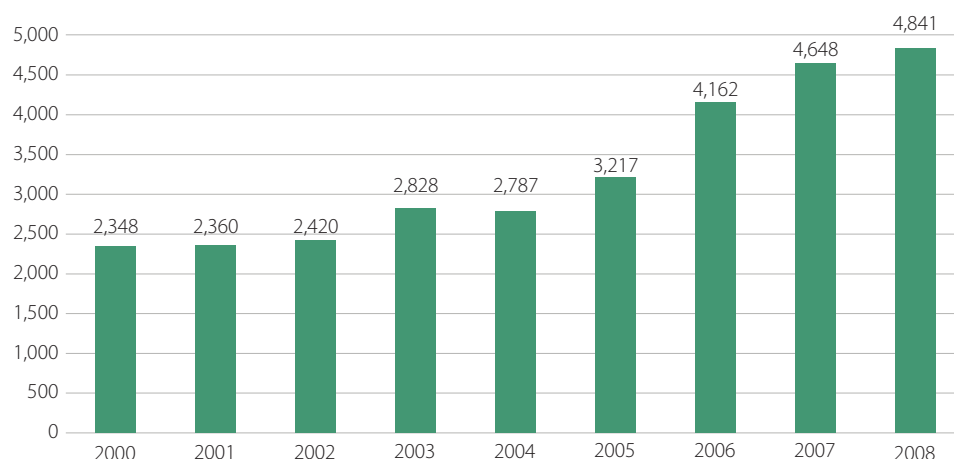
### 9.2.1. Communiqués filed with the official registers of the CNMV in 2008

The process of transposing the Transparency Directive was completed in 2008 with the enactment of Royal Decree 1362/2007, of 19 October (“Transparency Decree”) and of CNMV Circular 2/2007, of 19 December, approving the new forms for disclosing significant holdings, directors and executives, own shares, etc.

The number of disclosures of significant holdings and others was expected to increase sharply as a result of that new legislation. However, a total of 4,841 communiqués were validated, i.e. an increase of just 4.2% over 2007 (4,648). Figure 9.4 illustrates the number of communiqués registered each year since 2000. Validated communiqués accounted for 81.3% of the total received by the CNMV (5,957); the

Trend in communiqués

FIGURE 9.4



Source: CNMV.

others were annulled by the reporting entities since they contained errors which required a new communiqué to be issued<sup>9</sup>.

65% of communiqués related to directors (59% in 2007); 18% to significant shareholders other than directors (26% in 2007); 10% to executives (8% in 2007); and the other 6% to transactions with own shares (5% in 2007).

### Significant shareholders: disclosure of voting rights and financial instruments

The Transparency Decree reduced the threshold for disclosure of significant holdings from 5% to 3% of voting rights. If the shareholder is domiciled in a tax haven, the threshold for disclosure is 1% and multiples thereof. Table 9.2 shows a breakdown of notifications received, grouped by levels of voting rights and market capitalisation of the companies involved.

**Voting rights of significant shareholders:  
number of notifications received**

TABLE 9.2

| Companies            | Voting rights |            |            |           |
|----------------------|---------------|------------|------------|-----------|
|                      | Under 5%      | 5% to 30%  | 30% to 50% | Over 50%  |
| Ibex 35              | 169           | 70         | 6          | 7         |
| Over 1 billion euro  | 41            | 14         | 3          | 13        |
| Under 1 billion euro | 268           | 217        | 10         | 23        |
| Delisted             | 24            | 3          | 0          | 5         |
| <b>Total</b>         | <b>502</b>    | <b>304</b> | <b>19</b>  | <b>48</b> |
| % of total           | 58%           | 35%        | 2%         | 5%        |

Source: CNMV

Despite the increase in the number of notifications from significant shareholders with under 3% (335 notifications), there was a 26.8% decline in the total number of notifications in 2008 as a result of the following factors:

- i. The number of communiqués from custodians declined as a result of the exemption provided by article 33 of the Transparency Decree under which custodians that act as such and may exercise the voting rights of the shares in custody only with written instructions are not required to disclose significant holdings.

During the year, six large international custodians applied to be removed from the official register of notifications.

- ii. The number of notifications from companies within the same group has also declined. Under the previous regulations, both dependent companies and the group controlling company were required to disclose significant holdings. Under the new regulation, only the controlling company is obliged to make that disclosure.

In 2008, a total of 46 groups availed themselves of this exception with respect to 35 listed companies, under which only the group controlling company is required to present a notification (except where the dependent company is a director).

9. It is not possible to compare the number of annulled communiqués with previous years since no statistics are available.



- iii. Controlling companies may also apply the exemption from notification when any of their dependent companies is a UCITS management company or an investment firm that manages portfolios, subject to a number of conditions and provided that the dependent company exercises the voting rights independently of its controlling company.

In 2008, a total of 25 group controlling companies applied for non-aggregation of the holdings in portfolios managed by their dependent companies. Most of them are Spanish companies which head financial groups.

Investors are also obliged to notify the CNMV of the acquisition or disposal of financial instruments whose underlying are shares of listed companies where they provide the holder with the possibility of acquiring a significant holding in terms of voting rights. This information enables the market to be aware of significant shareholders that have acquired rights to increase their holdings, and others who may become significant shareholders of listed companies in the future.

Although the notification threshold is now 3%<sup>10</sup>, the number of notifications with regard to financial instruments was very small. Only 18 notifications of financial instruments were presented in 2008 by nine significant shareholders in eight listed companies.

### Directors: disclosure of voting rights, financial instruments and proxies for shareholders' meetings

Royal Decree 1333/2005, of 11 November (Market Abuse Decree) requires that directors of listed companies disclose all transactions with shares of the listed company of which they are directors and with financial instruments whose underlying are such shares. Also, the Transparency Decree requires directors to disclose beneficial ownership possession of voting rights or financial instruments. In 2008, 999 directors presented 2,854 notifications with regard to voting rights in 163 companies i.e. 6.1% more than the 2,690 notifications received in 2007 (Table 9.3).

#### Directors' voting rights: number of notifications received

TABLE 9.3

| Companies                                     | issuers    | notifications | Number of directors |
|---|------------|---------------|---------------------|
| Ibex  | 33         | 743           | 294                 |
| Over 1 billion euro in market capitalisation  | 15         | 341           | 122                 |
| Under 1 billion euro in market capitalisation | 106        | 1,632         | 540                 |
| Delisted                                      | 8          | 131           | 36                  |
| Participation shares                          | 1          | 7             | 7                   |
| <b>Total</b>                                  | <b>163</b> | <b>2,854</b>  | <b>999</b>          |

Source: CNMV

10. The Transparency Decree does not require voting rights and financial instruments to be aggregated for the purpose of calculating notification thresholds. This is the approach initially recommended by the CESR, although some EU member states have opted for aggregation. The exception for notification of instruments settled by differences is also under review.



As regards financial instruments whose underlying are shares of the company, directors are obliged to disclose those that are settled by physical delivery or by differences and those related to share-based compensation systems. The obligation covers instruments held by directors both directly and indirectly (through related parties). A total of 312 notifications of financial instruments were received in 2008 (181 in 2007) referring to 38 listed companies, 15 of them in the Ibex 35. A total of 27.9% of the notifications referred to compensation systems at 14 companies.

One of the most innovative aspects of the Transparency Decree is the obligation to disclose proxies received by or granted to directors for the shareholders' meeting. In 2008, 24 notifications were received with regard to proxies for the shareholders' meetings of 10 companies.

### Disclosures of own shares

In 2008, 304 disclosures of transactions with own shares were validated in connection with 82 issuers, i.e. 41.4% more than in 2007 (215); 40% of the notifications referred to Ibex 35 companies (38% in 2007). Table 9.4 shows the number of notifications that were received and the number of issuers to which they referred, while Table 9.5 breaks down the notifications on the basis of companies' market capitalisation and the final position in own shares.

**Own shares: number of communiqués and issuers**

TABLE 9.4

| Companies             | Number of<br>communiqués | Number of issuers, by number of communiqués |           |           |          |
|-----------------------|--------------------------|---|-----------|-----------|----------|
|                       |                          | Total                                       | 1 to 5    | 6 to 15   | Over 15  |
| Ibex                  | 122                      | 26  | 18        | 6         | 2        |
| Over 1 billion euro*  | 27                       | 9   | 9         | 0         | 0        |
| Under 1 billion euro* | 155                      | 47  | 42        | 4         | 1        |
| <b>Total</b>          | <b>304</b>               | <b>82</b>                                   | <b>69</b> | <b>10</b> | <b>3</b> |

\* capitalisation

Source: CNMV

**Own shares: number of issuers that presented disclosures,  
by final position**

TABLE 9.5

|                       | Total<br>issuers | Under<br>1% | 1%<br>to 2% | 2%<br>to 3% | 3%<br>to 4% | Over<br>4% |
|-----------------------|------------------|-------------|-------------|-------------|-------------|------------|
| Ibex                  | 25               | 7           | 8           | 8           | 1           | 1          |
| Over 1 billion euro*  | 10               | 4           | 2           | 2           | 1           | 1          |
| Under 1 billion euro* | 47               | 13          | 17          | 7           | 4           | 6          |
| <b>Total</b>          | <b>82</b>        | <b>24</b>   | <b>27</b>   | <b>17</b>   | <b>6</b>    | <b>8</b>   |

\* capitalisation

Source: CNMV

### Shareholder agreements

The Transparency Act requires that shareholder agreements that affect listed companies or their controlling entities be made public. The signature of the agreement and any extension or amendment must be notified to, and registered

with, the CNMV as a regulatory disclosure in accordance with articles 92 and 112 of the Securities Market Act.

In 2008, a total of seven new shareholder agreements were notified (16 in 2007) which affect seven listed companies, and there were nine amendments to pre-existing agreements. The new agreements regulate the transfer of shares; moreover, four of them regulate voting rights and three establish a pre-emptive purchase price.

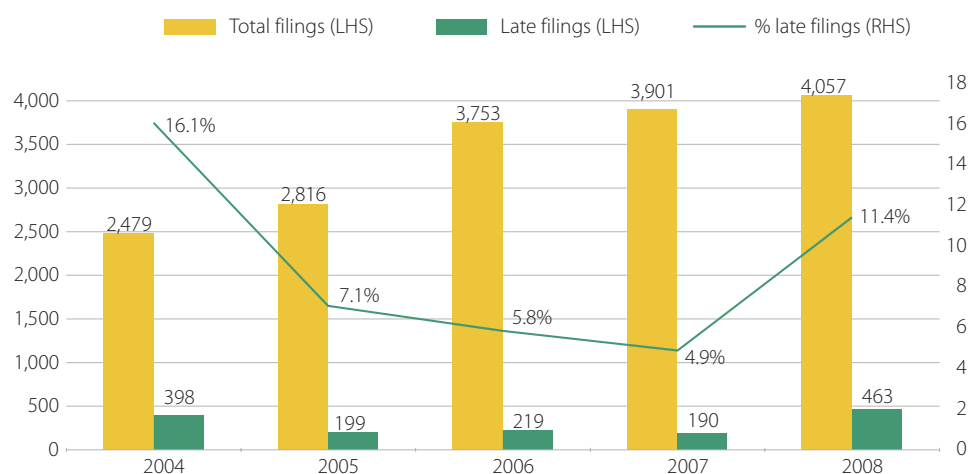
### 9.2.2. Delays in filing comunicués, and actions taken

A total of 543 comunicués were filed late in 2008, of which 463 (85.3%) referred to directors and significant shareholders, compared with 190 in 2007. A total of 306 parties were subpoenaed for filing notifications late.

For comparison with previous years, figure 9.5 shows only notifications, both timely and late, relating to directors and significant shareholders.

**Notifications regarding directors and significant shareholders that were presented late**

FIGURE 9.5



Source: CNMV.

The most interesting aspects of the various types of comunicués are shown below:

- Notifications were filed late in connection with 251 directors. In 68 cases (27.1%), the notification referred to their appointment or removal.
- A total of 45 late notifications by 41 directors referred to transactions with financial instruments.
- Of the late notifications by significant shareholders, 19 referred to an increase or decrease over or under the 3% threshold, and six referred to shareholders resident in tax havens.
- The 52 late notifications referring to executives involved 30 listed companies.
- The 28 late notifications with regard to own shares referred to 17 listed companies and most of them were due to an interpretation of the regulations to the effect that the 1% notification threshold referred to the final position rather than to acquisitions.

Based on the responses received to subpoenas sent in 2008, the reasons for delays can be broken down as follows:

- i. 77% of the responses claimed errors in interpreting the new regulations (the Transparency and Market Abuse Decrees reduced the deadline for disclosing significant shareholders and directors from 7 days to 4 and 5 days, respectively) or administrative or internal control failures.
- ii. 11% of the delays were attributed to forgetfulness or holiday periods.
- iii. 6% were justified by the existence of corporate transactions relating to mergers, takeovers or similar.
- iv. 4% were attributed to inheritance issues (difficulty in meeting the deadline because of the paperwork involved) or personal reasons (death of spouse).
- v. The other 2% referred to listed companies in a situation of insolvency.

### 9.3 Corporate governance

Article 116 of the Securities Market Act regulates the obligation upon listed companies to publish an annual corporate governance report and file it as a regulatory disclosure. The corporate governance report must provide full reasoned disclosure of corporate governance practices at issuers of listed securities in order to enable investors and other users of information to reach an informed opinion.

The coexistence of the two corporate governance codes —the Olivencia Code (1998) and the Aldama Code (2003)— created difficulties when disclosing the degree to which the recommendations were being applied. The Unified Code, which is applicable to corporate governance reports issued in 2008 and thereafter, established a single reference for listed companies' corporate governance practices.

In 2008 a total of 174 listed companies, 43 savings banks and 22 issuers of fixed-income securities presented their corporate governance report for 2007. Only nine companies were subpoenaed for late filing.

From the corporate governance reports produced by issuers, the CNMV drafts and publishes an annual report containing an analysis, on an aggregated basis, of the main governance practices at issuers together with a range of statistical data on each entity. The CNMV is a pioneer among securities supervisors in publishing this type of report.

#### 9.3.1. Main aspects of listed companies' governance structures

On an aggregated level, the main aspects of corporate governance practices at listed companies are as follows:

##### Ownership structure

The capital of listed companies increased by 13.1% in 2007 (Ibex: 7.3%). Market capitalisation was similar to 2006 except in the Ibex companies, where it increased

by 5.1% The main variation was in real estate companies, whose capitalisation declined by 50.7%.

The free float averaged 34.9% (Ibex: 44.2%), compared with 38.3% in 2006 (Ibex: 49.3%). This reduction is broadly due to the entry into force of the Transparency Decree, which reduced the threshold for considering a stake to be significant from 5% to 3%. Adjusting for the regulatory change, the average free float of listed companies was 36.2%.

Own shares increased on aggregate from 0.5% to 0.8%.

### **Board of Directors**

The average board of directors at the analyzed entities ( 10.1 members) was slightly later than in 2006 while still within the range recommended by the Unified Code (not less than 5 and not more than 15 members), and the number of companies complying with that recommendation rose from 79.8% in 2006 to 82.4% in 2007.

Independent directors experienced a reduction in importance within boards of directors, from 30.3% in 2006 to 28.3% in 2007. Part of this reduction was due to the gradual process of adjustment to the independence requirements established in the Unified Code.

The number of companies where independent directors account for at least one-third of the board declined by 5.3 points to 38% of the total. The companies attributed that reduction to the need to adapt the number of independent directors to their capital structure.

The number of female directors increased from 118 in 2006 to 131 in 2007. However, there are still very few female directors in listed companies: a mere 7.5% (6.9% in 2006). 51.4% of companies have at least one female director and 39.6% of the companies with few or no female directors stated that they have not adopted measures to correct this situation.

### **Director and senior management remuneration**

Compensation averaged 2.68 million euro per board of directors and 267,000 euro per director, i.e. an increase of 7% and 5.3%, respectively, with respect to 2006.

Fixed compensation increased by 15.9% on average and attendance fees by 10.9% on average with respect to 2006. Variable compensation increased by 5.4%.

Executive directors' compensation increased by 5.3% on average, following the 33.3% increase registered in 2006. A large number of incentive plans and stock options, whose main beneficiaries were executive directors, vested in 2006.

Director compensation policies and the degree of transparency in this connection continue to be one of the most controversial aspects of listed companies' corporate governance. The recommendations of the Unified Code which are applied to the least extent are those relating to transparency of director compensation ( less than 30% of

listed companies comply in full). Companies argue that the existing legislation already requires detailed disclosure of director compensation to shareholders.

### Board committees

In 2007, 20% of independent directors were not members of any subcommittee of their boards (23.2% in 2006). The number of companies where the chair of the supervision and oversight committees is an independent director increased slightly, as did the degree of compliance with the Code's other recommendations regarding committee composition.

However, the presence of independent directors declined on the Executive committee (20.5% vs. 22.8% in 2006), the audit committee (42.9% vs. 44.9%), and the appointments and remuneration committee (44.8% vs. 47.9%).

### Related-party transactions

It is necessary to continue insisting on the need to improve the transparency of the disclosures in the corporate governance report. Companies should expand the information they supply about the nature of related-party transactions when the amount is significant. In general, companies state that the transactions were conducted on arm's-length basis in the normal course of business.

#### Related-party transactions by listed companies

TABLE 9.6

| Million euro                     |                  |            |                                  |           |                                  |              |                |                |
|----------------------------------|------------------|------------|----------------------------------|-----------|----------------------------------|--------------|----------------|----------------|
|                                  | No. of companies |            | Type of transaction <sup>1</sup> |           | No. of transactions <sup>3</sup> |              | Amount         |                |
|                                  | 1H08             | 1H07       | 1H08                             | 1H07      | 1H08                             | 1H07         | 1H08           | 1H07           |
| Transactions with:               |                  |            |                                  |           |                                  |              |                |                |
| Significant shareholders         | 120              | 102        | 30                               | 30        | 534                              | 463          | 119,745        | 118,304        |
| Directors and executives         | 91               | 86         | 21                               | 25        | 296                              | 288          | 1,929          | 1,895          |
| Persons or entities in the group | 112              | 104        | 29                               | 28        | 544                              | 467          | 68,863         | 65,572         |
| Other related parties            | 88               | 79         | 28                               | 25        | 350                              | 302          | 24,349         | 17,617         |
| <b>Total</b>                     | <b>270</b>       | <b>270</b> | <b>31<sup>2</sup></b>            | <b>31</b> | <b>1,724</b>                     | <b>1,520</b> | <b>214,886</b> | <b>203,388</b> |
| % of total                       |                  |            |                                  |           |                                  |              |                |                |
| Significant shareholders         | 44.4             | 37.8       | 96.8                             | 96.8      | 31.0                             | 30.5         | 55.7           | 58.2           |
| Directors and executives         | 33.7             | 31.9       | 67.7                             | 80.6      | 17.2                             | 18.9         | 0.9            | 0.9            |
| Persons or entities in the group | 41.5             | 38.5       | 93.5                             | 90.3      | 31.6                             | 30.7         | 32.0           | 32.2           |
| Other related parties            | 32.6             | 29.3       | 90.3                             | 80.6      | 20.3                             | 19.9         | 11.3           | 8.7            |

Source: CNMV.

1. Number of types of transactions by each category of related party.
2. Total number of types of transaction contained in the half-yearly public disclosure form.
3. Number of transactions in each category.

The aggregate amount of related party transactions with significant shareholders was 119,745 million euro. Five entities accounted for 54.6% of the total amount.

A comparison of the figures for the first half of 2008 and 2007 reveals a 5.6% increase in the amount of related-party transactions that were disclosed. The bulk of these transactions were arranged with credit institutions that are related parties of the issuer.

## Risk control systems

In the corporate governance report, companies must disclose the degree of exposure to risks, highlighting those that are significant or highly likely to materialize and those which affect critical areas of their business.

The year 2007 was marked by major events and turbulence in the financial markets which affected companies of all types. Most companies disclose generic information about their financial or business risks and the systems implemented to detect, measure and manage them so as to control and mitigate their impact if they materialise.

However, the corporate governance report did not disclose information about the likelihood of occurrence or the impact of the identified risks. Only 23 companies identified the risks that affected them in 2007; another 129 stated that none of the risks that might have affected them actually materialised, and the other 21 merely stated that risks that are inherent to the Group companies' business had materialised.

In all cases, the company stated that the control systems in place had functioned correctly.

## Shareholders' Meeting

The average percentage attendance at shareholders' meetings was 74.9% in 2007 (73.8% in 2006). In recent years, listed companies have adopted measures to encourage minority shareholders to participate in shareholders' meetings. However, the largest percentages of participation are found to correspond with lower average free floats, suggesting the need to persist with measures to encourage participation by minority shareholders. The effective use of distance voting by electronic means is still very low.

The number of companies with caps on voting rights in their Articles of Association continues to decline (16, four less than in 2006), as does the number of companies that require a minimum number of shares in order to attend the shareholders' meeting (57.8% of listed companies, down from 63% in 2006).

## The "comply or explain" principle

CNMV Circular 4/2007 modified the standard form for listed companies' corporate governance reports to the new disclosure requirements introduced by the Unified Code. A number of new questions were added and the section dealing with the degree of compliance with each recommendation was modified to make the "comply or explain" principle more transparent.

Following a review of the criteria used for disclosing the degree of compliance with the Code's recommendations in the corporate governance reports, which covered 100 companies including the entire Ibex 35, fifty subpoenas were issued (Ibex: 21).

The subpoenas requested additional information or clarification about 39 of the Code's 58 recommendations. In some cases, the reporting company was required to rectify the information by presenting a new corporate governance report:

- The recommendations giving rise to the greatest proportion of subpoenas are those relating to the board of directors and to directors.
- All the companies that were subpoenaed provided additional information and explanations and 90% of them rectified their initial disclosure by presenting a new corporate governance report. The amendments have been added to the CNMV website.
- A significant number of the incidents detected were due to errors or inconsistency in compliance since this was the first year in which the Unified Code was applied and also because of the change in the form of the corporate governance report.

### Recommendations to which subpoenas referred and number of companies affected

TABLE 9.7

| Number and description of the recommendation in the Unified Code of Corporate Governance |   | No. of companies |
|--|---|------------------|
| 1  | Absence of limitations in the articles of association regarding the maximum number of votes that a shareholder may cast, and other restrictions on control            | 2                |
| 2  | Transparency in relations between the parent company and subsidiaries, and mechanisms for resolving conflicts of interest   | 1                |
| 5  | Separate voting of substantially independent matters in shareholders' meetings  | 1                |
| 8  | Powers of the board of directors  | 5                |
| 11   | Transparency with regard to related parties and relations with directors classified as external who are neither proprietary nor independent                           | 4                |
| 12   | Proportion between the number of proprietary and independent directors and the percentage of capital represented by the proprietary directors and the others          | 5                |
| 13   | Independent directors should account for at least one-third   | 9                |
| 14   | Explanation of each director's status to the shareholders' meeting, review of status, and transparency with regard to proprietary directors representing less than 5% | 4                |
| 15   | Gender diversity and transparency with regard to initiatives  | 10               |
| 17   | When the chairman is also the first executive, an independent director should be empowered for certain issues   | 8                |
| 18   | Functions of the secretary of the board   | 5                |
| 19   | The board should meet with the necessary frequency  | 1                |
| 20   | The number of absences at meetings should be reduced, and quantified  | 3                |
| 22   | Regular evaluations of the board, of the chairman's performance, and of the operations of the committees  | 1                |
| 23   | Directors should be able to obtain additional information   | 1                |
| 24   | Directors' right to obtain external advice in the discharge of their duties   | 8                |
| 25   | Induction programs for new directors, and refresher programs for all directors  | 4                |
| 26   | Directors' dedication and rules on the number of boards to which they may belong  | 3                |
| 27   | Selection, appointment and reappointment of directors   | 1                |
| 28   | Public information about directors  | 18               |
| 29   | Rotation of independent directors in a period not exceeding 12 years  | 4                |
| 30   | Removal or resignation of proprietary directors when the shareholder they represent reduces or sells its stake  | 1                |

**Recommendations to which subpoenas referred and number  
of companies affected (continuation)**

TABLE 9.7

| Number and description of the recommendation in the Unified Code of Corporate Governance |   | No. of companies |
|--|---|------------------|
| 31   | The board may not propose the removal of an independent director before the end of his term                   | 1                |
| 32   | Establishment of rules under which directors must disclose situations which might discredit the company       | 1                |
| 34   | Letter to the board describing the reasons for early removal or resignation of a director                     | 3                |
| 35   | System for compensation approval and transparency   | 4                |
| 37   | Remuneration of external directors should not compromise their status   | 1                |
| 38   | Remuneration linked to earnings should take account of audit qualifications                                   | 2                |
| 40   | The board should submit a report on compensation to a vote at the shareholders' meeting                       | 7                |
| 41   | Itemised detail of compensation in the notes to the financial statements                                      | 6                |
| 42   | Similar participation of the various director categories in the executive committee and in the board          | 11               |
| 43   | Informing the board of the business transacted by the executive committee                                     | 1                |
| 44   | Rules on the composition and operation of the audit committee and the appointments and remuneration committee | 14               |
| 48   | Presentation of the annual work plan by the head of internal audit to the audit committee                     | 1                |
| 49   | Minimum content of the risk control and management policy   | 3                |
| 50   | Powers of the audit committee   | 6                |
| 54   | Majority of independent directors on the appointments committee   | 4                |
| 55   | Functions of the appointments committee   | 1                |
| 57   | Functions of the remuneration committee   | 1                |

Source: CNMV.

**Classification of directors as independent, and constitution of the appointments committee**

The review of the corporate governance reports for 2007 revealed that 38 companies had not established an appointments committee by the end of the year. Nevertheless, four of those companies reappointed six directors classified as independent and another three appointed seven directors classified as independent, resulting in subpoenas from the CNMV. In 2008, only five of those 38 companies had established an appointments committee.

The degree of compliance with the binding definitions of the various director categories was analyzed. Specifically, the classification of 280 directors that formed part of the sample was analyzed, leading to subpoenas to 29 companies in connection with the application of the binding definitions to 33 independent directors, one proprietary director and four directors classified as "other external".

Table 9.8 contains a statistical summary of the conditions in the definition of independent director to which these subpoenas referred, together with the number of companies subpoenaed in each case and the total number of directors affected.



## Binding definition of independent director

TABLE 9.8

| Description of the breached condition  | No. of companies | No. of directors |
|--|------------------|------------------|
| Must have been proposed for appointment or reappointment by the appointments committee   | 6                | 14               |
| Must not have, or have had in the preceding year, a material business relationship with a significant shareholder or its group either on his own behalf or as a significant shareholder, director or senior executive of the related company | 2                | 2                |
| Must not have, or have had in the preceding year, a material business relationship with the company or its group either on his own behalf or as a significant shareholder, director or senior executive of the related company               | 4                | 4                |
| Must not have been an executive director of a group company in the last five years   | 3                | 3                |
| Must not have been an executive director of a significant shareholder in the last five years   | 1                | 2                |
| Persons who are relatives up to the second degree of an executive director or senior executive may not be classified as independent directors  | 1                | 1                |
| Must not own more than 3% of capital   | 1                | 1                |
| Directors representing significant shareholders will be classified as proprietary directors. A director is presumed to represent a significant shareholder when he is a director of the shareholder  | 3                | 3                |
| Directors who perform senior management functions at any group undertaking are classified as executive directors   | 1                | 3                |

Source: CNMV.

With regard to the other binding definitions in the Unified Code, three companies were subpoenaed to classify, as “other external”, directors who performed executive or senior management functions at undertakings in the same group or who had a significant holding in the company. A subpoena was also issued to a company that had classified a director who performed executive functions as a proprietary director.

### 9.3.2. Constitution and composition of the audit committee

As in previous years, the CNMV reviewed the constitution and composition of audit committees at all listed companies, with the following results:

- a) Members of the audit committee: The composition of the committee fulfils the regulatory requirements at the vast majority of listed companies. In 2008, only three companies did not fully comply and one of them was in the process of delisting.
- b) Chairman of the audit committee: a total of 25 listed companies were monitored in 2008 for failure to notify replacement of the chairman of their audit committee. All of them replaced the chairman or will complete the process of replacement in the first quarter of 2009.

### 9.3.3. Companies' internal regulations

In 2008, a large number of companies amended the regulations governing their shareholders' meeting and board of directors. Most of the changes were to align the

regulations with the recommendations of the Code. This process had commenced in 2006 following the approval of the Unified Code of Corporate Governance.

The main amendments to the Shareholders' Meeting Regulations were as follows:

- i. 51 companies included separate voting of items that are substantially independent.
- ii. 46 companies granted additional powers to their shareholders' meeting.
- iii. 45 companies allowed for fractional voting in their shareholders' meeting regulation.
- iv. Another 16 companies established that the detailed motions to be put before the shareholders' meeting should be published at the same time as the notice of meeting.
- v. Just five companies included the possibility of submitting a report on directors' remuneration to the shareholders' meeting as a separate item on the agenda on a consultative basis.

An analysis of the amendments made by companies to their regulations reveals that, since 2006, a large number of Spanish listed companies have adopted the possibility of voting by electronic means at the shareholders' meeting, in conformity with Directive 2007/36/EC on the exercise of certain rights of shareholders in listed companies. The deadline for transposing this Directive is 20 August 2009.

The main amendments to the board of directors regulations are summarised below:

- i. A total of 56 companies amended the composition of the audit committee in line with the recommendations of the Code.
- ii. 51 companies added new powers for the board of directors.
- iii. Another 51 established new functions for the appointments and remuneration committee in line with the Code's recommendations.
- iv. The board regulations of 41 companies established that the board secretary must focus particularly on ensuring that the board's actions conform to current regulations and the articles of association and take account of the recommendations on corporate governance.
- v. A total of 36 companies have included binding definitions of the various director categories in the board regulation.
- vi. 22 companies established that, once per year, the board must review the quality and efficiency of its work and the performance of the chairman and the company's chief executive, as well as the workings of the committees.
- vii. At 19 companies where the chairman is also the first executive, an independent director was granted the power to call board meetings as a means of avoiding the concentration of power.

- viii. A total of 18 companies have established mechanisms to improve transparency with regard to remuneration.
- ix. Ten companies established that independent directors must account for at least one-third of the board.
- x. And six companies implemented mechanisms to correct the low or zero presence of female directors.

Companies are not being diligent in pursuit of the goal of transparency with regard to remuneration policy (particularly the itemised breakdown of various classes of remuneration) or of increasing the presence of women on the board.

#### 9.4 Regulatory disclosures and other communiqués filed with the CNMV

In 2008, the CNMV received 11,320 regulatory disclosures from issuers, 16.6% more than in 2007 (Table 9.11). The Cifradoc procedure was used for 60.4% of the regulatory disclosures, enabling them to be published automatically on the CNMV website.

| <b>Regulatory disclosures and other communiqués received by the CNMV</b> |              |               |              |
|--|--------------|---------------|--------------|
| Type   | 2007         | 2008          | % chg. 08/07 |
| <b>Regulatory disclosures</b>  | <b>7,779</b> | <b>9,478</b>  | <b>21.8</b>  |
| Acquisitions or sales of holdings  | 814          | 454           | -44.2        |
| Notices and resolutions of shareholders' meetings                        | 584          | 602           | 3.1          |
| Issuers' advance results   | 865          | 912           | 5.4          |
| Changes in the board or other governing bodies                           | 357          | 344           | -3.6         |
| Audit committee (Act 44/2002)  | 9            | 5             | -44.4        |
| Periodical disclosure by asset securitisation trusts                     | 2,475        | 3,554         | 43.6         |
| Periodical disclosure by mortgage securitisation trusts                  | 779          | 834           | 7.1          |
| Annual corporate governance report                                       | 234          | 298           | 27.4         |
| Suspensions and resumption of trading                                    | 119          | 85            | -28.6        |
| Delistings (including prior agreements)                                  | 28           | 20            | -28.6        |
| Disclosures of short positions   | —            | 71            | —            |
| Liquidity contracts  | —            | 28            | —            |
| Changes in credit ratings  | —            | 44            | —            |
| Other  | 1,515        | 2,227         | 47.0         |
| <b>Other notifications</b>   | <b>1,929</b> | <b>1,842</b>  | <b>-4.5</b>  |
| Announcement of coupon and dividend payments                             | 264          | 257           | -2.7         |
| Meetings with analysts and investors. Notices of meetings                | 184          | 177           | -3.8         |
| Information about issuers' results                                       | 377          | 342           | -9.3         |
| Presentations about companies  | 200          | 139           | -30.5        |
| Other  | 904          | 927           | 2.5          |
| <b>Total</b>   | <b>9,708</b> | <b>11,320</b> | <b>16.6</b>  |

Source: CNMV.

The increase in the volume of regulatory disclosures was due mainly to communiqués of: (i) other disclosures, which increased by 47%, (ii) periodic disclosures by asset securitisation trusts (43.6%), and (iii) annual corporate governance reports (27.4%).

Three new types of disclosure were added to the register of regulatory disclosures in 2008: (i) disclosures of short positions due to the obligation to disclose short positions amounting to more than 0.25% of 20 Spanish financial institutions (71 disclosures were received); (ii) liquidity contracts, i.e. purchases and sales in the secondary market of an issuer's securities by an intermediary under a liquidity contract arranged in accordance with CNMV Circular 7/2007 (28 were disclosed); and (iii) changes in credit rating (44 disclosures).

## 10 Market supervision

The CNMV's mandate is to supervise the markets in order to ensure their correct operation. This chapter contains an overview of its actions in this sphere. Section 10.1 analyses the surveillance activities performed in Spain's various markets. Section 10.2 focuses on the activities of the Market Monitoring Unit, which intervenes if there are signs of irregularities in a particular transaction. Lastly, section 10.3 focuses on the market in corporate control and outlines actions in cases of takeover bids.

To perform these tasks, the CNMV monitors transactions where there might be signs of market failure, distortions in price discovery processes and incidents in transaction settlement. In 2008, the CNMV analysed 78,318 transactions (one in every thousand performed in the markets). Most of the transactions reviewed were in the equities market (Table 10.1).

**Summary of supervisory activity. 2008**

TABLE 10.1

|   | Equities   | Fixed-income | Derivatives | Settlement | Total      |
|---|------------|--------------|-------------|------------|------------|
| No. of transactions                           | 36,937,580 | 825,086      | 6,055,902   | 34,923,653 | 78,742,221 |
| Supervisory signals <sup>1</sup>              | 38,413     | 6,728        | 14,690      | 18,487     | 78,318     |
| Subpoenas                                     | 411        | 19           | 11          | 13         | 454        |
| Supervisory reports                           | 160        | 13           | 19          | 5          | 197        |
| Reports sent to other directorates and bodies | 6          | 17           | 7           | 0          | 30         |
| Periodic reports                              |            | 24           | 24          | 24         | 72         |

Source: CNMV.

1. Signals that identify transactions or groups of transactions in which there have been unusual movements in certain parameters, flagging them for analysis for supervisory purposes.

### 10.1 Salient actions by the CNMV in the various markets

#### 10.1.1. Equities

The CNMV focuses its supervision of Spanish equities on achieving two crucial objectives for ensuring that markets work properly: preventing the use of inside information and preventing price manipulation.

To meet the first of these objectives, the CNMV conducts ex-ante or preventive supervision to avoid situations of asymmetry in the dissemination of price-sensitive

information and to contain the spread of misleading information. To achieve these aims, the CNMV has the power to suspend trading in the shares involved. Furthermore, it performs ex-post supervision by studying the trading of those shares which, as the subject of regulatory disclosures, have been exposed to possible leaks.

The second major block of activity focuses on detecting market manipulation. To this end, on its own initiative the CNMV examines trading in those shares where it detects abnormal prices and volumes and those that, because of their scant liquidity, are more sensitive to practices that might send markets false or misleading signals regarding demand, supply and price. The special circumstances affecting the markets in 2008 obliged supervisors to increase the level of surveillance on trading of certain kinds of securities, and particularly to monitor compliance with regulations concerning hedging and transparency in short positions.

As part of its preventive duties, in 2008 the CNMV implemented various initiatives that were set out in decisions by the Executive Committee on short-selling and on detecting and reporting suspicious transactions, which were disseminated via the website. For the same purpose, market members were sent a letter on the prevention of practices that distort the price discovery process through the introduction of small orders in non-liquid securities.

### Trading halts due to disclosure of information

The CNMV can halt trading in a security if it suspects that there is significant information related to it that is not known to the market.

In 2008, the number of trading halts in equities was considerably lower than in 2007, in terms of both the number of issuers and the number of issues affected (Table 10.2). In both cases, the numbers decreased by around 40%. The breakdown of trading halts by cause (Table 10.2) shows that the main reason was the disclosure of price-sensitive information, which accounted for more than 92% of all temporary suspensions. Almost 25% of all trading halts were in the real estate sector, followed by trade and sundry services (12%), transport (10%), and food, beverages and tobacco (10%).

| <b>Trading halts</b>                             |             | TABLE 10.2  |
|--|-------------|-------------|
|  | <b>2007</b> | <b>2008</b> |
| No. of issuers halted                            | 54          | 33          |
| No. of halts                                     | 83          | 51          |
| Presentation of takeover bids                    | 23          | 1           |
| Dissemination of price-sensitive information     | 56          | 47          |
| Expiry of acceptance period for delisting offers | 4           | 0           |
| Other  | 0           | 3           |

Source: CNMV.

As a result of market conditions, there were practically no takeover bids, which explains why there was only one halt under the "Presentation of takeover bids" heading and none under the heading "Expiry of acceptance period for delisting offers."

Furthermore, there is a considerable degree of coordination in Europe in this connection. Since the introduction of MiFID, European regulators have established a mechanism to report trading halts, resumption of trading, and delistings.

### Surveillance of research reports and presentations

The CNMV performs specific surveillance of presentations organised by issuers, based on guidelines issued by the CNMV in December 2005 concerning informative meetings with analysts, institutional investors and other securities market professionals. Due and timely announcement of the date and objective of these actions, the simultaneous dissemination of the same information to all investors—and of any other which emerges during subsequent presentations or meetings with the press or analysts—are the supervisor's main concerns in this regard.

### Study of additions and removals from the Ibex 35

Measures taken by the CNMV to monitor market activity included a systematic analysis of securities added to and relegated from the Ibex 35 during the revisions of the index that occurred in 2008.

Inclusion in the Ibex 35 index is very important for companies in Spain; advantages include enhanced visibility and reputation and increased share liquidity, with the result that the shares can be included in the portfolios of many institutional investors (mainly index trackers). Inclusion in the index often gives a company an edge that translates into a higher share price.

Analysis of each change in the composition of the index focused on checking whether trading in shares of companies viewed as candidates for addition or removal and those actually added or removed was orderly and legitimate, without distortions that might reveal artificial trading aimed at ensuring that a share remained in or was added to the index, to the detriment of other candidate securities. Furthermore, the CNMV checked that, following each review, the components of the Ibex 35 complied with the technical regulations governing the composition and calculation of the index.

### Short positions

At a special meeting on 22 September 2008, the CNMV Executive Committee decided to require disclosure of short positions in 20 financial securities in excess of 0.25% of a company's share capital, as well as any increase in these positions or any reduction below the threshold of 0.25%. The new transparency obligation was established on a temporary basis, although it was still in place at the time of writing this report.

Furthermore, the Executive Committee reminded market participants of the ban on naked short selling for all securities listed in the stock market and urged market members to use the power granted to them under Article 39 of the Securities Market Act to ensure that their clients actually own the securities before processing sell orders.

To facilitate compliance in practice, the agreement clarified the concepts of short selling and naked short selling. In this regard, the decision emphasised that naked shorting is a breach of existing trading rules.

Table 10.3 shows the aggregate short position in securities subject to transparency obligations. In general, the reminder of the ban on naked short selling and of the obligation to disclose short positions has helped improve the settlement discipline of all securities and has contributed to reducing intraday trading activity.

A number of countries implemented restrictive measures (see table below). However, in the early months of 2009, supervisors such as the SEC and FSA withdrew these measures and others eased them.

**Short positions in financial sector securities  
at 30 December 2008**

TABLE 10.3

| Security          | Number of shares | Percentage of share capital |
|-------------------|------------------|-----------------------------|
| Popular           | 63,436,214       | 5.229                       |
| BBVA              | 41,975,668       | 1.120                       |
| MAPFRE            | 30,759,913       | 1.152                       |
| Santander         | 16,213,481       | 0.200                       |
| Sabadell          | 15,632,500       | 1.274                       |
| Bankinter         | 7,945,000        | 1.960                       |
| Banco de Valencia | 993,656          | 0.210                       |
| Pastor            | 464,134          | 0.180                       |

Source: CNMV.

### Short selling: measures implemented in Spain and other countries

In order to ensure orderly operation of the markets, at the end of September 2008 most European regulators imposed restrictions on short selling and introduced transparency obligations regarding net short positions. The table below summarises the measures approved in different countries.

#### Summary of measures implemented in different countries

| Country         | Measures   |
|-----------------|--|
| Spain (CNMV)    | <ul style="list-style-type: none"> <li>– Reminder of the existing ban on naked short selling in all securities, including intra-day transactions. Recognition of the needs of market-makers and similar parties.</li> <li>– Public disclosures: disclosure of short positions exceeding 0.25% of the share capital of 20 financial securities.</li> </ul>  |
| Germany (BaFin) | <ul style="list-style-type: none"> <li>– Banned practices: naked short selling in 11 financial securities (temporary ban until 31/12/08). BaFin extended the ban until 31/03/09.</li> <li>– Exemptions: market makers and similar parties.</li> <li>– Public disclosures: publication of short positions is not required.</li> </ul>   |
| Portugal (CMVM) | <ul style="list-style-type: none"> <li>– Naked short selling is generally banned in Portugal.</li> <li>– Banned practices: normal short selling is allowed provided the seller or broker can prove that they actually hold the securities they are selling.</li> <li>– Exemptions: market makers and similar parties.</li> <li>– Public disclosures: publication of short positions exceeding 0.25% of the share capital of 8 financial securities (including Banco de Santander and Banco Popular Español); for other PSI securities it is compulsory to notify the CMVM of short positions exceeding the 0.25% figure. Furthermore, stock market members were obliged to notify the CMVM of all naked short selling transactions (this obligation was lifted on 8/01/09).</li> </ul> |



|                       |  |
|-----------------------|--|
| <b>UK (FSA)</b>       | <ul style="list-style-type: none"><li>– Banned practices: the ban on normal and naked short selling of financial securities in place since 18/09/08 was lifted on 16/01/09</li><li>– Public disclosures: disclosure of short sales of financial securities exceeding 0.25% of the issuer's share capital (except market makers). On 16/01/09, the FSA extended this obligation until 30/06/09. The FSA is considering increasing to 0.50% the percentage above which it will be compulsory to disclose short positions and to include additional levels of 0.1% for subsequent notifications. The FSA is also considering the possibility of extending the obligation to disclose short positions to all listed companies.</li></ul> |
| <b>Italy (CONSOB)</b> | <ul style="list-style-type: none"><li>– Banned practices: initially, the ban referred to naked short selling of financial securities. Later, it was extended to include normal short selling and all securities (Italy extended the ban on short selling of financial issuers' securities and in capital increases to 31/05/09). For other securities, they must be deemed to be available in order for short selling to be allowable (borrowed securities are not considered to be available).</li><li>– Exemptions: market makers and similar parties.</li><li>– Public disclosures: publication of short positions is not required.</li></ul>   |
| <b>France (AMF)</b>   | <ul style="list-style-type: none"><li>– Banned practices: temporary ban (3 months, until 19/12/08) on naked short selling of 15 financial securities. On 19/12/08, the AMF extended the measures indefinitely. On 23/02/09, France announced that it would hold a public consultation to analyse the measures.</li><li>– Exemptions: market makers and similar parties.</li><li>– Public disclosures: disclosure of short positions in 15 financial securities exceeding 0.25% of the issuer's share capital. On 19/12/08, the AMF extended the measures indefinitely.</li></ul>   |

### 10.1.2. Fixed-income

Supervision of fixed-income markets in 2008 continued with the actions launched in previous years (protection of retail investors, surveillance of trading in asset-backed securities and mortgage covered bonds), although the worsening financial crisis made it necessary to place particular emphasis on monitoring credit risk, as well as prices and trading volumes.

One of the most notable supervision actions performed by the CNMV in 2008 was its surveillance of issuers of subordinated debt and preferred shares, which increased significantly in the last few months of the year in order to raise funds that, under certain conditions, compute as credit institutions' equity.

Many of the issues were aimed solely at retail investors. This was a potential source of conflicts of interest, since the issuer was also acting as placer via its network. Consequently, the CNMV paid particular attention to valuing this kind of financial product in the primary market, and especially to aspects linked to the approach, methodology and objective of independent appraisal reports. In order to assess these aspects, the valuations of 12 fixed-income issues aimed at retail investors were reviewed in 2008. Furthermore, on 17 February 2009, the CNMV sent a letter to the chairmen of Spain's financial industry associations setting out the guidelines for vetting fixed-income issues aimed at retail investors, including the content and approach of reports by independent experts, to determine whether the conditions of issues aimed at retail investors are comparable to those that should apply for the adequate placement of a similar issue in the wholesale market. At all events, the CNMV can decide to include warnings in prospectuses regarding issue conditions.

Market activity of issuers of this kind of product was also analysed with a view to detecting cases of discrimination between clients. This analysis led to 10 subpoenas and 5 supervision reports in the year. In 2008, as a result of a number of complaints, particular emphasis was placed on overseeing the activity of liquidity suppliers in these issues; in most cases, they were found to be fulfilling the contractual conditions under which they were supposed to act in the market.

The CNMV individually monitored all transactions in ABS and mortgage covered bonds in AIAF as a result of the crisis in these markets, in order to identify the spread levels prevailing at all times in 2008, the goal being to support checks on new issues and the surveillance of market conditions.

Furthermore, in 2008 the CNMV analysed the change in AIAF methodology for estimating theoretical benchmark prices for instruments listed in this market, and the implications for the calculation of average daily prices published by the market.

Fixed-income issuers are also now obliged to report any rating actions to the market, in order to enhance transparency and foster proper price discovery. This position has been notified to issuers affected by rating actions, and in some cases they were required to release regulatory disclosures. As a result, during the last quarter of 2008, 22 regulatory disclosures were registered in this connection (not including those registered by securitisation trusts).

### 10.1.3. Derivatives

#### MEFF *Renta variable*

In 2008, the CNMV continued to supervise aspects of market operation. With the support of MEFF, analyses were conducted of transactions whose sole purpose is cash transfer between account holders or the discretionary allocation of earnings and losses between managed accounts for tax purposes. Daily supervision duties also focused on matters linked to the regulations that govern prices for put-throughs, cancellations and regulations, among other aspects.

Also, specific analyses were conducted of MEFF activity on dates prior to the disclosure of mergers and acquisitions where there had been an impact on the prices of contracts. Special attention was devoted to changes in account-holders' open interest close to the expiration maturity dates of futures and options contracts, with particular attention to the possible impact of these transactions on spot markets for the underlying shares.

As regards the Central Counterparty Service, emphasis was placed on monitoring regulatory compliance regarding guarantees provided by members, since the considerable volatility in the markets triggered the request for extraordinary guarantees during the trading session as pre-set price fluctuation limits were reached in some cases. The high volatility led to numerous changes in the parameters for calculating daily guarantees. Because of the high levels of volatility in the market, MEFF was obliged to draft twelve circulars in 2008 to adapt these parameters (it drafted six in 2007), and this constituted the main regulatory activity in the market. Also in this connection, the CNMV, in coordination with MEFF, monitored non-compliance by Lehman Brothers, which had hitherto been

a trading member of MEFF. After Lehman went bankrupt, MEFF cancelled its trading membership and transferred and settled its open interest in the Spanish market.

### Olive Oil Futures Market (MFAO)

CNMV supervision focused particularly on analysing positions in the weeks prior to maturity and on monitoring settlement through physical delivery. Again, there were no cases of non-compliance in the settlement of contracts by physical delivery. Furthermore, as in 2007, there were a significant number of deliveries outside the clearing house, as provided in the regulations. Both the deliveries outside the clearing house and those performed through MFAO follow procedures that are comparable to standard practice in the olive oil sector.

### Warrants, certificates and other products

In 2008, despite lower trading levels in this market segment, a record number of issues were listed and the range of underlyings traded also reached a record high, thereby also increasing both the volume of information conveyed to the market and the supervision of specialist members' activities.

In October 2008, turbo warrants began trading with a broader variety of underlyings: futures on Brent oil, gold and, later, the EUR/USD exchange rate. Furthermore, the high volatility in the market, especially in the last quarter, caused many cases of early redemption of these products. Both factors contributed to a considerable increase in notifications of knock-out barrier early redemptions and rotation of these assets.

Issues of certificates with exotic components also continued; their supervision requires careful attention, particularly in situations of high volatility.

During 2008, supervisory activity in the warrants segment focused especially on day trading in warrants with illiquid underlyings. The transactions in this kind of warrant and their respective underlyings were analysed jointly, and very small transactions in the latter were detected; this eventually affects the trading range of the warrant in question.

#### 10.1.4. Registry, counterparties, clearing and settlement

##### Iberclear-SCLV

In the area of settlement supervision, particular attention was paid in 2008 to detecting naked short selling, either via the delivery of securities from loans registered on the same date as the sale or on a later date, or in the context of intraday transactions. In the first case, in order to check whether or not the seller held a sufficient position in the security, supervision focuses on verifying whether the loans used are arranged before or after the sale is ordered. In the second case, the analysis focuses on the performance of the position of each account holder throughout the session, to verify whether there is a position in the security at all

times prior to executing the sale or whether a sale is executed without first holding a position in the security, and the naked short is then closed in the same session. The number of events of this type was not significant.

## 10.2 Market Monitoring Unit

The purpose of the Market Monitoring Unit (MMU) is to conduct investigations to detect practices that are contrary to market integrity. The MMU investigates situations in which there may be market abuse, linked mainly to restricted information (either its possible illegal use or the failure to comply with codes of conduct by issuers and institutions providing investment or advisory services in securities markets), and market manipulation, in respect of both transactions and disclosure.

Table 10.4 details MMU interventions arising from investigations in 2007 and 2008:

| <b>Market Monitoring Unit's Actions</b>         |              | TABLE 10.4   |
|---|--------------|--------------|
|   | <b>2007</b>  | <b>2008</b>  |
| <b>Parties investigated</b>                     | <b>639</b>   | <b>625</b>   |
| Natural persons                                 | 359          | 275          |
| Legal persons                                   | 280          | 350          |
| <b>Actions during the investigations</b>        | <b>1,848</b> | <b>2,311</b> |
| Subpoenas                                       | 1,763        | 2,195        |
| Requests to foreign institutions for assistance | 46           | 50           |
| Depositions                                     | 23           | 49           |
| Visits  | 16           | 17           |
| <b>Subsequent actions</b>                       | <b>9</b>     | <b>5</b>     |
| Prior notifications and warnings                | 5            | 2            |
| Initiation of disciplinary proceedings          | 4            | 3            |

Source: CNMV.

The MMU's investigations may lead to subsequent actions by the CNMV if it is considered that the investigated parties have engaged in practices that are partly or wholly in breach of current regulations. In 2008, these actions were as follows:

- Initiation of disciplinary proceedings: the CNMV Executive Committee decided to initiate two disciplinary proceedings, involving four persons, for possible use of restricted information and for the disclosure of restricted information to third parties, plus one set of disciplinary proceedings against one person for market manipulation.
- The CNMV Executive Committee decided to notify the Public Prosecutor of two investigations conducted by the MMU due to indications of possible criminal activities in relation to the market. One case was related to the illicit use of restricted information resulting in a profit well above the limit of 600,000 euro from which point such conduct ceases to be an administrative infraction and is considered a criminal offence. The other case involved the manipulation of information with a significant impact on trading of the shares of a Spanish issuer.

### **CNMV criteria on the reporting of suspicious transactions**

In line with the guidelines set out in the Initiative against Market Abuse (ICAM), on 24 July 2008, the CNMV Executive Committee approved the CNMV criteria regarding the detection and reporting of suspicious transactions, with the aim of helping institutions that provide investment services to comply with the obligation established under article 83 quater of the Securities Market Act.

The document includes not only the procedure (via established channels and formats) that must be followed when notifying the CNMV of a transaction that is suspected of constituting market abuse, but also necessary recommendations regarding organisational matters (unit in charge of performing these tasks, adequate human resources, sufficient material resources), internal procedures, employee training and IT equipment to detect such transactions.

Additionally, in order to assist financial institutions, guidelines were drawn up for interpreting regulations in areas where some degree of difficulty has been encountered. As well as reporting transactions considered to be suspicious at the time of execution, institutions are also recommended to report transactions that arouse suspicion subsequent to their execution, and even transactions that have been rejected because they might potentially have breached the regulations concerning market abuse.

The document also contains a list of some signs of possible market abuse, which can be used by institutions as a basis for detecting suspicious transactions (both the improper use of restricted information and signs of market manipulation).

Following publication in mid-year of these CNMV criteria on detecting and reporting suspicious transactions, and the establishment of a channel exclusively for this purpose, there has been an increase in the number of notifications to the CNMV from financial intermediaries (in accordance with their legal obligation under Act 12/2006, of 16 May). These notifications are extremely useful for supervising market integrity. However, the number of notifications remains low, highlighting the need to insist on compliance with this legal obligation by the sector as a whole.

### **CNMV recommendations on rumours concerning securities**

Both the CNMV, as supervisor, and issuers of listed securities that are considering or negotiating any kind of legal or financial transaction are obliged to monitor the news which professional agencies and the media disseminate regarding listed securities.

The CNMV decided it was advisable to enhance the transparency of its actions with regard to such news and rumours. In line with recommendations issued by the CESR, the CNMV published a document including not only its own guidelines but also the conduct expected of issuers themselves when news or rumours appear (whether true or not) that might affect the price of their securities, as well as guidelines on the conduct expected of financial intermediaries in these circumstances.

For this purpose, on 12 February 2008, the CNMV Executive Committee approved the criteria for handling news and rumours with regard to listed securities, which establish a series of non-binding measures for:

- Firstly, monitoring and evaluating rumours (relevance, novelty, accuracy and credibility) to determine whether they are actual leaks and, therefore, require the publication of a regulatory disclosure, or simply rumours aimed at manipulation or other equally illegal practices that constitute market abuse, and,
- Secondly, describing the recommended action for issuers and financial institutions when they encounter this kind of information.

### 10.3 Supervision of takeover bids

In 2007, the new takeover law came into force, introducing major changes in Spain's legal framework in this connection. In 2008, the work to adapt supervision of takeover bids to the new regulations continued, and parts of the new regulations were enforced for the first time. Some significant aspects regarding supervision were as follows:

#### Setting a fair price

Supervision of the regulatory criteria for setting the "fair price" is one of the main new features of the regulations concerning takeover bids approved in 2007.

Some of the takeovers authorised in the year met the conditions that enabled the CNMV to approve at a bid price other than the highest price paid by the bidder in the twelve months prior to the announcement of the bid. This was the case of Prisa's bid for Sogecable, in which a lower price than the highest price paid by a member of the bidding group's board was paid, since that was a one-off transaction performed at market price for a very small volume.

In the Altadis bid for Logista, as well as considering the rule of the highest price paid in previous acquisitions by the bidder or persons acting in concert with the bidder, the bid price was ratified by an independent appraisal applying the valuation rules appropriate to a delisting takeover. This valuation was required because it was a creeping takeover in which the bidder did not first acquire a controlling stake, but obtained it indirectly by taking control of a company that owned the controlling interest, via a previous takeover.

The price in the delisting bid of Estabanell y Pahisa was set taking account of the fact that, in this type of takeover, the bid price must be at least the higher of the company's own appraisal and the fair value.

#### Squeeze-out and tag-along

The first three processes under the regulations for squeeze-out and tag-along were performed in 2008. One of these stemmed from a takeover filed the year before for Altadis, and the other two, Logista and Sogecable, from takeovers approved in 2008. The squeeze-out/tag-along transactions led to these three companies being delisted.

Squeeze-out, which was non-existent in Spanish regulations until the reform in 2007, enables the bidder to demand that all shareholders sell their shares in the three months subsequent to the completion of a takeover bid. In parallel, if the bidder decides not to make use of this possibility, all the company's shareholders can exercise their right to tag along (i.e. to demand that the bidder buy their shares). The price of the transactions is the takeover bid price.

These rights are dependent upon the bidder owning at least 90% of voting capital of the target company on the bid's settlement date; at the same time, the takeover must have been accepted by at least 90% of the voting rights which it targeted.

The necessary procedures for performing squeeze-out and tag-along are established in the takeover regulations, and they are detailed in the takeover prospectuses and published on the CNMV website.

Within the framework of supervision of squeeze-out and tag-along procedures, in 2008 the CNMV published a communication relating to the collection of fees for these transactions. This communication was a reminder that these fees must be borne not by the selling shareholders but by the bidder, and a series of expenses are listed which the bidder is not bound to bear because they do not derive from the purchase, exchange or settlement of the securities.

### Acceptance of bids for vetting

Another new item introduced in regulations approved in 2007 is the acceptance of takeover bids for vetting. This is a necessary pre-requisite for clearance of a takeover bid. Acceptance must be notified by the CNMV within at most seven business days following receipt of the documents required to process the transaction.

A bid cannot be accepted for processing if the prospectus contains fundamental errors or does not contain the minimum information required by regulation, if the documentation accrediting the provision of the bond for the takeover or any other compulsory supplementary documentation is missing, or if the request for authorisation is manifestly in breach of the takeover regulations.

In 2008, the CNMV refused to vet a takeover bid filed by a group of bidders for Inbesòs. The reason was the lack of documentation accrediting the provision of bonds within the maximum period established by the regulation.

Because this was a compulsory bid, the consequence of the refusal was the suspension of voting rights on shares already acquired by the bidders and the suspension of all the directors of Inbesòs who had been appointed by those shareholders.

In accordance with the provisions of the takeover regulations, except where unanimous and individually expressed consent is obtained from the rest of the company's shareholders, the voting rights can be reinstated only by filing a takeover bid in which the price is established based on the valuation criteria applicable to a delisting takeover, adding the interest accrued on the fair price at the legal interest rate.

### Exemptions from compulsory takeovers due to mergers

In 2008, there were two cases of control being attained through mergers, which were exempted from compulsory takeovers in accordance with applicable



regulations. These were the merger in which Afirma Grupo Inmobiliario absorbed a number of investees and a company belonging to the Rayet group, and the merger in which Campofrío absorbed Smithfield Foods (which was already a shareholder of Campofrío before the merger).

As a result of these mergers, the Rayet group attained a controlling stake in Afirma and the Smithfield group in Campofrío.

Both shareholders applied for exemption from having to present a takeover bid, and exemption was granted by the CNMV in accordance with the provisions of article 8.g of Royal Decree 1066/2007, after examining the case file in which, based on reports compiled by independent experts, justification was provided to support the claim that the transactions were not mainly aimed at gaining control but were designed for an industrial or business purpose.

### **Cooperation with other bodies and authorities**

In 2008, contacts were held with the French financial market regulator (AMF) to monitor the separation agreement regarding the main shareholders of Metrovacesa in France, which involved transactions with respect to the listed company Gecina.

Two of the takeovers in 2008 were aimed at companies listed only in the Barcelona stock exchange. One was the delisting bid for Estabanell y Pahísa, and the other bid was for Celo, which decided to delist after the takeover. In these cases, the decision on delisting lay with the Catalonia Regional Government's Directorate-General of Finance Policy, whereas the decision on the takeover and delisting procedure lay with the CNMV. Accordingly the necessary measures were taken to coordinate actions between the two bodies.

### **CNMV Circular on forms for announcements and requests for authorisation of bids**

CNMV Circular 8/2008, approving the forms for announcements and applications for authorisation of takeover bids, entered into force in the last few days of 2008.

Articles 16 and 17 of Royal Decree 1066/2007, dated 27 July, concerning takeovers, empowered the CNMV to design forms for the announcements and requests for authorisation for takeover bids as referred to in those articles. The approved forms set out the essential information which these documents must contain.

Via these announcements, which are published on the CNMV website, bidders must publicly announce their decision to file a takeover bid, in the case of both compulsory and voluntary bids, and must provide information regarding the main characteristics of the transaction.

The request for authorisation may be filed at the same time as the bid or later, in the terms established by the regulations, but at all events the information regulated in the Circular and any other information which the bidder believes might be necessary must be included.

Announcements must state that the terms of the bid will be detailed in the prospectus which will be published once the bid has been duly authorised by the CNMV.



This chapter examines the CNMV's supervision of entities within its sphere of competency, namely investment firms and UCITS-related firms. Section 11.1 focuses on the supervision of compliance with codes of conduct in the provision of investment services, section 11.2 overviews matters relating to prudential or solvency supervision, section 11.3 focuses on collective investment, section 11.4 looks at the supervision of venture capital firms and 11.5 deals with securitisation trust operators. The last section details the CNMV's work to prevent money laundering.

The CNMV's supervisory work takes into consideration the findings of the various reports drafted by international bodies in 2008 which indicate the need to improve certain aspects of regulation and supervision, aimed at:

1. Enhancing firms' solvency and improving risk management.
2. Improving transparency with regard to risks and valuation standards, especially when the markets become illiquid.
3. Enhancing cooperation and convergence between supervisors to ensure efficient prudential control of major transnational groups.
4. Preventing crises and managing them when they arise.
5. Improving market operation, including the role of credit rating agencies and existing incentive structures.

Many of these objectives are already being tackled by both regulatory initiatives (e.g. the proposal of a Directive to amend solvency regulations in certain matters) and supervisory measures (including the need for more coordination), which will very likely lead to changes in the actions of national supervisors in the next few years.

For its part, in the medium term the CNMV plans to implement an integrated supervision system with a largely preventive approach to cover investment and ancillary services offered within the framework of MiFID. This will pose a major challenge in efficiency terms, and will require, among other measures, closer cooperation with other supervisors, in particular the Bank of Spain, in view of the importance of credit institutions in marketing financial instruments and securities.

Supervision of the conduct of institutions providing investment services is particularly important for compliance with the objective of protecting investors,

which is part of the CNMV's legal mandate. Furthermore, most incidents detected in the sector are linked to problems with the codes of conduct (Table 11.1). Additionally, important work has been done in supervising possible breaches of codes of conduct with respect to marketing and reporting at Spanish institutions in relation to cases such as Lehman and Madoff (see box below).

**Summary of incidents detected at entities that provide investment services**

TABLE 11.1

| Area analysed  | Main issues detected   |
|--|--|
| <b>Financial requirements</b>                            | <ul style="list-style-type: none"> <li>- Insufficient equity.</li> <li>- Deficiencies in calculating equity requirements.</li> <li>- Incidents relating to accounting records and completion of confidential financial and risk statements.</li> </ul>   |
| <b>Organisational requirements</b>                       | <ul style="list-style-type: none"> <li>- Insufficient resources and procedures for appropriate control of activities and risks.</li> <li>- Lack of independence and autonomy in decision-making between group entities.</li> <li>- Deficiencies in the process of delegating duties.</li> <li>- Failure to implement policies to identify and manage conflicts of interest in relation to separate areas.</li> <li>- Inadequate management and documentation of conflicts of interest triggered by the existence of put-throughs between clients.</li> <li>- Inadequate management of conflict of interests originating when research reports are published on a listed company that is, at the same time, a major client, without properly disclosing this fact.</li> <li>- Incidents in the content of trade and brokerage order records with respect to the provisions of Regulation 1287/2006.</li> <li>- Deficiencies concerning safekeeping of client documentation, client profiling documents, contractual documentation or supporting documentation for transactions ordered by clients.</li> </ul> |
| <b>Internal code of conduct</b>                          | <ul style="list-style-type: none"> <li>- Non-compliance with provisions of the internal code of conduct or existence of deficiencies in its contents because it is not in line with the nature of the activities carried on by the entity or group.</li> </ul>   |
| <b>Codes of conduct: classification of clients</b>       | <ul style="list-style-type: none"> <li>- Failure to notify clients of the right to demand a different classification, indicating the potential limitations of the new classification in terms of client protection.</li> <li>- Incidents in procedures established for changing clients' regulatory classification.</li> <li>- Lack of periodic procedures to review the assigned category.</li> </ul>   |
| <b>Codes of conduct: suitability and appropriateness</b> | <ul style="list-style-type: none"> <li>- Deficiencies linked to the procedures for obtaining the information necessary to evaluate suitability and appropriateness: incidents in the design of suitability and appropriateness tests or other processes established by the entity to obtain this information, and in the effective implementation of these processes.</li> <li>- Periodic reviews of the information obtained to evaluate suitability and appropriateness.</li> <li>- Incidents in the design and effective implementation of warnings regarding failure to evaluate inadvisability or inappropriateness of the financial instrument.</li> <li>- Adoption of the client's initiative always in the case of non-complex products.</li> <li>- Incidents in the classification of complex and non-complex products and the assignment of risk levels to certain products.</li> <li>- Failure to adapt managed portfolios or personalised recommendations to the client's investment goals.</li> </ul>   |

**Summary of incidents detected at entities that provide investment services (continuation)**

TABLE 11.1

| Area analysed  | Main issues detected  |
|--|---|
| <b>Codes of conduct: obligations concerning reporting to clients</b> | <ul style="list-style-type: none"> <li>– Incidents in the information provided to clients prior to the provision of investment services in relation to the characteristics and inherent risks involved in certain financial instruments.</li> <li>– Failure to comply with provisions on information to be sent periodically to clients in connection with the service provided.</li> <li>– Deficiencies in the valuation of certain financial instruments in the periodic information delivered to clients.</li> <li>– Discrepancies between the information contained in prospectuses, advertising and internal notifications or circulars sent to the commercial network regarding the nature of products, their main features and risks.</li> </ul> |
| <b>Codes of conduct: inducements</b>                                 | <ul style="list-style-type: none"> <li>– Charging of fees for investment services provided to clients without properly disclosing such fees.</li> </ul>   |
| <b>Codes of conduct: best execution</b>                              | <ul style="list-style-type: none"> <li>– Failure to formally review the best execution policy and order execution contracts annually or whenever there is a significant change that affects an entity's capacity to continue to obtain the best possible results in the execution.</li> </ul>   |
| <b>Codes of conduct: client order transmission</b>                   | <ul style="list-style-type: none"> <li>– Insufficient procedures for certifying that investment decisions in favour of certain clients are taken prior to transfer to the intermediary, and the existence of valid distribution or disclosure criteria to ensure that no client is adversely affected when transactions are carried out for several of them.</li> </ul>   |
| <b>Client support services: client complaints</b>                    | <ul style="list-style-type: none"> <li>– Failure to include the possibility of filing a complaint with the CNMV in the form for notification to clients of the conclusion of a complaint made to the entity itself.</li> </ul>  |

Source: CNMV.

**Impact of the Lehman and Madoff cases**

The cases of investment bank Lehman and broker Bernard L. Madoff were two of the prime exponents of the financial crisis that gripped the global markets during most of 2008. Indeed, it was the bankruptcy of US bank Lehman Brothers in September 2008 that pushed markets over the edge and placed the global financial system in an extremely precarious situation. A few months later, in December 2008, the Ponzi scheme operated by Bernard Madoff shocked the world because of its sheer scale (50 billion dollars).

These two cases were notorious not only because of their impact on market confidence and their scale, but also because of their many international ramifications. Entities subject to CNMV supervision were not immune to these cases.

The demise of Lehman affected 459 Spanish UCITS and had an impact of 300 million euro (0.13% of the total managed assets) as a result of direct investments held by these UCITS in debt securities issued by Lehman, of OTC transactions with this counterparty and, to a much lesser extent, of investment in Lehman shares. OTC derivative investments affected mainly guaranteed funds; accordingly, the impact (averaging 3.21% per fund) will be absorbed by the guarantor when the guarantee expires. The average impact on other entities was 0.9%.

With regard to investments exposed to Lehman, the CNMV has been in close contact with the entities affected in order to ensure appropriate valuation of the assets affected and the due transparency vis-à-vis investors (particularly by including specific information in the periodic reports issued by UCITS).

The Lehman Brothers bankruptcy led the CNMV to issue subpoenas to 20 credit institutions for information, among other matters, about the number of clients and their nominal position in products issued, referenced, guaranteed or structured by Lehman Brothers. Furthermore, they were asked to periodically report to the CNMV any claims filed with their client services or support departments in respect of these products. The idea was to detect signs of breaches of regulations concerning the marketing of financial instruments.

The information requested from the institutions evidenced the scope of the impact of the Lehman Brothers bankruptcy on Spanish investors: more than 11,000 of these institutions' clients were affected. The total amount marketed was 1.1 billion euro (75% by five institutions) linked to 314 issues. The investors affected filed 733 complaints with the respective institutions involved in marketing these instruments between September and December 2008.

On 24 September 2008, as a result of the numerous queries received from Spanish investors interested in the effects on their investments stemming from the difficulties then being experienced by Lehman Brothers Holding Inc., the CNMV drafted a document which it published on its website that responded to the most frequently-asked questions from investors. Furthermore, at the end of November 2008, as a result of the various queries raised with the CNMV by investors, evidencing the difficulties investors were encountering in obtaining a copy of the prospectus of the issues marketed by the Lehman group in Spain, in order to ensure compliance with their obligation to adequately inform investors at all times, regardless of the distribution channel used, the CNMV demanded 29 credit institutions to send the appropriate instructions to their networks.

The exposure of clients that had portfolio management contracts with investment firms was not very significant: eight entities had securities issued by Lehman worth 3.2 million euro in portfolios managed for 87 clients.

After Lehman was declared bankrupt, the CNMV monitored trades in the days preceding the announcement by Lehman group companies that were pending settlement in order to determine the final impact of this event on the Spanish stock market, specifically the resulting losses. This affected 4 entities.

In the case of the fraud by US brokerage house Bernard L. Madoff Investment Securities LLC, exposure of Spanish UCITS due to their investments in foreign UCITS directly affected by the scandal (mostly institutions which might be described as hedge funds but also investments in one Luxembourg UCITS with an EU passport) totalled 106.9 million euro (0.05% of the total managed assets), at a total of 224 UCITS. Average exposure was 4.73% in the case of funds and 3.24% for open-end investment companies (SICAVs).

As with Lehman, the CNMV supervised operators in order to guarantee proper reporting and transparency to investors. Furthermore, UCITS management companies were told that investments affected by the fraud should be written off until further information became available, and they were urged to implement measures to ensure that the amounts that might eventually be recovered from the fund were used to mitigate the damage to affected shareholders.

Furthermore, on 17 September and 16 December 2008, the CNMV published press releases concerning the Lehman and Madoff cases. The CNMV was the first European supervisor to do so and it quantified the impact on Spanish UCITS in both cases and reminded the latter of their valuation and transparency obligations.

As regards investment firms, four held funds managed by Madoff Investment Securities LLC on behalf of clients, with a total market value of 15 million euro.

Banco Santander was significantly affected by the Madoff fraud. This led Santander to file a regulatory disclosure on 27 January 2009 regarding the issuance of preferred stock that was exchangeable for investments exposed to the Madoff fraud held by certain of the Santander group's private banking clients. In this connection, the CNMV published a document providing information regarding these preferred shares, their risks, and the conditions of liquidity, remuneration, redemption, etc.

## 11.1 Supervision of codes of conduct in the provision of financial services

### 11.1.1. MiFID's first year

MiFID was finally transposed into Spanish law in 2008 with the enactment of implementing regulations.

Following approval in 2007 of Act 47/2007, of 19 November, amending Act 24/1988, of 28 July, on the Securities Market, which transposes Directive 2004/39/EC (level I) and a small part of Directive 2006/73/EC (level II), in February 2008 Royal Decree 217/2008, of 15 February, on the rules governing investment firms and other providers of investment services was enacted, thereby completing the transposition into Spanish law of Directive 2006/73/EC. In 2008, the CNMV began work on various aspects included in the Securities Market Act and Royal Decree 217/2008 affecting codes of conduct and pending regulatory development.

These national laws must be supplemented by Regulation 1287/2006/EC, implementing Directive 2004/39/EC as regards record-keeping obligations for investment firms, transaction reporting, market transparency and admission of financial instruments to trading.

MiFID introduced significant new features in various spheres linked to institutions that provide investment services, including:

- The creation of a new category of investment firm: financial advisory firms.
- The inclusion of new investment services: management of a Multilateral Trading System (MTS) and investment advisory services. The latter is no longer an ancillary service and is now considered an investment service.
- The establishment of new organisational requirements, to support companies' various control functions.
- New codes of conduct, including: client classification, evaluation of the suitability or appropriateness of the product or service, information to clients prior to providing investment services, and the best execution principle.

Furthermore, although marketing investment services and winning new clients are not themselves classified as financial services but as initial activities, the Securities Market Act provides that they may only be performed professionally, by the entities authorised to provide investment services or by their agents.

All of these changes made it necessary to undertake a thorough and detailed review of the supervision procedures and work programmes in order to bring them into line with the new regulations. Furthermore, after this first year of MiFID, it would be particularly advisable for firms to assess the degree of compliance with the new obligations in order to determine whether their plans to adapt to them have been duly implemented and the measures they have adopted are achieving their purpose.

CESR published a number of documents in 2008 regarding supervision of key areas of MiFID so as to contribute to convergence in supervisory practices<sup>1</sup> or inform investors<sup>2</sup>. Some of them<sup>3</sup> include sample questions for supervisors to use when evaluating firms' compliance with the regulations. The questions are designed in such a way that each supervisor can use them as it sees fit within its own supervisory methodology.

As mentioned in the 2007 Annual Report, the CESR Intermediaries Subgroup received a mandate from the European Commission to draw up a Multilateral Memorandum of Understanding (MOU) containing practical agreements among CESR members for the supervision of obligations defined by MiFID in connection with foreign branches. At the end of 2007 and during 2008, the CNMV contacted some European supervisors in order to reach practical agreements regarding the supervision of branches. As a result, at the end of 2008, the CNMV sent information requests to the 39 branches of credit institutions and investment firms from Germany, Belgium and the UK that were registered on that date, asking them for information on the number of clients and amount of the investment services provided via the branches, broken down by category. The analysis of this information will determine the most suitable mechanism for cooperation between the CNMV and other supervisors.

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1. *Questions and answers on MiFID: Common positions agreed by CESR Members.*

2. *Consumers' Guide to MiFID - Investing in Financial Products.*

3. *Supervisory briefings -Best execution, Supervisory briefings -Inducements y Supervisory briefings -Conflicts of interest.*

### 11.1.2 Supervision of codes of conduct in the provision of financial services

The provision of investment services and ancillary services is the sole activity of investment firms, but credit institutions are the main providers of investment services in Spain, due primarily to their large branch networks.

Consequently, in Spain banks have traditionally played a major role in marketing financial instruments among retail investors. Moreover, products are becoming increasingly complex and there has been a steady development of investment culture, with the result that investors are starting to ask banks to recommend more sophisticated investment products. In addition to these factors, as observed throughout 2008, investors are now making greater demands when it comes to the liability of marketers.

The CNMV supervises codes of conduct for the provision of investment services by both credit institutions and investment firms. In 2008, this activity was shaped by the entry into force of MiFID. This, and other aspects, brought the definitive consolidation of significant requirements for firms providing investment services.

These stricter requirements are particularly significant in respect of the information to be provided to, and obtained from, clients. The information requirements are scaled at different standards according to the client's classification, the nature of the service and the kind of instrument or transaction. The ultimate objective is that the client should have the information necessary to make well-founded investment decisions, especially with regard to the characteristics and risks of the financial instruments and that, depending on the service provided, entities should be able to assess whether the service or product is right for the client.

The supervision objectives for 2008 granted priority to these aspects, which are fundamental in ensuring investor protection.

#### Outcome of supervising codes of conduct

TABLE 11.2

| Area analysed                               | Key supervision aims  |
|---|---|
| <b>Regulatory classification of clients</b> | <ul style="list-style-type: none"><li>– Assignment of regulatory category to pre-existing clients.</li><li>– Notification of the category assigned.</li><li>– Periodic review of categories.</li><li>– Processing of applications to change category.</li></ul>   |
| <b>Prior information</b>                    | <ul style="list-style-type: none"><li>– Content of advertising communication.</li><li>– Specific information on the nature and risk of financial instruments.</li><li>– Breakdown of cost, expenses and inducements.</li></ul>  |
| <b>Order receipt and processing</b>         | <ul style="list-style-type: none"><li>– Execution only vs. advisability: complex products and initiative of the entity.</li><li>– Compilation of data to evaluate knowledge and experience.</li><li>– Evaluation of knowledge and experience and notification of the result to clients.</li></ul>                           |
| <b>Investment advice</b>                    | <ul style="list-style-type: none"><li>– Personal vs. generic recommendations.</li><li>– Investment advice vs. marketing work.</li><li>– One-off vs. ongoing advice.</li><li>– Suitability of recommendations to the client's investor profile.</li></ul>  |
| <b>Discretionary portfolio management</b>   | <ul style="list-style-type: none"><li>– Compilation of data to evaluate objectives, knowledge and experience, and financial situation.</li><li>– Assessment of the client's investor profile. Significance of investment objectives.</li><li>– Suitability of managed portfolio to the client's investor profile.</li></ul> |



## Regulatory classification of clients

One of the aims of supervision in 2008 was to analyse the classification of clients into the regulatory categories of professional and retail investors. Correct classification is crucial, since it has a major impact on the degree of protection which the codes of conduct afford clients, enabling entities to presuppose that the client has particular knowledge and experience, or otherwise, and their financial situation.

During the year, checks were run on the procedures for segmenting pre-existing client databases and the correct notification of the category assigned as well as the procedures for periodically reviewing the assigned regulatory category and any changes in that category.

Only those clients who have the experience and knowledge necessary to make their own informed investment decisions and are able to properly assess the risks of these investments for themselves should be classified as professionals. In order to guarantee that persons and small and medium-sized enterprises receive the utmost protection possible, they are initially classified as retail investors by default.

However, this initial classification may be changed. Nevertheless, the regulations establish a very demanding procedure so as to ensure that clients who relinquish the maximum degree of protection do so voluntarily and are aware of the consequences. It is important to highlight the possibility of requesting a change of category that entails less protection for a specific kind of product or transaction.

## Prior information about financial instruments

Checks in this area focused on the content of advertising referring to specific financial instruments and in the specific information about the nature and risk of the financial instruments.

Advertising must be clearly identifiable as such and must meet certain requirements in regard to the presentation of potential profits as well as applicable risks, inclusion of past or future results and a comparison of services and instruments so that they may be considered impartial, clear and not misleading.

Moreover, sufficiently in advance of providing the investment service, the firm providing the service must send their clients an explanation of the characteristics and risks inherent to the financial instruments, with sufficient detail for clients to be able to make well-founded investment decisions taking into account their classification as retail or professional investors.

Evidently, the financial instrument itself and its target public, significantly determine the requirements with regard to this information. Accordingly, it is considered necessary that the documentation which entities use to inform clients on the characteristics and risks of a particular financial instrument should include a specific section which sets out the risks affecting the product in a way that is comprehensible. Furthermore, it is important to make every possible effort to ensure that the documentation is written clearly, simply and briefly, so that it is intelligible to the kind of investor to whom it is addressed.



In this regard, the role of distribution channels is vital, and as part of the analysis the procedures of information to them were examined. As a supplement to the information conveyed to the network with regard to the placement of specific products, it is considered necessary to implement training plans on the new features introduced by MiFID and on the nature and characteristics of the various kinds of financial instruments which the entity offers its clients.

### **Inducements from third parties**

The regulations establish three requirements in order for the receipt of inducements from third parties to be considered acceptable: (i) the existence, nature and amount or manner of calculating the inducement must be shown clearly to the client prior to processing the transaction, (ii) receipt of the inducement must enhance the quality of the service provided, and (iii) receipt of the inducement must not prevent the entity from acting in the client's interest.

In 2008, the CNMV supervised the incentives received from third parties to ensure that they were disclosed to clients prior to processing transactions. A very common inducement is the retrocession of marketing fees by UCITS managed by operators outside the marketer's group. The CNMV verified disclosure of the nature and manner of calculation to clients; generic references to the possible existence of this kind of inducement was considered insufficient. Furthermore, checks were performed to ensure that clients were notified regarding the existence of inducements for the distribution of certain financial instruments that are not listed in official markets or not subject to the obligation to register issue prospectuses, the use of which has been widespread in the last few years.

### **Order receipt and transmission or execution.**

The regulations establish three ways, all regulated differently, in which the service of order receipt and transmission or execution with respect to financial instruments may be provided: execution only, evaluation of appropriateness, and combined provision with an investment advice service. This section details the objectives of supervision for the first two forms, while the third is left for the following section.

Since the two factors which determine the way in which order receipt and transmission services are provided (excluding the analysis of the joint provision with an investment advice service) are the complexity (or otherwise) of the financial instrument, and whose initiative it was to provide the service, supervisors must make every effort to verify that entities have established suitable procedures to assess the complexity of products and to identify the initiative in the contract.

The practice observed at some entities of assuming that the initiative in the case of non-complex products is always the client's and that, therefore, there is no need to assess appropriateness is not suitable.

With respect to initiative, article 30 of Directive 2004/39/EC indicates that a service should be considered to be provided at the initiative of a client unless the client requests it in response to a personalised communication, from or on behalf of the firm to that particular client, which contains an invitation or is intended to influence the client in respect of a specific financial instrument or specific transaction. Consequently, the acquisition of a financial instrument must generally only be

considered to be performed at the investor's initiative in those cases where the client asks for a transaction to be performed and the entity did not previously address itself to that specific client in respect of the instrument acquired.

In supervising this area, the CNMV has taken into consideration the process chosen by entities for marketing the various financial instruments, based on factors such as the distribution channel chosen, support from drives and promotions, guidelines sent out to distribution networks, etc.

Furthermore, the provision of brokerage services which demand prior evaluation of their appropriateness for the client requires that entities compile gather information from the clients regarding their knowledge and experience. Accordingly, the 2008 objectives included the review of the procedures and mechanisms used to gather accurate information to evaluate appropriateness, and verification of the mechanisms to warn clients when the entity considers that the product or service is not appropriate.

### **Investment advice and discretionary portfolio management**

The main objective of supervising advisory and management services was to make sure the recommendations and portfolios were suitable to the investor profiles. The CNMV analysed and evaluated the procedures and mechanisms established by entities to compile the information necessary to evaluate appropriateness and the mechanisms used to form an opinion with respect to the investor's profile. The CNMV verified not only whether or not entities evaluate all aspects established by regulations, but also that the evaluation mechanisms do in fact ensure that the investment objectives are respected in accordance with clients' knowledge and experience and their financial situation.

In the case of financial advice, the analysis was scaled, distinguishing between whether or not it was a service provided recurrently (via periodic recommendations generally with regard to an asset or portfolio) or a more specific service (linked generally to financial instruments issued, managed or marketed by the entity itself or its group).

As regards one-off advice, the CNMV reminded entities that a personalised recommendation (given to a particular person and presented in a way that is suitable to that person or based their personal circumstances, and referring to a transaction on a specific financial instrument) must only be offered within the context of investment advisory services. In this case, the initiative is not relevant.

With regard to this aspect, the CNMV also verified that entities had prepared their distribution networks by providing them with training, resources and guidelines to identify when personalised recommendations might be issued. Once again, the marketing process is very relevant when discriminating between the various contexts in which investment services may be provided.

## **11.2 Prudential supervision of investment firms**

At 31 December 2008, 111 investment firms were subject to CNMV supervision (101 broker-dealers and brokers and 10 portfolio management companies). Also, the CNMV had supervisory responsibilities over 48 consolidable groups of investment firms.

The supervision process is based on each firm's risk profile. Much of the supervision is based on information sent periodically to the CNMV: balance sheet, profit and loss account, information on risks and auditors' reports, among others. This analysis is completed through on-site inspections. Accordingly, the distance monitoring work is coordinated with the on-site inspections, thus achieving continuous supervision through systematic and updated knowledge of each entity and/or consolidable group.

Prudential supervision focuses on compliance with capital, risk diversification and liquidity requirements.

### Supervision of investment firms: CNMV subpoenas in 2008

TABLE 11.3

| Type of subpoena                       | Actions    |           | Total      |
|--|------------|-----------|------------|
|  | Remote     | On-site   |            |
| For filing information late            | 72         | 2         | 74         |
| Requesting information                 | 69         | 41        | 110        |
| Corrective measures or recommendations | 32         | 26        | 58         |
| Other communications                   | 5          | 11        | 16         |
| <b>Total</b>                           | <b>178</b> | <b>80</b> | <b>258</b> |

Source: CNMV.

The number of subpoenas sent to institutions was 45% lower than in 2007. This is explained by the decrease in the number of subpoenas for filing information late (down 45%), and the decline in the number of subpoenas urging the adoption of corrective measures or recommendations.

### Surplus equity over solvency coefficient at investment firms<sup>1</sup>

TABLE 11.4

|                                | Surplus             |                | Number of firms, in terms of surplus equity (%) |          |           |          |           |          |           |           |          |           |
|--------------------------------|---------------------|----------------|---|----------|-----------|----------|-----------|----------|-----------|-----------|----------|-----------|
|                                | Amount <sup>2</sup> | % <sup>3</sup> | < 50 <sup>4</sup>                               | <100     | <150      | <200     | <300      | <400     | <500      | <750      | <1,000   | >1,000    |
| Broker-dealers                 | 1,297,449           | 465.42         | 2   | 1        | 3         | 2        | 11        | 3        | 9         | 4         | 3        | 13        |
| Stock exchange members         | 1,102,782           | 494.94         | 1   | 1        | 2         | 2        | 6         | 2        | 5         | 4         | 2        | 12        |
| Non-members                    | 194,667             | 347.91         | 1   | 0        | 1         | 0        | 5         | 1        | 4         | 0         | 1        | 1         |
| Brokers                        | 81,700              | 211.03         | 8   | 7        | 9         | 7        | 6         | 1        | 3         | 6         | 0        | 3         |
| Stock exchange members         | 23,851              | 474.93         | 1   | 0        | 1         | 2        | 0         | 0        | 0         | 2         | 0        | 1         |
| Non-members                    | 57,849              | 171.69         | 7   | 7        | 8         | 5        | 6         | 1        | 3         | 4         | 0        | 2         |
| Portfolio management companies | 21,736              | 150.15         | 1   | 1        | 4         | 0        | 2         | 0        | 1         | 0         | 0        | 1         |
| <b>Total</b>                   | <b>1,400,885</b>    | <b>422.01</b>  | <b>11</b>                                       | <b>9</b> | <b>16</b> | <b>9</b> | <b>19</b> | <b>4</b> | <b>13</b> | <b>10</b> | <b>3</b> | <b>17</b> |

Source: CNMV.

1. Data at 31 December 2008.
2. Thousand euro.
3. Average percentage based on average weighted by each firm's required equity. This is the ratio of surplus equity to average equity.
4. Includes registered broker-dealers and brokers which did not provide information.

Based on the data available in 2008, covering the period January-November<sup>4</sup>, investment firms' pre-tax earnings declined by 40% vs. the same period of 2007.

4. At the date of writing this annual report, the data for December 2008 was not yet available, since the recently-enacted Circular 7/2008 granted investment firms a transitory period in which to submit accounting information.

Furthermore, the number of entities making a loss has increased substantially, from 10 of the 110 firms in existence in 2007, to 33 of the 111 in existence in 2008. The losses are concentrated at a few firms, since the five firms with the largest losses account for almost 70% of total losses in the sector. However, the economic prospects for the next few months suggest that the main business lines will remain sluggish, and the sector could therefore face the need to review its cost structure and make strategic decisions.

Nevertheless, the sector's capital ratios are currently high. On aggregate, firms have ample surplus equity over requirements, after a 19% increase vs. the previous year. Consequently, except in specific cases, firms should generally be well-prepared to tackle the crisis in the financial markets.

#### **The importance of internal control of client transactions in some products (OTC, CFDs, etc.)**

The financial crisis has had a negative impact on investment firms' bottom lines, in addition to the general reduction in their activity and therefore in their fees.

In fact, several investment firms reported substantial losses in relation to their equity in this period as a result of the losses incurred by some of their clients in contracts on OTC derivative instruments on shares of listed companies and which were eventually passed on to the investment firms themselves as their clients were unable to shoulder such losses.

A common feature of these cases has been that the underlying assets in these OTC derivatives were companies belonging to the real estate and construction sectors, which were badly affected by the crisis. Another common feature of these losses is the significant scale of the open interest OTC, in terms of both absolute size and in relation to the capital of the companies that constitute the underlying assets, since these clients chose these instruments as a vehicle for exposure to these listed companies. It is precisely the large size of these OTC positions that is the main reason why the risk inherent to these positions was inadequately managed when clients ceased to attend to margin calls to cover the risk of their positions, since this made it more difficult to close the positions quickly.

Furthermore, in all cases these were firms' positions vis-à-vis clients whose market risk was hedged through opposing positions with counterparties that are financial intermediaries. This shows the increasing importance in the current environment of the adequate assessment and management of counterparty risk, which suggests that it is advisable to strengthen firms' control mechanisms.

In 2008, a review was performed of compliance with the risk concentration limits by the members of Iberclear. A thorough review of compliance with the risk concentration limit seemed advisable because of (i) the increase in trading in the last few years, with the consequent increase in risk linked to transactions pending settlement and the guarantees required for this purpose, (ii) the significant modifications to Iberclear's internal regulations,

basically since 2006 and, also, (iii) the process of regulatory reform regarding equity. The conclusion was that the existence of risk concentration problems deriving from the provision of security deposits to Iberclear is particularly significant at independent investment firms. Among the supervisory actions performed, at the end of November 2008 a document was sent to the members of Iberclear to remind them that they are obliged at all times to comply with regulations limiting major risks and, in the event, to implement corrective measures.

### Regulatory changes regarding solvency

Prudential supervision of investment firms and credit institutions is aimed at ensuring the stability of the Spanish financial system as a whole. To conduct efficient supervision of solvency in a context of increasingly globalised financial markets, it has been necessary to apply measures to harmonise the prudential criteria for equity at the financial intermediaries in each country.

In this connection, Directive 2006/48/EC, relating to the taking up and pursuit of the business of credit institutions and Directive 2006/49/EC, on the capital adequacy of investment firms and credit institutions, respectively (hereinafter, CAD II) were enacted on 14 June 2006.

Amendments to Spain's Securities Market Act, in November 2007, transposed CAD II in respect of investment firms into Spanish law. Royal Decree 216/2008, concerning financial institutions, approved in 2008, implemented the Securities Market Act in connection with this Directive and on 30 December 2008 Circular 12/2008 was published, concerning the equity requirements for investment firms and their groups, thus culminating the transposition of EU regulations into Spanish law. Accordingly, in 2008 a special effort was made and considerable resources were devoted to work on this Circular.

With the dual objective of avoiding regulatory arbitrage and facilitating the integration of various kinds of entity into consolidable groups subject to supervision, a parallel was established between the regulations concerning the capital requirements at credit institutions and those contained in CNMV Circular 12/2008.

However, as in the EU texts that are transposed, the specific characteristics of investment firms were taken into account, such as the possible exceptions or limitations applicable to certain requirements on firms that, due to their activity or scant complexity, do not require them, or the consideration of structural expenses as one of the thresholds to be taken into account in relation to equity requirements.

The Circular establishes the same reporting forms for both investment firms and credit institutions, not only nationally but throughout the EU, since they were developed specifically by the Committee of European Banking Supervisors (CEBS) at the direct proposal of the European Commission. The use of these forms will make it easier to compile and disseminate information, not only for national regulators but also for European solvency supervisors, making it possible for the first time to compare figures between financial institutions across Europe.

The main change for investment firms is the equity requirement for operational risk. The Circular establishes three methods for calculating equity requirements ranging from a simple percentage of net revenues, which is the basic indicator, to more advanced methods based on internal models. In general, the use of internal models is aimed at incentivating risk analysis and surveillance through the possible reduction of equity requirements; the more highly developed and sophisticated the systems for measuring, controlling and managing risks, the lower the equity requirements.

Notwithstanding its limitations, CNMV Circular 12/2008, based on Basel II, is a notable step forward in entities' risk management and it will enable entities to become better acquainted with their risks and, therefore, to control them better.

On 26 November 2008, the CNMV published Circular 7/2008, which amended the accounting system for investment firms to bring it into line with the new accounting framework established under the New Spanish General Accounting Plan approved by Royal Decree 1514/2007, of 16 November.

The adaptation process focused basically on prioritising the specific nature of investment firms as compared with other kinds of entities, financial or otherwise, thus allowing for adequate and efficient supervision of investment firms and guaranteeing investor protection. However, in some aspects it proved necessary and advisable to maintain the criteria and approaches contained in the previous regulation, such as the consolidation obligation for horizontal groups.

As regards the new content introduced in the Circular, the definition of fair value is extended to include financial instruments with no market or with an inactive market. Accordingly, the use of fair value is encouraged when it helps achieve correct risk management. The definitions of other new concepts like "effective interest rate" or "impairment" were also expanded.

The Circular also established specific conditions for reclassifying assets among the various defined categories of financial assets. Very strict criteria are established for derecognising financial assets and recognising capital gains as adjustments to equity due to measurement of available-for-sale financial assets clarifies their definition in solvency terms. The Circular also includes a specific rule on revenues from the provision of services and, in the event, financial expenses and trading losses, which includes the criteria for recognition in profit or loss.

Lastly, it is essential to highlight the importance of transparency, which requires managers of supervised entities to take responsibility for the accounting policy, explain it, disclose it to the market and supplement it with specific information as required. In this connection, the Annual Report and Directors' Report include a description of the financial risk assumed and the company's risk management and hedging policy.

On 25 November 2008, FOGAIN, CNMV and INVERCO held a seminar to disseminate the content of that accounting Circular, placing particular emphasis on the transitory framework for applying the new accounting regulation.

### 11.3 Supervision of UCITS

The context in which the supervision has been performed was shaped by the considerable number of regulatory changes in the form of CNMV circulars. Most of these Circulars (six in total) were implementations of the regulations on UCITS and adaptations to the New General Accounting Plan. The following Circulars were approved in 2008:

- Circular 2/2008, concerning electronic filing with the CNMV of certain data on the appraisal of buildings belonging to real estate UCITS.
- Circular 3/2008, adapting the accounting of UCITS to the New General Accounting Plan and introducing new forms for annual accounts and confidential filings.
- Circular 4/2008, with the new structure of periodic public disclosures by UCITS.
- Circular 5/2008, concerning statistical requirements of UCITS for the purposes of submitting information to the European Central Bank.
- Circular 6/2008, concerning the criteria for establishing the net asset value of UCITS and the implementation of operating matters.
- Circular 7/2008, which includes the accounting regulations for UCITS management companies.

As with investment firms, the supervision of UCITS is performed by analysing the information which they are obliged to submit periodically and also through on-site inspections. At all events, the supervision focuses in particular on the following aspects: compliance with legal coefficients and investment suitability, sufficiency of resources and suitability of internal controls, prevention of conflicts of interest and compliance with the oversight duties entrusted to the depository. There follows an overview of these periodic checks:

- Regarding checks of legality, UCITS regulations establish minimum requirements for portfolio diversification, limit the kind of assets in which it is possible to invest and establish minimum liquidity coefficients to cover redemptions. Additionally, the regulations require entities of this kind to maintain a minimum level of assets and have a minimum number of investors to ensure their collective nature.
- Another aspect that is supervised is the sufficiency of resources and the existence of internal controls at operators and depositories, since both are crucial to the correct discharge of the duties and obligations attributed to these entities under the regulations. Noteworthy in this connection was the supervision of solvency requirements at management companies and compliance with the diversification limits of their own investments.
- Furthermore, because of the system in the Spanish market, where in most cases the fund operator and depository belong to the same group and are part of groups whose parent companies' scopes of operations are universal, many of the supervisory actions are aimed at preventing potential conflicts of interest and ensuring that operators' decisions are made (as required by law) in the sole interest of shareholders.



- Finally, we highlight the importance of checking compliance with the functions assigned to depositories, not only with regard to their standard asset safekeeping function, but also with regard to the function of supervising and monitoring the actions of fund management companies in connection with certain particularly sensitive areas, such as the review of net asset value calculation procedures, flows of funds linked to subscription and redemption transactions, performance of transactions at market prices, ratio compliance, and accuracy of information provided to the CNMV and investors.

As well as periodic controls, specific supervision spot-checks are also performed, normally in response to special circumstances at the entities or in the markets. The financial crisis has made major demands on the supervisor, in particular in relation to overseeing liquidity in UCITS' portfolios and their valuation, the impact of the Lehman Brothers collapse and the Madoff fraud case on UCITS and specific supervision of non-standard UCITS, which were severely affected by the crisis, such as real estate UCITS, hedge funds and funds of hedge funds.

In 2008, as a result of all the aforementioned supervision actions, 1,127 notices were sent to supervised entities. Of all the notices, 136 were for filing information late. Considering the number of entities registered and their disclosure obligations to the CNMV (periodic reports, audits and confidential filings), compliance with the established deadlines was generally good.

A total of 436 requests for additional information necessary for the supervisory task (other than that generally available) were sent to entities subject to supervision. The bulk of these (404) were issued by the Remote Oversight Area, since the analyses are conducted away from the entities' registered offices and requests for information must therefore always be made in writing.

Lastly, 343 requests for the adoption of improvements were sent. Although most of these (278) related to Remote Control area subpoenas, they usually refer to a single aspect (normally the object of the analysis), whereas subpoenas in the On-site Control area usually reflect all the incidents detected during the inspection.

The main supervision actions performed in 2008 are set out below.

#### Supervision of UCITS: CNMV subpoenas in 2008

TABLE 11.5

| Type of subpoena                       | Actions    |            | Total        |
|--|------------|------------|--------------|
|  | Remote     | On-site    |              |
| For filing information late            | 135        | 1          | 136          |
| Requesting information                 | 404        | 32         | 436          |
| Corrective measures or recommendations | 278        | 65         | 343          |
| Other communications                   | 137        | 75         | 212          |
| <b>Total</b>                           | <b>954</b> | <b>173</b> | <b>1,127</b> |

Source: CNMV.



### 11.3.1 Supervision of prudential requirements regarding UCITS and their management companies (SGIIC)

#### Legality

Checking compliance with the legal coefficients is one of the basic objectives of UCITS supervision. As in previous years, the CNMV focused specifically on compliance with minimum capital requirements and the rules governing equity and investors in mutual funds and capital funds and shareholders of SICAVs (including verifying own share trading limits). This aspect became particularly significant in 2008 in view of the substantial redemptions and divestments in the collective investment sector.

At the same time, the CNMV reviewed compliance with liquidity ratios (which ensure the availability of sufficient liquidity to cater for redemptions without forcing the UCITS to make unplanned divestments), diversification ratios and legal limits on transactions with derivatives.

Simultaneously, by reviewing the notifications of incidents periodically received from depositories, compliance with their obligations to supervise and monitor UCITS management companies' actions was also checked.

#### UCITS management company solvency

Monitoring continued of entities' financial position in order to pre-empt solvency problems and request plans to return to compliance. For these analyses, various parameters were taken into account: (i) equity, (ii) the ratio of book equity to share capital, (iii) the profit and loss account (amount and source of losses and earnings obtained from activities other than normal UCITS operator activities), (iv) time UCITS operator would take to present an equity deficiency or net worth imbalance due to losses or a significant increase in equity requirements, and (v) possibility of reduction in activity due to lower volume of assets managed.

Although no serious incidents were detected, there were substantial declines in asset management fee revenues as an obvious consequence of the lower volumes of managed assets. These declines affected the equity situation at some UCITS management companies, obliging them to strengthen their situation via capital increases or participation loans.

These checks were supplemented by an analysis of compliance with legal coefficients.

### 11.3.2 Specific analyses

#### Yields analysis

This analysis is used to detect atypical or abnormal yields at UCITS. The procedure used to detect these yields consists in creating a daily benchmark index for each UCITS, on the basis of which its theoretical yield is obtained. By analysing statistically significant differences, net asset values are chosen for analysis to check their reasonableness and reliability.

The benchmark index is based on the composition of the UCITS' portfolio and its breakdown into asset classes, as well as the modified duration of each UCITS' cash portfolio. These data, obtained from confidential filings, plus the daily performance of market indices linked to the portfolio composition, makes it possible to obtain theoretical daily yields for each UCITS.

Identifying incidents in net asset values makes it possible to detect deficiencies in UCITS operators' internal procedures and controls. A particular procedure or control is classed as deficient when atypical yields are detected repeatedly as a result of the same error e.g., an accounting error or incorrect valuation of a particular asset type or misallocation of expenses. However, atypical yields may also be obtained as a result of the composition of the portfolio or the transactions performed that day, or they may be due to a one-time error in the accounts or in the valuation of an asset. In this last case, the impact on assets is quantified and, if it is material or affects investors in the UCITS, the management company is asked to provide information on what measures it plans to adopt to remedy the situation.

This analysis also makes it possible to detect regulatory infringements, since an atypical yield may also arise from an investment in unsuitable assets or from non-compliance with the UCITS' investment policy. In short, the findings of this analysis of UCITS' yields is one of the main factors to be taken into account when mapping UCITS operators' risk.

#### **Valuation and liquidity of fixed-income assets**

The global economy's liquidity problems have also taken their toll on fixed-income markets, generating problems at certain UCITS which, due to their investment policy, are exposed primarily to this kind of asset. They have experienced difficulties in properly managing liquidity amid requests for subscriptions and redemptions and in valuing these investments properly on a daily basis. The liquidity problem did not affect all fixed-income assets to the same extent: the markets in asset-backed securities and financial sector subordinated issues were hardest hit overall.

On 30 November, mutual funds held approximately 15,457.8 million euro in fixed-income assets which could present liquidity problems (i.e. 8.6% of total managed assets).

For the last two years, CNMV has strengthened its supervision to ensure proper asset valuation and control of liquidity in managed portfolios. In addition to specific actions under the standard supervision functions, the CNMV issued two communications via its website, on 17 March and 11 November, describing guidelines for managing and controlling liquidity and for valuing fixed-income assets held by UCITS.

With regard to managing liquidity of fixed-income assets, the CNMV urged entities to implement a policy specifically designed to control overall liquidity in the mutual fund portfolio and enable it to monitor the depth of the markets in which it is invested and plan the sale of positions in a gradual and orderly manner.

Furthermore, UCITS management companies were reminded that they must always act in investors' best interests and that they must avoid possible

conflicts of interest between investors who are withdrawing and those who remain in the fund.

Accordingly, the CNMV underscored the fact that the current regulation establishes certain mechanisms which could help manage portfolio liquidity, including setting minimum periods of notice for redemptions of more than a certain amount (article 48.6 of the UCITS Regulation) and performing partial subscriptions and redemptions (article 48.7 of the UCITS Regulation). Furthermore, the CNMV placed special emphasis on the exceptional nature of sales between related UCITS, highlighting that UCITS operators must strengthen the express authorisation procedures for these transactions so as to be able to prove that they were performed at market prices and in the interests of both institutions (article 67 of the UCITS Act and article 99 of the UCITS Regulation).

With regard to the valuation of assets which might pose liquidity problems and those which, accordingly, there is no active market, the aforementioned document reminded operators that they should have valuation procedures to ensure the use of observable market data as far as possible. The CNMV urged entities to use valuation techniques based on obtaining the prices disseminated by external sources, among others: AIAF transactions, indicative prices from information services (Bloomberg, Reuters, Markit, etc.), theoretical valuations by independent experts, etc., and to strengthen internal controls, so that the source they eventually use to value the asset can be considered to be representative, since it best reflects the current market situation in terms of yields, credit spreads and liquidity, and other factors. If the valuation techniques used by the UCITS are based on internal models, they must also establish procedures which incorporate market spreads in a way that reflects the current situation of the issuer or asset class as closely as possible. For this purpose, information inferred from credit default swaps or from other debt securities issued by the entity or others of very similar characteristics, such as those belonging to the same geographical region or sector, of the same scale, credit rating, subordination, etc. should be given priority, provided that it is representative.

In short, entities must implement the necessary procedures and controls to show that the valuation techniques they use are consistent with the situation of the market and of the investing UCITS, based on its structure and the potential performance of subscriptions and redemptions, so as to avoid conflicts of interest between participants withdrawing from the UCITS and those who choose to remain.

### Investments in other UCITS

The CNMV has continued to track Spanish UCITS that may have been affected by the suspension of subscriptions and redemptions by some foreign UCITS in which they invest, as a result of the financial crisis. Moreover, an analysis of the sector has been launched to assess the degree of compliance with the recommendations issued in the first half of 2008 relating to what to do in the event of it being impossible to calculate the net asset value of a UCITS, as a result of the suspension of calculation of the net asset value of the underlying UCITS.

## Rating downgrades

In 2008, the CNMV commenced a specific analysis of the impact of downgrades of the ratings of mutual funds' guarantors. In the event of a downgrade of a guarantor, managers were urged to submit a regulatory disclosure for publication by the CNMV and dissemination via the institution's periodic public information, in order to guarantee investor protection. Specifically, 17 guaranteed funds had to make a disclosure of this type. Furthermore, the CNMV posted a communication on its website setting out the criteria for this disclosure.

## Analysis of the investment in deposits and liquidity accounts by the UCITS, and the inherent expenses

The purpose of this analysis is to guarantee that the remuneration conditions of current accounts opened by UCITS, and the rates applied to overdrafts (where applicable) and bank fees on these accounts are within market standards and conditions. As a result, it may be concluded that the remuneration that is currently paid on current accounts held by UCITS at their depository entities, and the related expenses, may be considered to be market rates.

### Circular on UCITS categories by investment profile

Article 30.2 of UCITS Law 35/2003, dated 4 November, provides that they must clearly define their investment profile so that investors can accurately ascertain to which of the categories defined by the CNMV they belong. CNMV Circular 1/2009, dated 4 February, concerning UCITS categories by investment profile, implements that provision.

The category of a UCITS is understood to be the combination of its type and its investment profile. Types of UCITS are ordinary investment funds and companies, feeder UCITS (which invest mainly in other UCITS), UCITS that track or replicate a particular stock market or fixed-income index, and exchange-traded funds (ETFs).

The new classification of profiles contains the following new elements:

- Money-market funds: the definition is changed to require, among others, an average portfolio duration of less than 6 months, at least 90% of assets invested in assets with residual maturity of less than 2 years, no assets with residual maturity of more than 5 years and a short-term credit rating of at least A2 from S&P, or unrated assets, provided that the issuers have a short-term credit rating of at least A2. This change is aimed at correcting the effects of the pre-existing definition, under which these funds could have high levels of volatility and invest in assets with low credit quality.

Furthermore, the use of the term "money market" or similar is allowed only for those funds that fit this profile, and all those that match this profile must necessarily be classified as money-market funds; a fund can no longer simultaneously qualify as a money-market fund and a fixed-income fund.

- Fixed-income funds: there is no longer a distinction between fixed-income profiles based on portfolio duration, the only distinguishing element now

being currency risk, although this may now account for up to 10% of assets (previously 5%).

- Hybrid funds: the category of hybrid fixed-income/equity funds is maintained, while incorporating a distinction in terms of the geographical area to which the equity securities issuer belongs. Furthermore, in the case of hybrid fixed-income profiles, the threshold of 5% for classifying the UCITS as euro or international has been raised to 30%.
- Equity funds: the domestic equity category was eliminated and those UCITS are now classified as euro equity. International equity funds are no longer distinguished by the geographical area in which they invest. The euro equity profile now includes UCITS that invest more than 60% in equity of issuers in the euro area and whose currency risk is at most 30% of assets. International equity funds are all other equity UCITS that do not belong to the euro equity category.

The characteristic of investing mainly in a specific geographical area (Europe, US, Japan, emerging countries) will only be identified in the international equity fund's name, and the same applies to those that invest predominantly in a specific economic sector.

- Passively-managed UCITS: this new category was created to distinguish those UCITS that are passively managed (and not guaranteed) from those that are actively managed. This category profile includes the UCITS that track or replicate an index, ETFs and UCITS with a specific yield target (that is not guaranteed).
- Guaranteed UCITS: guaranteed fixed-income funds include UCITS that guarantee the initial investment plus a fixed yield, while guaranteed equity funds include those UCITS that guarantee 100% of the initial investment (variable yield guaranteed funds) and those that guarantee less than 100% of the initial investment (partial guarantee). These two categories also include UCITS that actively manage part of their assets.
- Absolute and overall return categories: the new category of absolute-yield UCITS, with a non-guaranteed management objective which target a specific periodic risk/return ratio, regardless of market performance, was split off from the global UCITS category. The global category is now confined to UCITS whose investment policy does not match any of the other profiles.

Among the criteria established in the Circular enabling each UCITS to be classified in a specific category is the consideration of both the cash and derivatives portfolios, classification in a category on the basis of the policy stated in the prospectus and not the portfolio composition, admission of an exceptional departure from the investment policy stated in the prospectus by investing in lower risk assets for at most 3 months, calculation of the investment percentages that define the investment category on the basis of the UCITS' assets, classification in the higher risk profile when a UCITS straddles two investment profiles or classification as global when it straddles three profiles.

The purpose of the Circular was to determine certain criteria and attain a smaller and more investor-friendly classification of profiles for UCITS, in accordance with the situation of the collective investment industry.

### 11.3.3. Investor information

Under UCITS regulations, UCITS are required to send to the CNMV their auditors' reports and financial statements, and this information must be delivered to the investors as part of the annual report. This information is supplemented with the recommendations of the auditors and the report on the degree of compliance with the internal control memorandum. All of these documents are essential in order for the CNMV to discharge its investor protection functions; accordingly, special emphasis was placed on reviewing their form and content, as well as compliance with the established submission deadlines.

### 11.3.4. Supervision of hedge fund operators and of funds of hedge funds

In 2008, supervision of these entities focused on guaranteeing orderly redemptions or liquidations of several institutions, most notably funds of hedge funds, whose future viability has been severely hampered by the collapse or suspension of the hedge funds in their portfolios. Particular attention was also paid to verifying these entities' due diligence or investment selection procedures in order to guarantee that they address all the aspects required by the regulations.

### 11.3.5. Supervision of UCITS depositories

The regulations governing UCITS afford a pivotal role to depositories, as entities mandated with the custody of the UCITS assets and monitoring the actions of UCITS management companies; these tasks must always be performed in the interests of the UCITS' shareholders.

Order EHA/596/2008, dated 5 March, regulating certain aspects of the legal regime concerning UCITS depositories, and specifying the content of the statements of account, was published in the Official State Gazette on 7 March 2008. Aside from specifying the content of the statements of account, this Order was aimed fundamentally at updating the legal framework governing UCITS depositories to adapt it to UCITS Act 35/2003, and its secondary legislation contained in Royal Decree 1309/2005.

To meet this objective, the Order substantially strengthens the function of depositories, specifying the obligations to supervise UCITS operators, and it states how to perform this task in more detail than the repealed Order of 30 July 1992, thereby strengthening depositories' surveillance and oversight role.

The main new features of the Order that help strengthen and detail the depository's tasks are as follows:

- Depositories must have a control system that enables them to check the operator's valuation procedures.
- They are explicitly obliged to check that assets in which the UCITS is invested match the investment profile defined in the prospectus.
- Commercialisation supervision is introduced in cases where the UCITS is marketed directly by the management company.

- Depositories are obliged to open current accounts with which UCITS will operate; UCITS management companies and SICAV administrators are banned from using the balance of these accounts.
- Custody functions are strengthened in cases where the UCITS invests in other UCITS, so as to guarantee that the investing UCITS retains ownership and full control of the investment at all times.

The purpose of the new regulation is also to systematise the procedural aspects of depositories' actions, for which they must have an internal procedural manual setting out the scope, methods and frequency of reviews.

As in previous years, during 2008 the CNMV supervised the activities of UCITS depositories with regard to settlement and custody of securities, and supervision and oversight of the management duties performed by UCITS management companies. Furthermore, in 2008 an analysis was conducted of compliance by depositories with their functions since 2002, when the CNMV began specific reviews of depositories. This analysis led to significant changes at depositories, requiring the majority to take cognizance of their obligations as UCITS depositories (surveillance and oversight of the UCITS activity) and acquire the necessary resources to comply with these obligations.

### 11.3.6. Supervision of real estate UCITS

In 2008, particular emphasis was placed on monitoring liquidity at real estate investment funds in view of the volume of redemptions, their projected performance and the payment schedules due to the commitments for property they had acquired. Accordingly, the CNMV was in close contact with real estate UCITS management companies and compiled specific information concerning the aforementioned aspects throughout the year. The operators were asked to submit an action plan for adverse situations. The findings of these analyses showed the situation to have deteriorated, leading, at the end of 2008, to a two-year suspension of redemptions in the second-largest real estate investment fund.

#### **Administrative procedures linked to situations of illiquidity. CNMV recommendations**

UCITS' capacity to realise their assets without incurring in unjustified discounts was affected by the current financial crisis due to the shortage of liquidity in some assets and the greater difficulty in obtaining financing.

Although many economic agents have encountered difficulties, the situation is even more serious for UCITS since they have had to face an increase in redemption requests from investors, partly in response to these same problems. To compound matters, the investors themselves are often UCITS which are also experiencing the same difficulties.

This situation made it necessary to assess the various administrative procedures available to managers to tackle liquidity problems. When assessing the various alternatives, particular attention should be paid to protecting investors' interests and avoiding conflicts of interest between them. For example, this means that, to avoid conflicts of interest with



participants who choose to stay in the UCITS, redemptions must not lead to substantial changes in the composition of UCITS portfolios (and, therefore, in their exposure to less liquid assets).

The alternatives provided by the current regulations for managing the risks described can be summarised as follows:

## **1. Adopt extraordinary measures to maintain liquidity**

### **1.1 Recourse to debt**

Real estate UCITS can seek third-party financing, up to at most 10% of the value of their assets at no more than 18 months, to overcome temporary cash difficulties. Financial UCITS and funds of hedge funds can also obtain third-party financing up to that limit but with a term of less than one month.

The regulation is more flexible for hedge funds, since no specific purpose is required and the limit is five times the asset value (provided this is specified in the prospectus).

At all events, the management company must assess the implications, in terms of fairness to investors, of recourse to debt to meet redemption requests.

### **1.2 Redemptions in kind**

The regulations expressly allow for redemptions in kind by financial UCITS, real estate UCITS and hedge funds, providing they receive CNMV approval. This is an exceptional measure which has never been applied to date, and its practical application has evident technical drawbacks.

## **2. Establishing measures to restrict liquidity**

### **2.1 Ordinary measures. Reducing redemption frequency.**

Financial UCITS can extend the period for calculating the net asset value up to once per fortnight at most, if so required by the planned investments.

Because of their special characteristics, hedge funds and real estate mutual funds have substantially more flexible liquidity conditions, and are given more time to realise the assets needed to cater for redemptions.

### **2.2 Extraordinary measures. Suspending redemptions.**

The general regulations for all UCITS allow the CNMV to temporarily suspend subscription or redemption of participations “in the event of other cases of force majeure,” either at its own initiative or in response to a request by the fund manager, with the obligation to file a regulatory disclosure.

In these extraordinary cases, and particularly when there are requests for redemptions amounting to more than 10%, real estate mutual funds may provisionally suspend redemptions, although they must provide liquidity up to at least 10% of assets, pro rata among the applications made prior to suspension, and establish a plan to liquidate the assets necessary to meet the redemption requests.



Application of these measures requires the approval of the CNMV, which must check that the necessary conditions hold and that investors have enough information in accordance with regulations.

### 3. Liquidation of the UCITS

The orderly liquidation of the UCITS requires the adoption of a liquidation and dissolution decision by the operator and depository, notification to the CNMV, publication of a regulatory disclosure and opening of a liquidation period in which subscriptions and redemptions are suspended.

The specific rule for real estate UCITS recognises that, “if it is not possible to dispose of all the assets and rights on property belonging to the fund in a period of two years from the start of liquidation, the fund management company will cancel the fund and register the assets and rights to the property in the Property Register in the name of all the shareholders.”

### 4. Splitting of assets

This alternative, along with the following two, enables subscriptions and redemptions to be covered at least in the liquid part of the portfolio. Basically, it consists of splitting the fund’s assets into two parts, assigned to two different funds (or compartments): illiquid assets are assigned to one of the resulting funds, and assets without liquidity problems to the other fund.

The process is similar to the merger of two or more investment funds: a proposal must be approved which clearly sets out the manner of designating and allocating all the components of the original fund’s assets which must be conveyed to the beneficiary funds, to ensure that there is no unwanted segmentation of the assets and to adequately resolve conflicts of interest (for example, by ensuring that the split funds are owned by the same investors and in the same relative proportions). The existence of free redemption rights in this alternative means that it is not very feasible in practice.

### 5. Compartmentalisation

This alternative is similar to the split except that, instead of creating a new fund, what is created is a compartment whose portfolio contains the illiquid assets. It has the same advantages and disadvantages as splitting the fund.

Another possibility is to establish side pockets. The need to set up side pockets in a UCITS may arise as a result of a voluntary move by the operator to invest part of the capital in illiquid assets, or when an investment turns illiquid at a certain value. A side pocket is a UCITS constituted from the illiquid assets and owned in identical percentages by the investors in the “original” UCITS. A side pocket can be defined as a “special-purpose” UCITS or compartment.

Side pockets enable illiquid assets to be segregated within the same fund; as soon as they are set up, these assets cease to be valued until the illiquidity is overcome. Once the side pocket has been set up, subscriptions and redemptions are performed at the net asset value without taking account of the side pocket (i.e. partial settlements and subscriptions). When the liquidity

problems are overcome, the side pocket is valued, and redemptions and subscriptions performed during the period in which the side pocket existed are adjusted as necessary.

This alternative is not covered by Spanish UCITS legislation but it could be regulated if the competition problems are perceived vis-à-vis other jurisdictions where it is allowed.

#### **11.4 Supervision of venture capital firms**

Last year, periodic supervision of venture capital firms continued to focus on reviewing annual financial statements and analysing compliance with legally established coefficients, taking into consideration the special characteristics of investors in this kind of entity.

Furthermore, CNMV Circular 11/2008, dated 30 December, concerning accounting regulations, annual financial statements and confidential reporting of venture capital firms was published on 14 January 2009. This Circular establishes and modifies the accounting standards and reporting forms to which these companies' annual financial statements for 2008 must conform. Because these firms' main purpose is to take temporary stakes in companies, application of the new Circular will have a significant impact on the value at which these stakes are carried in the financial statements of the venture capital companies and funds.

#### **11.5 Supervision of securitisation trust management companies**

In 2002, the CNMV launched an on-site supervision programme for securitisation trust operators, focused particularly on checking that the entities had sufficient resources to conduct their business, with an adequate organisation and the necessary internal control procedures.

The programme concluded in 2008 following on-site inspection of the only securitisation trust operator of the eight registered with the CNMV that had not yet been inspected; as a result of the inspections, securitisation trust operators have now set up organisational structures on a scale suited to the complexity of the activity they perform.

#### **11.6 Assistance in the prevention of money laundering**

In application of the collaboration agreement signed in June 2003 by the CNMV and the Executive Service of the Commission for the Prevention of Money Laundering and Monetary Offences (SEPBLAC), in 2008 the CNMV reviewed the degree of compliance with money laundering prevention obligations, in relation to UCITS operators agreed with SEPBLAC.

## 12 Investor assistance

The CNMV continued to work on improving investor education, information and protection in 2008. The goal is to enable investors to identify, find and assimilate the available information so that their relationship with intermediaries is more balanced and they can make financial decisions with full knowledge of the risks and possible consequences.

This chapter describes the CNMV's specific actions in the area of investor assistance. Section 12.1 describes actions channelled through the Investor Assistance Office. The CNMV's efforts at investor education are described in section 12.2. Oversight of advertising for products is described in section 12.3. And the actions of the Investment Guarantee Fund are described in section 12.4.

The financial crisis has increased investors' insecurity with regard to the products in which they have invested their savings. This has been evident in the considerable increase in queries, complaints and claims to the CNMV, as described in this chapter.

Many complaints were related to structured and other complex products that were sold to retail investors. These products pose serious comprehension difficulties to the public, leading to expectations that are not supported by the product in reality.

Many queries arose from problems at firms or measures taken by the authorities, such as the worsening situation of the markets in the second half of the year, the collapse of Lehman Brothers, the collapse of the Icelandic banks, the announcement of an extraordinary appraisal in the Santander Banif Inmobiliario real estate investment trust, and measures adopted with regard to short selling.

The first conclusion is that investor education has not advanced at the same pace as developments in the financial markets. There has apparently been little effort to improve the information available to retail investors, particularly given the complexity of the products being offered to them.

This chapter describes the actions of the CNMV in dealing with complaints and claims, and the initiatives adopted to improve transparency and investor education.

### 12.1 Investor Assistance Office

The purpose of the Investor Assistance Office (IAO) is to handle queries, complaints and claims by retail investors<sup>1</sup>. The number of claims made by investors increased

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1. The CNMV publishes an annual report detailing the activities of the IAO.

by 30% in 2008 with respect to 2007. This increase occurred mainly from June onwards, as claims in the second half of the year exceeded those in the second half of 2007 by 63%.

Investor queries increased by 12.5% with respect to 2007. Activity in this area rose particularly in the fourth quarter, when there were 5,283 queries, compared with 3,534 received in the same period of 2007. Most queries from investors were related to the situation in the financial markets.

### Total number of issues handled by the IAO

TABLE 12.1

|              | 2007          |            | 2008          |            | % change<br>08/07 |
|--------------|---------------|------------|---------------|------------|-------------------|
|              | Number        | % of total | Number        | % of total |                   |
| Queries      | 10,945        | 93.10      | 12,313        | 92.09      | 12.5              |
| Claims       | 809           | 6.88       | 1,058         | 7.91       | 30.8              |
| <b>Total</b> | <b>11,754</b> | <b>100</b> | <b>13,371</b> | <b>100</b> | <b>13.8</b>       |

Source: CNMV.

### Joining FIN-NET

During the year, the IAO joined FIN-NET, the European network of national out-of-court complaint schemes, which will make it easier for Spanish investors who deal with firms registered in the European Economic Area to file complaints with regard to investment services.

FIN-NET is a European cooperation network created by the European Commission in 2001. Its objective is to make it easier for users of financial services to make out-of-court complaints in cross-border disputes through cooperation and the exchange of information between the agencies in charge of handling complaints in each country.

To be a member of FIN-NET, it is necessary to fulfil the requirements set out in Commission Recommendation 98/257/EC on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes. The IAO fulfils the quality principles required of FIN-NET members in its complaints handling procedures: the independence, transparency, adversarial, efficacy, legality, liberty and representation principles.

Since January 2009, the IAO has been a member of the FIN-NET Steering Committee, which assists the European Commission in preparing plenary meetings and ensures coordination with the network members.

#### 12.1.1. Queries

The IAO handles queries relating to the CNMV's registers, information available on the website or its publications, and more complex issues that require a specialised response. For this purpose, the Office has a hotline (902 149 200) to respond to queries for information that is accessible and public. More complex issues are handled by the IAO technical staff. The public can present queries by

any means (e-mail, ordinary mail or telephone) and the CNMV responds as quickly as possible, with no need for administrative processes.

Cooperation between the Bank of Spain, the Directorate-General of Insurance and Pensions and the CNMV was intensified in 2008 in order to provide a faster and more effective response to queries from users of financial services. To this end, mechanisms were established for transferring user queries between supervisors.

### Amount and type of queries

The telephone is still the main channel used by investors to make queries. The call centre handled 52.8% of total queries, and received another 16.1% that required a more specialised from the CNMV's experts. The other 31.7% of queries were made by e-mail or in person. Six per cent of queries were received at Bolsalia and Borsadiner, two fairs dealing with the stock exchange and financial markets, held in Madrid and Barcelona, respectively, at which the CNMV had a stand.

#### Breakdown of queries by channel

TABLE 12.2

|              | 2007          |              | 2008          |              | % change<br>08/07 |
|--------------|---------------|--------------|---------------|--------------|-------------------|
|              | Number        | % of total   | Number        | % of total   |                   |
| Telephone    | 7,414         | 67.7         | 8,411         | 68.3         | 13.4              |
| E-mail       | 2,373         | 21.7         | 2,903         | 23.6         | 22.3              |
| Postal mail  | 312           | 2.9          | 234           | 1.9          | -25.0             |
| In person    | 846           | 7.7          | 765           | 6.2          | -9.6              |
| <b>Total</b> | <b>10,945</b> | <b>100.0</b> | <b>12,313</b> | <b>100.0</b> | <b>12.5</b>       |

Source: CNMV.

### Main issues to which queries referred

Investors contact the CNMV to request information about its functions and services (publications aimed at investors, status of claim resolution, procedure for filing a claim, or information contained in the Investor corner of the website), regulations, entities, investment services or products, and legal rights. Within these general themes, specific issues stand out each year, as shown in the figure.

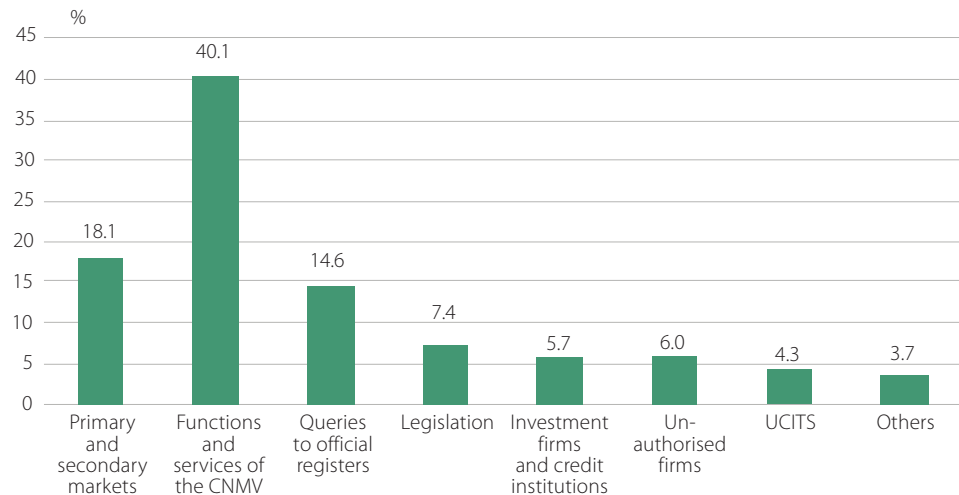
The main issues in 2008 were:

- Many investors had queries about the squeeze-out process. This procedure was used in Spain for the first time in the Imperial Tobacco bid for Altadis. Once the takeover bid had been settled, the Altadis shareholders who had not accepted the bid were finally obliged to sell their shares to Imperial Tobacco. The regulatory conditions for the bidder to acquire all the shares were met, as Imperial owned 95.8% of Altadis after the takeover bid.

Investor queries revealed improper practices on the part of some intermediaries, which had charged fees for this transaction. Consequently, information was posted in the Investor's Corner noting that the squeeze-out process is free of

### Subject matter of queries in 2008

FIGURE 12.1



Source: CNMV.

charge, and a communiqué was sent to financial institution reminding them of the applicable regulations.

- Queries about unregistered firms that may be offering investment services are a constant each year. The firms about which investors contacted the CNMV in 2008 included notably Finanzas Forex, Tribu Internacional Invest, S.L. and GCI Financial Ltd., both of which were warned by the Commission under article 13 of the Securities Market Act.
- With the entry into force of MiFID, investment advice, understood as the professional remunerated provision of personalised recommendations to clients about financial instruments, is a service restricted to the parties who are authorised to provide it. Parties that were providing investment advice before MiFID have until February 2009 to apply for authorisation from the CNMV. This measure led to numerous queries about specific persons and firms that were providing investment advice.
- Doubts about the changes introduced by MiFID in relations between clients and financial institutions were again a subject of many queries. Investors asked whether a given product should be considered complex or not, how often firms should update their appropriateness tests, and who the tests should apply to, where a securities account has several co-owners.

To respond to the most frequent questions, an area was created in the Investor's Corner of the CNMV website containing:

- A consumer's guide to MiFID. Investing in financial products.
- A FAQ on the practical impact of MiFID on the protection of retail investors.
- The MiFID glossary, which clarifies the new terminology.

- Media reports about the measures adopted by regulators in September 2008 with respect to short selling led many investors to contact the CNMV with questions.

In September 2008, the CNMV reminded all market participants, including investors (via CNMV Comunicués and the Investor's Corner) that naked short selling is prohibited and penalised.

- The situation of Lehman Brothers and, subsequently, Icelandic banks Landsbanki and Kaupthing aroused considerable concern among Spanish investors, who contacted the Commission to try to ascertain the consequences for their investments.

To inform the general public, on 24 September the CNMV website (Investor's Corner) published a note responding to the main questions received from investors affected by the situation of Lehman Brothers. Specifically, it referred to coverage by investment protection schemes, potential liability on the part of the product's marketer, and the steps to be taken to recover the investments.

Affected investors expressed disagreement with the way in which financial institutions had sold them the investment products issued by the aforementioned companies; in some cases, they were totally unaware of the identity of the issuer or the risks inherent to the product. Claims have been filed with the CNMV in this connection.

- With regard to the Madoff fraud, information was requested about affected products, and investors sought guidance about how to proceed and about the proposal by Banco Santander, S.A. to its clients who were victims of fraud.

To respond to the most frequent questions, a document was published about the effect of the fraud on Spanish investors and a note on the main characteristics of the product offered by Banco Santander to enable investors to assess the proposal and, in particular, the commitments, characteristics and risks of that product, and compare the value of the instruments offered in exchange.

- There were numerous queries in the second half of the year about investor compensation systems (FOGAIN and FGD). Responding to investor queries about the security and coverage offered for savings deposited and investments made via credit institutions and investment firms, a document was issued responding to frequently asked questions.
- Other notable issues in 2008: trends in the prices of certain securities, press reports about a takeover of Laboratorios Almirall, S.A. and of a merger between Europistas Concesionaria Española, S.A. and Itínere Infraestructuras, S.A., and subsequent comunicués about commitments to increase the merged company's trading volume and liquidity or delist it.
- Queries about UCITS in 2008 referred particularly to announcements by management companies with regard to the value of the portfolio and, consequently, the net asset value.

- The announcement by the operator of real estate investment trust Santander Banif Inmobiliaria FII that it would perform an additional appraisal to adapt the value of the trust to market reality. There was also the announcement by operator of Segurfondo Monetario, FI that it was going to modify the valuation method used to date because of the reduction in the liquidity of certain asset markets and the large number of redemption requests.
- There is also a steady flow, year after year, of queries about automated trading systems, which are increasingly popular among individual investors.

Considering the broad range of tools available in the market, with different characteristics and operational scopes, a document was published with recommendations for users. It emphasised the need for investors to properly assess a program's scope, workings and characteristics before deciding to use it, and that they should feel capable of monitoring the trades that were performed and bearing the ensuing risks. It also emphasised that such programs were not recommendable for novice investors.

The table below lists the documents of interest to investors that were published in response to emerging issues that led to the largest numbers of queries from investors in 2008.

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#### Documents of interest to investors

TABLE 12.3

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Preguntas y respuestas sobre los efectos prácticos de la MiFID para los inversores minoristas.

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Efectos de la situación de Lehman Brothers para los inversores españoles.

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Preguntas y respuestas sobre los sistemas de *trading* automatizado (STA).

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Preguntas y respuestas sobre los sistemas de indemnización de los inversores.

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Preguntas y respuestas sobre el efecto del fraude de Bernard Madoff en los inversores españoles.

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Información sobre las participaciones preferentes que emitirá el Grupo Santander.

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Preguntas y respuestas sobre las medidas adoptadas por la gestora de Santander Banif Inmobiliario FII.

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Source: CNMV.

#### 12.1.2. Claims

The IAO handles claims by users of financial services in connection with malfunction, delays or lack of service, or if they feel their interests have been impaired by a financial institution's actions.

Prior to making a claim to the CNMV, investors must contact the institution's Customer Care Unit or Ombudsperson. If the investor does not receive a response from the institution within two months, or if they are unsatisfied with the response, they may contact the IAO, which handles investors claims rapidly and free of charge.

Since 2008, the IAO has an internal instruction setting out the procedure for handling investor claims within the scope of the CNMV, which simply reflects pre-existing practice. In general terms, it coincides with the provisions of the Regulation for Financial Institutions' Ombudspersons.



## Key data for the year

In 2008, 47.4% of claims were resolved in less than four months from the date of presentation to the CNMV. Nevertheless, because of the increase in claims in the final months of the year, 390 (of the 1,058 received in the year) were unresolved at year-end.

In 2008, the number of claims resolved with a report by the IAO increased by 18.7% with respect to 2007. At the same time, greater compliance with the formal requirements for presenting claims led to a sharp decline in the percentage of claims that were not accepted.

There was a notable increase (28%) in the number of claims where the IAO resolved in favour of the complainant. Overall, the number of cases of mutual agreement and withdrawals of claims increased by 47% and, with claims resolved in favour of the investor, they accounted for nearly half of all resolved claims.

There was also an increase in the number of claims referred to other supervisors, such as the Bank of Spain and the Directorate-General of Insurance and Pension Funds, which were received by the CNMV under the administrative one-stop shop system or because the claims related to issues under their competency; nevertheless, claims declined as a percentage of total claims with respect to 2007.

### Outcome of complaints

TABLE 12.4

|   | 2007       |              | 2008         |             | % change<br>08/07 |
|---|------------|--------------|--------------|-------------|-------------------|
|   | Number     | % of total   | Number       | % of total  |                   |
| <b>Resolved</b>                           | <b>610</b> | <b>77.4</b>  | <b>724</b>   | <b>80.3</b> | <b>18.7</b>       |
| CNMV report favourable to complainant     | 176        | 22.3         | 226          | 25.1        | 28.4              |
| CNMV report not favourable to complainant | 342        | 43.4         | 367          | 40.7        | 7.3               |
| CNMV report without decision              | 7          | 0.9          | 10           | 1.1         | 42.9              |
| Resolved by mutual agreement              | 76         | 9.6          | 112          | 12.4        | 47.4              |
| Claim withdrawn                           | 9          | 1.1          | 9            | 1           | 0                 |
| <b>Unresolved</b>                         | <b>178</b> | <b>22.6</b>  | <b>178</b>   | <b>19.7</b> | <b>0</b>          |
| Under jurisdiction of another body        | 39         | 4.9          | 41           | 4.5         | 5.1               |
| Claim not accepted                        | 139        | 17.6         | 137          | 15.2        | -1.4              |
| <b>Total claims processed</b>             | <b>788</b> | <b>100.0</b> | <b>902</b>   | <b>100</b>  | <b>14.5</b>       |
| <b>Total presented</b>                    | <b>809</b> | <b>—</b>     | <b>1,058</b> | <b>—</b>    | <b>30.8</b>       |

Source: CNMV.

Once again, the bulk of claims referred to credit institutions, since their commercial networks are the predominant channel for retail investors to acquire financial products and services. Credit institutions accounted for 92.5% of total claims, with banks accounting for 69.3% of claims against credit institutions, three times more than those against savings banks (21.3%). Credit cooperatives accounted for a much smaller proportion of claims (1.9%).

Of the 90 entities against which claims were made, 69 were credit institutions, 11 were investment firms and 10 were UCITS management companies. Nevertheless, 26 entities were the object of 5 or more claims each (11 had over 15 claims each).

## Class of firm against which claims were made and type of outcome in 2008

TABLE 12.5

|                      | Favourable<br>to claimant |             | Unfavourable<br>to claimant |             | Mutual<br>agreement +<br>withdrawal |             | No<br>resolution |            | Total      |            |
|----------------------|---------------------------|-------------|-----------------------------|-------------|-------------------------------------|-------------|------------------|------------|------------|------------|
|                      | %<br>change               |             |                             |             |                                     |             |                  |            |            |            |
|                      | No.                       | 08/07       | No.                         | %           | No.                                 | %           | No.              | %          | No.        | %          |
| Credit institutions  | 204                       | 28.2        | 343                         | 47.3        | 113                                 | 15.6        | 10               | 1.4        | 670        | 92.5       |
| Banks                | 158                       | 21.9        | 246                         | 33.9        | 90                                  | 12.4        | 8                | 1.1        | 502        | 69.3       |
| Savings banks        | 42                        | 5.8         | 91                          | 12.6        | 20                                  | 2.8         | 1                | 0.1        | 154        | 21.3       |
| Credit coops.        | 4                         | 0.5         | 6                           | 0.8         | 3                                   | 0.4         | 1                | 0.1        | 14         | 1.9        |
| Investment firms     | 11                        | 1.5         | 11                          | 1.5         | 5                                   | 0.7         | 0                | 0          | 27         | 3.7        |
| UCITS management co. | 11                        | 1.5         | 13                          | 1.8         | 3                                   | 0.4         | 0                | 0          | 27         | 3.7        |
| Other                | 0                         | 0           | 0                           | 0           | 0                                   | 0           | 0                | 0          | 0          | 0          |
| <b>Total</b>         | <b>226</b>                | <b>31.3</b> | <b>367</b>                  | <b>50.7</b> | <b>121</b>                          | <b>16.7</b> | <b>10</b>        | <b>1.4</b> | <b>724</b> | <b>100</b> |

Source: CNMV.

### Monitoring firms' responses

During 2008, the CNMV continued the work, which commenced in 2007, of monitoring the actions of entities after claims are resolved in favour of the claimant. Once a claim has been resolved, the CNMV asks the entity against which the claim was made to provide information and documentary evidence of any actions in accordance with the report's conclusions. Improper action is considered to have been remedied when the firm proves that it attended to the matter at issue, either by paying indemnity to the complainant (whose amount is not addressed by the CNMV in any way) or when it accepts the position adopted by the CNMV in its report and takes measures to avoid a repetition of the improper conduct in the future. Where the entity fails to respond by the established deadline, the issue is classified as unresolved for statistical purposes.

On aggregate, in 34.1% of the 226 claims resolved in favour of the claimant, the entity amended its actions (repayment of 80,800.38 euro to claimants); however, in 65.9% of cases there was either no response or the response was to disagree with the CNMV's conclusions.

The process made it possible to assess the efficacy of the complaints handling system and the degree to which firms accept the positions and recommendations arising from the analysis of complaints. This is a form of encouraging entities to eliminate bad practices and improper actions and of favouring the adoption of measures to remedy the situation and to avoid repetitions.

### Most common claims

The claims on which the CNMV issued a decision in 2008 can be classified into two broad groups: incidents in the provision of investment services (orders, fees and reporting requirements arising from securities administration), which accounted for 53.7% of the total, and incidents relating to UCITS (information, net asset values, transfers, exercise of rights, etc.), which accounted for 46.3%.

The breakdown of claims was broadly in line with 2007, although the gap between the two groups narrowed since claims against UCITS are growing in importance.

The claims received in 2008 referred to a very broad range of issues, but the most important or novel were the following:

- Many complaints are related to the huge and rapid proliferation of complex products aimed at retail investors. The adverse market situation led to many claims about possible malpractice in commercialization, in the information supplied before, during and after the sale, and in the advice supplied by the marketer.

These products' complexity makes it difficult to value and price them since they do not have a deep liquid transparent market. Some case of improper practices were observed as certain firms were regularly informing their clients of a constant market value equal to the issue nominal value without recognizing the losses due to market trends.

- In the fourth quarter there was a surge in the number of claims due to the information supplied by firms during the process of selling structured financial products, such as assets issued by companies in the Lehman Brothers group, a firm whose collapse caused problems for many Spanish investors.

Nevertheless, Lehman Brothers is not the only case of problems arising from the commercialization of financial instruments throughout Europe under the single passport and the common standards on public offerings, which often exempt the issuer from filing prospectus with the CNMV; in fact, such problems are common with this class of products and with many transactions arranged before MiFID was transposed into Spanish law.

In these cases, different placing entities have been observed to apply different practices with regard to the information supplied to clients at the time of purchase and subsequently, via periodical account statements.

The decisions with regard to these claims generally hinge on the quality of the information supplied, the appropriateness of the product to the client's profile, and the way in which the transaction was arranged.

- In 2008, there were again many claims about delays in executing orders on securities listed on AIAF, many of which referred to actual failure to execute sell orders.

It is generally considered that a depository receiving client instructions to sell shares or bonds should seek a counterparty for the order by every reasonable means at its disposal, and its order execution policy should contemplate this eventuality. This process should also be conducted without discriminating between clients and without entering into conflicts of interest: i.e. searching for the best buy order through its internal order matching system or, barring that, contacting the firm entrusted with providing liquidity for the issue.

- As is now common since the legal reform that allowed transfers between UCITS at no tax cost, there were numerous and repeated claims in this connection:
  - Unjustified delays in situations where the source and target marketer are the same, even if the UCITS are managed by different operators, which ultimately has an impact on the net asset values of subscriptions and redemptions.
  - Rejections of transfers by the target UCITS due to defects attributable to the source UCITS, in terms of the tax information supplied, the reported amounts, etc.
  - Rejections of transfers due to deficiencies in the requests or other circumstances envisaged in the regulations, e.g. failure to reach the minimum number of investors (which, in principle, could be considered allocable to the target UCITS).
  - A distinction between the age of the investor's position in the UCITS (date of first entry in the investor register book for the purpose of applying commissions) and the age for tax purposes (for calculating capital gains and applying withholding tax, if appropriate), which is particularly important in the case of transfers where the back-end fee depends on the period for which the investor has been invested.
- Complaints about interest-rate swap contracts are also a recurring theme. Interest-rate swaps with no formal or contractual link to any other previously-arranged banking product or security are interpreted as being complex derivatives.

As in the previous year, the complaints in this case were due to deficiencies in formalizing the contract documents or the lack of relevant information about the conditions for early cancellation (all cases preceded the transposition of MiFID).

#### Breakdown of issues in claims resolved in 2008

TABLE 12.6

|   | 2007       |             | 2008       |             |
|---|------------|-------------|------------|-------------|
|   | Number     | % of total  | Number     | % of total  |
| <b>Provision of investment services</b>     | <b>338</b> | <b>55.6</b> | <b>389</b> | <b>53.7</b> |
| Order reception, transmission and execution | 173        | 28.5        | 201        | 27.8        |
| Information to clients                      | 96         | 15.8        | 112        | 15.5        |
| Fees and expenses                           | 59         | 9.7         | 59         | 8.1         |
| Other                                       | 10         | 1.6         | 17         | 2.3         |
| <b>Mutual funds and other UCITS</b>         | <b>272</b> | <b>44.4</b> | <b>335</b> | <b>46.3</b> |
| Information supplied                        | 114        | 18.7        | 96         | 13.3        |
| Subscription and redemption                 | 65         | 10.4        | 103        | 14.2        |
| Transfers                                   | 54         | 8.9         | 88         | 12.2        |
| Fees and expenses                           | 39         | 6.4         | 48         | 6.6         |
| <b>Total claims resolved</b>                | <b>610</b> | <b>100</b>  | <b>724</b> | <b>100</b>  |

Source: CNMV.

Where such swaps are not connected to a banking product, they should be considered as complex and, since November 2007, their commercialization should conform to the provisions of MiFID for such transactions.

- There were also complaints about allegedly improper actions in the supply of essential information to clients in transactions via the internet: incorrect identification of securities, failure to update the tools offered to the client, defects in the information about the order processing status, etc. In some cases, the improper actions may be reflected in the statement of account sent to clients and in the information offered via telephone banking services.

Additionally, there were a range of complaints which are repeated from year to year and are inherent to the provision of investment services. Specifically:

- Incidents connected with the information that firms must supply to their clients about their investments, leading to claims where, due to lack of evidence, it is not always possible to ascertain whether the firm acted improperly:
  - delays in sending mutual fund statements,
  - errors in tax information, or failure to send such information,
  - failure to deliver transaction settlement information or regular statements of account in the proper form and on a timely basis,
  - defects in the information on how to enter instructions with regard to corporate transactions (takeover bids or rights issues) or the exercise of shareholder rights (attendance at the Shareholders' Meeting, granting proxy or grouping votes, etc.),
  - failure to maintain records of orders and contracts.
- Claims relating to order processing and execution, both with mutual funds and other asset classes:
  - breach of validity periods or of the limit price established as a condition for execution of the order,
  - delays in executing orders and mandates, e.g. changes in ownership due to inheritance,
  - incidents with regard to investors' access to their securities accounts,
  - incidents with regard to pre-emptive subscription rights in the context of rights issues by listed companies,
  - disputes over commissions with which the client disagrees or about which the client claims he was not informed,
  - delays in terminating portfolio management contracts,
  - incidents in actions by depositories where the clients did not give specific instructions (rights issues, delisting takeovers).

- There were also claims about the actions of agents of banks and investment firms with regard to the signature of blank orders, the signature of orders after execution of the trade, commissions, information, etc.

### 12.1.3. Accusations

Six formal accusations were presented to the CNMV by individual investors in 2008; three were against banks (in connection with the securities market), two against investment firms and one against an issuer. The number of accusations decreased considerably with respect to 2007, when there were 15 (split evenly between banks, investment firms and companies with listed securities).

| <b>Accusations made in 2008</b>                |  | TABLE 12.7                |
|--|--|---------------------------|
| <b>Accused parties</b>                         |  | <b>No. of accusations</b> |
| Banks  |  | 3                         |
| Broker-dealers and brokers                     |  | 2                         |
| Securities issuers /listed companies           |  | 1                         |
| <b>Total</b>                                   |  | <b>6</b>                  |
| <b>Subject matter of accusations</b>           |  | <b>No. of accusations</b> |
| Market transactions                            |  | 2                         |
| UCITS  |  | 1                         |
| Codes of conduct                               |  | 3                         |
| <b>Total</b>                                   |  | <b>6</b>                  |
| <b>Status of the accusations at 31-12-2008</b> |  | <b>No. of accusations</b> |
| Under consideration                            |  | 4                         |
| Dismissed                                      |  | 2                         |
| <b>Total</b>                                   |  | <b>6</b>                  |

Source: CNMV.

Three accusations referred to alleged breaches of codes of conduct (improper action by a representative, failure to disclose conflicts of interest, and insufficient internal control measures). Two accusations referred to market transactions affecting retail investors (a share placement and a rights issue), and one accusation referred to irregularities in the subscription of a mutual fund.

At 31 December 2008, after processing by the competent units of the CNMV, two of the accusations were dismissed without any penalties, independently of the regulator's specific actions as result of the claims.

## 12.2 Investor education and information

Investor training and information activities were intense in 2008. In addition to cooperating with the Bank of Spain in the Financial Education Plan, major efforts were devoted to drafting new publications and the Commission participated actively in courses, fairs and seminars addressed to retail investors and parties that are in permanent contact with retail investors, such as the Municipal Consumer Offices.

### 12.2.1. Financial Education Plan

The implementation phase of the Financial Education Plan commenced in 2008 and will continue in 2009 as the Plan's various initiatives are developed. Work in this phase included drafting educational materials and informative instruments in various media (mainly accessible via new technologies), and the development of a portal which will be an essential first stop for anyone seeking to improve their financial culture.

Work was also done to finalize cooperation agreements with other institutions such as the Ministry of Education, the National Institute of Consumer Affairs, and the Directorate-General of Insurance and Pension Funds.

#### Financial education in schools

The Financial Education Plan for the period 2008-2012, promoted by the CNMV and Bank of Spain, was presented in May 2008. The project is very ambitious in terms of scope and objectives since it seeks to improve the financial culture of all segments of the population, both students and adults.

This objective is particularly important in the current context of the global financial crisis. Although the plan had already been adopted, the current crisis has made it even more important to improve the population's financial culture as a means of fostering more responsible use of financial products based on informed decisions that are appropriate to the consumer's circumstances and needs, and of strengthening confidence in the financial system.

It is particularly important to educate young people in this area, in accordance with international recommendations on the advisability of including specific notions in the school curriculum and, generally, so that financial knowledge is integrated more and effectively into young people's daily lives.

Accordingly, the CNMV is working with the education authorities to include financial matters in the curriculum; in parallel, it is seeking to implement specific initiatives that interlock with existing curricula. This will enable primary, secondary and vocational students to obtain a financial education as quickly as possible.

Cooperation with the Ministry of Education will focus on three main areas:

- Identifying the educational needs of students based on their age group, with specific emphasis on the concepts of saving, investment and debt, and on developing basic skills related to buying financial products.
- Defining the most effective tools for ensuring interest and motivation on the part of both students and teachers, so as to maximize training effectiveness. Particular attention will be paid to initiatives that favour interaction and participation.
- Implementation of pilot educational actions in the network of schools that depend directly on the Ministry, and in the autonomous regions that so wish, from the beginning of the 2009/10 academic year.

### 12.2.2. Investor's Corner

The Investor's Corner is the area of the CNMV website specially for investors. Since it was created in 2003, it has been improved in terms of both content and tools to enable investors to find and compare relevant information for making investment decisions.

Improvements in 2008 include notably the following:

- The launch of the first interactive course on the internet, which is free of charge. It is a learning program about mutual funds. The course is structured so that it is useful both to investors who are already familiar with funds and to those who are unfamiliar with this product. It includes numerous examples and interactive exercises, as well as a self-assessment test at the end of each module.
- The “What's new” section gained in importance. It serves to provide information about current issues of interest to investors, particularly retail investors. Notable news published in 2008 included:
  - The exceptional measures adopted in connection with the financial crisis and the increase in the coverage provided by investor compensation schemes.
  - The appearance in the market of new products aimed at retail investors, such as participation shares (*cuotas participativas*).
  - The launch of issues for retail investors where the CNMV warned about their limited liquidity and valuation difficulties (e.g. preferred shares).
  - The publication of new documents, factsheets and guides for investors, and replies to investors' frequently asked questions.
  - The CNMV's joining FIN-NET, and the main events addressed to investors.
- The creation of new sections, such as the ones about MiFID and the Financial Education Plan.
- In 2008, work was done on developing a commission search engine to enable investors to compare the commissions charged by different financial intermediaries; it is scheduled to be available in 2009. This comparison engine will accompany existing ones relating to registered entities and mutual funds.
- Work was also done in 2008 on two new interactive programs dealing with “market trading” and “making investment decisions”, which will be rolled out in 2009.

### 12.2.3. New services of the IAO

Other projects developed in 2008 which will be unveiled in 2009 include a new Investor Portal, which will be more intuitive and user-friendly than the existing Investor's Corner, and a new image for the Investor Assistance Office in line with the CNMV corporate image.

The redefinition of the website for investors will provide enhanced search facilities and access to information as well as being more effective in communicating the



CNMV's positions, recommendations, and best practices. It will also include tools for making investment decisions, an e-learning area, and links of interest to investors.

The fact that small investors use the Internet and mobile telephony on a daily basis has made it possible to develop two new services using these technologies to facilitate access to information and disseminate it faster: an electronic bulletin, and an SMS alert service, both of which will be fully operational in 2009. Subscription to both services will be free of charge.

The bulletin will be distributed in electronic form and containing information of interest to investors, including recommendations, new publications, interpretative documents, events, and warnings. It is expected to be quarterly. There will also be an SMS alerts service to notify users of new information of interest on the Portal in real time.

#### 12.2.4. Educational activities

##### Publications for investors

The factsheets and guides are aimed at providing non-professional investors with information about how the markets work, the agents that participate in them, and the various products and services that are commercialized, all in a simple, readily-comprehensible way. The number of subscribers who receive all new publications by mail increased by over 20% in 2008 to more than 12,000.

The guides and factsheets are available on the CNMV website ([www.cnmv.es](http://www.cnmv.es)) in English and Spanish; a list of available titles is shown in table 12.8. In some cases, the publications are also available in Spain's co-official languages. They may be requested free of charge by calling 902 149 200.

##### Investor factsheets and guides

TABLE 12.8

| Investor factsheets                                   | Investor guides  |
|---|--|
| Contracts for Differences (CFD)                       | A consumer's guide to MiFID. Investing in financial products |
| Guaranteed mutual funds                               | Fly-by-night operations                                      |
| New kinds of mutual funds                             | Investor protection: making a complaint                      |
| Warrants and turbowarrants                            | Fixed-income products  |
| Investment Guarantee Fund (FOGAIN)                    | Mutual funds and collective investment schemes               |
| Investment service fees and charges                   | Options and futures  |
| Takeover bids: what they are and how to proceed       | What you should know about securities orders                 |
| Exchange-traded funds (ETFs)                          | Investment firms   |
| Public share offerings/Rights offerings               |  |
| Transfers between mutual funds                        |  |
| CNMV investor services                                |  |
| How to make a complaint concerning financial services |  |

Source: CNMV.

Down through the years, the CNMV has observed that investors greatly appreciate our guides and factsheets; consequently, we seek to disseminate them as broadly as

possible. The CNMV seeks cooperation agreements with entities wishing to distribute these publications on condition that they are free of charge to investors. In 2008, 35 cooperation agreements were signed, i.e. 10% more than in 2007.

At the various events in which the Investor Assistance Office participates (courses, lectures, fairs, etc.), it publicizes the range of publications and provides attendees with full sets of guides and factsheets.

The guide entitled *A consumer's guide to MiFID. Investing in financial products*, published early in 2008, was a notable success: over 122,000 copies have been distributed, including 5,000 in Catalan.

### Investor factsheets and guides: number of cooperation agreements and copies distributed

TABLE 12.9

|   | Cooperation agreements |            | Copies distributed |                |               |                |
|---|------------------------|------------|--------------------|----------------|---------------|----------------|
|   |                        |            | Factsheets         |                | Guides        |                |
|   | 2007                   | 2008       | 2007               | 2008           | 2007          | 2008           |
| Markets: Stock exchanges and MEF                              | 5                      | 5          | 46,180             | 5,800          | 5,775         | 5,850          |
| Investors (direct requests to the Investor Assistance Office) | —                      | —          | 128,111            | 52,250         | 32,206        | 45,016         |
| Consumer associations   | 11                     | 15         | 3,550              | 1,220          | 500           | 1,714          |
| Securities market institutions                                | 187                    | 196        | 20,423             | 52,558         | 11,528        | 32,133         |
| Broker-dealers  | 30                     | 31         | 3,240              | 10,580         | 1,495         | 5,280          |
| Brokers   | 44                     | 45         | 4,315              | 7,405          | 1,390         | 4,808          |
| Portfolio management companies                                | 18                     | 20         | 4,678              | 1,800          | 1,564         | 1,822          |
| UCITS management companies                                    | 89                     | 92         | 7,992              | 31,173         | 7,005         | 18,943         |
| Branches of foreign investment firms                          | 6                      | 8          | 198                | 1,600          | 74            | 1,280          |
| Credit institutions   | 88                     | 105        | 88,218             | 27,296         | 19,066        | 92,296         |
| Universities and other education institutions                 | 38                     | 39         | 3,025              | 3,064          | 4,120         | 2,338          |
| Other   | —                      | 4          | —                  | 11,888         | 828           | 16,267         |
| <b>Total</b>  | <b>329</b>             | <b>364</b> | <b>289,507</b>     | <b>154,076</b> | <b>74,023</b> | <b>195,614</b> |

Source: CNMV.

### Meetings with investors

In 2008, the CNMV participated in 41 events in Spain, compared with 26 in 2007, which evidences the major efforts being made to inform investors about the CNMV's services and promote investor education.

These events are arranged in cooperation with both private and public institutions: public administrations, educational establishments, professional associations, financial institutions and the media. The events were aimed at investors and consumers, consumer affairs professionals, students, and financial institutions, among others.

The following events were particularly noteworthy:

- The seminar entitled “Consumer protection in the area of finance and investment”, organised in cooperation with the National Institute of Consumer

Affairs and the consumer affairs departments of the Balearic Islands and Basque Country regional governments. It dealt with such issues as: personal financial planning, precautions and preventing fraud and embezzlement, mutual funds, takeover bids, dispute resolution systems in the finance area, and problems with fees and commissions for investment services.

- The seminar organised by the Móstoles Municipal Office for Consumer Affairs to discuss consumers as investors and users of financial services.
- Participation in the series of lectures on “Key issues and solutions for investing in times of crisis”, organised in León by Inversis and Diario de León, which discussed the impact of the crisis on investors and the importance of financial education as the main form of investor protection.
- The presentation of the Financial Education Plan at the Corporate Social Responsibility convention organised by CECA in La Coruña.
- 10th Convention on Savings Banks Customer Service, organised by CECA, where the CNMV gave a keynote speech under the title “Practical application of complaints received by the CNMV on issues related to MiFID”.
- 2nd Course on Financial Services Customer Protection, organised by the Bank of Spain for supervisors from Latin America.
- Participation in training courses for Spain’s National Police Force in connection with claim procedures in the financial area.
- Participation each year in the seminar for magistrates organised by Spain’s Higher Council of the Judiciary and Bolsas y Mercados Españoles.
- Participation each year in the National Distance University (UNED) summer courses on “Stock Exchanges and Financial Markets”, which last one week.
- As in previous years, the CNMV participated in the Bolsalia (Madrid) and Borsadiner (Barcelona) fairs on the securities markets. On this occasion, the CNMV responded to almost 800 queries from small investors and distributed over 23,000 factsheets and 10,250 guides.

### Media appearances

The CNMV published a range of articles in the press and in specialised magazines, and granted interviews both to radio stations and the business and general press, both national and local, on MiFID, the Financial Education Plan, and the CNMV’s activities to improve investor education and protection.

### Cooperation with other bodies

In April 2008, the CNMV signed a cooperation agreement with the Spanish Committee of Representatives of People with Disabilities (CERMI). Under the agreement, the CNMV will foster the employment of people with disabilities, make its website accessible, and develop training content that takes account of the needs of people with disabilities.

The CNMV steadily increased the level of cooperation with the National Institute of Consumer Affairs (INC) in 2008 and expects to continue this trend in 2009. The Commission's participation in the seminars organised by the INC is viewed as a fundamental part of attaining the goal of improving financial knowledge on the part of users of financial services and of consumer affairs advisers.

#### 12.2.5. International cooperation

Two of the most notable developments in the area of international cooperation were that the CNMV joined FIN-NET and its steering committee in 2008, as well as the OECD's financial education network.

- As already mentioned FIN-NET is an initiative of the European Commission whose main goal is to provide consumers with easy access to out-of-court complaint procedures in cross-border cases through cooperation and information exchange between the authorities in each country.

The CNMV participated in two presentations at the meetings held in 2008: "CESR's recent developments stepping towards convergence", and "CNMV's Investors Assistance Office. *Attending enquiries and complaints of investors*".

Among the main issues discussed was the financial crisis and its impact on investors as a result of the growing commercialisation of complex products, and claims arising from the Lehman Brothers collapse and the Madoff fraud.

- The OECD, one of the international organizations that has insisted most on the need for citizens to be educated in financial matters, has created a network aimed at enabling government bodies involved in financial education to exchange experience and information. To this end, it also created a special website: [www.financial-education.org](http://www.financial-education.org).

The CNMV and the Bank of Spain are members of that network and have contributed to a range of initiatives such as questionnaires about OECD Recommendations and Principles regarding financial education, and financial education in the context of the financial crisis.

The main developments regarding the CNMV's participation in groups and forums such as CESR and IOSCO are as follows:

- The CNMV played an active role in drafting the CESR's first publication aimed at consumers: *A consumer's guide to MiFID. Investing in financial products*. Coinciding with the document's launch in Paris, the CNMV unveiled the Spanish version of the guide, under the title *Sus derechos como inversor: descubra la protección que le da la MiFID*.
- Active participation in the Intermediaries subgroup, which worked on MiFID-related issues in 2008, such as inducements, best execution and conflicts of interest, and organised workshops with the industry that focused on the wholesale and retail markets.

During the year, the CNMV assisted in developing a new zone for investors on the CESR website, the Investor Corner, and contributed to public consultations such as the one on the new simplified prospectus for UCITS.

- Participation in INFO 2008, the second annual conference of the International Network of Financial Services Ombudsman Schemes. The main issues addressed at the conference were the impact of the economic crisis on the activity of ombudsmen, as well as exchanging experiences in the area of inappropriate investments.

### 12.3 Advertising of investment products and services

Advertising has the function of providing investors with information about the range of investment products and services that are available. Because of their nature, advertising messages present the product as attractively as possible and, consequently, drawbacks or limitations may go unnoticed. They can also generate confusion or create unrealistic expectations in investors if not accompanied by the appropriate caveats.

The approval of the Spanish legislation transposing MiFID consolidated the criteria that were being applied to reviewing advertising campaigns that financial institutions submitted voluntarily for CNMV vetting. This service has gained in importance since the regulations require that all providers of investment services ensure that the information they provide to retail clients or potential clients, including advertising messages, must be impartial, clear and not misleading. The CNMV conveyed the message to all firms that it is essential for investors to examine the official information about a product before taking an investment decision.

A total of 282 advertising campaigns were vetted beforehand in 2008, i.e. 27.92% less than in 2007 as a result of the smaller number of products launched on the market in the year due to the adverse conditions.

Once again, campaigns to commercialize mutual funds predominated, accounting for 50% of the total. Also, contrasting with the 10 initial public offerings in 2007, there was only one in 2008: the participation shares issued by Caja de Ahorros del Mediterráneo.

A total of 63 campaigns for sophisticated products marketed in Spain under the EU passport were vetted, i.e. 22% of the total. Reviewing these campaigns is particularly important since they are often the only source of information for potential investors.

**Number of advertising campaigns reviewed by the CNMV**

TABLE 12.10

|                                 | Prior vetting |            | Subsequent oversight |          | Total      |            |
|---------------------------------|---------------|------------|----------------------|----------|------------|------------|
|                                 | 2007          | 2008       | 2007                 | 2008     | 2007       | 2008       |
| UCITS                           | 217           | 141        | 6                    | 0        | 223        | 141        |
| Foreign UCITS                   | 2             | 6          | 0                    | 0        | 2          | 6          |
| Primary and secondary offerings | 136           | 97         | 4                    | 1        | 140        | 98         |
| Financial services              | 29            | 38         | 0                    | 1        | 29         | 39         |
| <b>Total</b>                    | <b>384</b>    | <b>282</b> | <b>10</b>            | <b>2</b> | <b>394</b> | <b>284</b> |

Source: CNMV.

The growing variety of products, coupled with their complexity and the greater competition between entities, results in advertising having a considerable influence on investors. Because of the different oversight and review rules and procedures that apply to banking, securities and insurance, and of the proliferation of substitute products for retail investors with the same risk/return profile, it is advisable to make progress in standardizing the regulations, codes of conduct and oversight procedures.

## 12.4 General Investment Guarantee Fund

The number of entities which joined the General Investment Guarantee Fund (*Fondo General de Garantía de Inversiones*—FOGAIN) increased to 146 in 2008. As occurred in 2007, the increase was due primarily to the growing number of UCITS management companies which are members due to including individualized discretionary portfolio management in their schedule of activities. Also, the number of brokers and broker-dealers that are members of FOGAIN increased slightly, for the first time since 2002.

| Type of firm                         | 2004       | 2005       | 2006       | 2007       | 2008       |
|--------------------------------------|------------|------------|------------|------------|------------|
| Broker-dealers and brokers           | 103        | 101        | 101        | 99         | 101        |
| Portfolio management companies       | 24         | 21         | 17         | 11         | 10         |
| UCITS management companies           | —          | —          | 2          | 25         | 34         |
| Branches of foreign investment firms | —          | 1          | 1          | 1          | 1          |
| <b>Total</b>                         | <b>127</b> | <b>123</b> | <b>121</b> | <b>136</b> | <b>146</b> |

Source: CNMV.

The Board of the FOGAIN management company made the necessary adjustments to capital in order to accommodate the new and departing member firms and the changes in the percentage participation by member firms. The capital was established at 164,983 euro.

During the year, FOGAIN continue to process applications for indemnity due to violations by Ava Asesores de Valores, A.V., S.A., Gescartera Dinero, A.V., S.A., Broker Balear, A.V., S.A., X.M. Patrimonios, A.V., S.A. and Bolsa 8, A.V.B., S.A. To date, over 61 million euro have been paid out in indemnities in response to over 9,600 claims. Under current regulations, FOGAIN must be in a position to pay indemnities, to clients who are entitled, for claims received within the 15-year statute of limitations period, except where specific regulation provides otherwise.

Royal Decree 1642/2008, of 10 October, extending the maximum coverage by FOGAIN from 20,000 euro to 100,000 euro, came into force in 2008. Nevertheless, the previous cap of 20,000 euro will still apply to breaches that occurred before the Royal Decree came into force and are currently being indemnified (Ava Asesores de Valores, A.V., S.A., Gescartera Dinero, A.V., S.A., X.M. Patrimonios, A.V., S.A., Broker Balear, A.V., S.A., and BolsaA 8, Agencia de Valores y Bolsa, S.A.).

In 2008, the FOGAIN management company experienced a sharp increase in the number of queries about indemnity procedures and limits. The company provides

information by telephone and via its website [www.fogain.com](http://www.fogain.com). In 2008, FOGAIN continued the initiatives for informing the industry of the regulatory and supervisory positions. Activities focused on identifying best practices in codes of conduct and resolution of conflicts of interest, drafting an Internal Code of Conduct for investment firms, providing firms with feedback and support in the implementation of the new accounting and solvency regulations, commenting on draft regulations during the public consultation phase, and channelling the industry's concerns and opinions with regard to market operation and clearing and settlement.

Regulation  
and supervision  
of the securities markets  
Investor assistance





## 13 Disciplinary action

The CNMV has the power to impose penalties for breaches of the securities market regulations. Those regulations empower it to initiate and pursue investigations and disciplinary proceedings, and to directly punish minor and serious violations. Penalties for very serious violations are imposed by the Minister of Economy and Finance at the proposal of the CNMV, following consultation with its Advisory Committee. This chapter describes the CNMV's disciplinary actions (section 13.1), the Litigation Department's activities (section 13.2) and the warnings issued about unauthorised firms (section 13.3).

### 13.1 Disciplinary proceedings

#### 13.1.1 Statistics

In 2008, the CNMV Executive Committee initiated 13 new disciplinary proceedings, investigating a total of 22 possible violations. As in previous years, most investigations related to conduct classified as market abuse. Several disciplinary proceedings commenced for breach of the rules requiring the disclosure of significant holdings in listed companies. The others related mainly to defective disclosures to the CNMV and the market of regulated financial information or of information during takeover bids.

In one case involving alleged manipulation of the share price of a listed company, at the same time as it commenced disciplinary proceedings the CNMV also referred the matter to the public prosecutor's office since there was potentially a breach of article 284 of the Criminal Code. Once criminal proceedings commenced, the CNMV's disciplinary proceedings were suspended pending a final court decision.

The CNMV also completed 7 proceedings, covering a total of 9 violations. One of those proceedings had commenced in 2002, one in 2006 and five in 2007 (Tables 13.1 and 13.2). The most common violation to which the disciplinary decisions referred was misuse of inside information.

Also in 2008, a decision was issued on a disciplinary proceeding that commenced in 2002 but was suspended because the matter was sub judice; once a final court decision had been issued, the CNMV disciplinary proceeding was resumed. The matter referred to filing inexact financial and accounting information with the CNMV.

Table 13.4 details the violations to which the disciplinary proceedings that commenced or concluded in 2008 refer.

A total of 11 penalties were imposed, all fines, for a total of 5,279.5 thousand euro (Table 13.3).

| <b>Proceedings initiated and completed in 2008</b> |      |      | TABLE 13.1 |
|--|------|------|------------|
|  | 2007 | 2008 |            |
| <b>Number of proceedings initiated</b>             | 4    | 13   |            |
| <b>Number of proceedings concluded</b>             | 9    | 7    |            |
| Of which:  |      |      |            |
| – Initiated in 2002                                | —    | 1    |            |
| – Initiated in 003                                 | 1    | —    |            |
| – Initiated in 2005                                | 4    | —    |            |
| – Initiated in 2006                                | 4    | 1    |            |
| – Initiated in 2007                                | —    | 4    |            |
| – Initiated in 2008                                | —    | 1    |            |

Source: CNMV.

| <b>Violations addressed in disciplinary proceedings</b>    |      |      | TABLE 13.2 |
|--|------|------|------------|
|  | 2007 | 2008 |            |
| <b>Violations leading to the initiation of proceedings</b> | 6    | 23   |            |
| Very serious   | 4    | 17   |            |
| Serious  | 2    | 5    |            |
| <b>Violations on which proceedings concluded</b>           | 15   | 9    |            |
| Very serious violations                                    | 10   | 6    |            |
| proceedings initiated in 002                               | —    | 1    |            |
| proceedings initiated in 2003                              | 1    | —    |            |
| proceedings initiated in 2005                              | 4    | —    |            |
| proceedings initiated in 2006                              | 5    | 1    |            |
| proceedings initiated in 2007                              | —    | 4    |            |
| Serious violations   | 5    | 3    |            |
| proceedings initiated in 2005                              | 4    | —    |            |
| proceedings initiated in 2006                              | 1    | —    |            |
| proceedings initiated in 2007                              | —    | 3    |            |

Source: CNMV.

| <b>Penalties imposed</b>              |      |                     |                     |      |                     |                     | TABLE 13.3 |
|---------------------------------------|------|---------------------|---------------------|------|---------------------|---------------------|------------|
|                                       | 2007 |                     |                     | 2008 |                     |                     |            |
|                                       | No.  | Amount <sup>1</sup> | Period <sup>2</sup> | No.  | Amount <sup>1</sup> | Period <sup>2</sup> |            |
| Fines                                 | 14   | 18,630.4            | —                   | 11   | 5,279.5             | —                   |            |
| Suspension / Limitation of activities | —    | —                   | —                   | —    | —                   | —                   |            |
| Removal / General disqualification    | 3    | —                   | 18                  | —    | —                   | —                   |            |

Source: CNMV.

1. Thousand euro.

2. Years.

Number of each type of violation pursued TABLE 13.4

|  | Opened   |           | Closed    |          |
|--|----------|-----------|-----------|----------|
|  | 2007     | 2008      | 2007      | 2008     |
| <b>VERY SERIOUS VIOLATIONS</b>   | <b>4</b> | <b>17</b> | <b>10</b> | <b>6</b> |
| Failure to disclose/incorrect disclosure of significant holdings   | —        | 5         | 2         | —        |
| Operating without authorisation  | —        | —         | 2         | 1        |
| Market manipulation  | —        | 1         | —         | —        |
| Breach of coefficients   | —        | 1         | —         | —        |
| Failure to disclose significant events/provision of misleading, incorrect or materially incomplete information | —        | —         | 1         | 1        |
| Breach of issuer's periodical disclosure requirements  | —        | 2         | —         | —        |
| Breach of rules on takeover bids   | —        | 3         | —         | —        |
| Violation of general securities market regulations   | —        | —         | —         | —        |
| Violation of general UCITS regulations   | —        | 2         | —         | —        |
| Accounting irregularities  | —        | —         | 3         | —        |
| Unregistered issues  | —        | —         | —         | —        |
| Insider dealing  | 3        | 3         | 2         | 3        |
| Obstruction of inspection  | 1        | —         | —         | 1        |
| <b>SERIOUS VIOLATIONS</b>  | <b>2</b> | <b>5</b>  | <b>5</b>  | <b>3</b> |
| Accounting irregularities  | —        | —         | —         | —        |
| Operating without authorisation  | —        | —         | —         | —        |
| Breach of coefficients   | —        | —         | —         | —        |
| Corporate governance violations  | —        | 2         | —         | 1        |
| Market abuse violations  | —        | 1         | —         | —        |
| Violation of general securities market regulations   | —        | —         | —         | —        |
| Violation of general UCITS regulations   | —        | —         | 3         | —        |
| Violation of rules of conduct  | —        | —         | —         | —        |
| Market manipulation  | —        | —         | —         | —        |
| Insider dealing  | 2        | —         | 1         | 2        |
| Failure to draft / publish / file mandatory reports by the deadlines   | —        | 1         | 1         | —        |
| Failure to respond to CNMV subpoenas   | —        | 1         | —         | —        |

Source: CNMV.

### 13.1.2. Public register of penalties for serious and very serious violations

The following penalties for serious and very serious violations were incorporated into the public register of penalties in 2008:

- CNMV decision dated 27 March 2008, disclosing the imposition of penalties for a very serious violation by as provided by articles 102 and 105 of Act 24/1988, of 28 July, on the Securities Market.
- CNMV decision dated 27 March 2008, disclosing the imposition of penalties for a very serious violation by Caja de Ahorros de Salamanca y Soria (Caja Duero), as provided by article 102 of Act 24/1988, of 28 July, on the Securities Market.

- CNMV decision dated 27 March 2008, disclosing the imposition of penalties for a very serious violation by \_\_\_\_\_ as provided by articles 102 and 105 of Act 24/1988, of 28 July, on the Securities Market.
- CNMV decision dated 27 March 2008, disclosing the imposition of penalties for a serious violation by \_\_\_\_\_ as provided by articles 103 and 106 of Act 24/1988, of 28 July, on the Securities Market.
- CNMV decision of 4 December 2008, disclosing the imposition of penalties for a very serious violation by \_\_\_\_\_ as provided by articles 102 and 105 of Act 24/1988, of 28 July, on the Securities Market.
- CNMV Resolution of 4 December 2008, disclosing the imposition of penalties for a very serious violation by \_\_\_\_\_, as provided by article 102 of Act 24/1998, of 28 July, on the Securities Market.

### 13.1.3. Criteria of interest

#### Composition of Audit Committees: minimum number of members

In 2008, the CNMV imposed penalties on a listed company and its directors because the Audit Committee consisted of just two members despite having received two prior warnings from the CNMV to bring the committee's composition into line with the regulations.

The obligation for issuers to have an Audit Committee arises from Additional Provision Eighteen of the Securities Market Act, introduced by article 47 of Act 44/2002, of 22 November, on Measures to Reform the Financial System, and subsequently amended by article 98.3 of Act 62/2003, of 30 December on Tax, Administrative and Labour Measures, the relevant parts of which read as follows:

"[...]"

1. *Issuing companies whose shares or bonds are listed on official secondary securities markets must have an Audit Committee,*
2. *which must consist of a majority of non-executive directors [...]*
3. *[...]*
4. *The number of members, the competencies and the working rules of that Committee shall be laid down by the company's Articles of Association or the rules that apply to the company, and must foster its independence. [...]"*

The Audit Committee is a body whose minimum functions are specified in the Securities Market Act. Therefore, it is not a delegate body of the Board of Directors but, rather, is a body whose competencies are defined by law, even if it is an

ancillary or oversight committee linked to the Board of Directors and, consequently, made up solely of members of the Board.

Although the actual number of members of the Audit Committee is not literally stated in the law, as a collegiate body it can be deduced that it must consist of at least three directors (in which case, two of them must be non-executives). It is not possible to constitute an Audit Committee with just one or two members. The Securities Market Act also requires that the majority of the committee members be non-executive directors, which strengthens the idea that there must be at least three.

The penalty for breach of the obligation to have an Audit Committee in the required terms was introduced in Act 47/2007, of 19 December, amending the Securities Market Act, by classifying as a serious violation (article 100 bis) *“(...)failure by issuers of securities listed in official secondary markets to have an Audit Committee in the terms of additional provision eighteen of this Act”*.

### The precise nature of inside information

In 2008, the CNMV imposed penalties on two natural persons for insider dealing in connection with the acquisition of shares of a listed company while they were aware of negotiations for a major partner to acquire a stake in the company.

Article 81 of the Securities Market Act prohibits the use of inside information, which paragraph 1 of the Act defines as follows: *“all information of a precise nature which has not been made public, relating, directly or indirectly, to one or more transferable securities [...] or to one or more issuers of such transferable securities [...] which has not been made public and which, if it were made public, might have or might have had a significant effect on the prices of those securities in a regulated market or multilateral trading facility”*.

Article 1 of Royal Decree 1333/2005, of 11 November, implementing the Securities Market Act, in connection with market abuse, states that *“[...] the information will be considered to be of a precise nature if it indicates a series of circumstances that arise or may be reasonably expected to arise, or an event that has occurred or may reasonably be expected to occur, where that information is sufficiently specific to make it possible to reach a conclusion regarding the possible effect of that series of circumstances or events on the prices of the transferable securities or financial instruments in question or of any derivative financial instruments related to them.”*

The precise nature of the information must be evaluated on a case-by-case basis and depends on the nature, the context and the reliability of the source. In general, the precise nature of information is determined by the events to which it refers, i.e. rumours and speculation about vague, diffuse or uncertain events do not count.

Nevertheless, the precise nature of the information, i.e. of the facts it contains, should not be confused or identified with the conviction, certainty or security of the results or consequences that may arise from them.

In short, where the law requires that the information be of a precise nature, it is not requiring that it be complete, i.e. that it comprise all details of an event, but merely that it entail express knowledge of a specific fact above and beyond mere rumours, opinions or suppositions.

In a context of negotiations for a takeover bid or a merger or acquisition, parties who are aware of this process by virtue of participating in it have precise information, even if they did not attend all the meetings between the parties, or are unaware of the specific status of negotiations or the tentative price, and regardless of whether or not an agreement is ultimately reached.

### **Imposition of penalties: graduation criteria**

The penalty to be imposed on a firm or person should be graduated in accordance with the principle of proportionality. That principle is enshrined in article 131 of Act 30/1992, of 26 November, on the Legal Regime of the Public Administrations and the Common Administrative Procedure, which states that “ [...] *when the Public Administrations impose penalties, they must be proportional to the severity of the violation, considering in particular the following criteria when graduating the penalty:*

- a) The existence of intent or repetition.*
- b) The nature of the harm caused.*
- c) Recidivism, i.e. commission within one year of more than one violation of the same type, when so declared by a final decision.”*

In the case of violations of securities market regulations, the criteria set out in article 14 of the Act on Control and Supervision of Credit Institutions also apply due to express reference thereto in article 98 of the Securities Market Act: “*the penalties applicable in each case for very serious, serious or minor violations shall be determined on the basis of the following criteria:*

- a) The nature and magnitude of the violation.*
- b) The seriousness of the danger or damage caused.*
- c) The gains obtained, if any, as a result of the acts or omissions constituting the violation.*
- d) The importance of the credit institution in question, measured as a function of the size of its balance sheet.*
- e) The adverse consequences of the events for the national financial system or economy.*
- f) Whether the violation was remedied on the perpetrator’s own initiative.*
- g) In the event of an equity shortfall, the objective difficulties in attaining or maintaining the legal minimum.*
- h) The entity’s prior conduct in connection with the rules of control and supervision that affect it, having regard to any final penalties imposed on it in the previous five years”.*

Where directors or executives of the violating entity are involved, the regulation provides the following additional criteria:

- a) The person's degree of responsibility for the events.*
- b) The person's prior conduct, in the same or in another credit institution, in connection with the rules of control and supervision, considering final penalties imposed on him/her in the last five years.*
- c) The representative capacity in which the person acted".*

Based on those criteria, any attenuating circumstances should be reflected in the penalty but they may not serve as exonerating circumstances leading to a declaration of no liability.

Moreover, not all the foregoing criteria act as attenuating or aggravating circumstances. It is necessary to analyse and assess the specific case to decide whether it should mitigate or exacerbate the penalty. Therefore, where none of the aforementioned circumstances arise, the penalty should be neither aggravated nor attenuated.

### **13.2 Litigation Department: judicial review of disciplinary proceedings and other actions**

The corollary of a penalty in our legal system is the possibility of a review by the administrative tribunals (the Ministry of Economy and Finance) and by the administrative appeals courts; the CNMV has standing to defend the general interests entrusted to its care before such instances.

Among these functions, the Litigation Department is in charge of taking the steps envisaged by the Act Governing the Administrative Appeals Jurisdiction and in cooperating in the defence of penalties that have been challenged and of the other decisions made by the CNMV in the scope of its powers.

In this context, one appeal for review by a higher instance and five motions for reconsideration were presented to the Ministry of Economy and Finance in 2008, and the Ministry issued decisions on 4 motions for reconsideration of penalties (Table 13.5). The appealed decisions were upheld in all cases.

Additionally, nine appeals were filed with the administrative courts, four of them against penalty decisions, one against a decision to dismiss penalty proceedings, one against a decision rejecting pecuniary liability, and three against CNMV decisions. Twenty-three administrative appeals against acts or decisions of the CNMV were upheld by the courts, including 14 penalties imposed by the CNMV or the Ministry of Economy and Finance (Table 13.5 and Annex IV.3). Apart from one appeal, which was upheld, all the court decisions confirmed the penalties.

Also, in compliance with the general imperative principle of providing the assistance that may be required by the judges and the courts, the Litigation and Penalties Department provides assistance to judges and courts of all types, particularly the criminal courts, basically in cases of alleged fraud, embezzlement and insider dealing.

A total of 84 such requests for assistance were handled in 2008 (Table 13.5). The bulk of requests (45) were from the civil courts. Those requests related basically to notices

of attachment (which are the competency of the market governing companies), identification of securities owned by persons (knowledge of which lies with the securities depositories) and obtainment of evidence in proceedings of various types.

### Cases in which the CNMV participated in 2008

TABLE 13.5

|   | Presented                       | Decided   |
|---|---------------------------------|-----------|
| <b>Administrative appeals</b>                                 | <b>6</b>                        | <b>4</b>  |
| Appeals to a higher instance                                  | 1                               | —         |
| Appeals for reconsideration                                   | 5                               | 4         |
| <b>Appeals to the courts against administrative decisions</b> | <b>9</b>                        | <b>23</b> |
| Pro memoria   | <b>Assistance to the courts</b> |           |
| Requests received for assistance                              | 84                              |           |

Source: CNMV.

### 13.3 Warnings about unregistered firms

Through its website, the CNMV issues warnings to investors about unauthorised firms that have been detected by it or by other supervisors.

The following warnings were issued in 2008 (see Annex IV.4):

- Ten warnings (about ten entities) were issued under article 13 of the Securities Market Act, which entrusts the CNMV with protecting investors by disseminating any information that may be necessary to that end.
- In the area of international cooperation, 256 communiqués were received from European and other countries in connection with unauthorised firms, and there were 24 warnings in connection with improper conduct or actions.

Among the warnings published by the CNMV itself, of particular note is the one dated 7 April 2008 in connection with Evolution Market Group Inc (an entity trading under the name Finanzas Forex), Mr Germán Cardona Soler and Mr Santiago Fuentes Jover.

Evolution Market Group, Inc is an entity incorporated and domiciled in Panama which purportedly provides investments in the currency markets while guaranteeing very high returns. Its chairman is Mr Germán Cardona Soler, a Spanish national, and Mr Santiago Fuentes Jover is its most active marketer in Spain.

The company approaches potential investors in Spain and other European countries such as France, The Netherlands, Austria and in Scandinavia, as well as in Latin American countries such as Venezuela and Colombia. In addition to the warning issued by the CNMV, the supervisory authorities in France and Panama also issued public warnings.

Given the company's transnational nature and the high risk faced by potential victims, the CNMV made specific efforts to warn the public by disseminating all the data that was available at the time of the warning with a view to enhancing investor protection.



### 14.1 Introduction

The CNMV's international activity in 2008 was shaped by the world economic crisis. The crisis led to a notable increase in activity by forums of securities supervisors both in Europe (CESR) and worldwide (IOSCO, Joint Forum, etc.), which devoted a considerable amount of their time and efforts to attempting to reach a consensus on recommendations and proposals to regulators. The result was that the CNMV's participation in international meetings and conference calls increased with respect to 2007, particularly in the fourth quarter of the year due to the collapse of Lehman Brothers and the first meeting of the G20 Heads of State and Government.

This chapter describes the main work performed by the international bodies to which the CNMV belongs and those on which it worked in international inter-sectoral forums. The goal is to provide a general overview rather than a detailed description of the work, which is covered in other chapters of this report. Section 14.2 describes the activities performed by CESR, and section 14.3 is devoted to IOSCO. Section 14.4 summarizes the initiatives undertaken in industry forums such as the Joint Forum and the Coordination Committee of the CEBS, CEIOPS and CESR ("3L3"). The activities of the *Instituto Iberoamericano del Mercado de Valores* (IIMV) are described in section 14.5. And the final section describes actions in other forums and bodies.

The CNMV's intensive participation in CESR and IOSCO increased in 2008 since the Commission has representatives in most of the new working groups<sup>1</sup> created to analyze the measures which governments have adopted in line with the recommendations of the Council of the European Union, the Financial Stability Forum (FSF) and G20. The CNMV also assisted the new cross-sectoral working groups established by the EU level 3 committees and, with the Bank of Spain, participated in the working groups of the Joint Forum (comprising the banking, insurance and securities supervisors of the world's leading economies). The CNMV's international activities also included working with Spain's Directorate-General of the Treasury and Finance Policy to prepare sessions of the European Securities Committee, in the working groups to review company law in the framework of the EU, and in the recommendations on corporate governance for the OECD.

Table 14.1 shows the CNMV's participation in international meetings and the technical assistance provided to other countries.

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1. The structure of CESR and IOSCO are described in tables 14.2 and 14.3.

| <b>Attendance at international meetings and technical assistance</b> |                    |            |
|--|--------------------|------------|
| TABLE 14.1   |                    |            |
|  | Number of meetings |            |
|  | 2007               | 2008       |
| CESR   | 84                 | 142        |
| IOSCO  | 42                 | 65         |
| European Union   | 18                 | 27         |
| OECD   | 6                  | 7          |
| Other forums   | 30                 | 48         |
| <b>Total</b>   | <b>180</b>         | <b>289</b> |
| Technical assistance missions  | 4                  | 4          |

Source: CNMV.

## 14.2 Committee of European Securities Regulators (CESR)

CESR's agenda in 2008 was shaped by review of the Lamfalussy process which, in line with the route map established by EcoFin in December 2007, made substantial changes to the internal workings of the sectoral regulators' committees (banking, securities and insurance) and strengthened cooperation and information exchange between them. The review culminated in January 2009 with the decisions by the European Commission (EC) to modify the previous decisions to establish CESR and the other sectoral committees.

CESR also continued to conduct its ordinary activities in 2008, focused on advising the EC on implementing second-level legislation (directives and regulations of the Commission itself) and on convergence in the application of EU regulations through the production of standards, recommendations and guides.

CESR's main areas of action are described briefly below, distinguishing its ordinary work from that which arose as a result of the financial crisis and the review of the Lamfalussy process.

### Financial crisis

The activities of financial market regulators were shaped to a considerable extent by the developing crisis. This section describes the activities of CESR that were affected, in one way or another, by the crisis.

### Financial reporting

In October 2008, CESR (with CEBS and CEIOPS) issued a declaration supporting the amendment of IAS 39 with regard to reclassification of assets from the trading portfolio to other portfolios (e.g. loan portfolio or assets held to maturity). This measure eliminates the competitive disadvantage of European issuers with respect to their US counterparts, since US accounting standards allowed such a reclassification in extraordinary circumstances. It also contributed, with CEBS and CEIOPS, to drafting the guides for the IASB Expert Advisory Panel on measuring and disclosing the fair value of financial instruments in markets that are no longer active.

## Short selling

CESR established an *ad hoc* subgroup to consider the possibility of establishing a common method for disclosing short selling, and setting minimum disclosure percentages. The report is expected to be approved in the next few months.

## Lehman Brothers

The collapse of US bank Lehman Brothers led to the creation of a CESR working group to analyse the impact of this situation. In particular, the working group studied issues related to the marketing of financial products, the information contained in prospectuses, the transparency of structured products, and post-trade processes. Some of these issues will be reviewed in 2009.

## Credit rating agencies

At the request of the EC, CESR analyzed the role of the credit rating agencies in rating structured financial products. It also presented the EC with its proposals for strengthening the integrity and quality of the credit rating process, including notably the creation of a European body entrusted with authorizing and supervising the rating agencies. In parallel, CESR assessed the degree to which the rating agencies comply with the IOSCO Code of Conduct.

And, considering the imminent regulation of credit rating agencies by the European Union, CESR established a permanent group of experts to advise the EC in this area and, as appropriate, establish the procedures for performing the tasks to be assigned under the new regulation.

## Transparency of corporate bonds, structured finance products and credit derivatives

CESR commenced a review of the August 2007 conclusions regarding transparency in trading in the bond markets in the light of the turbulence in the financial crisis. This review was expanded to include transparency in trading structured finance products and credit derivatives. The resulting report will be published in the summer of 2009 following the mandatory public consultation process.

## Review of the Lamfalussy process

In line with the recommendations contained in the roadmap drafted by the EcoFin in December 2007, the level 3 committees of financial regulators worked on several parallel initiatives to strengthen convergence in supervision. The following three initiatives are particularly noteworthy:

### Review of the level 3 committees' charters

The main amendment consisted of eliminating the need for unanimity for decisions, replacing it with a qualified majority. Also, although it was decided that the decisions of the supervisors' committee should continue to be non-binding, if the national authorities decide not to apply the committees' decisions, they must explain their position. Measures were also adopted to strengthen cross-sectoral cooperation and exchange of information, particularly in the area of financial stability.

## Training initiative

With CEBS and CEIOPS, CESR continued to teach cross-sectoral courses, which were attended by staff members of the three committees and of competent authorities. In particular, the course on reputational risk and internal control, organised by the Bank of Spain and including lectures by the CNMV, was a great success.

The EC has decided to finance this initiative from 2009 onwards. Accordingly, the three committees will establish a permanent structure for training.

## Delegation of tasks and responsibilities

CESR, in cooperation with CEBS and CEIOPS, established three general principles for the delegation of tasks between financial supervisors. Delegation of tasks, which is considered to be fundamental in order to enhance supervisors' efficiency and also strengthen convergence, does not imply the delegation of responsibilities. The three committees will continue working in this area in 2009.

## The Larosière report

In view of the severity of the financial crisis at the end of 2008, it became clear that it was necessary to review the degree of coordination between European authorities in the supervision and regulation of securities markets and banking entities. As a result, in October 2008, the European Commission established a high level group of experts, chaired by Jacques de Larosière, to draft a report setting up the priorities of the future framework for financial supervision and regulation in Europe.

The main recommendations of the report, published in February 2009, included the establishment of a European Systemic Risk Council (ESRC), chaired by the President of the ECB, and consisting of the chairmen of the coordination groups of Europe's banking, insurance and securities regulators and supervisors, whose function would be to implement an effective early warning system for systemic risks, and also the establishment of a European System of Financial Supervisors (ESFS) to centralize coordination in application of regulations, although day-to-day supervision would remain in the hands of the national authorities. The Larosière report recommends a preparation period (2009-2010) and an implementation period (2011-2012).

## Ordinary activities

### Financial information (CESR Fin)

CESR drafted a number of documents, the most significant of which are as follows:

- a. CESR statement on the reclassification of financial instruments. This document analyzed the use, by European financial institutions, of the authorization to reclassify assets in the financial statements for the third quarter of 2008.
- b. Final report to the EC on the equivalence of third countries' accounting standards, recommending the acceptance of Indian GAAP in 2011.

- c. Comments regarding IASB's Exposure Draft on amendments to International Financial Reporting Standards, such as the amendment to IAS 31 regarding jointly-controlled entities, the proposal to establish a new framework for distinguishing between equity and debt, and the proposal to reduce the complexity of reporting financial instruments.
- d. CESR published key information from its database of enforcement decisions taken by EU National Enforcers of financial information (IFRS).

### **Market integrity (CESR Pol)**

Through CESR-Pol, CESR continued to coordinate the activities of supervision, inspection and discipline between the Member States of the European Union. In addition to the measures related to short selling, CESR developed a third set of guidance and information on the common operation of the Market Abuse Directive. Specifically, it addressed the drafting of lists of insiders, reports of suspicious transactions, stabilization and share buyback programmes, and inside information.

Also, in coordination with the SEC, CESR established a procedure for informing investors how to proceed if affected by the Madoff fraud.

### **Review of CESR standards and guides and of the application of EU regulations (Review Panel)**

Continuing with the self-assessment by regulators of the degree of implementation of the European financial regulations, which commenced in 2007, CESR reviewed the degree of application of the guides for simplifying procedures for notification about UCITS between regulators in different Member States.

CESR also drafted a mapping methodology which was used in the review conducted during 2008 (completed early in 2009) of the supervisory powers and practices and the administrative and criminal disciplinary regimes of the various Member States in connection with MiFID.

### **MiFID**

Following the entry into force of MiFID in November 2007, CESR has been working intensely on level 3 regulation through two subgroups: one on markets and one on intermediaries (chaired by the CNMV).

The activities of the subgroup on intermediaries included notably the implementation of a protocol for supervising branches, the drafting of a MiFID Guide for retail investors, the production of FAQ documents on particular aspects of applying MiFID, and the publication of supervision manuals on best execution, conflicts of interest and inducements.

In addition to analyzing transparency in the markets in bonds, structured products and credit derivatives, the markets subgroup also drafted a protocol for trading halts and exclusions of financial instruments and an analysis of (i) the impact of MiFID on secondary markets in securities, (ii) calculation methods for determining net asset values, and (iii) discretionary orders.

The entry into force of MiFID also led to the implementation of the Transaction Exchange Mechanism (TREM) for the exchange of information on transactions in

financial instruments listed in regulated markets in the Member States. CESR decided to expand the capacity of the TREM to include information on OTC transactions in financial instruments. This project will have specific funding from the EC.

### **Undertakings for Collective Investment in Tradable Securities (UCITS)**

In the area of collective investment, CESR addressed the following issues:

- Advising the EC on the passport for management companies. This will be included in the amendment to the UCITS Directive.
- Drafting the principles of risk management for UCITS management companies, which were approved in 2009.
- Continuing with the work to design Key Investor Information, which will replace the simplified prospectus.
- Commencement of an analysis of the situation in Europe of money market funds, hedge funds and real estate investment trusts in the context of the current financial crisis.

### **Other actions**

In the area of post-trade, the IOSCO recommendations on clearing and settlement systems and central counterparties were adapted to the European regulatory environment, based on the recommendations of the Basel Committee on Payment and Settlement Systems (CPSS) and IOSCO. Also in this area, CESR is advising the EC on mapping existing agreements for access and interoperability in post-trading infrastructures.

CESR has also been working in parallel with the EC on mutual recognition of regulated markets and financial institutions with other jurisdictions, e.g. the United States. Finally, CESR provided advice to the EC on two areas related to commodities:

- a) Working with CEBS on the review that the EC must perform of the exceptions contained in the MiFID and the Capital Requirements Directive for members that trade in commodities.
- b) Working with the European Regulators' Group for Electricity and Gas (ERGEG) on the ongoing review by the EC of the Electricity and Gas Directives within the Third Energy Package. The review covered market abuse, transparency, information storage and exchange of information between energy and securities regulators.

### **14.3 International Organization of Securities Commissions (IOSCO)**

Since 1990, the CNMV has been an ordinary member of IOSCO, whose headquarters are located in Madrid, and it participates actively in its Executive, Technical and European Region committees. In 2008, the CNMV was re-elected for a further two years as the representative of the European Regional Committee on the Executive Committee.

The CNMV also participates in the working groups organised by those committees, both the permanent groups and those established *ad hoc* for specific issues. IOSCO's main activities in 2008 were as follows:

### The financial crisis and the role of IOSCO

The international financial crisis had a substantial impact on IOSCO's work plan.

At a meeting of the Financial Stability Forum in April 2008, in which the Basel Committee on Banking Supervision, the International Association of Insurance Supervisors (IAIS) and IOSCO participated, recommendations were made for work in the following five areas: a) Strengthening prudential supervision of financial institutions, particularly in the areas of capital, liquidity and risk management; b) Strengthening transparency and asset valuation; c) Changes in the role played by credit rating agencies; d) Strengthening the authorities' capacity of response to situations of risk; and e) Stronger agreements for managing crises in the financial system.

From the perspective of IOSCO, the FSF's most significant recommendations were those addressed to securities regulators urging them, in conjunction with market participants, to strengthen and improve transparency at each stage of the securitisation process, and the implementation of the Code of Conduct (revised) for the rating agencies, especially in handling conflicts of interest and improving the quality and transparency of the rating process.

In 2008, IOSCO published two documents on issues raised by the crisis: subprime mortgages, and credit rating agencies.

The report on subprime mortgages<sup>2</sup> analyzed the causes of the crisis, drew conclusions on the need to enhance and amend the IOSCO Code of Conduct for rating agencies, and drew up 11 recommendations in the form of mandates for development by permanent working groups reporting to the Technical Committee.

In May, IOSCO approved the new Code of Conduct for credit rating agencies<sup>3</sup>. The review focused on their activity with regard to structured financial products. IOSCO is to establish a permanent committee on ratings to liaise continuously with the industry with regard to new legislation and to increase cooperation in this area.

Prior to the G20 meeting in Washington in November 2008, the chairs of the Executive, Technical and Emerging Markets Committee, in representation of IOSCO, sent an open letter to the chairman of the Financial Stability Forum and other representatives at the G20 setting out their views on the agenda. Following the G20 meeting, which set the general lines for the reform of the international financial system, IOSCO established a number of working groups to analyse the issues that are related to the securities markets. Specifically, it set up four working groups on the following issues: transparency of short selling; unregulated or insufficiently-regulated entities, focused on hedge funds; unregulated products and markets (trading in structured finance products and credit default swaps); and a working

2. *Report on the Subprime Crisis*. IOSCO, Technical Committee. May 2008.

3. *Code of Conduct Fundamentals for Credit Rating Agencies*. IOSCO, Technical Committee. May 2008.

group to develop a new strategic plan for the organisation. The conclusions of this work will be released early in 2009.

### **Accounting, auditing and dissemination of information**

In the accounting area, IOSCO issued a public statement, through its Technical Committee, supporting the efforts of the International Accounting Standards Board (IASB) and the Financial Accounting Standards Board (FASB) in the search for measures on fair value and asset reclassification.

With regard to auditing, IOSCO monitored the new international standards issued by the International Auditing and Assurance Standards Board (IAASB) with the goal of increasing their clarity and homogeneity (Clarity Project). This project concluded recently.

IOSCO also published a Contingency Plan to prepare for the eventuality of an audit firm finding itself in difficulties that might affect the issuance of auditors' report. The plan includes guides for regulators, which can draw up the necessary procedures as a function of powers in the area of audit.

Two projects are still under way. One is to develop principles for periodical disclosure by listed companies with the goal of improving those disclosures on an international level. The second deals with the development of principles for disclosures when issuing asset-backed securities.

### **Secondary markets and intermediaries**

These groups did a range of work in 2008 which will be released for public consultation early in 2009. The markets group drew up principles on direct access to markets and on outsourcing services. The intermediaries group worked with the UCITS group to analyse obligatory disclosures to investors when commercialising mutual funds or similar products.

### **Cooperation and exchange of information. IOSCO Multilateral MOU**

In line with the decision adopted by IOSCO in its strategic plan, all its members must be signatories of the Multilateral Memorandum concerning Consultation and Cooperation and the Exchange of Information by 2010. Nevertheless, those jurisdictions where material changes in legislation are required in order to fulfil the requirements of the MoU must undertake to make all necessary efforts to complete them. At the end of 2008, 51 jurisdictions had signed the Memorandum and other 21 had undertaken to sign it once their legislation allowed. That is, approximately 63% of the membership have completed the process, and a significant number of members are in the process.

In 2008, the CNMV continued to provide technical assistance to jurisdictions which requested it, principally in Latin America.

Another important task performed in 2008, supported by the Financial Stability Forum, was dialogue with jurisdictions with which there are difficulties in the area



of cooperation and the exchange of information. The goal was to identify the factors preventing cooperation, such as lack of resources or the lack of specific regulations governing corporation. Once the causes were identified, technical assistance was provided in an attempt to overcome them.

## UCITS

IOSCO's work in this area led to the publication of the following documents:

### Review of the regulatory issues relating to real estate funds

This document reviews regulatory issues of real estate funds and sets out the replies by a range of jurisdictions to a questionnaire on this issue. The report indicates whether or not a jurisdiction has specific regulations in this area and identifies significant aspects such as asset valuation, conflicts of interest, liquidity management, and ownership of the properties.

### Funds of hedge funds

The purpose of this report was to assess whether the principles set out in previous reports needed to be amended or updated. It focused on examining the regulation or draft regulation on funds of hedge funds in member jurisdictions, identifying any aspect of risk for regulators, and developing standards for these funds based on best practices. The report concludes that it is necessary to establish principles in two specific areas: liquidity risk, and the characteristics required of the due diligence process.

## Other actions

In 2008, the Presidents' committee adopted a specific plan of action for reviewing and updating IOSCO's principles and objectives, which is scheduled for completion in 2011. The plan will consist of two phases: (1) a review of the principles and methodology for self-assessment issued since the last review in 2003, and (2) maintaining the current structure of the principles in order to complete and improve the texts.

## 14.4 International inter-sectoral forums

The CNMV participated actively in inter-sectoral international forums of financial supervisors during the year.

### Joint Forum

As occurred with other forums and committees of financial regulators and supervisors, the financial crisis affected the activities of the Joint Forum (JF)<sup>4</sup>. In addition to the standard mandates from international associations of regulators

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4. The Joint Forum groups banking, securities and insurance regulators; the CNMV has been a member since its foundation in 1999.

(Basel Committee on Banking Supervision, IOSCO, the International Association of Insurance Supervisors), the Joint Forum is also working more intensely as a result of mandates from the Financial Stability Forum. In this context, the most significant actions by the Joint Forum in 2008 (some of which will be continued in 2009) were as follows:

#### **Work completed in 2008**

1. Evaluation of the degree of compliance with the Joint Forum's principles on the supervision of financial conglomerates.
2. Identification and management, by financial institutions, of concentration risk and the use of stress tests.
3. Risk management in commercialization of financial products (legal, reputational and operating risks).

#### **Work performed at the request of the Financial Stability Forum**

1. Update of the report on credit risk transfer.
2. The use of agency ratings by regulators and investors
3. Treatment of the transfer or retention of risk in off-balance sheet vehicles.

Finally, in response to a request from the G20 meeting in November 2008, the Joint Forum will evaluate differences and loopholes in existing financial regulation.

#### **CEBS-CEIOPS-CESR coordination committee (3L3)**

The working protocol of the 3L3, the group comprising the presidents and general secretaries of the three level 3 supervisors, was revised in November 2008 to enhance the group's activities (the protocol had been in force since 2005). A short- and medium-term work plan for 3L3 was sent to the EC. In line with the work plan, a number of the tasks envisaged in the review of the Lamfalussy process, such as joint training initiatives and the establishment of general principles for task delegation between European Union financial supervisors, were undertaken.

Other areas of action by 3L3 in 2008 were:

1. Principles for the fit and proper criteria in cross-border mergers and acquisitions of financial institutions.
2. *Internal Governance*: evaluation of regulatory differences in the MiFID, CRD and UCITS Directive.
3. Study on issues related to money laundering.

A mandate was approved in 2008 for 3L3 to work in 2009 on developing common risk management criteria and, based on its work plan, it will foreseeably conduct a survey of remuneration and compensation policies for financial institution executives.

## 14.5 Instituto Iberoamericano del Mercado de Valores (IIMV)

The IIMV is a legal person with full functional independence. The CNMV chairs its Board of Trustees and works closely with the IIMV to promote Latin America's securities markets through joint training and cooperation programmes.

During the year, the IIMV undertook 13 training and cooperation activities (two on-line and the other 11 face-to-face), covering such important areas of interest to Latin America as: (1) regulation of the markets in corporate control, (2) takeover bids and protecting the interests of minority shareholders, (3) IFRS/IAS, focusing particularly on the accounting regulations for financial instruments, (4) the regulatory framework for valuing assets, (5) supervision of the new forms of collective investment, legislative development to support venture capital, (6) dissemination of the XBRL standard, (7) information system security and the development of new applications and tools for disseminating information, and (8) processes and actions in the oversight, inspection and discipline of entities.

Additionally, the Forum on models of supervision in Latin America's financial markets was attended by the top-level supervisory authorities from Argentina, Bolivia, Brazil, Costa Rica, Colombia, Chile, El Salvador, Spain, Mexico, Panama, Portugal, the Dominican Republic, Uruguay and Venezuela.

## 14.6 Other forums and activities

### Iberian Electricity Market (MIBEL)

The international convention between the Kingdom of Spain and the Republic of Portugal which regulates the Iberian market in electricity (MIBEL) was updated in 2008. In the first half of 2009, the CNMV became chairman of MIBEL's Board of Regulators, comprising the two countries' securities and energy regulator (the chair is rotated).

The strictly financial issues addressed by the MIBEL Board of Regulators in 2008 included notably the conversion of the forward or derivatives market (OMIP) into a regulated market in accordance with MiFID, increasing the capital of OMIP and of its clearing house (OMIClear), and a range of regulations in the market and the clearing house aimed at increasing market liquidity (which is still relatively low).

### Organisation for Economic Cooperation and Development

The CNMV has been providing regular assistance to Spain's Directorate-General of the Treasury and Finance Policy in the OECD working groups and committees to review the OECD Principles of Corporate Governance.

In 2008, considerable work was done to implement the new work methodology for examining the application of these principles in the various national jurisdictions. The CNMV worked actively with the OECD Secretariat in drawing up framework documentation that will serve as a basis for examining and evaluating the implementation of the OECD principles in the countries wishing to join the organisation in 2009. The Spanish delegation also cooperated in the annual Latin American corporate governance conference, held in Mexico in December 2008.

### International responses to the financial crisis

Responding to the economic and financial situation, a number of international bodies have been working to attenuate the crisis and prevent future crises. To provide a global response to the events that resulted from the September 2008 collapse of Lehman Brothers, the G20 held its first meeting in November 2008. The meeting established some principles with regard to working to improve the financial markets:

- Strengthening transparency of financial markets and products.
- Enhancing sound regulation.
- Promoting integrity in financial markets.
- Reinforcing international cooperation.
- Reforming international financial institutions.

The conclusions of the work performed since then will be analysed and released at the next G20 meeting, in April 2009. The recommendations to be presented at the summit were outlined by the Ministers of Finance and the Governors of the Central Banks, focusing on the following principles:

- All financial institutions, markets and instruments that have the potential to generate systemic risk should be regulated and supervised.
- Greater regulation should be accompanied by strengthened macroprudential supervision.
- Financial regulation must ensure that capital requirements are strengthened in the expansive phase of the economic cycle.
- There should be more international cooperation between supervisors to prevent and resolve crises, and the IMF and FSF should establish early warning systems.

In 2008, the FSF drafted reports containing recommendations on the following issues, among others: prudential supervision, risk management and liquidity, the role of credit rating agencies, and greater cooperation and exchange of information between financial supervisors.

Within the EU, work was done in 2008 on developing legislation related to the financial crisis, which will be submitted for approval in the first half of 2009. The main measures are:

- Review of the Capital Requirements Directive to limit the risk which credit institutions can assume.
- Regulation, registration and supervision of the credit rating agencies that operate within the EU.

- Increase of the minimum guarantee on customer deposits at credit institutions.
- Review of the criteria for setting executive remuneration at financial institutions.

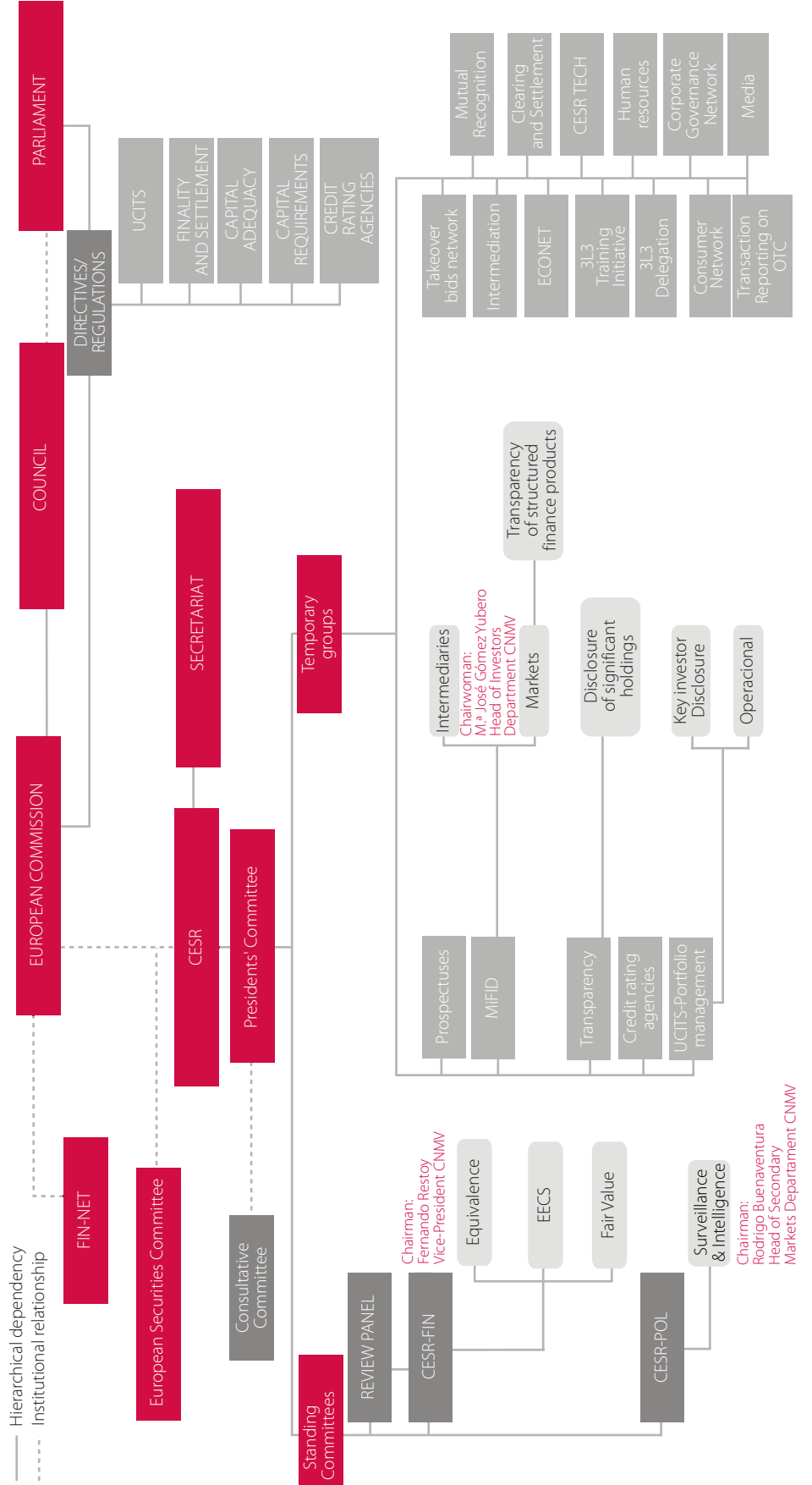
In October 2008, the President of the European Commission entrusted a group of experts headed by Jacques de Larosière with the task of drawing up recommendations to strengthen financial supervision in Europe. The group presented its conclusions on 25 February and the recommendations and their implementation are currently being considered by the European institutions.

### **International Support Unit (Litigation and Penalties Department)**

The CNMV's Litigation and Penalties Department handles cooperation with other supervisors in the area of investigation. In 2008, it issued 65 requests to regulators in other countries (55 in 2007) and handled 28 incoming requests for cooperation (44 in 2007). Approximately half of incoming requests for assistance related to investigations of market abuse and the other half to investigations of activities being performed in the securities markets by unauthorised parties. Approximately three-quarters of outgoing requests for assistance to foreign regulators were related to market abuse and the remainder to unauthorised firms.

TABLE 14.2

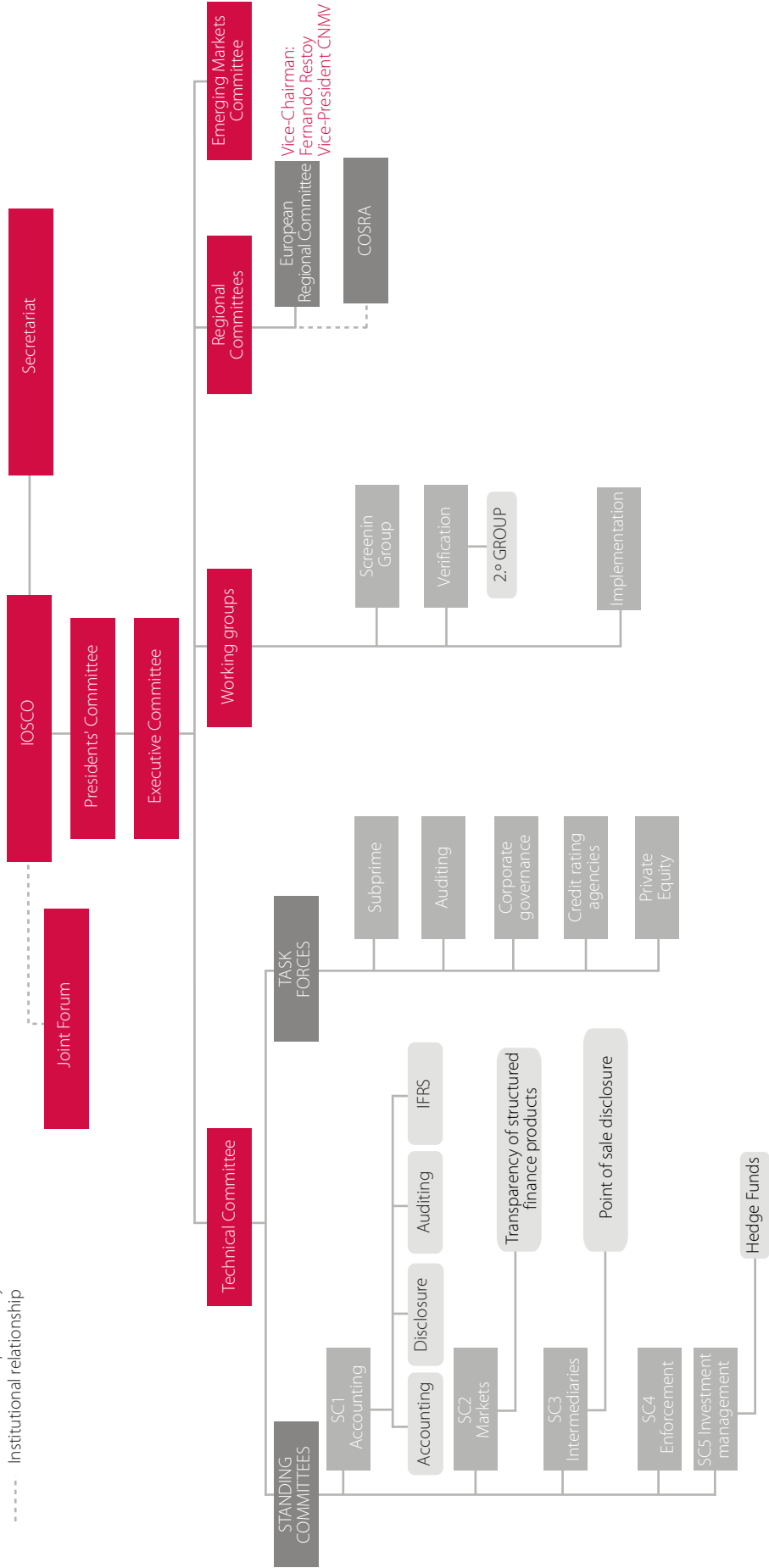
**CESR: groups and subgroups**



**IOSCO: groups and subgroups**

TABLE 14.3

— Hierarchical dependency  
 - - - Institutional relationship



**Regulation  
 and supervision  
 of the securities markets**  
 International activities





## V CNMV: organisation, finance and institutional aspects



## 15 Organisation

CNMV:  
organisation, finance  
and institutional aspects  
Organisation

### 15.1 Human resources

The CNMV had 369 employees at the end of 2008, i.e. 18 more than at 2007 year-end. The net growth in the workforce is the result of 38 new hires and 20 departures.

#### CNMV staff: composition by professional category

TABLE 15.1

Number of employees at 31 December

|                             | 2007       |            |            | 2008       |            |            |
|-----------------------------|------------|------------|------------|------------|------------|------------|
|                             | Total      | Men        | Women      | Total      | Men        | Women      |
| Services                    | 9          | 8          | 1          | 9          | 8          | 1          |
| Clerical/Computer operators | 63         | 12         | 51         | 66         | 14         | 52         |
| Technical                   | 258        | 122        | 136        | 274        | 131        | 143        |
| Management                  | 21         | 14         | 7          | 20         | 13         | 7          |
| <b>Total</b>                | <b>351</b> | <b>156</b> | <b>195</b> | <b>369</b> | <b>166</b> | <b>203</b> |

Source: CNMV.

#### Breakdown of CNMV staff by division

TABLE 15.2

Number of employees at 31 December

|                            | 2007       |            |            | 2008       |            |            |
|----------------------------|------------|------------|------------|------------|------------|------------|
|                            | Total      | Men        | Women      | Total      | Men        | Women      |
| Line Directorates-General: | 219        | 92         | 127        | 234        | 100        | 134        |
| Entities                   | 97         | 39         | 58         | 103        | 42         | 61         |
| Markets                    | 90         | 40         | 50         | 98         | 45         | 53         |
| Legal Counsel              | 32         | 13         | 19         | 33         | 13         | 20         |
| Directorates               | 116        | 60         | 56         | 119        | 63         | 56         |
| Board                      | 16         | 4          | 12         | 16         | 3          | 13         |
| <b>Total</b>               | <b>351</b> | <b>156</b> | <b>195</b> | <b>369</b> | <b>166</b> | <b>203</b> |

Source: CNMV.

The Public Sector Hiring Process of 2008, which included 45 positions for the CNMV, is expected to be completed in the first half of 2009. Assuming that those positions are filled, the workforce will have expanded by approximately 18% (Table 15.3).

### Breakdown of CNMV staff by division (projection)

TABLE 15.3

Projected number of employees at 31 December 2008, including the 45 positions offered in the Public Sector Hiring Process

|                            | 2007               | 2008               |                     | Total projected staff |
|----------------------------|--------------------|--------------------|---------------------|-----------------------|
|                            | Total actual staff | Total actual staff | Positions announced |                       |
| Line Directorates-General: | 219                | 234                | 32                  | 266                   |
| Entities                   | 97                 | 103                | 23                  | 126                   |
| Markets                    | 90                 | 98                 | 8                   | 106                   |
| Legal Counsel              | 32                 | 33                 | 1                   | 34                    |
| Directorates               | 116                | 119                | 13                  | 132                   |
| Board                      | 16                 | 16                 | 0                   | 16                    |
| <b>Total</b>               | <b>351</b>         | <b>369</b>         | <b>45</b>           | <b>414</b>            |

Source: CNMV.

The following human resources policy initiatives were implemented in 2008:

- A Development Programme for University Graduates was implemented, with ten candidates to be selected in the 2008 Public Sector Hiring Process. The Programme aims to provide selected candidates with a comprehensive understanding of how the CNMV works. During the two-year Programme, participants will receive specific training adapted to the needs of each CNMV department, where they will rotate for periods of six months to one year. The programme will begin in the first half of 2009 once the current selection process has been completed. The programme is scheduled to be repeated in the 2009.
- The needs of each Department were analysed with a view to drafting an internal training plan to be implemented in 2009. Moreover, another edition of the Training Programme was launched in English, the goal being to continue developing English-language communication skills.
- Negotiation with the Works Committee as regards the first Collective Agreement for CNMV employees who are not civil servants, which began in 2007, made significant progress in 2008, approximately 75% of the agreement having been completed.
- The first agreement with the Committee of European Securities Regulators (CESR) came into force, implementing the programme to promote professional exchanges between the various European supervisors in the form of temporary secondments.
- Due to review of the Safety Plan for the building on Calle Marqués de Villamagna, 3, the Emergency, Evacuation, and First Aid Plan for the CNMV offices located there was revised and updated.

## 15.2 Information systems

The CNMV had two main goals for its IT networks in 2008: (i) to implement the necessary software to support the application of the new Circulars that entered into

force, and (ii) as part of the General Contingency Plan, to implement new infrastructure in the main and backup data centres and the users' backup centre. The plan to promote e-administration continued as seven new procedures were added to the electronic registry.

As regards regulated information from issuers, new software was implemented to receive, register and disseminate disclosures of significant holdings, annual corporate governance reports and interim financial reports (quarterly and half-yearly reports) with a new IPP taxonomy in XBRL.

New processes were also implemented to receive, use and, if appropriate, disseminate periodic disclosures by UCITS to the CNMV. The implementation of a new version of the electronic prospectus for UCITS was completed.

The implementation was completed of procedures for electronic reception, by various methods and from various sources, of disclosures relating to transactions in financial instruments, now including data on the person conducting the transaction.

The pilot project within the plant for comprehensive management of documents in image format was completed and the new system was rolled out for all procedures at the Entities Authorisation and Registration Department.

#### **CNMV Activities Plan 2009: revision and update**

Last February, as it has done since October 2007, the CNMV presented its Activities Plan for 2009. The only other European supervisory body to publish a similar plan is the UK's FSA; the CNMV Plan is an exercise in transparency and accountability that goes beyond legal requirements, since it details objectives established until the first quarter of 2010 and tracks commitments included in the first Plan (2007-2008), disclosing their degree of fulfilment and explaining the reasons for any changes or delays.

The degree of execution of plans envisaged for 2008 was shaped by the complexity of the global financial situation. Due to the heightening of the crisis and the succession of unexpected events, the CNMV had to re-evaluate priorities and redefine objectives to adapt to new requirements.

The collapse of Lehman Brothers and the Madoff fraud required resources to be re-allocated with a view to ensuring maximum transparency as regards the impact of those events and conducting adequate supervision. In 2008, collaboration intensified with the Government on issues such as the implementation of the Financial Assets Acquisition Fund (FAAF) and government guarantees. That collaboration also expanded to encompass defining and coordinating positions at an international level due to the growing debate about the financial crisis in various international forums.

Various objectives required more resources than initially estimated. For example, special efforts were necessary to review asset valuation in illiquid markets, both in UCITS portfolios and on corporate balance sheets. More resources were allocated to establishing and applying criteria with regard to

securities issued by banks for sale to their customers, the goal being to ensure that investors receive adequate information regarding the issue conditions, guarantee fair valuation and monitor compliance with best practices in the commercialisation of those issues.

In this context, the CNMV fulfilled a large percentage of the 67 objectives initially envisaged in the 2007-2008 Plan. Specifically, the CNMV completed 85% of its goals, including those that were finalised in the first quarter of 2009. Of those, 41 (61% of the total) were completed within the original deadlines. Including the 11 that were fulfilled in the first quarter of 2009, and excluding those whose completion did not depend solely on the CNMV, just 10 objectives (15% of the total) were not completed in the period initially envisaged. The CNMV completed a large number of regulatory projects in the last year. Of the 21 Circulars included in the Plan, 16 were drafted and approved (the same as the number of Circulars drafted in the last six years).

The Activities Plan for 2009 maintains the strategic lines identified in the Securities Market Act, placing special emphasis on lessons from the crisis and the need to revive confidence in the financial system. Under the Plan, the CNMV undertakes to approve nine additional Circulars; accordingly, in the last two years, the Commission will have approved two-thirds of the Circulars drafted in its 21 years of existence. The Plan emphasizes improving transparency as one of its principal goals, while also maintaining rigorous oversight of listed companies' financial information and the quality of information provided to retail investors. The 2009 Plan seeks to improve quality in the provision of investment services, enhance investor training and protection, and detect potential cases of market abuse. It also recognises the need to strengthen mechanisms for cooperation between supervisory authorities, particularly to monitor global groups and institutions (e.g. rating agencies) while establishing a set of objectives aimed at improving the organisation internally and strengthening its human capital so as to increase the Commission's flexibility and effectiveness.

### CNMV 20th Anniversary

The CNMV celebrated its 20th anniversary in 2008, since it was established by virtue of Act 24/1988, of 28 July, on the Securities Market Law, and played a fundamental role in the reform of Spain's securities market which began in 1988. A series of commemorative activities were organised in 2008 to reflect on the transformation of the securities markets and on the challenges that remain in terms of financial integration and the adaptation of supervisory structures.

Most of the events were held in September 2008, coinciding with the meeting of the International Organization of Securities Commissions (IOSCO), to which the CNMV belongs and whose headquarters are located in Madrid.

In particular, the 20th Anniversary International Conference brought together representatives of the world's leading financial market regulators to discuss global prospects, the challenges facing the securities markets, and the status and outlook for integration of Europe's securities markets.

The conference was attended by experts such as EU Economic and Monetary Affairs Commissioner, Joaquín Almunia, Chairman of the New Zealand Securities Commission and of IOSCO's Executive Committee, Jane Diplock, and Chairman of CESR, Eddy Wymeersch. Spain's Second Vice-President of the Government and Minister of Economy and Finance, Pedro Solbes, gave a closing lunchtime address.

The Conference speeches have been compiled in a special book commemorating the CNMV's 20th Anniversary, which also includes a detailed analysis of the transformation of Spain's financial markets over the last two decades by Gonzalo Gil entitled: "The Spanish Financial System: current situation and medium term prospects".

The Latin American Forum on Supervision Models was also held in September. It was organised jointly with the Instituto Iberoamericano del Mercado de Valores (IIMV) and brought together leading Latin American supervisors to reflect on the various models for institutional supervision; participants included Corporación Andina de Fomento (CAF) and Spain's Directorate-General of the Treasury and Finance Policy.

A number of celebratory events were also held with CNMV employees and former members of the CNMV Board of Directors, the goal being to recognise the importance of human capital in the institution's ongoing development.





## 16 Finances

### 16.1 Revenues and expenses

In 2008, the CNMV obtained 61.6 million euro in revenues and incurred 42.2 million euro in expenses; therefore, the surplus for the year amounted to 19.4 million euro.

The bulk of revenues were from fees: 55.6 million euro, 1.4% more than in 2007. The other revenues were mainly from interest and, to a lesser extent, from the sale of publications and other sources (professional information disseminators, recovery of expenses for announcement of tenders, etc.).

Total expenses increased by 14.4% with respect to 2007. Personnel expenses, which accounted for 56.5% of the total, increased by 4.5% with respect to 2007, and the average headcount increased by 1.7%. Other expenses increased by 30.6%. This increase was due mainly to other management expenses (up 33.8% year-on-year) as a result of higher spending on leases and the acquisition of non-capitalisable materials. Increased lease expenses are due to new office rentals in order to relocate staff during the scheduled renovation work at the headquarters building. The increase in non-capitalisable materials reflects the computer, security and other fittings installed in 2008 in the new leased offices.

On 5 December 2008, at the proposal of the CNMV, the government resolved to allocate the 2007 surplus to the Treasury.

### 16.2 Fee structure

Table 16.1 shows the fees for the various services that the CNMV performs; fee revenues rose by 1.4% in 2008.

This increase is due largely to the growing pace of revenues from Sociedad de Sistemas member supervision fees (16.6%), which offset the decline in revenues from prospectus and entity registration fees (-6.1%) and from UCITS supervision fees (-14.2%).

**CNMV fee revenues**

TABLE 16.1

| Thousand euro   |                 |                 |              |
|---|-----------------|-----------------|--------------|
| Activity or service   | 2007            | 2008            | % chg. 08/07 |
| <b>Registration of prospectuses and market participants</b>                 | <b>11,449.1</b> | <b>10,755.1</b> | <b>-6.1</b>  |
| Prospectus registration   | 9,535.3         | 9,881.0         | 3.6          |
| Issue prospectuses  | 7,461.7         | 7,973.4         | 6.9          |
| Listing prospectuses  | 590.9           | 339.4           | -42.6        |
| Vetting of AIAF listing requirements  | 1,482.6         | 1,568.2         | 5.8          |
| Market participant registration   | 1,166.1         | 660.0           | -43.4        |
| Authorisation of takeover bids  | 747.8           | 214.1           | -71.4        |
| <b>Market supervision</b>   | <b>29,549.3</b> | <b>32,739.0</b> | <b>10.8</b>  |
| AIAF members  | 237.3           | 270.6           | 14.0         |
| Sociedad de Sistemas members  | 17,237.4        | 20,093.6        | 16.6         |
| Stock exchange members  | 11,650.6        | 11,853.8        | 1.7          |
| MEFF RF members   | 2.5             | 2.4             | -6.1         |
| MEFF RV members   | 420.2           | 517.3           | 23.1         |
| MFAO members  | 1.1             | 1.3             | 12.8         |
| <b>Market participant supervision</b>                                       | <b>13,874.9</b> | <b>12,139.7</b> | <b>-12.5</b> |
| UCITS supervision   | 12,766.7        | 10,959.5        | -14.2        |
| Mutual funds  | 10,922.3        | 9,077.5         | -16.9        |
| Investment companies  | 1,471.8         | 1,529.1         | 3.9          |
| Real estate investment trusts   | 352.1           | 337.3           | -4.2         |
| Real estate investment companies  | 20.4            | 15.6            | -23.5        |
| Supervision of UCITS and mortgage securitisation trust management companies | 260.7           | 270.6           | 3.8          |
| UCITS management companies  | 246.7           | 255.8           | 3.7          |
| Asset securitisation trust management companies                             | 14.0            | 14.8            | 5.8          |
| Supervision of investment firms   | 847.5           | 909.7           | 7.3          |
| Portfolio management companies  | 17.0            | 14.5            | -14.5        |
| Broker-dealers and brokers  | 830.5           | 895.1           | 7.8          |
| <b>Issuance of certificates</b>   | <b>3.5</b>      | <b>4.2</b>      | <b>22.6</b>  |
| <b>Total</b>  | <b>54,876.7</b> | <b>55,638.1</b> | <b>1.4</b>   |

Source: CNMV.

## 17 National Securities Numbering Agency

CNMV:  
organisation, finance  
and institutional aspects  
National Securities  
Numbering Agency

The CNMV discharges the functions of the Spanish National Securities Numbering Agency (ANCV), whose main goal is to assign and administer International Securities Identification Numbers (ISIN)<sup>1</sup> and Classification of Financial Instruments (CFI)<sup>2</sup> codes to facilitate their dissemination and use. In Spain, the ISIN code is used as the primary identifier in securities trading, clearing and settlement. The CNMV is a founder and full member of the Association of National Numbering Agencies (ANNA); at 2008 year-end, ANNA had a total of 78 full member countries and 23 associates representing 35 countries.

As a result of the requirements regarding the exchange and dissemination of information contained in the new European directives and of the European Commission's goal of using international standards, ANNA is being forced to reconsider the scope of securities numbering, particularly regarding derivatives and structured products. In connection with these new requirements, and in accordance with Commission Regulation 1287/2006 implementing the Markets in Financial Instruments Directive (MiFID), the CNMV (as the competent authority in Spain) drafts and provides daily updates of a list of financial instruments listed on Spain's regulated markets. The list includes each financial instrument's ISIN code, as the primary identifier of the security, and the competent authority in accordance with MiFID.

In 2008, the ANCV data base increased by 4.5% in relation to 2007, to 34,550 references. This increase was due primarily to fixed-income securities, such as bonds and covered bonds.

The primary market in fixed-income securities was very dynamic, especially in medium- and long-term issues such as asset-backed securities and mortgage covered bonds, contributing to a significant increase in the number of ISIN codes assigned to these types of securities (Table 17.1). In the financial derivatives market, there was also an increase in the volume of options contracts with ISINs. In contrast, the number of warrant issues with ISINs declined.

At year-end, there were 22,495 financial instruments with a current ISIN, i.e. 0.8% more than in 2007. Listed securities and instruments accounted for 55% of the total.

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1. International Securities Identification Number.  
2. Classification of Financial Instruments.

**Number of securities and other financial instruments with an ISIN<sup>1</sup>** TABLE 17.1

|                          | Listed        |               |              | Total         |               |             |
|--------------------------|---------------|---------------|--------------|---------------|---------------|-------------|
|                          | 2007          | 2008          | % var.       | 2007          | 2008          | % Chg.      |
| Public debt <sup>2</sup> | 257           | 263           | 2.33%        | 261           | 265           | 1.5         |
| Equities <sup>3</sup>    | 3,531         | 3,578         | 1.33%        | 13,483        | 13,435        | -0.4        |
| Debentures               | 387           | 367           | -5.17%       | 452           | 426           | -5.8        |
| Bonds                    | 1,386         | 1,711         | 23.45%       | 1,468         | 1,768         | 20.4        |
| Covered bonds            | 144           | 184           | 27.78%       | 185           | 238           | 28.7        |
| Commercial paper         | 2,562         | 2,556         | -0.23%       | 2,562         | 2,556         | -0.2        |
| Warrants                 | 1,407         | 1,480         | 5.19%        | 1,753         | 1,564         | -10.7       |
| Treasury Bills           | 11            | 12            | 9.09%        | 11            | 12            | 9.1         |
| Options                  | 2,051         | 2,158         | 5.22%        | 2,051         | 2,158         | 5.2         |
| Futures                  | 82            | 73            | -10.98%      | 82            | 73            | -11.0       |
| <b>Total</b>             | <b>11,818</b> | <b>12,382</b> | <b>4.77%</b> | <b>22,308</b> | <b>22,495</b> | <b>0.84</b> |

1. ANCV data base. ISIN code.
2. Except Treasury Bills.
3. Shares, mutual fund units and other equities.

In 2008, the number of queries to the ANCV decreased by 18.9% with respect to 2007 (Table 17.2). The decline in queries about Spanish codes (38%) was broadly attributable to the fact that the information is available on the CNMV website. However, queries about foreign codes increased considerably (by 45.8%), a testament to the universal nature of the ISIN code for identifying securities and financial instruments. There were 893 queries in total in 2008, compared with 1,101 in 2007. Of the total queries, 59% referred to Spanish codes, and the remainder to foreign codes.

**Queries handled directly by the ANCV** TABLE 17.2

|               | 2007         | 2008       | % var.       |
|---------------|--------------|------------|--------------|
| Spanish codes | 850          | 527        | -38.0        |
| Foreign codes | 251          | 366        | 45.8         |
| <b>Total</b>  | <b>1,101</b> | <b>893</b> | <b>-18.9</b> |

## 18 CNMV Advisory Board

CNMV:  
organisation, finance  
and institutional aspects  
CNMV Advisory Board

### 18.1 Introduction

The CNMV Advisory Board is the Board's consultative body, as provided in article 22 of the Securities Market Act; it is composed of representatives of the official secondary markets, issuers and investors, as well as the Autonomous Regions with official secondary markets. The Committee, which is chaired by the CNMV's Vice-President, was established by Act 24/1988, on the Securities Market, and, in accordance with article 23 of the Act, it must be consulted obligatorily in the following matters:

- Approval of CNMV Circulars.
- Imposition of penalties for very serious violations.
- Authorisation, revocation, mergers and takeovers of investment firms.
- Authorisation, revocation, mergers and takeovers of branches of investment firms from non-EU Member States.

In addition to its consultative role to the Board, the Advisory Committee provides advice on draft regulations relating generally to the securities markets which are referred to it by the Government or the Ministry of Economy and Finance. It thus fulfils the principle of consulting the affected sectors when new regulations are being drafted.

Also, in order to promote greater participation on the part of the industry and in line with international recommendations on analysing the impact of regulation, the CNMV decided to enhance the advisory role of the Advisory Committee by extending its scope in international issues and matters relating to market workings. As a result, the Committee's agenda regularly includes issues referred to it voluntarily (not by legal mandate) that relate to consultations from international bodies such as CESR as well as initiatives of the CNMV or the Committee itself. Tables 18.1 and 18.2 summarise the Committee's actions in 2008.

The Advisory Committee also underwent the following changes in 2008:

- The Committee's members were replaced on 1 April 2008, since they had been appointed in 2004 and the four-year term established by regulation had expired. The composition of the Advisory Committee is set out in the Organisation Annexes.

- The President of the CNMV was re-appointed on 6 October 2008 and a new Vice-President, Mr Fernando Restoy, was appointed; he thus became chairman of the Advisory Committee since Mr Carlos Arenillas Lorente's mandate as Vice-President of the CNMV had expired.

Royal Decree 504/2003, of 2 May, is the regulation governing the composition and workings of the Advisory Committee and the way in which its members are appointed.

The Advisory Committee has 16 members, 6 representing the official secondary markets, 4 representing securities issuers, 4 representing investors, and one for each Autonomous Region which has devolved powers over securities markets and has a (regulated) official market in its territory. There are also 16 substitutes. These members are appointed in accordance with the procedure detailed in Royal Decree 504/2003, of 2 May.

On 30 January 2008, the CNMV Board decided to commence the process of renewal and, on 24 March 2008, the appointment of candidates was approved effective 1 April 2008.

## 18.2 Actions by the Committee in 2008

The Advisory Committee addressed a total of 41 issues in 2008, compared with 49 in 2007 and 39 in 2006. Those issues are detailed in table 18.1.

| <b>Types of issues referred to the Advisory Committee</b>              |           |           | TABLE 18.1 |
|--|-----------|-----------|------------|
| Number   | 2007      | 2008      |            |
| Mandatory reports on standards   | 14        | 24        |            |
| Proposals for very serious penalties                                   | 6         | 3         |            |
| Authorisations, revocations, mergers and takeovers of investment firms | 15        | 4         |            |
| Voluntary consultations (IOSCO, CESR, etc.)                            | 14        | 10        |            |
| <b>Total</b>   | <b>49</b> | <b>41</b> |            |

Source: CNMV

As a result of the considerable regulatory activity arising from the transposition and implementation of European legislation, there was a notable increase, in both absolute and relative terms, in the number of matters referred obligatorily to the Committee, accounting for almost 60% of the business transacted by the Committee in the year. The number of cases of authorization, revocation, merger and takeover of investment firms referred to the Committee declined significantly.

**List of Advisory Committee actions in 2008**

TABLE 18.2

**CNMV:**  
**organisation, finance**  
**and institutional aspects**  
 CNMV Advisory Board

| Date               | Mandatory reports on regulations  | Proposals for very serious penalties | Corporate transactions of investment firms and branches  | Other matters |
|--------------------|---|--------------------------------------|--|---------------|
| January: 21/01/08  | Draft Royal Decree on the legal regime for investment firms and other entities providing investment services.                                   |                                      |  |               |
|                    | Draft Order on financial transactions in financial derivatives by UCITS.  |                                      |  |               |
|                    | Draft Royal Decree amending article 59 of the Regulation implementing Act 35/2003, of 4 November, governing UCITS.                              |                                      |  |               |
|                    | Draft Order regulating certain aspects of the rules governing UCITS depositories.   |                                      |  |               |
|                    | Draft Royal Decree on the equity of financial institutions.   |                                      |  |               |
| February: 18/02/08 | Draft Order amending Order ECO/805/2003, of 27 March, on valuation standards for real estate and certain rights for certain financial purposes. |                                      | Authorisation of SARASIN ALÉN, AGENCIA DE VALORES, S.A.  |               |
|                    |   |                                      | Authorisation of ALLFUNDS ALTERNATIVE, SOCIEDAD DE VALORES, S.A.   |               |
|                    |   |                                      | Authorisation for the transformation of TRESSIS, AGENCIA DE VALORES, S.A. into a broker-dealer and amendments to its scheme of operations. |               |

List of Advisory Committee actions in 2008 (*continuation*)

TABLE 18.2

| Date            | Mandatory reports on regulations  | Proposals for very serious penalties  | Corporate transactions of investment firms and branches | Other matters   |
|-----------------|---|---|---|---|
|                 |   |   | Authorisation of FINANCIAL LAB, A.V., S.A.              |   |
| March: 17/03/08 | Draft Order EHA/XX/2008 on securities lending by UCITS.   |   |   |   |
|                 | Draft CNMV Circular partly amending Circular 4/1994, of 14 December, on accounting rules, reporting obligations, calculation of the net asset value, investment and operational coefficients, and actions in appraising real estate, applicable to real estate UCITS. |   |   |   |
| April: 14/04/08 | Draft Royal Decree to implement certain aspects of Act 2/1981, of 25 March, regulating the mortgage market.   | Penalty 1 for filing financial and accounting information containing inaccurate or false data or omitting material information. |   | IOSCO consultation on the role of the credit rating agencies in the markets in structured products. |
|                 |   | Penalty 2 for rejection or obstruction of the CNMV inspectorate's activities.   |   |   |
| June: 09/06/08  | Draft Circular governing the accounting of UCITS.   |   |   | Draft form of report and guides for limited reviews of interim financial statements.                |
|                 | Draft Circular on quarterly, half-yearly and annual reports of UCITS and the position statement.  |   |   | Draft criteria for drafting special reports on financial statements.                                |



List of Advisory Committee actions in 2008 (continuation)

TABLE 18.2

CNMV:  
organisation, finance  
and institutional aspects  
CNMV Advisory Board

| Date                | Mandatory reports on regulations  | Proposals for very serious penalties | Corporate transactions of investment firms and branches | Other matters   |
|---------------------|---|--------------------------------------|---|---|
|                     |   |                                      |   | Proposed amendment to the legislation to overcome the block on attached securities in the case of a squeeze-out following a takeover bid. |
| July: 15/07/08      | Draft Act amending Act 24/1988, of 28 July, on the Securities Market, and Act 26/1988, of 29 July, on discipline and intervention of credit institutions.                 |                                      |   | Consultation by the European Commission on amendments to Commission decisions establishing CESR, CEBS and CEIOPS.                         |
|                     | Draft Act on Payment Services.  |                                      |   | CESR consultation on the draft third set of CESR Guidance on the operation of the Market Abuse Directive.                                 |
|                     | Draft CNMV Circular regarding the determination of the net asset value and operational aspects of UCITS.  |                                      |   | Consultation on CESR's technical advice to the European Commission on the review of the commodities business.                             |
|                     |   |                                      |   | Draft Criteria and Guidelines to apply in detecting and reporting suspicious transactions.  |
| September: 22/09/08 | Draft Ministerial Order implementing article 82.5 of Act 24/1988, of 28 July, on the Securities Market, in connection with the disclosure of price-sensitive information. |                                      |   | CESR, CEBS and CEIOPS consultation on the prudential assessment of acquisitions and increase of holdings in the financial sector.         |

List of Advisory Committee actions in 2008 (*continuation*)

TABLE 18.2

| Date                  | Mandatory reports on regulations  | Proposals for very serious penalties  | Corporate transactions of investment firms and branches | Other matters   |
|-----------------------|---|---|---|---|
|                       | Draft Circular on the accounting of investment firms, UCITS management companies and venture capital firm operators.  |   |   |   |
|                       | Draft Circular on investment firm solvency.   |   |   |   |
| October:<br>20/10/08  | Draft Circular on UCITS categories by investment profile.   |   |   | CESR Consultation on UCITS management company passport. |
|                       | Draft CNMV Circular on the statistical reporting requirements with regard to assets and liabilities of European Union UCITS.  |   |   |   |
| November:<br>17/11/08 | Draft CNMV Circular on the accounting standards, confidential and public disclosures and annual accounts of the governing companies of official secondary markets, of governing companies of multilateral trading facilities, of the Sociedad de Sistemas, of central counterparties and of the Sociedad de Bolsas. | Penalty 3 for delays in disclosure of significant holdings in a listed company. |   |   |
|                       | Draft CNMV Circular approving the forms for announcements and applications for authorisation of takeover bids.  |   |   |   |

**List of Advisory Committee actions in 2008 (continuation)**

TABLE 18.2

**CNMV:**  
**organisation, finance**  
**and institutional aspects**  
 CNMV Advisory Board

| Date               | Mandatory reports on regulations   | Proposals for very serious penalties | Corporate transactions of investment firms and branches | Other matters |
|--------------------|--|--------------------------------------|---|---------------|
|                    | Draft CNMV Circular on investment advisory firms.  |                                      |   |               |
|                    | Draft CNMV Circular on accounting standards, annual accounts and confidential disclosures of venture capital firms.  |                                      |   |               |
| December: 15/12/08 | Draft CNMV Circular on accounting standards, annual accounts, public financial statements and confidential statistical reports of asset securitisation trusts. |                                      |   |               |



## VI Report by the Internal Control Body





AUDITORS' REPORT, AS PROVIDED UNDER ACT  
44/2002, ON MEASURES TO REFORM THE FINANCIAL  
SYSTEM. - YEAR 2008



## 1. Introduction

The Comisión Nacional del Mercado de Valores's Internal Control Department has performed an internal audit of the degree to which the decisions adopted by the governing bodies conform to the procedural regulations applicable in each case, in implementation of the Audit and Internal Control Action Plan approved by the Board of the Commission on 21 January 2009, thus complying with Additional Provision Two of Act 44/2002, of 22 November, on Measures to Reform the Financial System (gazetted on 23 November).

The work was performed in accordance with the International Standards for the Professional Practice of Internal Auditing, issued by the Institute of Internal Auditors (IIA), as provided in the CNMV's Internal Audit Rules approved by the Board on 21 January 2009.

## 2. Objectives and scope of the work

The objective of this work is to ascertain the degree to which the decision by the governing bodies of the Comisión Nacional del Mercado de Valores in 2008 conformed to the applicable procedural rules.

The specific regulations applicable to the procedures of the CNMV were as follows:

- Securities Market Act (24/1998, of 28 July).
- The Act on the Legal Regime of the Public Administrations and the Common Administrative Procedure (Act 30/1992, of 26 November)
- The CNMV Internal Regulation

The decision adopted on 24 October 2007 to delegate powers to the President, the Vice-President and the Executive Committee of the Comisión Nacional del Mercado de Valores was also considered.

There were no scope limitations in the performance of the work.





### 3. Opinion

In our opinion, having completed the audit work, it can be concluded that, in 2008, the governing bodies of the Comisión Nacional del Mercado de Valores, in the scope of supervision entrusted by the Securities Market Act and other regulations, complied with the requirements established in the current legislation that is applicable in each case, in terms of both procedure and competence.

Madrid, 26 March 2009.  
Head of Internal Control

Signed: Margarita García Muñoz



## VII Financial statements of the CNMV



# Summary of Financial Statements 2008

## 1 Balance sheet

| Account no. | Assets  | Current year          | Previous year         |
|-------------|---|-----------------------|-----------------------|
|             | <b>A) FIXED ASSETS</b>                        | <b>33,960,081.31</b>  | <b>32,037,537.61</b>  |
|             | II. Intangible assets                         | 2,531,027.73          | 1,937,318.59          |
| 215         | 3. Computer software                          | 5,211,709.90          | 4,266,013.27          |
| 281         | 7. Amortisation                               | -2,680,682.17         | -2,328,694.68         |
|             | III. Property, plant and equipment            | 31,427,817.71         | 30,098,983.15         |
| 220, 221    | 1. Land and structures                        | 28,748,375.47         | 28,646,223.02         |
| 226         | 3. Tools and furniture                        | 3,059,881.77          | 2,602,672.30          |
| 227, 228    | 4. Other fixed assets                         | 5,635,594.22          | 4,092,755.28          |
| 282         | 5. Depreciation                               | -6,016,033.75         | -5,242,667.45         |
|             | V. Permanent financial assets                 | 1,235.87              | 1,235.87              |
| 250         | 1. Long-term securities portfolio             | 935.36                | 935.36                |
| 265         | 3. Long-term deposits and guarantees provided | 300.51                | 300.51                |
|             | <b>C) CURRENT ASSETS</b>                      | <b>134,240,025.50</b> | <b>115,906,610.05</b> |
|             | II. Accounts receivable                       | 5,541,986.08          | 11,706,566.54         |
| 460, 469    | 1. Sundry accounts receivable                 | 5,522,542.01          | 11,711,840.78         |
| 471         | 3. General government                         | 337.74                | 0.00                  |
| 555, 558    | 4. Other accounts receivable                  | 57,268.80             | 27,190.65             |
| 490         | 5. Provisions                                 | -38,162.47            | -32,464.89            |
|             | III. Short-term financial assets              | 121,848,325.04        | 102,336,341.86        |
| 541, 546    | 1. Short-term securities portfolio            | 121,816,094.17        | 102,319,169.42        |
| 544, 547    | 2. Other short-term assets and receivables    | 32,230.87             | 17,172.44             |
| 57          | IV. Cash                                      | 6,624,250.39          | 1,644,951.16          |
| 480         | V. Accruals                                   | 225,463.99            | 218,750.49            |
|             | <b>GRAND TOTAL (A+B+C)</b>                    | <b>168,200,106.81</b> | <b>147,944,147.66</b> |



## 2 Statement of revenues and expenditure

| Account no.     | Debit  | Current year         | Previous year        |
|-----------------|--|----------------------|----------------------|
|                 | <b>A) EXPENSES</b>   | <b>42,167,301.30</b> | <b>36,846,151.49</b> |
|                 | 3. Service operating expenses                              | 41,509,522.19        | 36,266,210.82        |
|                 | a) Personnel expenses:                                     | 23,830,538.75        | 22,807,302.51        |
| 640, 641        | a.1) Wages, salaries and similar                           | 19,195,025.61        | 18,368,667.14        |
| 642, 643, 644   | a.2) Employee welfare expenses                             | 4,635,513.14         | 4,438,635.37         |
| 681, 682        | c) Period depreciation and amortisation charge             | 1,248,101.93         | 1,146,537.78         |
|                 | d) Change in operating provisions                          | 47,940.96            | 59,797.89            |
| 675, 694, (794) | d.2) Change in provisions for, and losses on,<br>bad debts | 47,940.96            | 59,797.89            |
|                 | e) Other operating expenses                                | 16,355,245.01        | 12,220,010.92        |
| 62              | e.1) Outside services                                      | 16,297,707.58        | 12,168,978.11        |
| 630, 632        | e.2) Taxes   | 50,379.86            | 45,229.67            |
| 676             | e.3) Other current operating expenses                      | 7,157.57             | 5,803.14             |
|                 | f) Financial and similar expenses                          | 27,378.84            | 32,047.31            |
| 669             | f.1) On debts  | 27,378.84            | 32,047.31            |
| 668             | h) Exchange losses   | 316.70               | 514.41               |
|                 | 4. Transfers and subsidies                                 | 403,868.69           | 350,957.63           |
| 651             | b) Current subsidies                                       | 403,868.69           | 350,957.63           |
|                 | 5. Extraordinary losses and expenses                       | 253,910.42           | 228,983.04           |
| 670, 671        | a) Losses on fixed assets                                  | 215,144.28           | 10,464.14            |
| 678             | c) Extraordinary expenses                                  | 15,542.62            | 0.00                 |
| 679             | d) Expenses and losses from other years                    | 23,223.52            | 218,518.90           |
|                 | <b>SURPLUS</b>   | <b>19,438,910.75</b> | <b>22,652,922.29</b> |

## 2 Statement of revenues and expenditure (continuación)

| Account no. | Credit   | Current year         | Previous year        |
|-------------|--|----------------------|----------------------|
|             | <b>B) REVENUES</b>   | <b>61,606,212.05</b> | <b>59,499,073.78</b> |
|             | 3. Ordinary revenues   | 55,638,111.31        | 54,876,680.69        |
|             | a) Fee revenues  | 55,638,111.31        | 54,876,680.69        |
| 740         | a1) Fees for the provision of services<br>or the performance of activities | 55,638,111.31        | 54,876,680.69        |
|             | 4. Other ordinary revenues   | 5,925,766.91         | 4,519,084.77         |
| 78          | b) In-house work   | 843,979.98           | 554,871.33           |
|             | c) Other ordinary revenues   | 179,595.60           | 185,404.68           |
| 776, 777    | c.1) Ancillary and other ordinary revenues                                 |                      |                      |
| 761         | e) Revenues from other transferable securities<br>and fixed asset loans    | 4,574,343.09         | 3,543,977.11         |
|             | f) Other interest and similar revenues                                     | 327,765.86           | 234,797.52           |
| 769         | f.1) Other interest  | 327,765.86           | 234,797.52           |
| 768         | g) Exchange gains  | 82.38                | 34.13                |
|             | 6. Extraordinary gains and revenues  | 42,333.83            | 103,308.32           |
| 771         | a) Gains on fixed assets   | 0.00                 | 1,719.50             |
| 778         | c) Extraordinary revenues  | 2,891.13             | 0.00                 |
| 779         | d) Revenues and income from other years                                    | 39,442.70            | 101,588.82           |
|             |  |                      |                      |
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|             |  |                      |                      |
|             |  |                      |                      |
|             |  |                      |                      |
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### 3 Cash Flow Statement. Source and application of funds

| <b>Funds applied</b>   | <b>Current year</b>  | <b>Previous year</b> |
|--|----------------------|----------------------|
| 1. Funds applied in operations   | 40,285,976.32        | 35,227,189.37        |
| c) Outside services  | 16,297,707.58        | 12,168,978.11        |
| d) Taxes   | 50,379.86            | 45,229.67            |
| e) Personnel expenses  | 23,412,459.98        | 22,414,233.07        |
| g) Transfers and subsidies   | 403,868.69           | 350,957.63           |
| h) Financial expenses  | 27,695.54            | 32,561.72            |
| i) Other current losses and extraordinary expenses                             | 45,923.71            | 155,431.28           |
| j) Provision for current assets  | 47,940.96            | 59,797.89            |
| 4. Fixed asset acquisitions and other additions                                | 3,401,838.26         | 907,164.09           |
| b) Intangible assets   | 1,241,273.70         | 578,763.05           |
| c) Property, plant and equipment   | 2,160,564.56         | 328,401.04           |
| 5. Direct decrease in equity   | 22,654,048.90        | 0.00                 |
| b) Assignments   | 1,126.61             | 0.00                 |
| c) Delivered for general use   | 22,652,922.29        | 0.00                 |
| 7. Provisions for contingencies and expenses                                   | 355,314.02           | 410,011.68           |
| <b>TOTAL FUNDS APPLIED</b>   | <b>66,697,177.50</b> | <b>36,544,365.14</b> |
| <b>FUNDS OBTAINED IN EXCESS OF FUNDS APPLIED (INCREASE IN WORKING CAPITAL)</b> | <b>0.00</b>          | <b>22,954,788.64</b> |

| <b>Funds obtained</b>  | <b>Current year</b>  | <b>Previous year</b> |
|--|----------------------|----------------------|
| 1. Funds from operations   | 61,606,212.05        | 59,497,354.28        |
| e) Fees, charges and special levies  | 55,638,111.31        | 54,876,680.69        |
| g) Financial revenues  | 4,902,191.33         | 3,778,808.76         |
| h) Other current revenues and extraordinary expenses                           | 1,065,909.41         | 841,864.83           |
| 3. Direct increase in equity   | 49,869.13            | 0.00                 |
| b) Assignments   | 49,869.13            | 0.00                 |
| 5. Fixed asset disposals and other retirements                                 | 22,423.61            | 1,799.50             |
| c) Property, plant and equipment   | 22,423.61            | 1,799.50             |
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|  |                      |                      |
| <b>TOTAL FUNDS OBTAINED</b>  | <b>61,678,504.79</b> | <b>59,499,153.78</b> |
| <b>FUNDS APPLIED IN EXCESS OF FUNDS OBTAINED (DECREASE IN WORKING CAPITAL)</b> | <b>5,018,672.71</b>  | <b>0.00</b>          |

### 3 Cash Flow Statement. Change in working capital

|  | Current year         |                      | Previous year        |               |
|--|----------------------|----------------------|----------------------|---------------|
|  | Increase             | Decrease             | Increase             | Decrease      |
| <b>Change in working capital (Summary)</b>     |                      |                      |                      |               |
| 2. Accounts receivable                         | 337.74               | 6,194,996.35         | 151,974.08           | 0.00          |
| a) Operational accounts receivable             | 0.00                 | 6,194,996.35         | 151,974.08           | 0.00          |
| b) Other accounts receivable                   | 337.74               | 0.00                 | 0.00                 | 0.00          |
| 3. Accounts payable                            | 86,974.13            | 23,456,669.76        | 622,922.41           | 0.00          |
| a) Operational accounts payable                | 86,974.13            | 0.00                 | 111,552.96           | 0.00          |
| b) Other accounts payable                      | 0.00                 | 23,456,669.76        | 511,369.45           | 0.00          |
| 4. Short-term financial assets                 | 19,511,983.18        | 0.00                 | 21,846,657.29        | 0.00          |
| 6. Other non-bank accounts                     | 47,685.62            | 0.00                 | 11,235.23            | 0.00          |
| 7. Cash  | 4,981,723.28         | 2,424.05             | 275,698.33           | 821.98        |
| a) Cash on hand                                | 0.00                 | 2,424.05             | 0.00                 | 821.98        |
| c) Cash at banks and other credit institutions | 4,981,723.28         | 0.00                 | 275,698.33           | 0.00          |
| 8. Accruals                                    | 6,713.50             | 0.00                 | 47,123.28            | 0.00          |
| <b>TOTAL</b>                                   | <b>24,635,417.45</b> | <b>29,654,090.16</b> | <b>22,955,610.62</b> | <b>821.98</b> |
| <b>CHANGE IN WORKING CAPITAL</b>               | <b>0.00</b>          | <b>5,018,672.71</b>  | <b>22,954,788.64</b> | <b>0.00</b>   |

## Annexes



## Statistical annexes I

### International economic indicators

I.1

|                  | GDP <sup>1</sup> |      |      | Internal demand <sup>2</sup> |      |      | Unemployment rate <sup>3</sup> |      |                  |
|------------------|------------------|------|------|------------------------------|------|------|--------------------------------|------|------------------|
|                  | 2006             | 2007 | 2008 | 2006                         | 2007 | 2008 | 2006                           | 2007 | 2008             |
| <b>OECD</b>      | 3.2              | 2.6  | 1.0  | 3.0                          | 2.3  | 0.8  | 6.3                            | 5.8  | 6.1              |
| <b>USA</b>       | 2.8              | 2.0  | 1.1  | 2.8                          | 1.4  | -0.2 | 4.6                            | 4.6  | 5.8              |
| <b>Japan</b>     | 2.0              | 2.4  | -0.7 | 1.2                          | 1.3  | -0.8 | 4.1                            | 3.9  | 4.0              |
| <b>Euro area</b> | 3.0              | 2.6  | 0.7  | 2.7                          | 2.2  | 0.7  | 8.3                            | 7.4  | 7.6              |
| Germany          | 3.2              | 2.6  | 1.0  | 1.9                          | 1.0  | 1.3  | 10.7                           | 9.0  | 7.8              |
| Spain            | 3.9              | 3.7  | 1.2  | 5.3                          | 4.4  | -3.0 | 8.5                            | 8.3  | 11.3             |
| France           | 2.4              | 2.1  | 0.7  | 2.7                          | 3.0  | 1.0  | 8.8                            | 8.0  | 7.4              |
| Italy            | 1.9              | 1.4  | -1.0 | 1.8                          | 1.3  | -1.3 | 6.8                            | 6.2  | 6.7 <sup>4</sup> |
| <b>UK</b>        | 2.8              | 3.0  | 0.7  | 2.7                          | 3.8  | 0.5  | 2.9                            | 2.7  | 2.8              |

|                  | Inflation <sup>5</sup> |      |      | Budgetary balance <sup>6</sup> |      |      | Current account balance <sup>6</sup> |      |      |
|------------------|------------------------|------|------|--------------------------------|------|------|--------------------------------------|------|------|
|                  | 2006                   | 2007 | 2008 | 2006                           | 2007 | 2008 | 2006                                 | 2007 | 2008 |
| <b>OECD</b>      | 2.7                    | 2.5  | 3.7  | -1.3                           | -1.4 | -3.0 | -1.6                                 | 1.4  | -1.5 |
| <b>USA</b>       | 3.2                    | 2.9  | 3.8  | -2.3                           | -2.7 | -5.3 | -6.2                                 | -5.4 | -4.6 |
| <b>Japan</b>     | 0.2                    | 0.1  | 1.4  | -4.6                           | -4.0 | -1.9 | 3.9                                  | 4.7  | 4.0  |
| <b>Euro area</b> | 2.2                    | 2.1  | 3.3  | -2.1                           | -0.8 | -1.3 | 0.0                                  | 0.0  | -0.3 |
| Germany          | 1.6                    | 2.3  | 2.6  | -2.3                           | 0.1  | 0.0  | 4.9                                  | 5.8  | 7.5  |
| Spain            | 3.5                    | 2.8  | 4.1  | 1.8                            | 2.2  | -1.6 | -8.6                                 | -9.2 | -9.9 |
| France           | 1.7                    | 1.5  | 2.8  | -2.7                           | -2.6 | -3.0 | -1.3                                 | -2.3 | -3.5 |
| Italy            | 2.1                    | 1.8  | 3.3  | -4.8                           | -2.3 | -2.5 | -2.6                                 | -2.2 | -2.1 |
| <b>UK</b>        | 2.3                    | 2.3  | 3.6  | -3.0                           | -2.8 | -4.2 | -3.1                                 | -3.1 | -2.8 |

Sources: Ministry of Economy and Finance and ECLAC.

1. Annual rate of change, in real terms (%).
2. Contribution to annual growth in percentage points, except for the OECD, which is expressed in annual growth terms (%).
3. Annual average (% of active population).
4. Average of the first three quarters of 2008.
5. Consumer price indices. Average y/y rate of change.
6. Surplus (+) or deficit (-) as a % of GDP.

## Composition of households' financial assets<sup>1</sup>

1.2

Amounts in percentages except for balance, expressed in million euro

|                   | Balance   | Cash and deposits | Fixed-income securities | Shares | Mutual funds and investment companies | Insurance underwriting reserves | Other |
|-------------------|-----------|-------------------|-------------------------|--------|---------------------------------------|---------------------------------|-------|
| 1999              | 1,029,597 | 36.4              | 2.4                     | 27.3   | 16.7                                  | 12.0                            | 5.2   |
| 2000              | 1,048,790 | 39.8              | 2.5                     | 23.9   | 13.7                                  | 13.9                            | 6.2   |
| 2001              | 1,105,066 | 40.3              | 2.3                     | 23.6   | 12.8                                  | 14.6                            | 6.4   |
| 2002              | 1,116,987 | 42.3              | 2.5                     | 20.4   | 12.0                                  | 15.7                            | 7.1   |
| 2003              | 1,272,704 | 39.2              | 3.0                     | 23.6   | 12.3                                  | 15.0                            | 7.0   |
| 2004              | 1,386,672 | 39.0              | 2.3                     | 23.3   | 12.5                                  | 15.1                            | 7.5   |
| 2005              | 1,570,453 | 37.6              | 2.1                     | 25.1   | 12.7                                  | 14.7                            | 7.5   |
| 2006              | 1,822,366 | 36.8              | 2.5                     | 27.5   | 11.7                                  | 13.8                            | 7.6   |
| 2007              | 1,915,050 | 38.1              | 2.7                     | 27.5   | 11.4                                  | 13.6                            | 7.4   |
| 2008 <sup>2</sup> | 1,731,762 | 45.0              | 2.3                     | 20.4   | 9.4                                   | 14.9                            | 8.0   |

Pro memoria: breakdown of change in the portfolio between December 2007 and September 2008

| (% change)                              | -9.6     | 6.8    | -20.8   | -33.0    | -20.4   | -1.0   | -2.8   |
|---|----------|--------|---------|----------|---------|--------|--------|
| Change (million euro)                   | -183,289 | 49,360 | -10,618 | -173,585 | -41,840 | -2,646 | -3,959 |
| - net acquisition of assets             | 15,540   | 50,380 | -7,288  | 559      | -30,223 | 6,054  | -3,941 |
| - approximate price effect <sup>3</sup> | -198,829 | -1,020 | -3,330  | -174,144 | -11,617 | -8,700 | -18    |

Source: Bank of Spain "Financial accounts of the Spanish economy"; and CNMV.

1. Includes NPISH (Non-Profit Institutions Serving Households).

2. Data at September 2008.

3. The price effect is approximated using data from the "Financial accounts of the Spanish economy". For its effect on UCITS with CNMV data, see chapter 6.

## Composition of non-residents' financial assets

1.3

Amounts in percentages except for balance, expressed in million euro

|                   | Balance   | Cash and deposits | Fixed-income securities | Loans | Shares | Mutual funds and investment companies | Other |
|-------------------|-----------|-------------------|-------------------------|-------|--------|---------------------------------------|-------|
| 1999              | 670,739   | 28.5              | 18.7                    | 11.3  | 33.1   | 0.6                                   | 7.8   |
| 2000              | 823,791   | 28.6              | 20.3                    | 12.3  | 31.1   | 0.4                                   | 7.3   |
| 2001              | 919,557   | 28.0              | 20.9                    | 14.3  | 29.4   | 0.3                                   | 7.1   |
| 2002              | 989,658   | 27.7              | 23.2                    | 15.4  | 26.0   | 0.7                                   | 7.1   |
| 2003              | 1,142,173 | 27.8              | 23.2                    | 16.0  | 25.7   | 0.6                                   | 6.7   |
| 2004              | 1,352,948 | 24.1              | 28.2                    | 14.7  | 26.1   | 0.6                                   | 6.2   |
| 2005              | 1,630,248 | 23.6              | 32.7                    | 14.0  | 23.6   | 0.3                                   | 5.8   |
| 2006              | 1,947,698 | 19.6              | 38.0                    | 13.7  | 23.0   | 0.3                                   | 5.4   |
| 2007              | 2,228,194 | 20.0              | 37.0                    | 13.9  | 23.8   | 0.2                                   | 5.2   |
| 2008 <sup>1</sup> | 2,290,015 | 23.5              | 35.6                    | 14.6  | 21.1   | 0.2                                   | 5.2   |

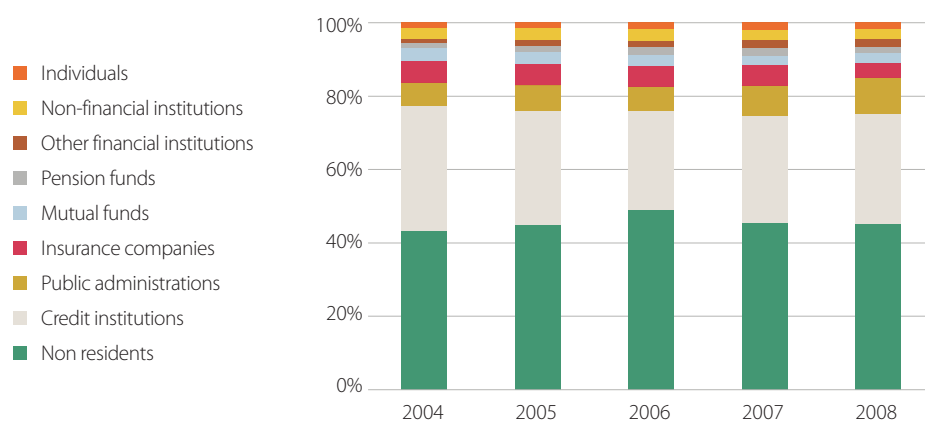
Source: Bank of Spain "Financial accounts of the Spanish economy"; and CNMV.

1. Data at September 2008.

## Balance of public debt by holder

1.4

Annexes  
Statistical annexes I



Source: Directorate-General of the Treasury and Financial Policy.

## EBT of companies listed on the electronic market<sup>1</sup>

1.5

Million euro

| CNMV sector                       | 2007             | % Chg. 07/06 <sup>2</sup> | 2008 <sup>3</sup> | % Chg. 08/07 <sup>2</sup> |
|-----------------------------------|------------------|---------------------------|-------------------|---------------------------|
| Oil                               | 6,885.88         | 1.3                       | 5,306.16          | -23.1                     |
| Energy & water                    | 11,395.65        | 15.0                      | 13,399.27         | 17.5                      |
| Mining & base metals              | 766.38           | -30.9                     | 290.06            | -62.7                     |
| Cement and construction materials | 727.53           | 14.5                      | 461.44            | -36.0                     |
| Chemicals                         | 87.60            | -30.2                     | -54.54            | —                         |
| Textiles and paper                | 1,776.06         | 31.8                      | 1,549.17          | -24.5                     |
| Metal-mechanical                  | 1,047.95         | 42.1                      | 557.06            | -13.6                     |
| Food                              | 422.15           | -17.5                     | 218.44            | -42.5                     |
| Construction                      | 6,431.74         | 8.9                       | 1,897.89          | -63.1                     |
| Real estate                       | 1,348.47         | -59.6                     | -7,423.36         | —                         |
| Transport and communications      | 12,125.11        | 49.5                      | 11,921.73         | -1.6                      |
| Other non-financial               | 2,872.34         | 15.5                      | 1,758.41          | -29.6                     |
| Banks                             | 25,422.13        | 24.3                      | 22,381.45         | -12.5                     |
| Insurance                         | 330.52           | 77.1                      | 1,408.80          | -19.1                     |
| Portfolio companies               | 1,903.91         | -35.3                     | 893.81            | -52.9                     |
| <b>Total</b>                      | <b>73,543.40</b> | <b>13.8</b>               | <b>54,565.78</b>  | <b>-25.7</b>              |

Source: CNMV.

1. According to IFRS for companies with a consolidated group and national GAAP for companies that do not present consolidated data. Only information from domestic issuers is included.
2. Percentage change calculated using periodic financial information issued by the companies. The information issued with respect to the previous year is used for each rate of change.
3. Does not include companies that had not filed earnings for the second half of 2008.

## Return on assets and equity of companies listed on the electronic market<sup>1</sup>

1.6

%

| CNMV sector                       | ROA <sup>2</sup> 2007 | ROA <sup>2</sup> 2008 <sup>4</sup> | ROE <sup>3</sup> 2007 | ROE <sup>3</sup> 2008 <sup>4</sup> |
|-----------------------------------|-----------------------|------------------------------------|-----------------------|------------------------------------|
| Oil                               | 12.1                  | 8.1                                | 16.1                  | 11.8                               |
| Energy & water                    | 5.9                   | 5.8                                | 10.7                  | 18.2                               |
| Mining & base metals              | 8.3                   | 3.4                                | 14.4                  | 6.9                                |
| Cement and construction materials | 10.4                  | 6.4                                | 16.2                  | 13.5                               |
| Chemicals                         | 2.9                   | —                                  | 6.8                   | —                                  |
| Textiles and paper                | 12.0                  | 9.3                                | 16.6                  | 13.3                               |
| Metal-mechanical                  | 5.9                   | 2.8                                | 23.3                  | 20.7                               |
| Food                              | 3.9                   | 1.7                                | 8.5                   | 7.7                                |
| Construction                      | 3.2                   | 1.0                                | 15.7                  | 7.7                                |
| Real estate                       | 2.0                   | —                                  | 11.2                  | —                                  |
| Transport and communications      | 8.2                   | 8.4                                | 31.1                  | 31.9                               |
| Other non-financial               | 7.3                   | 4.9                                | 21.0                  | 17.6                               |
| Banks                             | 1.4                   | 1.1                                | 17.5                  | 16.3                               |
| Insurance                         | 5.3                   | 2.7                                | 7.0                   | 13.9                               |
| Portfolio companies               | 4.4                   | 2.0                                | 11.4                  | 8.2                                |
| <b>Total</b>                      | <b>2.7</b>            | <b>1.8</b>                         | <b>16.2</b>           | <b>13.4</b>                        |

Source: CNMV.

1. According to IFRS for companies with a consolidated group and national GAAP for companies that do not present consolidated data. Only information from domestic issuers is included.
2. EBIT/Average total assets in the year.
3. Earnings after taxes/Average net equity in the year.
4. Does not include companies that had not filed earnings for the second half of 2008.



## Capital increases and public offerings: cash amount

II.1

Million euro

| Issuer   | Cash amount <sup>1</sup> | Type of transaction                                   | Date registered with the CNMV |
|--|--------------------------|---|-------------------------------|
| Vidrala, S.A.  | 0.00                     | Bonus issue   | 15/01/08                      |
| Laboratorios Farmacéuticos Rovi, S.A.                    | 9.53                     | Extension of IPO by exercising green shoe option      | 15/01/08                      |
| Bankinter, S.A.  | 2.71                     | Capital increase by conversion                        | 24/01/08                      |
| Avanzit, S.A.  | 5.22                     | Capital increase without trading warrants             | 24/01/08                      |
| Service Point Solutions, S.A.                            | 1.15                     | Capital increase by conversion                        | 31/01/08                      |
| Jazztel, Plc.  | 0.30                     | Capital increase without trading warrants             | 07/02/08                      |
| Sogecable, S.A.  | 0.57                     | Capital increase without trading warrants             | 07/02/08                      |
| Azkoyen, S.A.  | 0.00                     | Bonus issue   | 13/02/08                      |
| Dogi International Fabrics, S.A.                         | 0.10                     | Capital increase by conversion                        | 06/03/08                      |
| Itínere Infraestructuras, S.A.                           | 4,174.06                 | Capital increase for non-monetary consideration       | 27/03/08                      |
| Service Point Solutions, S.A.                            | 0.00                     | Bonus issue   | 15/04/08                      |
| Tecnocom, Telecomunicaciones y Energía, S.A.             | 1.58                     | Capital increase without trading warrants             | 17/04/08                      |
| Tavex Algodonera, S.A.                                   | 39.93                    | Capital increase with pre-emptive subscription rights | 22/04/08                      |
| Itínere Infraestructuras, S.A.                           | 0.00                     | Bonus issue   | 22/04/08                      |
| Afirma Grupo Inmobiliario, S.A.                          | 395.50                   | Capital increase for non-monetary consideration       | 30/04/08                      |
| European Aeronautic Defence and Space Company Eads, N.V. | 0.61                     | Capital increase without trading warrants             | 30/04/08                      |
| Promotora de Informaciones, S.A.                         | 4.33                     | Capital increase without trading warrants             | 13/05/08                      |
| Iberia Líneas Aéreas de España, S.A.                     | 0.31                     | Capital increase by conversion                        | 27/05/08                      |
| Faes Farma, S.A.   | 0.00                     | Bonus issue   | 03/06/08                      |
| Fersa Energías Renovables, S.A.                          | 280.54                   | Capital increase for non-monetary consideration       | 03/06/08                      |
| Abertis Infraestructuras, S.A.                           | 0.00                     | Bonus issue   | 10/06/08                      |
| Cartera Industrial Rea, S.A.                             | 24.71                    | Capital increase with pre-emptive subscription rights | 17/06/08                      |
| Banco de Valencia, S.A.                                  | 0.00                     | Bonus issue   | 24/06/08                      |
| Inmobiliaria Colonial, S.A.                              | 0.00                     | Bonus issue   | 24/06/08                      |
| Caja de Ahorros del Mediterráneo                         | 292.00                   | Participation shares                                  | 26/06/08                      |
| Indo Internacional, S.A.                                 | 16.70                    | Capital increase with pre-emptive subscription rights | 01/07/08                      |
| Mapfre, S.A.   | 1,208.60                 | Capital increase for non-monetary consideration       | 01/07/08                      |
| Dogi International Fabrics, S.A.                         | 4.28                     | Capital increase with pre-emptive subscription rights | 03/07/08                      |
| Prim, S.A.   | 0.00                     | Bonus issue   | 08/07/08                      |
| Service Point Solutions, S.A.                            | 3.29                     | Capital increase for non-monetary consideration       | 24/07/08                      |
| Zardoya Otis, S.A.                                       | 0.00                     | Bonus issue   | 05/08/08                      |
| European Aeronautic Defence and Space Company Eads, N.V. | 23.77                    | Capital increase without trading warrants             | 05/08/08                      |
| Tecnocom, Telecomunicaciones y Energía, S.A.             | 24.66                    | Capital increase for non-monetary consideration       | 10/09/08                      |
| Inbesòs, S.A.  | 635.33                   | Capital increase for non-monetary consideration       | 12/09/08                      |

## Capital increases and public offerings: cash amount (*continuation*)

II.1

Million euro

| Issuer   | Cash amount <sup>1</sup> | Type of transaction                                   | Date registered with the CNMV |
|--|--------------------------|---|-------------------------------|
| Jazztel, Plc.  | 0.01                     | Capital increase without trading warrants             | 02/10/08                      |
| Jazztel, Plc.  | 14.05                    | Capital increase without trading warrants             | 07/10/08                      |
| Ahorro Familiar, S.A.                                      | 50.77                    | Capital increase with pre-emptive subscription rights | 09/10/08                      |
| Inypsa Informes y Proyectos, S.A.                          | 0.00                     | Bonus issue   | 09/10/08                      |
| Banco Santander, S.A.                                      | 1,436.29                 | Capital increase for non-monetary consideration       | 13/10/08                      |
| Vértice Trescientos Sesenta Grados, S.A.                   | 1.81                     | Capital increase for non-monetary consideration       | 14/10/08                      |
| Iberdrola, S.A.  | 54.67                    | Capital increase without trading warrants             | 28/10/08                      |
| Tecnocom, Telecomunicaciones y Energía, S.A.               | 0.00                     | Bonus issue   | 30/10/08                      |
| Sacyr Vallehermoso, S.A.                                   | 0.00                     | Bonus issue   | 06/11/08                      |
| Banco Santander, S.A.                                      | 7,194.65                 | Capital increase with pre-emptive subscription rights | 11/11/08                      |
| Mapfre, S.A.   | 151.69                   | Capital increase with pre-emptive subscription rights | 11/11/08                      |
| Azkoyen, S.A.  | 0.00                     | Bonus issue   | 20/11/08                      |
| Cintra Concesiones de Infraestructuras de Transporte, S.A. | 0.00                     | Bonus issue   | 04/12/08                      |
| Vértice Trescientos Sesenta Grados, S.A.                   | 8.71                     | Capital increase with pre-emptive subscription rights | 11/12/08                      |
| Mecalux, S.A.  | 168.04                   | Capital increase without trading warrants             | 11/12/08                      |
| Compañía Levantina de Edificación y Obras Públicas, S.A.   | 0.00                     | Bonus issue   | 16/12/08                      |
| Inmobiliaria del Sur, S.A.                                 | 0.00                     | Bonus issue   | 16/12/08                      |
| Prim, S.A.   | 0.00                     | Bonus issue   | 18/12/08                      |
| Banco Popular Español, S.A.                                | 118.80                   | Capital increase for non-monetary consideration       | 22/12/08                      |

Source: CNMV

1. Issues of new shares not paid for in cash have been valued at market prices.

| Company                       | Market <sup>2</sup> | Reason. Procedure   | Date       |
|-------------------------------|---------------------|---|------------|
| Banco de Castilla             | SIBE                | Merged into Banco Popular Español, S.A.-<br>Madrid Stock Exchange Bulletin 19/12/08   | 22/12/2008 |
| Banco de Crédito Balear       | SIBE                | Merged into Banco Popular Español, S.A.-<br>Madrid Stock Exchange Bulletin 19/12/08   | 22/12/2008 |
| Banco de Galicia              | SIBE                | Merged into Banco Popular Español, S.A.-<br>Madrid Stock Exchange Bulletin 19/12/08   | 22/12/2008 |
| Banco de Vasconia             | SIBE                | Merged into Banco Popular Español, S.A.-<br>Madrid Stock Exchange Bulletin 19/12/08   | 22/12/2008 |
| Distribución Integral Logista | SIBE                | Delisted as of 16/06/08 following the squeeze out   | 15/06/2008 |
| Altadis                       | SIBE                | Madrid Stock Exchange Bulletin 22/02/08.<br>Settlement of the takeover bid, effective 25/02/08  | 24/02/2008 |
| Sogecable                     | SIBE                | Madrid Stock Exchange Bulletin of 19 June, following squeeze-out<br>by Prisa as part of the takeover bid for Sogecable                                  | 20/06/2008 |
| Flame ETF Ibex 35, FI         | SIBE                | Decision by the CNMV, 22/09/08  | 22/09/2008 |
| Flame ETF Monetario, FI       | SIBE                | Decision by the CNMV, 22/09/08  | 22/09/2008 |
| Flame ETF Ibex Small Caps, FI | SIBE                | Decision by the CNMV, 22/09/08  | 22/09/2008 |
| Flame ETF Ibex Mid Caps, FI   | SIBE                | Decision by the CNMV, 22/09/08  | 22/09/2008 |
| Leucan                        | Open outcry         | Bilbao Stock Exchange Bulletin of 26 March.<br>Extraordinary Shareholders' Meeting resolution 18/02/2008  | 27/03/2008 |
| Macamju, Sicav                | Open outcry, UCITS  | Madrid Stock Exchange 14/01/08. Dissolution and liquidation   | 14/01/2008 |
| Serfix Europa                 | Open outcry, UCITS  | Extraordinary Shareholders' Meeting resolution 18/04/07<br>RD 82017 05/07/07. Madrid Stock Exchange Bulletin 01/07/08.<br>Conversion into a corporation | 03/07/2008 |
| Estabanell y Pahisa, S.A.     | Second market       | Barcelona Stock Exchange Bulletin 16/06/08  | 17/06/2008 |
| Inmobiliaria Carroggio, S.A.  | Third market        | Catalonia Reg. Gov't Resolution of 11 April; Reg. discl 18 April  | 18/04/2008 |

Source: CNMV.

1. Delistings due to change of market are not included.

2. Companies which are UCITS are indicated as such.

Yield in the period (%)

|  | 2005        | 2006        | 2007       | 2008         | 2008         |             |             |              |
|--|-------------|-------------|------------|--------------|--------------|-------------|-------------|--------------|
|  |             |             |            |              | 1Q           | 2Q          | 3Q          | 4Q           |
| <b>Madrid Stock Exchange</b>               |             |             |            |              |              |             |             |              |
| Oil and energy                             | 28.0        | 33.3        | 13.0       | -33.3        | -8.0         | -5.5        | -14.3       | -10.6        |
| Commodities, industry and construction     | 43.4        | 61.9        | -3.2       | -50.5        | -11.3        | -7.4        | -22.8       | -21.9        |
| Consumer goods                             | 24.2        | 31.9        | 6.1        | -25.7        | -4.9         | -5.9        | -8.1        | -9.6         |
| Consumer services                          | 21.2        | 8.6         | -8.0       | -45.1        | -8.9         | -23.6       | -7.5        | -14.7        |
| Financial and real estate services         | 22.7        | 34.9        | -5.5       | -49.2        | -13.8        | -13.0       | -8.2        | -26.2        |
| Banking                                    | 16.6        | 27.3        | -3.6       | -49.0        | -13.8        | -12.3       | -7.5        | -27.1        |
| Real estate and others                     | -14.7       | 111.2       | -40.6      | -68.0        | -12.2        | -26.1       | -28.7       | -30.9        |
| Technology and telecommunications          | -6.6        | 28.4        | 34.3       | -28.8        | -17.7        | -7.5        | -1.0        | -5.6         |
| <b>Madrid Stock Exchange General Index</b> | <b>20.6</b> | <b>34.5</b> | <b>5.6</b> | <b>-40.6</b> | <b>-12.4</b> | <b>-9.8</b> | <b>-9.5</b> | <b>-16.9</b> |
| <b>Barcelona Stock Exchange</b>            |             |             |            |              |              |             |             |              |
| Electricity                                | 29.9        | 48.3        | 12.3       | -26.2        | -7.0         | -10.3       | -11.5       | 0.0          |
| Banks                                      | 19.4        | 26.0        | -0.8       | -49.6        | -14.3        | -10.7       | -8.1        | -28.3        |
| Chemicals                                  | 29.1        | 7.2         | -10.4      | -41.5        | -11.3        | 9.9         | -16.8       | -27.9        |
| Cement, construction and real estate       | 56.9        | 85.6        | -32.0      | -61.5        | -22.9        | -19.4       | -23.5       | -18.9        |
| Metallurgy                                 | 17.7        | 77.9        | 8.0        | -47.9        | -4.0         | -4.3        | -19.7       | -29.3        |
| Food, agriculture and forestry             | 35.6        | 32.4        | -14.0      | -23.1        | 0.0          | -5.3        | -11.6       | -8.1         |
| Textiles and paper                         | 32.5        | 42.0        | -8.5       | -30.2        | -15.7        | -17.7       | -0.5        | 0.9          |
| Trade and finance                          | 26.7        | 34.4        | -9.6       | -37.7        | -0.8         | -9.0        | -11.5       | -22.0        |
| Sundry services                            | -2.2        | 20.6        | 23.3       | -32.6        | -14.9        | -11.0       | -5.1        | -6.2         |
| <b>BCN Global 100</b>                      | <b>12.7</b> | <b>29.3</b> | <b>5.2</b> | <b>-41.8</b> | <b>-13.8</b> | <b>-9.8</b> | <b>-9.3</b> | <b>-17.5</b> |

Source: Bolsas y Mercados Españoles.

## Concentration of capitalisation by sector<sup>1</sup>

II.4

Number

| Sector                            | 2007 |     |     |      | 2008 |     |     |      |
|-----------------------------------|------|-----|-----|------|------|-----|-----|------|
|                                   | 25%  | 50% | 75% | 100% | 25%  | 50% | 75% | 100% |
| Oil                               | 1    | 1   | 2   | 2    | 1    | 1   | 2   | 2    |
| Energy & water                    | 1    | 2   | 3   | 11   | 1    | 2   | 4   | 11   |
| Mining & base metals              | 1    | 1   | 4   | 7    | 1    | 1   | 3   | 8    |
| Cement and construction materials | 1    | 2   | 3   | 5    | 1    | 2   | 3   | 5    |
| Chemicals                         | 1    | 2   | 3   | 6    | 1    | 2   | 3   | 6    |
| Textiles and paper                | 1    | 1   | 2   | 19   | 1    | 1   | 1   | 19   |
| Metal-mechanical                  | 1    | 3   | 5   | 17   | 1    | 2   | 4   | 17   |
| Food                              | 1    | 1   | 3   | 15   | 1    | 3   | 4   | 14   |
| Construction                      | 1    | 2   | 4   | 7    | 1    | 2   | 3   | 7    |
| Real estate                       | 1    | 3   | 6   | 30   | 2    | 3   | 7   | 28   |
| Transport and communications      | 1    | 1   | 1   | 6    | 1    | 1   | 1   | 6    |
| Other non-financial               | 2    | 4   | 8   | 23   | 2    | 3   | 6   | 22   |
| Banks                             | 1    | 2   | 2   | 14   | 1    | 2   | 2   | 11   |
| Insurance                         | 1    | 1   | 2   | 2    | 1    | 1   | 1   | 2    |
| Portfolio companies               | 1    | 1   | 2   | 10   | 1    | 1   | 1   | 12   |
| SICAV                             | 1    | 1   | 3   | 8    | 1    | 1   | 3   | 4    |
| Finance houses                    | 0    | 0   | 0   | 0    | 0    | 0   | 0   | 0    |

Source: CNMV.

1. Includes only capitalisation of companies that were traded at some time during the year. Values do not include Latibex or MAB.

**Percentage of capitalisation by sector and largest companies with respect to the overall market<sup>1</sup>**

11.5

| Sector                            | % sector/market <sup>2</sup> | Companies with the largest capitalisation in the sector | % company/market <sup>3</sup> |
|-----------------------------------|------------------------------|---|-------------------------------|
| Oil                               | 9.4                          | Repsol YPF  | 4.7                           |
|                                   |                              | CEPSA   | 4.6                           |
| Energy & water                    | 28.7                         | Iberdrola   | 8.4                           |
|                                   |                              | Endesa  | 7.8                           |
|                                   |                              | Gas Natural   | 4.2                           |
| Mining & base metals              | 1.2                          | Acerinox  | 0.7                           |
|                                   |                              | Tubos Reunidos  | 0.1                           |
|                                   |                              | Duro Felguera   | 0.1                           |
| Cement and construction materials | 0.6                          | Cementos Portland Valderrivas                           | 0.2                           |
|                                   |                              | Cementos Molins   | 0.2                           |
|                                   |                              | Uralita   | 0.2                           |
| Chemicals                         | 0.7                          | Laboratorios Almirall                                   | 0.2                           |
|                                   |                              | Zeltia  | 0.2                           |
|                                   |                              | Faes Farma  | 0.1                           |
| Textiles and paper                | 6.2                          | Industria de Diseño Textil                              | 5.0                           |
|                                   |                              | Grífols   | 0.7                           |
|                                   |                              | Solaria   | 0.1                           |
| Metal-mechanical                  | 2.4                          | Zardoya Otis  | 1.0                           |
|                                   |                              | Técnicas Reunidas                                       | 0.3                           |
|                                   |                              | Abengoa   | 0.3                           |
| Food                              | 1.8                          | Altadis   | 0.5                           |
|                                   |                              | Damm  | 0.4                           |
|                                   |                              | Ebro Puleva   | 0.4                           |
| Construction                      | 6.5                          | ACS   | 2.8                           |
|                                   |                              | Acciona   | 1.5                           |
|                                   |                              | Sacyr Vallehermoso                                      | 0.8                           |
| Real estate                       | 2.7                          | Metrovacesa   | 0.7                           |
|                                   |                              | Inmobiliaria Colonial                                   | 0.5                           |
|                                   |                              | Royal Urbis   | 0.4                           |
| Transport and communications      | 23.2                         | Telefónica  | 19.1                          |
|                                   |                              | Abertis Infraestructuras                                | 2.2                           |
|                                   |                              | Cintra  | 0.8                           |
| Other non-financial               | 3.9                          | Gamesa  | 0.8                           |
|                                   |                              | Telecinco   | 0.7                           |
|                                   |                              | BME   | 0.5                           |
| Banks                             | 29.3                         | Santander   | 13.8                          |
|                                   |                              | BBVA  | 8.3                           |
|                                   |                              | Banco Popular   | 1.9                           |
| Insurance                         | 2.1                          | Mapfre  | 1.7                           |
|                                   |                              | Grupo Catalana Occidente                                | 0.5                           |
| Portfolio companies               | 3.2                          | Criteria CaixaCorp                                      | 2.4                           |

**Percentage of capitalisation by sector and largest companies with respect to the overall market<sup>1</sup> (continuation)**

II.5

| Sector             | % sector/market <sup>2</sup> | Companies with the largest capitalisation in the sector | % company/market <sup>3</sup> |
|--------------------|------------------------------|---|-------------------------------|
|                    |                              | Corporación Financiera Alba                             | 0.4                           |
|                    |                              | Unión Europea de Inversiones                            | 0.1                           |
| SICAV <sup>4</sup> | 0.05                         | Financiera Ponferrada SICAV                             | 0.03                          |
|                    |                              | CAT Patrimonis SICAV                                    | 0.01                          |
|                    |                              | Mulinsar SICAV  | 0.01                          |

Source: CNMV.

1. Capitalisation at year-end.
2. Capitalisation of the sector as a percentage of the overall market.
3. Capitalisation of the company as a percentage of the overall market.
4. Includes open-end securities investment companies traded in the open outcry market at 2008 year-end.

Million euro

| Company                           | Market capitalisation <sup>2</sup> |           |                         | Trading volume |           |                         |
|-----------------------------------|------------------------------------|-----------|-------------------------|----------------|-----------|-------------------------|
|                                   | 2007                               | 2008      | % of total <sup>3</sup> | 2007           | 2008      | % of total <sup>3</sup> |
| Telefónica                        | 106,067.1                          | 74,574.19 | 15.7                    | 286,907.1      | 239,510.8 | 19.3                    |
| Banco Santander Central Hispano   | 92,501.0                           | 53,959.90 | 11.3                    | 301,115.9      | 282,374.9 | 22.7                    |
| Iberdrola                         | 51,934.9                           | 32,715.20 | 6.9                     | 200,229.7      | 99,339.0  | 8.0                     |
| Iberdrola Renovables <sup>4</sup> | 51,934.9                           | 32,715.20 | 6.9                     | 200,229.7      | 99,339.0  | 8.0                     |
| Banco Bilbao Vizcaya Argentaria   | 62,816.0                           | 32,457.41 | 6.8                     | 229,852.0      | 171,660.1 | 13.8                    |
| Endesa                            | 38,485.6                           | 30,280.31 | 6.4                     | 123,332.4      | 6,962.4   | 0.6                     |
| Inditex                           | 26,192.3                           | 19,528.94 | 4.1                     | 28,355.8       | 26,516.3  | 2.1                     |
| Repsol YPF                        | 29,764.7                           | 18,435.04 | 3.9                     | 78,668.4       | 76,363.7  | 6.1                     |
| Unión Fenosa                      | 14,073.1                           | 16,205.89 | 3.4                     | 19,581.7       | 46,887.7  | 3.8                     |
| ACS                               | 14,344.3                           | 10,950.50 | 2.3                     | 22,572.1       | 14,538.0  | 1.2                     |
| Criteria CaixaCorp <sup>5</sup>   | 17,386.1                           | 9,348.83  | 2.0                     | 5,842.9        | 5,515.6   | 0.4                     |
| Gas Natural                       | 17,920.0                           | 8,637.60  | 1.8                     | 15,648.8       | 11,833.3  | 1.0                     |
| Abertis Infraestructuras          | 14,070.5                           | 8,446.15  | 1.8                     | 12,234.7       | 10,854.0  | 0.9                     |
| Banco Popular Español             | 14,220.6                           | 7,513.30  | 1.6                     | 31,798.1       | 30,350.9  | 2.4                     |
| Corporación Mapfre                | 6,848.7                            | 6,587.60  | 1.4                     | 6,968.9        | 6,994.1   | 0.6                     |
| Banco de Sabadell                 | 9,069.9                            | 5,820.00  | 1.2                     | 17,785.4       | 7,649.1   | 0.6                     |
| Acciona                           | 13,780.8                           | 5,655.95  | 1.2                     | 15,843.2       | 12,147.1  | 1.0                     |
| Banesto                           | 9,241.5                            | 5,554.09  | 1.2                     | 4,813.4        | 2,195.5   | 0.2                     |
| Red Eléctrica de España           | 5,849.1                            | 4,869.72  | 1.0                     | 15,241.6       | 12,768.1  | 1.0                     |
| Enagás                            | 4,772.3                            | 3,714.71  | 0.8                     | 13,950.3       | 9,719.4   | 0.8                     |
| Gamesa Corporación Tecnológica    | 7,780.7                            | 3,099.64  | 0.7                     | 14,461.8       | 15,638.3  | 1.3                     |
| Cintra Conc. Infr. y Transp.      | 5,593.2                            | 3,024.57  | 0.6                     | 7,853.1        | 6,234.3   | 0.5                     |
| FCC                               | 6,711.2                            | 2,969.99  | 0.6                     | 11,549.3       | 6,727.6   | 0.5                     |
| Acerinox                          | 4,367.4                            | 2,891.39  | 0.6                     | 12,169.2       | 7,060.0   | 0.6                     |
| Grupo Ferrovial                   | 6,749.5                            | 2,746.38  | 0.6                     | 16,675.4       | 11,248.6  | 0.9                     |
| Indra Sistemas                    | 3,049.6                            | 2,657.31  | 0.6                     | 5,538.0        | 5,272.1   | 0.4                     |
| Grífols <sup>6</sup>              | 3,283.3                            | 2,622.83  | 0.6                     | 4,288.1        | 6,430.9   | 0.5                     |
| Bankinter                         | 4,980.8                            | 2,561.19  | 0.5                     | 12,168.0       | 5,639.9   | 0.5                     |
| Sacyr Vallehermoso                | 7,571.3                            | 1,942.64  | 0.4                     | 6,114.7        | 3,087.9   | 0.2                     |
| Iberia Líneas Aéreas de España    | 2,858.7                            | 1,887.14  | 0.4                     | 11,199.8       | 6,056.7   | 0.5                     |
| Gestevisión Telecinco             | 4,318.7                            | 1,862.15  | 0.4                     | 7,676.8        | 4,908.8   | 0.4                     |
| BME                               | 3,896.5                            | 1,537.69  | 0.3                     | 6,932.5        | 6,486.9   | 0.5                     |
| Abengoa <sup>7</sup>              | 2,187.6                            | 1,067.54  | 0.2                     | 3,837.3        | 2,102.4   | 0.2                     |
| Técnicas Reunidas <sup>8</sup>    | 2,447.1                            | 1,029.05  | 0.2                     | 2,857.2        | 3,466.6   | 0.3                     |
| Obrascón Huarte Lain <sup>9</sup> | 2,014.9                            | 871.42    | 0.2                     | 3,555.7        | 2,097.8   | 0.2                     |

Source: CNMV.

1. Companies in the Ibx 35 at 30 December 2008.

2. Capitalisation on the last day of the year.

3. With respect to the market total.

4. Included in the index on 04/02/2008.

5. Included in the index on 04/02/2008.

6. Included in the index on 04/01/2008.

7. Included in the index on 04/01/2008.

8. Included in the index on 13/04/2008.

9. Included in the index on 01/07/2008.



|                                   | Yield |       | Volatility <sup>1</sup> |      | Dividend yield (%) <sup>2</sup> |      | Price/earnings ratio <sup>3</sup> |      |
|-----------------------------------|-------|-------|-------------------------|------|---------------------------------|------|-----------------------------------|------|
|                                   | 2007  | 2008  | 2007                    | 2008 | 2007                            | 2008 | 2007                              | 2008 |
| Telefónica                        | 37.8  | -28.7 | 20.6                    | 37.6 | 2.9                             | 5.7  | 13.5                              | 10.1 |
| Banco Santander Central Hispano   | 4.6   | -51.1 | 21.5                    | 54.9 | 3.9                             | 11.8 | 9.8                               | 5.4  |
| Iberdrola                         | 25.6  | -37.1 | 22.3                    | 58.1 | 2.5                             | 4.6  | 23.3                              | 8.1  |
| Banco Bilbao Vizcaya Argentaria   | -8.1  | -48.3 | 20.9                    | 50.8 | 4.2                             | 9.0  | 8.9                               | 5.0  |
| Repsol YPF                        | -7.0  | -38.1 | 21.4                    | 49.5 | 3.5                             | 6.8  | 8.3                               | 4.1  |
| Unión Fenosa                      | 23.2  | 15.1  | 21.8                    | 32.6 | 2.7                             | 3.5  | 13.2                              | 11.8 |
| Inditex                           | 3.0   | -25.4 | 25.5                    | 47.8 | 2.0                             | 3.4  | 44.3                              | 23.8 |
| ACS                               | -4.8  | -19.7 | 26.4                    | 40.5 | 3.9                             | 5.8  | 5.4                               | 4.5  |
| Banco Popular                     | -14.8 | -48.0 | 19.3                    | 53.8 | 3.8                             | 8.3  | 10.9                              | 5.2  |
| Abertis Infraestructuras          | 2.8   | -40.0 | 19.6                    | 40.2 | 2.4                             | 4.6  | 20.3                              | 11.6 |
| Banco de Sabadell                 | -12.6 | -34.6 | 19.9                    | 36.2 | 3.3                             | 6.4  | 10.8                              | 6.8  |
| Gas Natural                       | 33.4  | -51.8 | 25.0                    | 45.2 | 2.6                             | 6.2  | 16.2                              | 7.0  |
| Red Eléctrica de España           | 33.1  | -16.7 | 23.5                    | 37.4 | 2.2                             | 3.2  | 23.3                              | 16.1 |
| Acciona                           | 53.7  | -59.0 | 36.8                    | 62.3 | 1.5                             | 4.1  | 18.5                              | 6.8  |
| Critería <sup>4</sup>             | -1.5  | -46.2 | 17.4                    | 47.8 | —                               | 7.2  | —                                 | 7.1  |
| Enagás                            | 13.5  | -22.2 | 22.9                    | 36.5 | 2.6                             | 4.0  | 20.4                              | 14.3 |
| Gamesa Corporación Tecnológica    | 53.4  | -60.2 | 32.9                    | 69.6 | 0.7                             | 1.8  | 61.7                              | 7.8  |
| Acerinox                          | -27.0 | -32.4 | 29.8                    | 44.1 | 2.7                             | 4.0  | 5.1                               | 9.1  |
| Indra Sistemas                    | -0.2  | -12.9 | 21.2                    | 36.6 | 2.3                             | 3.1  | 19.6                              | 12.9 |
| Corporación Mapfre                | -11.8 | -20.1 | 27.2                    | 53.8 | 3.7                             | 5.8  | 7.6                               | 5.7  |
| Grífols                           | 52.6  | -20.1 | 36.2                    | 40.7 | 0.4                             | 1.3  | 35.9                              | 21.0 |
| Iberdrola Renovables <sup>5</sup> | 9.7   | -46.0 | 45.5                    | 56.6 | —                               | —    | —                                 | 32.1 |
| Bankinter                         | 5.3   | -49.7 | 34.0                    | 51.3 | 2.3                             | 4.7  | 9.9                               | 9.7  |
| Grupo Ferrovial                   | -34.9 | -59.3 | 32.2                    | 61.6 | 2.2                             | 6.5  | 4.0                               | 94.6 |
| Iberia                            | 8.7   | -34.0 | 36.2                    | 66.5 | 1.2                             | 8.6  | 19.1                              | 45.5 |
| Cintra                            | -14.6 | -45.9 | 28.9                    | 53.0 | —                               | 1.8  | —                                 | —    |
| FCC                               | -33.4 | -54.6 | 29.0                    | 44.4 | 4.1                             | 7.9  | 5.9                               | 5.4  |
| BME                               | 48.7  | -60.5 | 28.9                    | 48.7 | 3.3                             | 10.9 | 18.9                              | 7.5  |
| Endesa                            | 1.5   | -21.3 | 14.4                    | 40.4 | 3.5                             | 5.4  | 11.9                              | 2.3  |
| Gestevisión Telecinco             | -18.9 | -56.9 | 23.9                    | 46.2 | 7.3                             | 17.3 | 10.2                              | 4.8  |
| Banesto                           | -20.6 | -39.3 | 23.2                    | 42.1 | 2.7                             | 8.9  | 11.9                              | 6.2  |
| Abengoa                           | -13.1 | -51.2 | 38.5                    | 53.4 | 0.7                             | 1.4  | 17.5                              | 6.5  |
| Técnicas Reunidas                 | 50.3  | -58.0 | 38.9                    | 59.2 | 1.8                             | 6.3  | 24.7                              | 8.3  |
| Sacyr Vallehermoso                | -40.9 | -74.3 | 40.8                    | 68.4 | 2.4                             | 9.4  | 6.2                               | —    |
| Obrascón Huarte Lain              | -1.6  | -56.8 | 39.0                    | 54.7 | —                               | 4.0  | 25.6                              | 5.2  |

Source: Datastream and BME.

1. Historical volatility annualised for the period.
2. Dividends distributed/price.
3. Year-end closing price/EBT.
4. Began trading on 10/10/2007 after primary offering.
5. Began trading on 13/12/2007 after primary offering.

## Takeover bids authorised in 2008

II.8

Million euro

| Company   | Offeror                          | Purpose              | % capital addressed by the bid | Cash amount paid | Result (%) <sup>1</sup> |
|---|----------------------------------|----------------------|--------------------------------|------------------|-------------------------|
| Compañía española para la fabricación mecánica del vidrio, S.A. | Gepro XXI, S.L.                  | Merger by absorption | 8.0                            | 0.6              | 6.5                     |
| Metrovacesa   | Undertake Options, S.L.          | Increase in stake    | 13.4                           | 585.8            | 10.1                    |
| Sogecable   | Promotora de informaciones, S.A. | Takeover             | 49.6                           | 1,845.4          | 47.6                    |
| Compañía de distribución integral logística, S.A.               | Altadis, S.A.                    | Takeover             | 40.4                           | 866.5            | 37.3                    |
| Estabanell y Pahisa, S.A.                                       | Estabanell y Pahisa, S.A.        | Delisting            | 20.9                           | 15.7             | 17.2                    |
| Plarrega Invest 2000, S.A.                                      | Vancouver gestión, S.L.          | Takeover             | 100.0                          | 5.0              | 100.0                   |
| <b>Total amount</b>   |                                  |                      |                                | <b>3,318.89</b>  |                         |

Source: CNMV.

1. Percentage of capital. In the event of pro-rating, the coefficient is indicated.

## Companies listed on Latibex, by sector

II.9

Million euro, unless indicated otherwise

|                              | No. of companies |           | Market capitalisation |                |               | Trading volume |              |               |
|------------------------------|------------------|-----------|-----------------------|----------------|---------------|----------------|--------------|---------------|
|                              | 2007             | 2008      | 2007                  | 2008           | % chg. 08/07  | 2007           | 2008         | % chg. 08/07  |
| Oil                          | 2                | 2         | 174,775               | 73,216         | -58.11        | 91.8           | 118.1        | 28.53         |
| Energy & water               | 5                | 5         | 26,416                | 22,600         | -14.45        | 61.4           | 67.6         | 10.09         |
| Mining & base metals         | 5                | 5         | 117,331               | 47,440         | -59.57        | 286.0          | 250.7        | -12.36        |
| Chemicals                    | 1                | 1         | 1,361                 | 540            | -60.31        | 14.4           | 4.1          | -71.81        |
| Textiles and paper           | 2                | 2         | 3,465                 | 421            | -87.84        | 14.7           | 12.7         | -13.63        |
| Metal-mechanical             | 1                | 1         | 2,688                 | 919            | -65.83        | 26.8           | 15.0         | -44.08        |
| Food                         | 2                | 2         | 3,788                 | 1,785          | -52.89        | 126.4          | 93.9         | -25.74        |
| Real estate                  | 2                | 2         | 1,381                 | 503            | -63.58        | 19.3           | 2.4          | -87.39        |
| Transport and communications | 4                | 5         | 68,712                | 113,149        | 64.67         | 107.2          | 112.1        | 4.55          |
| Other non-financial          | 2                | 2         | 3,535                 | 2,471          | -30.11        | 16.6           | 10.3         | -37.94        |
| Banks                        | 6                | 6         | 16,132                | 14,961         | -7.26         | 74.1           | 53.8         | -27.47        |
| Portfolio companies          | 1                | 1         | 3,264                 | 2,032          | -37.76        | 26.4           | 12.4         | -53.15        |
| Finance houses               | 1                | 1         | 4,925                 | 7,153          | 45.23         | 3.0            | 4.9          | 61.04         |
| <b>Total</b>                 | <b>34</b>        | <b>35</b> | <b>427,774</b>        | <b>287,189</b> | <b>-32.86</b> | <b>868.2</b>   | <b>757.7</b> | <b>-12.72</b> |

Source: CNMV.

## Mutual funds listed on the Spanish stock exchange

II.10

Thousand euro

| Issuer | Name                               | Underlying index                  | Trading volume |           |              | Managed assets |         |              | Net asset value |        |              |
|--------|------------------------------------|-----------------------------------|----------------|-----------|--------------|----------------|---------|--------------|-----------------|--------|--------------|
|        |                                    |                                   | 2007           | 2008      | % chg. 08/07 | 2007           | 2008    | % chg. 08/07 | 2007            | 2008   | % chg. 08/07 |
| BBVA   | Acción DJ Euro Stoxx 50 ETF FI     | DJ Euro Stoxx 50                  | 588,064        | 625,170   | 6.3          | 183,984        | 162,651 | -11.6        | 44.12           | 25.94  | -41.2        |
| BBVA   | Acción FTSE Latibex Brasil ETF FI  | FTSE Latibex Brasil               | 27,810         | 21,987    | -20.9        | 11,210         | 5,646   | -49.6        | 141.54          | 71.29  | -49.6        |
| BBVA   | Acción FTSE Latibex Top ETF FI     | FTSE Latibex Top                  | 17,191         | 967,217   | 5,526.2      | 7,620          | 257,826 | 3,283.5      | 51              | 31.95  | -37.1        |
| BBVA   | Acción Ibox 35 ETF FI              | Ibox 35                           | 1,098,304      | 801,168   | -27.1        | 230,629        | 143,547 | -37.8        | 15              | 9.83   | -35.6        |
| BBVA   | Acción Ibox Top Dividendo ETF FI   | Ibox Top Dividendo                | 9,387          | 12,150    | 29.4         | 4,990          | 3,042   | -39.0        | 37              | 22.53  | -39.0        |
| BBVA   | AFI Bonos Medio Plazo Euro ETF FI  | AFI Bonos Medio Plazo Euro        | 101,279        | 147,203   | 45.3         | 50,397         | 90,769  | 80.1         | 103             | 110.09 | 6.8          |
| BBVA   | AFI Monetario Euro ETF FI          | AFI Monetario Euro                | 491,491        | 2,784,778 | 466.6        | 250,172        | 870,322 | 247.9        | 102             | 106.98 | 4.7          |
| BBVA   | FTSE 4Good Ibox ETF FI             | FTSE4Good IBEX                    | —              | 6,325     | —            | —              | 1,215   | —            | —               | 8.68   | —            |
| Lyxor  | Lyxor ETF Brazil (Ibovespa) FI     | IBOVESPA                          | —              | 7,094     | —            | —              | 209     | —            | —               | 13.04  | —            |
| Lyxor  | Lyxor ETF China Enterprise FI      | Hang Seng                         | 13,208         | 17,242    | 30.5         | 908            | 662     | -27.1        | 142             | 82.72  | -41.7        |
| Lyxor  | Lyxor ETF DJ Euro Stoxx 50 FI      | DJ Euro Stoxx 50                  | 280,565        | 578,053   | 106.0        | 8,926          | 55,128  | 517.6        | 44              | 25.68  | -41.8        |
| Lyxor  | Lyxor ETF DJ Stoxx 600 Banks FI    | DOW JONES STOXX 600 BANKS         | —              | 19,327    | —            | —              | 1,275   | —            | —               | 16.03  | —            |
| Lyxor  | Lyxor ETF DJ Stoxx Sel Div 30 FI   | DJ Euro Stoxx Select Dividend 30  | —              | 5,530     | —            | —              | 90      | —            | —               | 12.21  | —            |
| Lyxor  | Lyxor ETF Dow Jones IA FI          | DJ Industrial Average             | 24,958         | 18,320    | -26.6        | 265            | 1,325   | 400.0        | 91              | 66.09  | -27.5        |
| Lyxor  | Lyxor ETF Eastern Europe FI        | Eastern Europe (CECE Eur)         | 30,609         | 17,876    | -41.6        | 337            | 355     | 5.3          | 28              | 13.75  | -51.2        |
| Lyxor  | Lyxor ETF Euro Cash FI             | Euro MTS EONIA Investable         | —              | 97,614    | —            | —              | 10,819  | —            | —               | 105.08 | —            |
| Lyxor  | Lyxor ETF Ibox 35 FI               | Ibox 35                           | 743,863        | 544,972   | -26.7        | 55,551         | 19,217  | -65.4        | 153             | 97.73  | -36.0        |
| Lyxor  | Lyxor ETF Japan (Topix) FI         | TOPIX INDEX                       | —              | 11,370    | —            | —              | 1,977   | —            | —               | 69.05  | —            |
| Lyxor  | Lyxor ETF Leveraged DJ Stoxx 50 FI | Dow Jones Euro Stoxx 50 Leveraged | —              | 37,831    | —            | —              | 1,734   | —            | —               | 14.75  | —            |
| Lyxor  | Lyxor ETF MSCI EM Latin America FI | MSCI EM Latin America             | 4,966          | 4,294     | -13.5        | 335            | 338     | 0.9          | 30              | 16.82  | -44.5        |
| Lyxor  | Lyxor ETF MSCI Emerging Mkts AFI   | MSCI Emerging Markets             | 3,251          | 24,837    | 663.9        | 245            | 715     | 191.8        | 9               | 4.41   | -48.6        |
| Lyxor  | Lyxor ETF MSCI EMU Growth FI       | MSCI EMU Growth                   | —              | 6,087     | —            | —              | 2       | —            | —               | 62.04  | —            |
| Lyxor  | Lyxor ETF MSCI Emu Small Cap FI    | MSCI EMU Small Cap                | 22,002         | 7,129     | -67.6        | 336            | 40      | -88.1        | 198             | 101.69 | -48.6        |

Source: BME and CNMV.

### Mutual funds listed on the Spanish stock exchange (continuation)

II.10

Thousand euro

| Issuer                 | Name                               | Underlying index                 | Trading volume   |                  |                 | Managed assets |                  |                  | Net asset value |          |                 |          |
|------------------------|------------------------------------|----------------------------------|------------------|------------------|-----------------|----------------|------------------|------------------|-----------------|----------|-----------------|----------|
|                        |                                    |                                  | 2007             | 2008             | % chg.<br>08/07 | 2007           | 2008             | % chg.<br>08/07  | 2007            | 2008     | % chg.<br>08/07 |          |
| Lyxor                  | Lyxor ETF MSCI EMU Value FI        | MSCI EMU Value                   | —                | 13,065           | —               | —              | —                | 21               | —               | —        | 93.57           | —        |
| Lyxor                  | Lyxor ETF MSCI India FI            | MSCI India                       | 9,765            | 5,854            | -40.0           | 997            | 566              | 566              | 43.2            | 15       | 6.00            | -59.7    |
| Lyxor                  | Lyxor ETF Nasdaq 100 FI            | Nasdaq 100                       | 6,312            | 10,399           | 64.7            | 604            | 382              | 382              | -36.8           | 6        | 3.73            | -34.8    |
| Lyxor                  | Lyxor ETF New Energy FI            | World Alternative Energy Index   | —                | 4,818            | —               | —              | 143              | 143              | —               | —        | 21.27           | —        |
| Lyxor                  | Lyxor ETF Russia FI                | Dow Jones Rusindex Titans 10     | 6,230            | 7,089            | 13.8            | 876            | 202              | 202              | -76.9           | 44       | 13.99           | -68.2    |
| Lyxor                  | Lyxor ETF Short Strategy Europe FI | Based on Dow Jones Stoxx 600     | —                | 3,491            | —               | —              | 104              | 104              | —               | —        | 111.00          | —        |
| Lyxor                  | Lyxor ETF World Water FI           | World Water Index                | —                | 1,144            | —               | —              | 12               | 12               | —               | —        | 12.91           | —        |
| Santander <sup>1</sup> | Flame ETF Ibex 35 FI               | Ibex 35                          | 1,131,723        | 102,023          | -91.0           | 64,092         | —                | —                | —               | 15,26    | —               | —        |
| Santander              | Flame ETF Ibex Mid Caps FI         | Ibex Medium Cap                  | 22,985           | 10,421           | -54.7           | 6,891          | —                | —                | —               | 18       | —               | —        |
| Santander              | Flame ETF Ibex Small Caps FI       | Ibex Small Cap                   | 30,514           | 9,854            | -67.7           | 6,566          | —                | —                | —               | 15       | —               | —        |
| Santander              | Flame ETF Monetario FI             | ML Spanish Government Bill Index | —                | 6,355            | —               | —              | —                | —                | —               | —        | —               | —        |
| <b>Total</b>           |                                    |                                  | <b>4,664,477</b> | <b>6,750,357</b> | <b>44.7</b>     | <b>885,931</b> | <b>1,630,335</b> | <b>1,630,335</b> | <b>84.0</b>     | <b>—</b> | <b>—</b>        | <b>—</b> |

Source: BME and CNMV.

1. Santander's ETF's were liquidated and delisted on 18/12/2008.

## Gross issues by the public administrations

II.11

Nominal amount in million euro

|                               | Amount        |               |               |                | % year-on-year change |              |              |
|-------------------------------|---------------|---------------|---------------|----------------|-----------------------|--------------|--------------|
|                               | 2005          | 2006          | 2007          | 2008           | 06/05                 | 07/06        | 08/07        |
| <b>Central Government</b>     | <b>67,802</b> | <b>57,962</b> | <b>52,091</b> | <b>115,181</b> | <b>-14.5</b>          | <b>-10.1</b> | <b>121.1</b> |
| Short term                    | 29,512        | 25,891        | 26,971        | 52,657         | -12.3                 | 4.2          | 95.2         |
| Long term                     | 38,290        | 32,071        | 25,120        | 62,523         | -16.2                 | -21.7        | 148.9        |
| <b>Autonomous Communities</b> | <b>10,170</b> | <b>9,523</b>  | <b>7,553</b>  | <b>9,035</b>   | <b>-6.4</b>           | <b>-20.7</b> | <b>19.6</b>  |
| Short term                    | 4,132         | 4,586         | 4,004         | 5,054          | 11.0                  | -12.7        | 26.2         |
| Long term                     | 6,037         | 4,937         | 3,548         | 3,981          | -18.2                 | -28.1        | 12.2         |
| <b>Local government</b>       | <b>200</b>    | <b>590</b>    | <b>496</b>    | <b>208</b>     | <b>194.7</b>          | <b>-16.0</b> | <b>-58.1</b> |
| Short term                    | —             | —             | —             | —              | —                     | —            | —            |
| Long term                     | 200           | 590           | 496           | 208            | 194.7                 | -16.0        | -58.1        |
| <b>Total</b>                  | <b>78,172</b> | <b>68,075</b> | <b>60,139</b> | <b>124,423</b> | <b>-12.9</b>          | <b>-11.7</b> | <b>106.9</b> |

Source: Bank of Spain and CNMV.

## Net issues by the public administrations

II.12

Nominal amount in million euro

|                               | Amount       |               |               |               | % year-on-year change |              |              |
|-------------------------------|--------------|---------------|---------------|---------------|-----------------------|--------------|--------------|
|                               | 2005         | 2006          | 2007          | 2008          | 06/05                 | 07/06        | 08/07        |
| <b>Central Government</b>     | <b>3,890</b> | <b>-4,789</b> | <b>-4,716</b> | <b>50,208</b> | <b>—</b>              | <b>1.5</b>   | <b>—</b>     |
| Short term                    | -3,819       | -1,993        | 1,144         | 19,630        | 47.8                  | —            | 1.616.6      |
| Long term                     | 7,709        | -2,796        | -5,860        | 30,578        | —                     | -109.6       | —            |
| <b>Autonomous Communities</b> | <b>2,797</b> | <b>1,827</b>  | <b>223</b>    | <b>1,280</b>  | <b>-34.7</b>          | <b>-87.8</b> | <b>473.4</b> |
| Short term                    | 276          | -141          | 283           | 430           | —                     | —            | 51.8         |
| Long term                     | 2,521        | 1,968         | -60           | 851           | -21.9                 | —            | —            |
| <b>Local government</b>       | <b>-5</b>    | <b>228</b>    | <b>131</b>    | <b>-14</b>    | <b>—</b>              | <b>-42.4</b> | <b>—</b>     |
| Short term                    | 0            | 0             | 0             | 0             | —                     | —            | —            |
| Long term                     | -5           | 228           | 131           | -14           | —                     | -42.4        | —            |
| <b>Total</b>                  | <b>6,682</b> | <b>-2,734</b> | <b>-4,362</b> | <b>51,474</b> | <b>—</b>              | <b>-59.5</b> | <b>—</b>     |

Source: Bank of Spain and CNMV.

**Public debt trading between account holders. Outright transactions, repos and sell-buybacks/buy-sellbacks**

II.13

Nominal amount in million euro

|                                 | Amount           |                  |                  |                  |                  |                  | % year-on-year change |             |
|---------------------------------|------------------|------------------|------------------|------------------|------------------|------------------|-----------------------|-------------|
|                                 | 2003             | 2004             | 2005             | 2006             | 2007             | 2008             | 07/06                 | 08/07       |
| <b>Letras</b>                   | <b>508,880</b>   | <b>472,518</b>   | <b>484,161</b>   | <b>480,711</b>   | <b>339,956</b>   | <b>534,889</b>   | <b>-29.3</b>          | <b>57.3</b> |
| Outright                        | 62,075           | 85,222           | 82,515           | 64,164           | 35,894           | 63,929           | -44.1                 | 78.1        |
| Spot                            | 61,662           | 84,833           | 82,389           | 63,694           | 35,868           | 63,885           | -43.7                 | 78.1        |
| Maturity                        | 413              | 389              | 126              | 470              | 27               | 44               | -94.3                 | 64.9        |
| Repos                           | 7,030            | 1,990            | 411              | 0                | 0                | 0                | —                     | —           |
| Sell-buybacks/<br>Buy-sellbacks | 439,775          | 385,306          | 401,234          | 416,547          | 304,062          | 470,959          | -27.0                 | 54.9        |
| <b>Bonos and Obligaciones</b>   | <b>7,217,128</b> | <b>7,308,084</b> | <b>7,260,528</b> | <b>7,062,437</b> | <b>7,142,097</b> | <b>6,458,962</b> | <b>1.1</b>            | <b>-9.6</b> |
| Outright                        | 901,582          | 562,627          | 491,550          | 447,211          | 418,761          | 362,235          | -6.4                  | -13.5       |
| Spot                            | 882,482          | 552,418          | 481,854          | 444,083          | 417,749          | 359,633          | -5.9                  | -13.9       |
| Maturity                        | 19,099           | 10,209           | 9,696            | 3,128            | 1,012            | 2,602            | -67.7                 | 157.2       |
| Repos                           | 58,550           | 94,254           | 69,327           | 96               | 0                | 0                | —                     | —           |
| Sell-buybacks/<br>Buy-sellbacks | 6,257,002        | 6,651,203        | 6,699,650        | 6,615,129        | 6,723,337        | 6,096,727        | 1.6                   | -9.3        |
| <b>Total</b>                    | <b>7,726,013</b> | <b>7,780,602</b> | <b>7,744,688</b> | <b>7,543,148</b> | <b>7,482,053</b> | <b>6,993,851</b> | <b>-0.8</b>           | <b>-6.5</b> |

Source: Bank of Spain and CNMV.

**Letras trading between account holders. Breakdown by trade type**

II.14

Nominal amount in million euro

|                             | Amount         |                |                |                |                |                | % year-on-year change |             |
|-----------------------------|----------------|----------------|----------------|----------------|----------------|----------------|-----------------------|-------------|
|                             | 2003           | 2004           | 2005           | 2006           | 2007           | 2008           | 07/06                 | 08/07       |
| <b>Outright<sup>1</sup></b> | <b>62,075</b>  | <b>85,222</b>  | <b>82,515</b>  | <b>64,164</b>  | <b>35,894</b>  | <b>63,929</b>  | <b>-44.1</b>          | <b>78.1</b> |
| Senaf                       | 27,093         | 36,350         | 13,119         | 5,111          | 2,790          | 10,511         | 54.5                  | 511.6       |
| MTS-España                  | 13,103         | 13,580         | 16,959         | 12,464         | 7,896          | 17,063         | -77.6                 | 33.1        |
| EuroMTS                     | 0              | 180            | 170            | 260            | 80             | 109            | -69.2                 | 36.3        |
| Bilateral trading           | 21,879         | 35,112         | 52,267         | 46,329         | 25,128         | 36,246         | -45.8                 | 44.2        |
| <b>Repos<sup>2</sup></b>    | <b>446,806</b> | <b>387,297</b> | <b>401,646</b> | <b>416,547</b> | <b>304,062</b> | <b>470,959</b> | <b>-27.0</b>          | <b>54.9</b> |
| Senaf                       | 30,527         | 18,211         | 25,543         | 7,579          | 4,723          | 13,343         | -37.7                 | 182.5       |
| MTS-España                  | 243            | 0              | 0              | 53             | 0              | 0              | —                     | —           |
| EuroMTS                     | 0              | 0              | 0              | 0              | 0              | 0              | —                     | —           |
| Bilateral trading           | 416,036        | 369,086        | 376,103        | 408,915        | 299,339        | 457,616        | -26.8                 | 52.9        |
| <b>Total</b>                | <b>508,880</b> | <b>472,518</b> | <b>484,161</b> | <b>480,711</b> | <b>339,956</b> | <b>534,889</b> | <b>-29.3</b>          | <b>57.3</b> |

Source: Bank of Spain, Directorate-General of the Treasury and Financial Policy, and CNMV.

1. Outright trades include spot and forward trades.

2. The figure for repos includes sell-buybacks/buy-sellbacks.

**Bonos and Obligaciones trading between account holders.  
Breakdown by trade type**

II.15

Nominal amount in million euro

|                             | Amount           |                  |                  |                  |                  |                  | % year on year change |              |
|-----------------------------|------------------|------------------|------------------|------------------|------------------|------------------|-----------------------|--------------|
|                             | 2003             | 2004             | 2005             | 2006             | 2007             | 2008             | 07/06                 | 08/07        |
| <b>Outright<sup>1</sup></b> | <b>899,445</b>   | <b>562,290</b>   | <b>491,238</b>   | <b>447,211</b>   | <b>418,761</b>   | <b>362,235</b>   | <b>-6.4</b>           | <b>-13.5</b> |
| Senaf                       | 253,653          | 69,758           | 57,554           | 89,118           | 55,049           | 27,925           | -38.2                 | -49.3        |
| MTS-España                  | 183,208          | 85,265           | 83,830           | 72,581           | 66,484           | 34,111           | -8.4                  | -48.7        |
| EuroMTS                     | 111,705          | 47,503           | 24,462           | 11,170           | 10,746           | 6,943            | -3.8                  | -35.4        |
| Bilateral trading           | 350,879          | 359,764          | 325,392          | 274,343          | 286,482          | 293,257          | 4.4                   | 2.4          |
| <b>Repos<sup>2</sup></b>    | <b>6,315,551</b> | <b>6,745,457</b> | <b>6,768,978</b> | <b>6,615,226</b> | <b>6,723,337</b> | <b>6,096,727</b> | <b>1.6</b>            | <b>-9.3</b>  |
| Senaf                       | 436,455          | 277,358          | 127,478          | 76,788           | 33,662           | 30,511           | -56.2                 | -9.4         |
| MTS-España                  | 7,501            | 388              | 0                | 1,949            | 2,668            | 0                | 36.9                  | -100.0       |
| EuroMTS                     | 0                | 0                | 0                | 0                | 0                | 0                | —                     | —            |
| Bilateral trading           | 5,871,595        | 6,467,711        | 6,641,500        | 6,536,489        | 6,687,007        | 6,066,216        | 2.3                   | -9.3         |
| <b>Total</b>                | <b>7,214,996</b> | <b>7,307,747</b> | <b>7,260,216</b> | <b>7,062,437</b> | <b>7,142,097</b> | <b>6,458,962</b> | <b>1.1</b>            | <b>-9.6</b>  |

Source: Bank of Spain, Directorate-General of the Treasury and Financial Policy, and CNMV.

1. Outright trades include spot and forward trades.
2. The figure for repos includes sell-buybacks/buy-sellbacks.

**Public debt trading by account holders and third parties. Outright transactions, repos and sell/buybacks and buy/sellbacks**

II.16

Nominal amount in million euro

|                             | Amount            |                   |                   |                   |                   |                   | % year-on-year change |              |
|-----------------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-----------------------|--------------|
|                             | 2003              | 2004              | 2005              | 2006              | 2007              | 2008              | 07/06                 | 08/07        |
| <b>Letras</b>               | <b>2,098,975</b>  | <b>1,800,846</b>  | <b>1,746,209</b>  | <b>1,214,840</b>  | <b>1,254,600</b>  | <b>1,687,338</b>  | <b>3.3</b>            | <b>34.5</b>  |
| Outright                    | 28,120            | 30,328            | 33,963            | 29,167            | 22,030            | 51,331            | -24.5                 | 133.0        |
| Spot                        | 28,089            | 30,119            | 33,698            | 29,137            | 21,496            | 50,695            | -26.2                 | 135.8        |
| Maturity                    | 31                | 209               | 265               | 31                | 534               | 636               | 1,624.2               | 18.9         |
| Repos                       | 2,069,898         | 1,768,729         | 1,709,341         | 1,185,339         | 1,230,166         | 1,635,437         | 3.8                   | 32.9         |
| Sell-buybacks/Buy-sellbacks | 957               | 1,789             | 2,905             | 334               | 2,404             | 570               | 620.2                 | -76.3        |
| <b>Bonds and debentures</b> | <b>11,465,342</b> | <b>13,252,235</b> | <b>12,729,047</b> | <b>13,857,369</b> | <b>13,927,674</b> | <b>11,253,295</b> | <b>0.5</b>            | <b>-19.2</b> |
| Outright                    | 1,318,652         | 1,571,265         | 2,040,064         | 2,690,033         | 2,994,352         | 1,980,708         | 11.3                  | -33.9        |
| Spot                        | 1,274,648         | 1,469,329         | 1,740,267         | 2,366,230         | 2,702,273         | 1,726,925         | 14.2                  | -36.1        |
| Maturity                    | 44,004            | 101,936           | 299,797           | 323,803           | 292,079           | 253,783           | -9.8                  | -13.1        |
| Repos                       | 9,042,194         | 10,613,122        | 9,631,174         | 9,850,322         | 9,741,672         | 8,474,523         | -1.1                  | -13.0        |
| Sell-buybacks/Buy-sellbacks | 1,104,496         | 1,067,848         | 1,057,808         | 1,317,014         | 1,191,650         | 798,064           | -9.5                  | -33.0        |
| <b>Total</b>                | <b>13,564,317</b> | <b>15,053,081</b> | <b>14,475,256</b> | <b>15,072,210</b> | <b>15,182,274</b> | <b>12,940,633</b> | <b>0.7</b>            | <b>-14.8</b> |

Source: Bank of Spain and CNMV.

## Number of issuers and issues filed with the CNMV: detail by instrument

II.17

|                                      | Number of issuers <sup>1</sup> |            | Number of issues |            |
|--------------------------------------|--------------------------------|------------|------------------|------------|
|                                      | 2007                           | 2008       | 2007             | 2008       |
| <b>Long term</b>                     | <b>129</b>                     | <b>135</b> | <b>228</b>       | <b>249</b> |
| Non-convertible bonds and debentures | 41                             | 30         | 79               | 76         |
| – of which, subordinated debt        | 14                             | 9          | 14               | 12         |
| Convertible bonds and debentures     | 0                              | 1          | 0                | 1          |
| Mortgage covered bonds               | 10                             | 19         | 32               | 47         |
| Territorial covered bonds            | 4                              | 7          | 8                | 8          |
| Securitisation bonds                 | 77                             | 88         | 101              | 108        |
| – asset-backed (ABS)                 | 73                             | 87         | 97               | 107        |
| – mortgage-backed (MBS)              | 4                              | 1          | 4                | 1          |
| Preference shares                    | 5                              | 8          | 5                | 9          |
| Other                                | 2                              | 0          | 3                | 0          |
| <b>Short term<sup>2</sup></b>        | <b>80</b>                      | <b>77</b>  | <b>106</b>       | <b>88</b>  |
| Commercial paper                     | 80                             | 77         | 106              | 88         |
| – of which, asset-backed             | 3                              | 2          | 3                | 2          |
| <b>Total</b>                         | <b>173</b>                     | <b>179</b> | <b>334</b>       | <b>337</b> |

Source: CNMV.

1. In the case of issuers, the figures are not exclusive; i.e. a single issuer may have issued more than one type of instrument.
2. Shelf registrations.



## Main fixed-income issuers<sup>1</sup> registered with the CNMV in 2008

II.18

Nominal amount in million euro

| Name of issuing company                                    | Nominal amount issued |                         |           |
|--|-----------------------|-------------------------|-----------|
|  | Total                 | Short term <sup>2</sup> | Long term |
| AYT Cédulas Cajas Global Fondo de Titulización de Activos  | 19,190                | 0                       | 19,190    |
| Caja de Ahorros de Valencia, Castellón y Alicante, Bancaja | 15,375                | 13,000                  | 2,375     |
| Caja de Ahorros y Pensiones de Barcelona                   | 14,800                | 12,000                  | 2,800     |
| Caja de Ahorros y Monte de Piedad de Madrid                | 11,664                | 7,000                   | 4,664     |
| BBVA Banco de Financiación, S.A.                           | 10,000                | 10,000                  | 0         |
| Santander Consumer Finance, S.A.                           | 10,000                | 10,000                  | 0         |
| Banco de Sabadell, S.A.                                    | 9,973                 | 8,500                   | 1,473     |
| Banco Popular Español, S.A.                                | 9,900                 | 9,900                   | 0         |
| Bankinter, S.A.  | 8,775                 | 7,000                   | 1,775     |
| BBVA RMBS 7, Fondo de Titulización de Activos              | 8,500                 | 0                       | 8,500     |
| Caixa d'Estalvis de Catalunya                              | 7,649                 | 5,000                   | 2,649     |
| Banco Pastor, S.A.   | 7,050                 | 6,000                   | 1,050     |
| Banesto Banco de Emisiones, S.A.                           | 7,000                 | 7,000                   | 0         |
| Caja de Ahorros del Mediterráneo                           | 6,150                 | 5,000                   | 1,150     |
| Fondo de Titulización de Activos Santander 2               | 6,000                 | 6,000                   | 0         |
| IM Banco Popular MBS 1, Fondo de Titulización de Activos   | 6,000                 | 0                       | 6,000     |
| Caja de Ahorros de Galicia                                 | 5,925                 | 5,000                   | 925       |
| Bankinter Sociedad de Financiación, S.A.                   | 5,000                 | 5,000                   | 0         |
| Barclays Bank, S.A.  | 5,000                 | 5,000                   | 0         |
| BBVA RMBS 5, Fondo de Titulización de Activos              | 5,000                 | 0                       | 5,000     |
| Cédulas TDA 11, Fondo de Titulización de Activos           | 5,000                 | 0                       | 5,000     |
| BBVA RMBS 6, Fondo de Titulización de Activos              | 4,995                 | 0                       | 4,995     |
| Cédulas TDA 10, Fondo de Titulización de Activos           | 4,750                 | 0                       | 4,750     |
| Telefónica, S.A.   | 4,000                 | 4,000                   | 0         |

Source: CNMV.

1. Issuers that registered issues exceeding 4 billion euro in 2008.
2. Shelf registrations.

## Main fixed-income issuers<sup>1</sup> registered with the CNMV in 2008. Detail by instrument

II.19

Million euro

| Type of asset <sup>2</sup>           | Issuer  | Amount |
|--------------------------------------|---|--------|
| Non-convertible bonds and debentures | Caja de Ahorros y Monte de Piedad de Madrid                                     | 4,149  |
| Mortgage covered bonds               | Caja de Ahorros y Pensiones de Barcelona  | 2,600  |
|                                      | Caja de Ahorros de Valencia, Castellón y Alicante, Bancaja                      | 2,375  |
|                                      | Caixa d'Estalvis de Catalunya   | 1,975  |
|                                      | Bankinter, S.A.   | 1,725  |
| Commercial paper <sup>3</sup>        | Caja de Ahorros de Valencia, Castellón y Alicante, Bancaja                      | 13,000 |
|                                      | Caja de Ahorros y Pensiones de Barcelona  | 12,000 |
|                                      | BBVA Banco de Financiación, S.A.  | 10,000 |
|                                      | Santander Consumer Finance, S.A.  | 10,000 |
|                                      | Banco Popular Español, S.A.   | 9,900  |
|                                      | Banco de Sabadell, S.A.   | 8,500  |
|                                      | Banesto Banco de Emisiones, S.A.  | 7,000  |
|                                      | Bankinter, S.A.   | 7,000  |
|                                      | Caja de Ahorros y Monte de Piedad de Madrid                                     | 7,000  |
|                                      | Banco Pastor, S.A.  | 6,000  |
|                                      | Bankinter Sociedad de Financiación, S.A.  | 5,000  |
|                                      | Barclays Bank, S.A.   | 5,000  |
|                                      | Caixa d'Estalvis de Catalunya, S.A.   | 5,000  |
|                                      | Caja de Ahorros de Galicia  | 5,000  |
|                                      | Caja de Ahorros del Mediterráneo  | 5,000  |
|                                      | Telefónica, S.A.  | 4,000  |
|                                      | Banco de Andalucía, S.A.  | 3,600  |
|                                      | BBK Empréstitos, S.A.U.   | 3,000  |
|                                      | Caja de Ahorros Municipal de Burgos   | 3,000  |
|                                      | Caja España de Inversiones, Caja de Ahorros y Monte de Piedad                   | 3,000  |
|                                      | Iberdrola, S.A.   | 3,000  |
|                                      | Banco Guipuzcoano, S.A.   | 2,500  |
|                                      | Caja de Ahorros de Murcia   | 2,500  |
|                                      | Caja de Ahorros y Monte de Piedad de Navarra                                    | 2,500  |
|                                      | Montes de Piedad y Caja de Ahorros de Ronda, Cádiz, Almería, Málaga y Antequera | 2,500  |
|                                      | Caja de Ahorros de Salamanca y Soria  | 2,250  |
|                                      | Banco Espíritu Santo, S.A.  | 2,000  |
|                                      | Caixa d'Estalvis del Penedès  | 2,000  |
|                                      | Caixa de Aforros de Vigo, Ourense e Pontevedra, Caixanova                       | 2,000  |
|                                      | Cajamar Caja Rural, Sociedad Cooperativa de Crédito                             | 2,000  |
|                                      | Endesa Capital, S.A.  | 2,000  |
|                                      | Banca March, S.A.   | 1,500  |
|                                      | Caja de Ahorros de Castilla-La Mancha   | 1,500  |
|                                      | Caja de Ahorros y Monte de Piedad de Zaragoza, Aragón y La Rioja, Ibercaja      | 1,500  |
| ABCP                                 | Fondo de Titulización de Activos Santander 2                                    | 6,000  |

Source: CNMV.

1. Issuers which issued more than 1.5 billion euro in 2007, in the corresponding financial instrument.
2. Convertible bonds and debentures and preference shares do not appear as no issuer issued more than 1.5 billion euro in these instruments.
3. Amount of shelf registrations.

## Commercial paper issuers: largest outstanding balances<sup>1</sup> at 31 December 2008

II.20

Million of euro

| Issuer   | Amount | % of total | % accum. |
|--|--------|------------|----------|
| Banesto Banco de Emisiones   | 8,338  | 11.6       | 11.6     |
| BBVA Banco de Financiación   | 5,115  | 7.1        | 18.7     |
| Banco Popular  | 4,457  | 6.2        | 25.0     |
| Santander Consumer Finance   | 3,638  | 5.1        | 30.0     |
| Caja de Ahorros y Monte de Piedad de Madrid                                | 3,570  | 5.0        | 35.0     |
| Caja de Ahorros y Pensiones de Barcelona                                   | 3,568  | 5.0        | 40.0     |
| Bankinter Sociedad de Financiación   | 2,950  | 4.1        | 44.1     |
| Banco Sabadell   | 2,727  | 3.8        | 47.9     |
| Bankinter  | 2,598  | 3.6        | 51.5     |
| Fondo de Titulización de Activos Santander 2                               | 2,525  | 3.5        | 55.0     |
| Caixa d'Estalvis de Catalunya  | 2,318  | 3.2        | 58.2     |
| BBK Empréstitos  | 2,228  | 3.1        | 61.4     |
| Banco Pastor   | 1,959  | 2.7        | 64.1     |
| Iberdrola  | 1,702  | 2.4        | 66.5     |
| Caja de Ahorros y Monte de Piedad de Zaragoza, Aragón y La Rioja, Ibercaja | 1,279  | 1.8        | 68.2     |
| Unicaja  | 1,247  | 1.7        | 70.0     |
| Banco Guipuzcoano  | 1,244  | 1.7        | 71.7     |
| Caja de Ahorros y Monte de Piedad de Navarra                               | 1,202  | 1.7        | 73.4     |
| Caja Municipal de Burgos   | 1,153  | 1.6        | 75.0     |
| Caixa Galicia  | 1,060  | 1.5        | 76.5     |

Source: CNMV.

1. Issuers with an outstanding balance greater than 1.5 billion euro.

## Main securitisation bond issuers<sup>1</sup> in 2008

II.21

Million euro

| Issuer                                  | Amount | Assets securitised       |
|---|--------|--------------------------|
| AYT Cédulas Cajas Global, FTA           | 19,190 | Mortgage covered bonds   |
| BBVA RMBS 7, FTA                        | 8,500  | Mortgage loans           |
| IM Banco Popular MBS I, FTA             | 6,000  | Mortgage loans           |
| BBVA RMBS 5, FTA                        | 5,000  | Mortgage loans           |
| Cédulas TDA 11, FTA                     | 5,000  | Mortgage covered bonds   |
| BBVA RMBS 6, FTA                        | 4,995  | Mortgage loans           |
| Cédulas TDA 10, TDA                     | 4,750  | Mortgage covered bonds   |
| AYT Colaterales Global Hipotecario, FTA | 3,400  | Mortgage loans           |
| Bancaja 13, FTA                         | 2,895  | Mortgage loans           |
| Empresas Banesto 3, FTA                 | 2,300  | Corporate loans          |
| Cédulas TDA 13, FTA                     | 2,260  | Mortgage covered bonds   |
| Cédulas TDA 12, FTA                     | 2,200  | Mortgage covered bonds   |
| Bancaja 12, FTA                         | 2,100  | Mortgage loans           |
| Bankinter 16, FTA                       | 2,043  | Mortgage loans           |
| Empresas Banesto 2, FTA                 | 2,000  | Corporate loans          |
| IM Cajamar 6, FTA                       | 2,000  | Mortgage loans           |
| Rural Hipotecario X, FTA                | 1,880  | Mortgage loans           |
| MBS Bancaja 5, FTA                      | 1,850  | Mortgage loans           |
| IM Sabadell Empresas 3, FTA             | 1,740  | Corporate loans          |
| FTA UCI 18                              | 1,723  | Mortgage loans           |
| TDA CAM 11, FTA                         | 1,716  | Mortgage loans           |
| Madrid Activos Corporativos I, FTA      | 1,682  | Loans to large companies |
| IM Grupo Banco Popular Leasing I, FTA   | 1,680  | Financial leases         |
| TDA Ibercaja 6, FTA                     | 1,521  | Mortgage loans           |
| Bankinter 18, FTA                       | 1,500  | Mortgage loans           |

Source: CNMV.

1. Issuers with CNMV-registered issued of more than 1.5 billion euro in 2008, in the corresponding financial instrument.

Nominal amount in million euro

|  | 2003          | 2004          | 2005          | 2006          | 2007           | 2008           |
|--|---------------|---------------|---------------|---------------|----------------|----------------|
| <b>Total asset-backed bonds issued</b>                 | <b>36,745</b> | <b>50,525</b> | <b>69,044</b> | <b>91,608</b> | <b>141,627</b> | <b>135,253</b> |
| Via FTH (a)  | 5,030         | 4,890         | 6,850         | 4,300         | 4,740          | 800            |
| Via FTA  | 31,715        | 45,635        | 62,194        | 87,308        | 136,887        | 134,453        |
| Mortgage loans (b)                                     | 11,832        | 13,967        | 22,314        | 34,663        | 57,550         | 63,615         |
| Mortgage covered bonds (c)                             | 10,650        | 18,685        | 24,280        | 25,670        | 26,655         | 34,400         |
| Real estate developer loans (d)                        | 0             | 475           | 730           | 0             | 0              | 0              |
| <b>Mortgage subtotal (a+b+c+d)</b>                     | <b>27,512</b> | <b>38,017</b> | <b>54,175</b> | <b>64,633</b> | <b>88,945</b>  | <b>98,815</b>  |
| FTPYME <sup>1</sup>                                    | 5,303         | 8,964         | 2,944         | 7,956         | 6,474          | 7,276          |
| FTGENCAT <sup>1</sup>                                  | 950           | 0             | 2,177         | 1,860         | 2,020          | 3,391          |
| Other SME <sup>1</sup>                                 | 0             | 0             | 1,250         | 2,979         | 2,485          | 1,350          |
| Loans to companies <sup>2</sup>                        | 0             | 0             | 3,100         | 5,536         | 19,250         | 10,500         |
| <b>Subtotal SMEs and Companies</b>                     | <b>6,253</b>  | <b>8,964</b>  | <b>9,471</b>  | <b>18,331</b> | <b>30,230</b>  | <b>22,517</b>  |
| Loans to large companies <sup>3</sup>                  | 0             | 0             | 556           | 0             | 0              | 1,682          |
| Territorial covered bonds                              | 1,400         | 0             | 665           | 0             | 0              | 450            |
| Treasury bonds   | 0             | 0             | 1,180         | 1,450         | 0              | 765            |
| Subordinated debt                                      | 0             | 0             | 0             | 298           | 0              | 0              |
| Government loans                                       | 0             | 1,850         | 0             | 0             | 0              | 0              |
| Consumer loans   | 1,280         | 235           | 0             | 5,527         | 3,592          | 6,459          |
| Auto loans   | 0             | 1,000         | 2,598         | 1,360         | 2,840          | 1,485          |
| Financial leases                                       | 0             | 0             | 0             | 0             | 2,500          | 3,080          |
| Other loans <sup>4</sup>                               | 300           | 458           | 400           | 307           | 13,521         | 0              |
| <b>Total asset-backed commercial paper<sup>5</sup></b> | <b>3,870</b>  | <b>3,724</b>  | <b>2,767</b>  | <b>1,993</b>  | <b>465</b>     | <b>2,843</b>   |
| <b>Total bonds and commercial paper</b>                | <b>40,614</b> | <b>54,248</b> | <b>71,811</b> | <b>93,600</b> | <b>142,092</b> | <b>138,096</b> |

Source: CNMV.

1. Includes trusts whose pools include almost all loans to SMEs.
2. Includes trusts whose pools include loans to any type of business: self-employed, micro-enterprises, SMEs, and larger companies.
3. Includes trusts whose pools are comprised only of loans to large companies.
4. Includes: in 2003, an accounts receivable fund; in 2004 and 2005, loans for agricultural and livestock activities; in 2004 and 2006, AYT Fondo Eólico, FTA (infrastructure); in 2006, AYT Deuda Subordinada I, FTA (special subordinated debentures); in 2007, Mediación I AYT, FTA (mediation lines granted by ICO to financial institutions) and IM Préstamos Fondos Cédulas, FTA (loans granted to mortgage covered bond securitisation trusts to cover their reserve fund).
5. Gross issues by FTAs under asset-backed commercial paper programmes.

Nominal amount in million euro

|                                     | 2003          | 2004           | 2005           | 2006           | 2007           | 2008             | % change<br>08/07 |
|-------------------------------------|---------------|----------------|----------------|----------------|----------------|------------------|-------------------|
| Commercial paper                    | 2,946         | 9,440          | 28,474         | 41,916         | 41,243         | 84,841           | 105.7             |
| Bonds and debentures                | 48,875        | 122,989        | 249,375        | 155,960        | 231,942        | 1,606,100        | 592.5             |
| – of which, asset-backed securities | 41,334        | 102,885        | 219,722        | 130,624        | 205,044        | 1,570,686        | 666.0             |
| Mortgage covered bonds              | 184           | 5,950          | 5,651          | 7,071          | 14,572         | 84,033           | 476.7             |
| Territorial covered bonds           | 4             | 4              | 111            | 23             | 1,050          | 1,413            | 34.6              |
| Matador bonds                       | 2,992         | 3,519          | 2,363          | 2,915          | 1,363          | 0                | -100.0            |
| <b>Total</b>                        | <b>55,001</b> | <b>141,902</b> | <b>285,975</b> | <b>207,885</b> | <b>290,169</b> | <b>1,776,388</b> | <b>512.2</b>      |

Source: CNMV.

## Statistical Annexes III

### Numbers, investors, assets and breakdown of variation in assets of securities and real estate mutual funds<sup>1</sup>

III.1

Million euro

| Category                          | No. of funds |        | No. of investors |          | Assets      |                     | Change in assets due to subscriptions and net yield |              |           | Pro-memoria |
|-----------------------------------|--------------|--------|------------------|----------|-------------|---------------------|---|--------------|-----------|-------------|
|                                   | 2008         | Change | 2008             | Change   | Amount 2008 | Change <sup>2</sup> | Amount  | Net subscrp. | Net yield |             |
| Short-term fixed-income (RFCP)    | 309          | -25    | 1,034,403        | -473,814 | 58,826      | -26.5               | -9,070  | -10,373      | 1,303     | -16.2       |
| Long-term fixed-income (RFLP)     | 144          | -6     | 170,113          | -149,247 | 5,657       | -22.9               | -1,540  | -1,816       | 276       | -2.8        |
| Mixed fixed-income (RFM)          | 127          | -9     | 172,656          | -118,983 | 3,933       | -50.9               | -4,043  | -3,644       | -399      | -5.7        |
| Mixed equity (RVM)                | 133          | -2     | 162,056          | -83,869  | 2,966       | -52.6               | -3,250  | -2,128       | -1,122    | -3.3        |
| Spanish equity (RVN)              | 117          | -6     | 169,765          | -118,445 | 2,749       | -64.9               | -5,102  | -2,897       | -2,206    | -4.5        |
| Foreign fixed-income (RFI)        | 66           | -3     | 66,984           | 3,427    | 985         | -27.7               | -487  | -490         | 2         | -0.8        |
| Foreign mixed fixed-income (RFMI) | 69           | 1      | 107,333          | -94,814  | 2,064       | -58.7               | -2,787  | -2,360       | -427      | -3.7        |
| Foreign mixed equity (RVMI)       | 71           | -1     | 54,229           | -31,060  | 1,137       | -56.0               | -1,495  | -1,068       | -427      | -1.7        |
| Euro equity (RVE)                 | 122          | -2     | 209,901          | -79,411  | 3,266       | -62.7               | -5,484  | -2,705       | -2,779    | -4.2        |
| Guaranteed fixed-income (GRF)     | 261          | 10     | 546,583          | -2,525   | 21,469      | 21.5                | 3,857   | 2,807        | 1,051     | 4.4         |
| Guaranteed equity (GRV)           | 593          | 3      | 1,422,055        | -293,089 | 31,177      | -25.8               | -13,094   | -10,855      | -2,239    | -16.9       |
| Global funds                      | 472          | 2      | 472,373          | -349,904 | 11,976      | -59.7               | -15,285   | -14,680      | -605      | -22.9       |
| Foreign equity Europe (RVIE)      | 70           | -1     | 126,997          | -135,562 | 1,579       | -75.5               | -4,838  | -3,289       | -1,549    | -5.1        |
| Foreign equity Japan (RVIJ)       | 27           | -1     | 31,850           | -19,806  | 171         | -62.8               | -290  | -174         | -116      | -0.3        |
| Foreign equity USA (RVIU)         | 38           | -5     | 41,277           | -7,276   | 510         | -42.9               | -381  | -102         | -279      | -0.2        |

### Numbers, investors, assets and breakdown of variation in assets of securities and real estate mutual funds (continuation)

III.1

Million euro

| Category                                 | No. of funds |            | No. of investors |                   | Assets         |                     | Change in assets due to subscriptions and net yield |                | Pro-memoria    |               |
|--|--------------|------------|------------------|-------------------|----------------|---------------------|---|----------------|----------------|---------------|
|  | 2008         | Change     | 2008             | Change            | Amount 2008    | Change <sup>2</sup> | Amount  | Net subscrip.  | Net yield      | Net yield     |
| Foreign equity emerging countries (RVIM) | 65           | 3          | 80,333           | -76,604           | 757            | -65.6               | -1,442  | -504           | -938           | -0.8          |
| Other foreign equity (RVIO)              | 141          | -12        | 201,171          | -79,680           | 1,573          | -60.3               | -2,376  | -1,155         | -1,221         | -1.8          |
| Money market funds                       | 111          | 64         | 956,781          | 84,473            | 28,810         | 17.6                | -8,329  | -8,792         | 463            | -13.7         |
| <b>Total mutual funds</b>                | <b>2,936</b> | <b>10</b>  | <b>6,026,860</b> | <b>-2,026,189</b> | <b>179,605</b> | <b>-29.6</b>        | <b>-75,436</b>                                      | <b>-64,223</b> | <b>-11,213</b> | <b>-100.2</b> |
| Funds of hedge funds                     | 40           | 9          | 9,596            | 5,699             | 1,252          | 25.3                | 253   | n.a.           | n.a.           | n.a.          |
| Hedge funds                              | 25           | 4          | 1576             | 449               | 550            | 23.4                | 259   | 131            | 128            | 0.2           |
| <b>Total securities funds</b>            | <b>3,001</b> | <b>23</b>  | <b>6,038,032</b> | <b>-2,020,041</b> | <b>181,407</b> | <b>-29.3</b>        | <b>-75,177</b>                                      | <b>-64,092</b> | <b>-11,085</b> | <b>-100.0</b> |
| <b>Real estate funds</b>                 | <b>9</b>     | <b>-1</b>  | <b>97,784</b>    | <b>-48,569</b>    | <b>7,490</b>   | <b>-13.0</b>        | <b>-1,119</b>                                       | <b>-1,267</b>  | <b>148</b>     |               |
| <b>Foreign UCITS<sup>3</sup></b>         | <b>563</b>   | <b>123</b> | <b>585,627</b>   | <b>-265,304</b>   | <b>18,014</b>  | <b>-51.4</b>        |   |                |                |               |

Source: CNMV.

n.a.: not available.

1 All data to November 2008, except for foreign UCITS, to December.

2 Variation in assets is due to net subscriptions, net yields on assets and the net asset balance resulting from changes in investment policy. Specifically, part of the increase in assets in 2008 in management funds is attributable to the reclassification of approximately 12.5 billion euro, primarily from short-term fixed-income funds.

3 The line on foreign UCITS includes both companies and funds. The asset data for foreign UCITS refer to the volume of investment, i.e. the product of the number of shares and units marketed in Spain and their year-end value..



## Fund portfolio as a percentage of the outstanding balance of Spanish securities

III.2

%

|  | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 <sup>4</sup> |
|--|------|------|------|------|------|------|------|-------------------|
| Listed equities <sup>1</sup>             | 2.6  | 2.9  | 4.8  | 5.2  | 4.9  | 4.1  | 3.8  | 3.0               |
| Private sector fixed-income <sup>2</sup> | 14.0 | 10.6 | 10.0 | 11.2 | 10.2 | 8.8  | 8.1  | 5.3               |
| Short term                               | 42.4 | 43.4 | 38.1 | 43.7 | 46.5 | 40.2 | 38.1 | 32.6              |
| Long term                                | 6.5  | 4.1  | 4.8  | 5.5  | 4.8  | 4.5  | 3.6  | 2.5               |
| Public sector fixed-income               | 8.3  | 6.5  | 6.2  | 4.8  | 4.2  | 3.8  | 3.3  | 3.3               |
| Short term <sup>3</sup>                  | 13.8 | 18.4 | 16.3 | 11.7 | 12.1 | 9.0  | 6.6  | 13.5              |
| Long term                                | 7.6  | 5.1  | 4.8  | 3.9  | 3.3  | 3.3  | 2.9  | 1.7               |

Source: CNMV and Bank of Spain.

1. Realisation value. The outstanding balance figures are the capitalisation of domestic securities in the electronic market, open outcry market and MAB.
2. Fixed-income figures are nominal values.
3. Repos are not included.
4. Data to year-end except for 2008 (to November).

## Expenses charged to financial mutual funds<sup>1</sup> (excluding ETFs and hedge funds)

III.3

Million euro

|                               | 2007            |                              | 2008            |                              |
|-------------------------------|-----------------|------------------------------|-----------------|------------------------------|
|                               | Amounts         | as % of average daily assets | Amounts         | as % of average daily assets |
| Management fees               | 2,933.31        | 1.02                         | 2,182.31        | 0.92                         |
| Depository fees               | 264.12          | 0.09                         | 212.07          | 0.09                         |
| Other operating expenses      | 57.64           | 0.02                         | 51.09           | 0.02                         |
| <b>Total expenses charged</b> | <b>3,255.06</b> | <b>1.13</b>                  | <b>2,445.46</b> | <b>1.03</b>                  |

Source: CNMV.

1. Expenses accumulated between the fourth quarter of 2007 and the third quarter of 2008.

## Expenses charged to ETFs<sup>1</sup>

III.4

Million euro

|                               | 2007        |                              | 2008        |                              |
|-------------------------------|-------------|------------------------------|-------------|------------------------------|
|                               | Amounts     | as % of average daily assets | Amounts     | as % of average daily assets |
| Management fees               | 1.14        | 0.26                         | 2.43        | 0.15                         |
| Depository fees               | 0.23        | 0.05                         | 0.40        | 0.02                         |
| Other operating expenses      | 0.09        | 0.02                         | 0.17        | 0.01                         |
| <b>Total expenses charged</b> | <b>1.46</b> | <b>0.33</b>                  | <b>2.99</b> | <b>0.18</b>                  |

Source: CNMV.

1. Expenses accumulated between the fourth quarter of 2007 and the third quarter of 2008.

## Expenses charged to hedge funds<sup>1</sup>

III.5

Million euro

|                               | 2007        |                                   | 2008         |                                |
|-------------------------------|-------------|-----------------------------------|--------------|--------------------------------|
|                               | Amounts     | as % s/ of average monthly assets | Amounts      | as % of average monthly assets |
| Management fees               | 2.01        | 1.24                              | 12.87        | 2.30                           |
| Funding expenses              | 0.89        | 0.55                              | 1.02         | 0.18                           |
| Other                         | 1.37        | 0.85                              | 34.48        | 6.17                           |
| <b>Total expenses charged</b> | <b>4.26</b> | <b>2.64</b>                       | <b>48.36</b> | <b>8.66</b>                    |

Source: CNMV.

1. Expenses accumulated between the fourth quarter of 2007 and the third quarter of 2008.

## Yields and net subscriptions of mutual funds<sup>1</sup>

III.6

Yield (%) and net subscriptions (million euro)

|  | 2003        |               | 2004        |               | 2005        |               | 2006        |               | 2007        |                | 2008         |                |
|--|-------------|---------------|-------------|---------------|-------------|---------------|-------------|---------------|-------------|----------------|--------------|----------------|
|  | Yield       | Net subs.     | Yield       | Net subs.     | Yield       | Net subs.     | Yield       | Net subs.     | Yield       | Net subs.      | Yield        | Net subs.      |
| Short-term fixed-income  | 1.89        | 12,011        | 1.78        | 6,842         | 1.63        | 5,607         | 2.26        | 49,005        | 2.87        | -3,194         | 1.82         | -10,373        |
| Long-term fixed-income   | 2.58        | -383          | 3.4         | 889           | 2.14        | -461          | 0.47        | -3,267        | 1.19        | -1,425         | 2.15         | -1,816         |
| Mixed fixed-income   | 5.14        | -323          | 3.95        | 15            | 4.78        | 1,657         | 4.87        | 910           | 2.30        | -1,053         | -5.80        | -3,644         |
| Mixed equity   | 11.34       | -877          | 6.87        | -852          | 11.62       | -475          | 13.06       | -955          | 3.68        | -840           | -22.62       | -2,128         |
| Spanish equity   | 29.02       | 511           | 19.51       | 1,130         | 20.61       | 276           | 33.25       | -2,219        | 8.02        | -2,314         | -39.64       | -2,897         |
| International fixed-income   | 1.66        | 101           | 1.82        | 192           | 3.67        | 177           | -0.11       | -533          | -0.22       | -65            | 2.31         | -490           |
| International mixed fixed-income   | 2.39        | -1,597        | 2.98        | -456          | 5.4         | 689           | 3.11        | 629           | 1.31        | -889           | -8.81        | -2,360         |
| International mixed equity   | 7.55        | -576          | 4.29        | -257          | 12.42       | -70           | 4.71        | 101           | 0.34        | -437           | -20.91       | -1,068         |
| Euro equity  | 16.91       | 472           | 9.23        | 11            | 22.35       | 344           | 19.16       | 382           | 3.78        | -442           | -40.97       | -2,705         |
| Guaranteed fixed-income  | 2.39        | -2,262        | 2.5         | 1,853         | 1.65        | -354          | 0.83        | 1,019         | 2.78        | 2,715          | 3.12         | 2,807          |
| Guaranteed equity  | 2.66        | 12,873        | 3.92        | 1,222         | 4.02        | 4,694         | 4.66        | -3,021        | 2.44        | -3,602         | -3.27        | -10,855        |
| Global funds   | 5.79        | 4,367         | 2.31        | 8,070         | 6.16        | 3,928         | 4.09        | 7,301         | 1.48        | -6,259         | -6.50        | -14,680        |
| International equity Europe  | 13.36       | 167           | 8.61        | 345           | 22.23       | 1,174         | 17.35       | 899           | -0.24       | -1,141         | -38.92       | -3,289         |
| International equity Japan   | 11.84       | -1            | 5.94        | 173           | 40.9        | 681           | -5.61       | -395          | -16.15      | -482           | -34.16       | -174           |
| International equity USA   | 10.03       | 314           | 0.37        | -130          | 12.14       | 138           | 4.24        | 155           | -1.77       | -497           | -31.38       | -102           |
| International equity Emerging countries  | 26.48       | -18           | 22.86       | 137           | 52.75       | 368           | 22.16       | 78            | 23.76       | 165            | -48.96       | -504           |
| International equity Other   | 11.77       | -252          | 4.7         | -21           | 21.46       | -51           | 12.13       | 15            | -0.93       | -948           | -38.40       | -1,155         |
| Money market funds   | —           | —             | —           | —             | —           | —             | —           | —             | 0.72        | -1,063         | 2.03         | -8,792         |
| <b>Total securities funds</b>  | <b>5.22</b> | <b>24,528</b> | <b>4.13</b> | <b>19,164</b> | <b>6.13</b> | <b>18,319</b> | <b>5.85</b> | <b>50,103</b> | <b>2.72</b> | <b>-21,772</b> | <b>-4.30</b> | <b>-64,223</b> |
| Funds of hedge funds   | —           | —             | —           | —             | —           | —             | —           | 1             | -0.95       | 1,006          | -15.86       | n.a.           |
| Hedge funds  | —           | —             | —           | —             | —           | —             | —           | —             | 2.21        | 378            | -5.42        | 131            |
| <b>Total</b>   | <b>5.22</b> | <b>24,528</b> | <b>4.13</b> | <b>19,164</b> | <b>6.13</b> | <b>18,319</b> | <b>5.85</b> | <b>—</b>      | <b>2.71</b> | <b>-20,388</b> | <b>-6.87</b> | <b>-64,092</b> |
| <b>FIAMM (money market)</b>  | <b>2.42</b> | <b>8,350</b>  | <b>1.5</b>  | <b>3,843</b>  | <b>1.18</b> | <b>-739</b>   | <b>1.17</b> | <b>-3,878</b> | <b>2.06</b> | <b>-54,629</b> | <b>—</b>     | <b>—</b>       |
| <b>Real Estate Funds</b>   | <b>7.87</b> | <b>459</b>    | <b>6.89</b> | <b>559</b>    | <b>6.7</b>  | <b>1,304</b>  | <b>5.35</b> | <b>1,808</b>  | <b>5.98</b> | <b>1,673</b>   | <b>1.63</b>  | <b>-1,267</b>  |
| Pro memoria: amount marketed by Spanish firms and Spanish-resident foreign firms |             |               |             |               |             |               |             |               |             |                |              |                |
| Foreign UCITS  |             |               |             |               |             | 6,766         | —           | 11,770        | —           | 6,435          | —            | -10,016        |

Source: CNMV.

1. Date to November 2008, except for foreign UCITS, to December.

### UCITS operators (SGIIC): registrations and deregistrations in 2008

III.7

| UCITS operators                              | Controlling group         |
|--|---------------------------|
| <b>Registrations</b>                         |                           |
| Alpha Plus Gestora SGIIC, S.A.               | Independent               |
| Epsilón Gestión Alternativa SGIIC, S.A.      | Independent               |
| Valira Capital Asset Management, SGIIC, S.A. | Crédito Andorrá           |
| <b>Deregistrations</b>                       |                           |
| Gesdiner, S.A., SGIIC                        | Bankpyme                  |
| Gesmutual, S.A., SGIIC                       | Mutualidad Divina Pastora |
| La Caixa Gestión de Activos, SGIIC, S.A.     | La Caixa                  |

Source: CNMV.

### Foreign investment firms with community passport: Home Member State<sup>1</sup>

III.8

|  | 2007  | 2008  |
|--|-------|-------|
| <b>No. of firms operating in Spain</b> |       |       |
| Free provision of services             | 1,395 | 1,781 |
| Branches                               | 29    | 37    |
| <b>Breakdown according to origin</b>   |       |       |
| <b>Free provision of services</b>      |       |       |
| Austria                                | 28    | 28    |
| Belgium                                | 8     | 9     |
| Cyprus                                 | 10    | 15    |
| Denmark                                | 8     | 9     |
| Finland                                | 5     | 5     |
| France                                 | 41    | 44    |
| Germany                                | 28    | 31    |
| Greece                                 | 8     | 8     |
| Ireland                                | 29    | 39    |
| Italy                                  | 4     | 4     |
| Liechtenstein                          | 0     | 1     |
| Luxembourg                             | 11    | 15    |
| Malta                                  | 1     | 1     |
| Netherlands                            | 54    | 60    |
| Norway                                 | 20    | 23    |
| Portugal                               | 8     | 8     |
| Slovenia                               | 1     | 1     |
| Sweden                                 | 8     | 9     |
| UK                                     | 1,123 | 1,471 |
| <b>Branches</b>                        |       |       |
| France                                 | 2     | 2     |
| Germany                                | 0     | 1     |
| Luxembourg                             | 0     | 2     |
| Netherlands                            | 2     | 2     |
| Poland                                 | 0     | 1     |
| Portugal                               | 1     | 2     |
| UK                                     | 24    | 27    |

Source: CNMV.

1. Countries stated in the communiqués by investment firms from EU Member States and in authorisations of investment firms from non-EU countries.

| <b>Firm</b>  | <b>Controlling group</b>                 |
|--|--|
| <b>Broker-dealers and brokers</b>                                  |  |
| <b>Registrations</b>   |  |
| Altura Markets, SV, S.A.   | BBVA / Calyon / Société Générale         |
| Arcalia Patrimonios, SV, S.A.                                      | Bancaja                                  |
| Tactical Global Advisory, AV, S.A.                                 | Caja Castilla la Mancha                  |
| M&B Capital Markets, SV, S.A.                                      | Independent                              |
| Tressis, SV, S.A.  | Independent                              |
| Allfunds Alternative, SV, S.A.                                     | Banco Banif, S.A. / Intesa San Paolo SPA |
| Sarasín Alén, AV, S.A.   | Rabobank, NV                             |
| Capital Strategies Partners, AV, S.A.                              | Independent                              |
| GBS Finanzas Investcapital, AV, S.A.                               | Independent                              |
| Financial Lab, AV, S.A.  | Independent                              |
| Capital At Work, AV, S.A.  | Independent                              |
| GVC Gaesco Valores, SV, S.A.                                       | Independent                              |
| <b>Deregistrations</b>   |  |
| Altura Markets, AV, S.A.   | BBVA / Calyon / Société Générale         |
| Arcalia Valores, AV, S.A.  | Bancaja                                  |
| Arcalia Patrimonios, AV, S.A.                                      | Bancaja                                  |
| Tressis, AV, S.A.  | Independent                              |
| Alpha Finanzas, AV   | Independent                              |
| La Caixa Gestión de Patrimonios, SV, S.A.                          | La Caixa                                 |
| Interdín Mercados, AV, S.A.  | Cajas de Ahorros                         |
| Hermes Bolsa, AV, S.A.   | Independent                              |
| Estubroker, AV, S.A.   | Independent                              |
| Money Brok-2, AV, S.A.   | Banque Degroof                           |
| <b>Portfolio management companies</b>                              |  |
| <b>Deregistrations</b>   |  |
| Capital At Work Int'l, SGC, S.A.                                   | Independent                              |
| <b>Foreign investment firms with branch</b>                        |  |
| <b>Registrations</b>   |  |
| European Capital Financial Services Limited, Sucursal en España    | European Capital                         |
| X-Trade Brokers Dom Maklerski, S.A., Sucursal en España            | X-Trade Brokers                          |
| Vontobel Europe S.A., Sucursal en España                           | Vontobel                                 |
| Allianz Global Investors Europe GmbH, Sucursal en España           | Allianz                                  |
| Scottish Widows Investment Partnership Limited, Sucursal en España | Scottish Widows                          |
| Skandia Invest, S.A., Sucursal en España                           | Skandia                                  |
| CMC Markets UK Plc, Sucursal en España                             | CMC                                      |
| Orey Valores - Sociedade Corretora, S.A., Sucursal en España       | Orey                                     |

Source: CNMV.

### Changes of control at broker-dealers, brokers and portfolio management companies. 2008

III.10

| Firm   | Buyer                    |
|--|--------------------------|
| <b>Acquisitions of control by Spanish financial institutions</b> |                          |
| Morgan Stanley Wealth Management, SV, S.A.                       | La Caixa                 |
| Estubroker, AV, S.A.   | Independent <sup>1</sup> |
| <b>Acquisitions of control by foreign financial institutions</b> |                          |
| Asesores y Gestores Financieros, AV                              | EFG                      |
| Gottardo Patrimonios, AV, S.A.                                   | BSI <sup>2</sup>         |

Source: CNMV.

- Spin-off from Gaesco Bolsa, S.V., S.A. and General de Valores y Cambios, S.V., S.A., both to GVC Gaesco Valores, Sociedad de Valores, S.A. (previously Estubroker, AV, S.A.).
- BSI, S.A. acquired 100% of Banca del Gottardo thus attaining a 99.99% stake indirectly in Gottardo Inversiones Financieras S.A. and consequently in Gottardo Patrimonios A.V. S.A.

### Spanish investment firms with community passport. Host Member State<sup>1</sup>

III.11

|  | 2007 | 2008 |
|--|------|------|
| <b>Number of firms with cross-border transactions</b>                                    |      |      |
| Free provision of services   | 29   | 33   |
| Branches   | 2    | 2    |
| <b>Breakdown of Spanish investment firms providing cross-border services<sup>2</sup></b> |      |      |
| <b>Free provision of services</b>  |      |      |
| Austria  | 5    | 5    |
| Belgium  | 12   | 12   |
| Denmark  | 5    | 5    |
| Finland  | 5    | 5    |
| France   | 12   | 13   |
| Germany  | 16   | 16   |
| Greece   | 5    | 6    |
| Iceland  | 3    | 3    |
| Ireland  | 7    | 9    |
| Italy  | 11   | 12   |
| Liechtenstein  | 1    | 1    |
| Luxembourg   | 9    | 11   |
| Netherlands  | 11   | 11   |
| Norway   | 3    | 3    |
| Portugal   | 17   | 19   |
| Sweden   | 5    | 6    |
| UK   | 10   | 12   |
| <b>Branches</b>  |      |      |
| Portugal   | 1    | 0    |
| Sweden   | 0    | 1    |
| UK   | 1    | 1    |

Source: CNMV.

- Countries stated in the communiqués relating to free provision of services and in authorisations of branches.
- Number of Spanish investment firms providing services in other countries. A single firm may provide services in more than one country.

**Foreign credit institutions with Community passport to provide investment services at 31 December 2008. Home Member State**

III.12

Annexes  
Statistical Annexes III

|   | 2007 | 2008 |
|---|------|------|
| <b>No. of non-EU credit institutions providing investment services in Spain</b>           |      |      |
| <b>EU credit institutions</b>   |      |      |
| Free provision of services  | 310  | 348  |
| Subsidiaries of EU credit institutions under the free provision of services regime        | 1    | 1    |
| Branches  | 52   | 56   |
| <b>Non-EU credit institutions</b>   |      |      |
| Free provision of services  | 1    | 1    |
| Branches  | 8    | 8    |
| <b>Breakdown by home state</b>  |      |      |
| <b>Free provision of services</b>   |      |      |
| Austria   | 20   | 25   |
| Belgium   | 7    | 7    |
| Cyprus  | 2    | 3    |
| Denmark   | 9    | 9    |
| Finland   | 5    | 6    |
| France  | 48   | 47   |
| Germany   | 36   | 39   |
| Greece  | 0    | 1    |
| Hungary   | 1    | 4    |
| Iceland   | 1    | 1    |
| Ireland   | 23   | 27   |
| Italy   | 7    | 7    |
| Liechtenstein   | 2    | 2    |
| Luxembourg  | 43   | 47   |
| Malta   | 3    | 4    |
| Netherlands   | 25   | 26   |
| Norway  | 2    | 3    |
| Poland  | 0    | 1    |
| Portugal  | 11   | 11   |
| Sweden  | 3    | 4    |
| Switzerland   | 1    | 1    |
| UK  | 62   | 74   |
| <b>Subsidiaries of EU credit institutions under the free provision of services regime</b> |      |      |
| Ireland   | 1    | 1    |
| <b>Branches</b>   |      |      |
| Argentina   | 1    | 1    |
| Belgium   | 3    | 3    |
| Brazil  | 1    | 1    |
| Denmark   | 1    | 1    |
| France  | 14   | 14   |
| Germany   | 6    | 6    |

**Foreign credit institutions with Community passport to provide  
investment services at 31 December 2008. Home Member State  
(continuation)**

III.12

|               | 2007 | 2008 |
|---------------|------|------|
| Iceland       | 1    | 1    |
| Ireland       | 3    | 3    |
| Italy         | 1    | 2    |
| Japan         | 1    | 1    |
| Luxembourg    | 2    | 4    |
| Netherlands   | 5    | 5    |
| Portugal      | 8    | 8    |
| Sweden        | 0    | 1    |
| Switzerland   | 1    | 1    |
| UK            | 8    | 8    |
| United States | 4    | 4    |

Source: Bank of Spain and CNMV.



## Statistical annexes IV

### Number of shareholders of Ibex 35 companies<sup>1</sup> with significant holdings

IV.1

| Company              | Stake     |           |           |          |                |
|----------------------|-----------|-----------|-----------|----------|----------------|
|                      | 3%-5%     | 5%-10%    | 10%-25%   | 25%-50%  | 50%-100%       |
| Abengoa              | —         | —         | —         | —        | 1              |
| Abertis              | —         | 1         | —         | 2        | —              |
| Acciona              | —         | —         | —         | —        | 1              |
| Acerinox             | 2         | 1         | 3         | —        | —              |
| ACS                  | —         | 2         | 3         | —        | —              |
| B. Popular           | —         | 4         | 1         | —        | —              |
| B. Sabadell          | 1         | 4         | —         | —        | —              |
| B. Santander         | 1         | 1         | —         | —        | —              |
| Banesto              | —         | —         | —         | —        | 1              |
| Bankinter            | 1         | 1         | 2         | —        | —              |
| BBVA                 | 2         | —         | —         | —        | —              |
| BME                  | 2         | 4         | —         | —        | —              |
| Cintra               | 2         | 1         | —         | —        | 1              |
| Criteria             | —         | —         | —         | —        | 1              |
| Enagás               | 1         | 5         | —         | —        | —              |
| Endesa               | —         | —         | —         | —        | 1 <sup>2</sup> |
| FCC                  | 1         | —         | 1         | —        | 1              |
| Ferrovial            | —         | —         | —         | —        | 1              |
| Gamesa               | 3         | 1         | 1         | —        | —              |
| Gas Natural          | 1         | —         | 1         | 2        | —              |
| Grífols              | 1         | 5         | 1         | —        | —              |
| Iberdrola Renovables | —         | —         | —         | —        | 1              |
| Iberdrola            | —         | 4         | —         | —        | —              |
| Iberia               | 1         | 1         | 2         | —        | —              |
| Inditex              | —         | 2         | —         | —        | 1              |
| Indra                | —         | 3         | 2         | —        | —              |
| Mapfre               | —         | —         | 1         | —        | 1              |
| OHL                  | —         | 1         | —         | —        | 1              |
| REE                  | —         | 1         | 1         | —        | —              |
| Repsol YPF           | —         | 2         | 2         | —        | —              |
| Sacyr Vallehermoso   | 3         | 5         | 3         | —        | —              |
| Técnicas Reunidas    | —         | 1         | —         | —        | 1              |
| Telecinco            | 1         | 2         | 1         | —        | 1              |
| Telefónica           | —         | 3         | —         | —        | —              |
| Unión Fenosa         | 1         | —         | 1         | 1        | —              |
| <b>Total</b>         | <b>24</b> | <b>55</b> | <b>26</b> | <b>5</b> | <b>14</b>      |

Source: CNMV.

1. Composition of the Ibex 35 index at year-end.

2. Concerted action between Enel and Acciona.

Note: In accordance with the new regulation, custodians are exempt from disclosing significant holdings, and most of them have applied to be removed from the CNMV register of holdings.

| Reference | Resolution  |
|-----------|---|
| (1/08)    | <b>Ministerial Order of 24 January 2008</b><br><br>Resolution on disciplinary proceedings against a limited company and the three members of its Board of Directors for an alleged very serious breach of article 99 q) of the Securities Market Act (performance of reserved activities without authorisation). The company and its managing director were fined 300,506.05 euro, and the other two directors were fined 150,253.02 euro each. |
| (2/08)    | <b>Ministerial Order of 4 February 2008</b><br><br>Resolution on disciplinary proceedings against a natural person for alleged very serious breach of article 99 o) of the Securities Market Act (insider dealing). Fine: 1,760,000 euro.   |
| (3/08)    | <b>Ministerial Order of 7 February 2008</b><br><br>Resolution on disciplinary proceedings against a natural person for alleged very serious breach of article 99 o) of the Securities Market Act (insider dealing). Fine: 600,000 euro.   |
| (4/08)    | <b>Ministerial Order of 4 July 2008</b><br><br>Resolution to dismiss disciplinary proceedings against a natural person for alleged very serious breach of article 99 t) of the Securities Market Act (obstruction of the CNMV inspectorate).  |
| (5/08)    | <b>Ministerial Order of 18 July 2008</b><br><br>Resolution on disciplinary proceedings against a listed credit institution for alleged very serious breach of article 99 ñ) of the Securities Market Act (filing of financial information with the CNMV that was inexact or false or contained material omissions). Fine: 2 million euro.   |
| (6/08)    | <b>CNMV Board Resolution dated 11 September 2008</b><br><br>Resolution on disciplinary proceedings against two natural persons for alleged very serious breach, by one of them, of article 99 o) of the Securities Market Act (disclosure of inside information) and two alleged serious breaches, by the other, of article 100 x) of the Securities Market Act (insider dealing). The accusations were dismissed.                              |
| (7/08)    | <b>CNMV Board Resolution dated 26 November 2008</b><br><br>Resolution on disciplinary proceedings against a listed corporation and the members of its Board of Directors for an alleged serious breach of article 100 b) bis of the Securities Market Act (failure to have an Audit Committee in the terms established by law). The company was fined 9,000 euro and each of the three directors was fined 3,000 euro.                          |

Source: CNMV.

| No.  | Date       | Court          | Appeal no. | Appealed order                     |
|--|------------|----------------|------------|------------------------------------|
| 1  | 21/01/2008 | National Court | 304/2005   | Order MEH 29/03/2005               |
| Upheld the penalties imposed by Ministry of Economy and Finance Order dated 29 March 2005 for a very serious breach of article 99 q) of the Securities Market Act.   |            |                |            |                                    |
| 2  | 24/01/2008 | Supreme Court  | 552/2001   | National Court decision 02/06/2004 |
| Upheld, on appeal, the National Court decision of 2 June 2004 rejecting administrative appeal number 552/2001 against the Order of the Ministry of the Economy dated 7 March 2001, imposing a penalty for a very serious breach of article 99 p) of the Securities Market Act.   |            |                |            |                                    |
| 3  | 25/04/2008 | National Court | 512/2006   | Order MEH 10/02/2006               |
| Upheld the penalties imposed by Ministry of Economy and Finance Order dated 24 October 2005, which had been confirmed on appeal on 10 February 2006, for a very serious breach of article 99 l) of the Securities Market Act.  |            |                |            |                                    |
| 4  | 14/05/2008 | Supreme Court  | 290/2006   | National Court Order 28/03/2007    |
| Upheld, on appeal, the National Court Order of 28 March 2007, which in turn confirmed, on appeal, an order of 4 December 2006 that denied precautionary suspension of the publication of a penalty decision relating to a very serious breach of article 99 o) of the Securities Market Act.   |            |                |            |                                    |
| 5  | 10/06/2008 | National Court | 210/2005   | Order MEH 14/02/2005               |
| Upheld the penalty imposed by Ministry of Economy and Finance Order dated 14 February 2005 for a very serious breach of article 99 p) of the Securities Market Act.  |            |                |            |                                    |
| 6  | 10/06/2008 | National Court | 166/2005   | Order MEH 14/02/2005               |
| Upheld the penalty imposed by Ministry of Economy and Finance Order dated 14 February 2005 for a very serious breach of article 99 p) of the Securities Market Act.  |            |                |            |                                    |
| 7  | 17/06/2008 | National Court | 346/2005   | Order MEH 15/04/2005               |
| Upheld the penalty imposed by Ministry of Economy and Finance Order dated 14 January 2005, confirmed on appeal by an order of 15 April 2006, for a very serious breach of article 99 o) of the Securities Market Act.  |            |                |            |                                    |
| 8  | 01/07/2008 | Supreme Court  | 147/2004   | National Court decision 28/07/2005 |
| Upheld, on appeal, the National Court decision of 28 July 2005 rejecting administrative appeal number 147/2004 against the Order of the Ministry of the Economy dated 23 January 2004, imposing a penalty for a very serious breach of article 99 q) of the Securities Market Act.   |            |                |            |                                    |
| 9  | 01/07/2008 | Supreme Court  | 87/2004    | National Court decision 22/06/2005 |
| Upheld, on appeal, the National Court decision of 22 June 2006 rejecting administrative appeal number 147/2001 against the Orders of the Ministry of the Economy dated 18 and 19 December 2003, which imposed penalties for serious breaches of articles 100 o) and 100 t) of the Securities Market Act and very serious breaches of articles 99 e) and 99 l) of the Securities Market Act.. |            |                |            |                                    |
| 10   | 17/07/2008 | National Court | 220/2005   | Order MEH 14/02/2005               |
| Upheld the penalty imposed by Ministry of Economy and Finance Order dated 14 February 2005 for a very serious breach of article 99 l) of the Securities Market Act.  |            |                |            |                                    |
| 11   | 17/07/2008 | National Court | 176/2005   | Order MEH 18/02/2005               |
| Upheld the penalties imposed by Ministry of Economy and Finance Order dated 18 February 2005 for very serious breaches of articles 99 o) and 99 t) of the Securities Market Act.   |            |                |            |                                    |

| No.   | Date       | Court          | Appeal no. | Appealed order       |
|---|------------|----------------|------------|----------------------|
| 12  | 17/07/2008 | National Court | 150/2005   | Order MEH 24/01/2005 |
| Upheld the penalties imposed by Resolution of the CNMV Board dated 14 September 2004, confirmed on appeal by Ministry of Economy and Finance Order dated 24 January 2005, in connection with three serious breaches of the Securities Market Act -art. 100 c), 100 h) and 100 o). |            |                |            |                      |
| 13  | 21/10/2008 | National Court | 290/2006   | Order MEH 16/06/2006 |
| Upheld the penalty imposed by Ministry of Economy and Finance Order dated 10 March 2006, confirmed on appeal by another dated 16 June 2006, for a very serious breach of article 99 o) of the Securities Market Act.  |            |                |            |                      |
| 14  | 31/10/2008 | National Court | 123/2007   | Order MEH 30/01/2007 |
| Upheld the penalty imposed by Resolution of the CNMV Board for a serious breach of article 100 t) of the Securities Market Act, confirmed on appeal by Ministry of Economy and Finance Order dated 30 January 2007.   |            |                |            |                      |

Source: CNMV.

| Date   | Firm   | Regulator/Supervisor |
|--|--|----------------------|
| <b>CNMV warnings about unauthorised firms</b>  |  |                      |
| 21/01/2008                                     | Hibber Bothwell Capital Partners<br>www.hibber-bothwell.com  | CNMV                 |
| 11/02/2008                                     | GRAN CANARIA CONSULTORES Y ASESORES, S.L.  | CNMV                 |
| 07/04/2008                                     | EVOLUTION MARKET GROUP INC (FINANZAS FOREX)<br>GERMAN CARDONA SOLER<br>SANTIAGO FUENTES JOVER          | CNMV                 |
| 07/04/2008                                     | SANTIAGO FUENTES JOVER<br>GERMAN CARDONA SOLER<br>EVOLUTION MARKET GROUP INC (FINANZAS FOREX)          | CNMV                 |
| 07/04/2008                                     | GERMAN CARDONA SOLER<br>EVOLUTION MARKET GROUP INC (FINANZAS FOREX)<br>SANTIAGO FUENTES JOVER          | CNMV                 |
| 21/07/2008                                     | TRIBU INTERNATIONAL INVEST, S.L.   | CNMV                 |
| 28/07/2008                                     | AKEMAN CAPITAL<br>AKEMAN ALLAN CAPITAL<br>WWW.AKEMANCAPITAL.COM  | CNMV                 |
| 20/10/2008                                     | ATLANTIS FINANCIAL<br>WWW.ATLANTIS-FINANCIAL.COM   | CNMV                 |
| 20/10/2008                                     | GCI FINANCIAL, LTD.<br>WWW.GCITRADING.COM<br>CAPITAL RESOURCES SYSTEMS, LTD.                           | CNMV                 |
| 27/10/2008                                     | CAPITAL MANAGEMENT SCHOTTS, S.L.<br>ROBERT MITCHELL MCMILLAN ALLAN<br>Brookfield Partners, S.L.        | CNMV                 |
| <b>Public warnings from foreign regulators</b> |  |                      |
| 23/01/2008                                     | UK MAN INTERNATIONAL INVESTMENT FINANCIAL<br>GROUP CO., LTD.<br>WWW.MANAHL.CO.UK<br>WWW.MANASIA.COM.CN | SFC - HONG KONG      |
| 23/01/2008                                     | MACAO MANAGEMENT<br>WWW.MACAOMGMT.HK   | SFC - HONG KONG      |
| 23/01/2008                                     | TRANSCORP PLC<br>WWW.TRANSCORPINTL.COM   | JFSC - JERSEY        |
| 23/01/2008                                     | TRANSCORP INTERNATIONAL<br>WWW.TRANSCORPINTL.COM   | JFSC - JERSEY        |
| 23/01/2008                                     | OPEN TRADE INTERNATIONAL, INC.<br>WWW.OPENTRADE.NET  | CONAVAL - PANAMA     |
| 23/01/2008                                     | SCOTT FITZGERALD GROUP<br>WWW.SCOTTFITZGERALDGROUP.COM   | FSAN - NORWAY        |
| 23/01/2008                                     | CYRRUS CAPITAL VENTURE<br>WWW.CYRRUSCAPITAL.COM  | CBFA - BELGIUM       |
| 23/01/2008                                     | HANNOVER HOLDINGS<br>WWW.HANNOVERHOLDINGS.COM  | CBFA - BELGIUM       |
| 23/01/2008                                     | ROBINSON ASSET MANAGEMENT<br>WWW.ROBINSONAM.COM  | CBFA - BELGIUM       |
| 23/01/2008                                     | JOHNSON AND BROWN<br>WWW.JOHNSONANDBROWN.COM   | CBFA - BELGIUM       |

Public warnings about unauthorised firms (*continuation*)

IV.4

| Date       | Firm  | Regulator/Supervisor |
|------------|---|----------------------|
| 23/01/2008 | TALBOT REESE<br>WWW.TALBOTREESE.COM   | CBFA - BELGIUM       |
| 23/01/2008 | MAXON FINANCIAL (H.K.) CO. LTD<br>WWW.MAXONFINANCIAL.COM  | SFC - HONG KONG      |
| 23/01/2008 | MFA INTERNATIONAL HOLDINGS LIMITED<br>WWW.MORGAN-ADVISORS.COM   | SFC - HONG KONG      |
| 23/01/2008 | MORGAN FINANCIAL ADVISORS<br>WWW.MORGAN-ADVISORS.COM  | SFC - HONG KONG      |
| 23/01/2008 | PANCISCO INTERNATIONAL, INC.<br>WWW.PIIIEAST.COM  | SFC - HONG KONG      |
| 23/01/2008 | SOUTHERN CROSS MERGERS AND ACQUISITIONS<br>WWW.SOUTHERNCROSSMA.COM  | SFC - HONG KONG      |
| 23/01/2008 | U.S.A. ICII INTERNATIONAL CONSULTANT LIMITED<br><a href="http://WWW.IICI.BIZ">WWW.IICI.BIZ</a><br>WWW.USAIICII.BIZ<br>WWW.USAIICI.BIZ | SFC - HONG KONG      |
| 23/01/2008 | WWW.HDLI.NET  | SFC - HONG KONG      |
| 23/01/2008 | AIBWT NOMINEES LIMITED<br>HTTP://AIBWT.COM<br>JAMAL WEHBEH<br>HTTP://WWW.AIBWT-NOMINEES.COM   | JFSC - JERSEY        |
| 23/01/2008 | LANCASTER MANAGEMENT CORPORATION  | HCMC - GREECE        |
| 23/01/2008 | MOUNT REAL CORPORATION  | HCMC - GREECE        |
| 06/02/2008 | OICU LIMITED  | FSC - ISLE OF MAN    |
| 06/02/2008 | WWW.ALIANCE-LEICESTER-UK.COM  | FSC - ISLE OF MAN    |
| 06/02/2008 | ISLE OF MAN LOTTO PROMOTIONS UK   | FSC - ISLE OF MAN    |
| 06/02/2008 | ARTEMIS FINANCIAL   | AMF - FRANCE         |
| 06/02/2008 | BANK NATIONAL TSB OFFSHORE LIMITED  | JFSC - JERSEY        |
| 06/02/2008 | HAMILTON HASTINGS & ASSOCIATES<br>WWW.HAMILTONHASTINGS.COM  | SFSA - SWEDEN        |
| 06/02/2008 | AKEMAN CAPITAL<br>WWW.AKEMANCAPITAL.COM   | SFSA - SWEDEN        |
| 06/02/2008 | THE ALLIANCE GROUP<br>WWW.ALLIANCEGROUPTRUST.COM  | SFSA - SWEDEN        |
| 06/02/2008 | ERNEST GREENE GROUP, LTD.<br>WWW.ERNEST-GREENE.COM<br>WWW.E-GREENE.COM  | SFSA - SWEDEN        |
| 06/02/2008 | CAPITAL VENTURE GROUP, CVG<br>WWW.CAPITALVENTUREGROUP.NET   | SFSA - SWEDEN        |
| 13/02/2008 | AKEMAN CAPITAL<br>WWW.AKEMANCAPITAL.COM   | DFSA - DENMARK       |
| 13/02/2008 | PRESTIGE ASSET MANAGEMENT   | CSSF - LUXEMBOURG    |
| 13/02/2008 | CRICKMORE & LUTZ  | CSSF - LUXEMBOURG    |
| 13/02/2008 | GLOBAL PENSION PLAN   | SSMA - SLOVENIA      |
| 13/02/2008 | WORLDWIDE RESEARCH GROUP<br>WWW.WORLDWIDERG.COM   | CBFA - BELGIUM       |
| 13/02/2008 | PALLADIUM CATHAY INTERMEDIARIES<br>WWW.PALLADIUMCATHAY.COM  | SFSA - SWEDEN        |

Public warnings about unauthorised firms (*continuation*)

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Anexos  
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| Date       | Firm  | Regulator/Supervisor |
|------------|---|----------------------|
| 13/02/2008 | DAVIS & RUDELL LLC<br>WWW.DAVIS-RUDELL.COM                        | SFSA - SWEDEN        |
| 27/02/2008 | 629 PLAN  | AMF - FRANCE         |
| 27/02/2008 | AKEMAN CAPITAL<br>WWW.AKEMANCAPITAL.COM                           | DFSA - DENMARK       |
| 27/02/2008 | AKEMAN ALLAN CAPITAL<br>WWW.AKEMANCAPITAL.COM                     | DFSA - DENMARK       |
| 27/02/2008 | CFM TRADING<br>WWW.CFMTRADINGS.COM                                | SFSA - SWEDEN        |
| 27/02/2008 | STRATEGIC INVESTMENT GROUP, SIG<br>WWW.SIGADVISOR.COM             | SFSA - SWEDEN        |
| 27/02/2008 | HEDGES MERGERS & ACQUISITIONS<br>WWW.HMAWORLD.COM                 | SFSA - SWEDEN        |
| 27/02/2008 | CONCEPTS SOLUTIONS, S.A.  | HCMC - GREECE        |
| 27/02/2008 | CONCEPTS FINANCIAL CONSULTANTS, S.A.                              | HCMC - GREECE        |
| 27/02/2008 | FIA CORPORATION, S.A.   | HCMC - GREECE        |
| 06/03/2008 | WWW.HK-GUOCO.COM  | SFC - HONG KONG      |
| 06/03/2008 | MAXON & ASSOCIATES SECURITIES LIMITED<br>WWW.MAXON-ASSOCIATES.COM | SFC - HONG KONG      |
| 06/03/2008 | MANCHUKUO TEMPORARY GOVERNMENT<br>WWW.MANCHUKUO.ORG               | SFC - HONG KONG      |
| 06/03/2008 | HOWELL SCHINE & CO<br>WWW.HOWELLSCHINE.COM                        | SFC - HONG KONG      |
| 12/03/2008 | HACHIRO MERGERS AND ACQUISITIONS<br>WWW.HACHIRO.ORG               | SFSA - SWEDEN        |
| 12/03/2008 | OKAMURA ASSET MANAGEMENT  | AFM - NETHERLANDS    |
| 19/03/2008 | BLACKSTONE, NELSON, NEWHOUSE<br>WWW.BNNSERVICES.COM               | SFC - HONG KONG      |
| 19/03/2008 | ABERDEEN LYLE GROUP<br>WWW.ABERDEENLYLE.COM                       | SFC - HONG KONG      |
| 19/03/2008 | WESTGATE CAPITAL MANAGEMENT<br>WWW.WESTGATECM.COM                 | JFSC - JERSEY        |
| 19/03/2008 | NOMURA FINANCIAL GROUP<br>WWW.NOMURAGRP.COM                       | SFSA - SWEDEN        |
| 19/03/2008 | ASHLEY PARTNERS MERGERS & ACQUISITIONS<br>WWW.ASHLEYPARTNERS.COM  | SFSA - SWEDEN        |
| 19/03/2008 | WALLSTREET MANAGEMENT INCORPORATED<br>WWW.WM-INCORPORATED.COM     | SFSA - SWEDEN        |
| 16/04/2008 | VARIOS ISLA DE MAN  | FSC - ISLE OF MAN    |
| 16/04/2008 | VARIOS ISLA DE MAN  | FSC - ISLE OF MAN    |
| 16/04/2008 | KELVIN DUNCAN & BORIS OLEG  | FSC - ISLE OF MAN    |
| 16/04/2008 | PIERRE WALKER   | FSC - ISLE OF MAN    |
| 16/04/2008 | LOTS FINANCIAL GROUP LIMITED<br>WWW.LOTSFX.COM                    | SFC - HONG KONG      |

Public warnings about unauthorised firms (*continuation*)

IV.4

| Date       | Firm   | Regulator/Supervisor |
|------------|--|----------------------|
| 16/04/2008 | WALSH, ATKINS & ASSOCIATES<br>WWW.WALSHATKINSASSOC.COM                                       | SFSA - SWEDEN        |
| 16/04/2008 | 7M MANAGEMENT SERVICES, LTD.<br>CHRIS MELAS<br>KONSTANTINOS KALLONIATIS                      | HCMC - GREECE        |
| 16/04/2008 | GOLDEN PURSE FUND<br>KONSTANTINOS KALLONIATIS<br>CHRIS MELAS                                 | HCMC - GREECE        |
| 16/04/2008 | SOLID GOLD FINANCE LIMITED   | SFC - HONG KONG      |
| 16/04/2008 | IBIA<br>WWW.IBIA.INFO  | DFSA - DENMARK       |
| 16/04/2008 | CUNNINGHAM HYATT MERGERS & ACQUISITIONS, LLP<br>WWW.CUNNINGHAMHYATT.COM                      | SFSA - SWEDEN        |
| 16/04/2008 | HABERMAN BROTHERS INTERNATIONAL<br>WWW.HABERMANBROTHERS.COM                                  | SFSA - SWEDEN        |
| 16/04/2008 | BERKLEY LIQUIDATION & ADMINISTRATION<br>WWW.BERKLEYLIQUIDATION.COM                           | SFSA - SWEDEN        |
| 16/04/2008 | KAGOSHIMA SECURITIES FINANCE<br>WWW.KAGOFIN.NET  | SFSA - SWEDEN        |
| 16/04/2008 | ALLIANCE GLOBAL INVESTORS FUND MANAGEMENT LLC<br>WWW.AGIFUNDMGM.COM                          | SFSA - SWEDEN        |
| 16/04/2008 | MINERVA MANAGEMENT<br>WWW.MINERVAMANAGEMENT.COM  | SFSA - SWEDEN        |
| 16/04/2008 | J. S. Knight & Co, Ltd.  | IFSRA - IRELAND      |
| 16/04/2008 | MCANTHONY INVESTMENTS<br>WWW.MCANTHONYINVESTMENTS.COM  | CBFA - BELGIUM       |
| 30/04/2008 | MOSSACK-FONSECA@EUROPE.COM   | JFSC - JERSEY        |
| 30/04/2008 | NAKAMISHI FINANCIAL, INC.<br>WWW.NAKAMISHIFINANCIAL.COM                                      | SFSA - SWEDEN        |
| 30/04/2008 | MCKINLEY & CO, LTD.<br>WWW.MCKINLEYCOLTD.COM   | SFSA - SWEDEN        |
| 30/04/2008 | EMPIRE STATE CONSULTANTS<br>WWW.EMPIRESTATECONSULTANTS.COM                                   | SFSA - SWEDEN        |
| 14/05/2008 | RAFIQ AHMED PETKAR<br>FIREBIRD HOLDINGS LLC (FB HOLDINGS)                                    | JFSC - JERSEY        |
| 14/05/2008 | THOMAS CASTLE MANAGEMENT<br>WWW.THOMAS-CASTLE.COM  | DFSA - DENMARK       |
| 14/05/2008 | ATLANTIS FINANCIAL<br>Edzell Ventures<br>WWW.ATLANTIS-FINANCIAL.COM                          | SFSA - SWEDEN        |
| 21/05/2008 | AB HUTTON GLOBAL HOLDINGS<br>WWW.ABHGLOBAL.COM   | CYSEC - CYPRUS       |
| 21/05/2008 | EURO MONUMENT HOUSE & FINANCE PLC<br>HTTP://EUROMONUMENTHOUSEFINANCE.COM/EHF<br>ALLEN LUCADO | FSC - ISLE OF MAN    |
| 21/05/2008 | CORPORATE FINANCE<br>CHARLES BURNHAM   | FSC - ISLE OF MAN    |
| 21/05/2008 | VARIOS ISLA DE MAN   | FSC - ISLE OF MAN    |



## Public warnings about unauthorised firms (continuation)

IV.4

Anexos  
Statistical annexes IV

| Date       | Firm  | Regulator/Supervisor |
|------------|---|----------------------|
| 21/05/2008 | COLEMAN, PETERSON & ASSOCIATES (CPA)<br>WWW.CPA-ADVISORS.COM                        | SFSA - SWEDEN        |
| 21/05/2008 | SCANDINAVIAN TRADE<br>WWW.SCANDINAVIAN-TRADE.COM                                    | SFSA - SWEDEN        |
| 28/05/2008 | FUTURE TRADING CLUB<br>WWW.FUTURETRADINGCLUB.COM                                    | SFSA - SWEDEN        |
| 28/05/2008 | STRATEGIC CAPITAL PARTNERS PORTFOLIO MANAGEMENT AG<br>WWW.STRATEGICCAPITAL.CH       | CBFA - BELGIUM       |
| 28/05/2008 | VARIOS ISLA DE MAN<br>ROLAND MANTU<br>CHUDY MORRISON                                | FSC - ISLE OF MAN    |
| 11/06/2008 | CAPITAL ACCESS LIMITED<br>WWW.CAPITALACCESSLIMITED.COM                              | SFSA - SWEDEN        |
| 18/06/2008 | BULL AND BEAR ADVISORY (IRELAND)  | IFSRA - IRELAND      |
| 18/06/2008 | BAYSIDE EQUITY GROUP<br>WWW.BAYSIDEEQUITYGROUP.COM                                  | SFSA - SWEDEN        |
| 18/06/2008 | HANNOVER STERLING, LTD.<br>WWW.HANNOVERSTERLINGLTD.COM<br>(WARNING: CONTAINS VIRUS) | SFSA - SWEDEN        |
| 18/06/2008 | EVOLUTION MARKET GROUP INC.<br>(FINANZAS FOREX)                                     | AMF - FRANCE         |
| 02/07/2008 | BLUE BAYOU PROSPECT MANAGEMENT<br>WWW.BBPROSPECT.COM                                | SFSA - SWEDEN        |
| 02/07/2008 | BULLMAN ASSET MANAGEMENT<br>WWW.BULLMANASSETMANAGEMENT.COM                          | SFSA - SWEDEN        |
| 02/07/2008 | PATERSON & CO, LTD.<br>WWW.PATERSONCOLTD.COM  | SFSA - SWEDEN        |
| 09/07/2008 | AVERY KINGSTON CAPITAL<br>WWW.AVERYKINGSTON.COM                                     | SFSA - SWEDEN        |
| 09/07/2008 | DAUPHIN ASSET EUROPE<br>WWW.DAUPHINEUROPE.COM                                       | SFSA - SWEDEN        |
| 09/07/2008 | FIRST PRIME GROUP<br>WWW.FIRSTPRIMEGROUP.NET  | SFSA - SWEDEN        |
| 09/07/2008 | REYNOLDS GROUP LIMITED<br>WWW.REYNOLDSFINANCE.COM                                   | SFSA - SWEDEN        |
| 09/07/2008 | RICHMOND CAPITAL MANAGEMENT<br>WWW.RICHMONDCONSULTANCY.COM                          | SFSA - SWEDEN        |
| 09/07/2008 | KIMURA FINANCIAL<br>WWW.KIMURAFINANCIAL.COM   | DFSA - DENMARK       |
| 23/07/2008 | DAVIS MAYER GROUP<br>WWW.DAVISMAYER.COM   | CBFA - BELGIUM       |
| 23/07/2008 | ROYAL ASSETS AND RESEARCH<br>WWW.ROYALASSETSANDRESEARCH.COM                         | CBFA - BELGIUM       |
| 23/07/2008 | ABEYSINGHE SUMINDRA   | FSC - ISLE OF MAN    |
| 23/07/2008 | LASHORND A YOUNG<br>MOVEANYTHING@SIFY.COM<br>HENRYBROWN23@GMAIL.COM                 | FSC - ISLE OF MAN    |
| 23/07/2008 | HTTP://INVESTEC-B.COM   | FSC - ISLE OF MAN    |

**Public warnings about unauthorised firms (continuation)**

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| Date       | Firm  | Regulator/Supervisor |
|------------|---|----------------------|
| 23/07/2008 | MOHAMMED M. HOQUE<br>HTTP://MRLAWCHAMBERS.COM/FEES.HTM<br>HTTP://MRLAWCHAMBERS.COM/LEGALTEAM.HTM    | FSC - ISLE OF MAN    |
| 23/07/2008 | CANARY TRUST SECURITY   | FSC - ISLE OF MAN    |
| 30/07/2008 | COMMISSION FEDERALE DES MARCHES FINANCIERS<br>WWW.CFMF.GOV.TE                                       | CBFA - BELGIUM       |
| 30/07/2008 | SOLVAY FINANCIAL  | CBFA - BELGIUM       |
| 30/07/2008 | CITY PRIVATE BANKING & WEALTH MANAGEMENT<br>JAMES SHERMAN   | FSC - ISLA DE MAN    |
| 30/07/2008 | GLOBE FINANCE GROUP<br>HTTP://GLOBEFINANCEINVESTMENTS.EN.ECPLAZA.NET<br>WWW.GLOBEFINANCEINVESTMENTS | FSC - ISLE OF MAN    |
| 30/07/2008 | LIGHTHOUSE FINANCE LLC<br>WWW.WEBNOW.COM/LIGHTHOUSELIVE-COM<br>WWW.LIGHTHOUSE.INVESTMENT.COM        | FSC - ISLE OF MAN    |
| 30/07/2008 | CENTURION CAPITAL INTERNATIONAL, INC.<br>WWW.CENTURIONCAPITALONLINE.COM                             | SFSA - SWEDEN        |
| 13/08/2008 | INVESTMENT SOLUTIONS, LTD.<br>CHRISTOS STERGIOU   | HCMC - GREECE        |
| 13/08/2008 | SUMMIT CAPITAL MANAGEMENT   | CBFA - BELGIUM       |
| 13/08/2008 | ADVANTAGE SECURITIES, INC.<br>WWW.ADVANTAGESECURITIES.COM   | SFC - HONG KONG      |
| 13/08/2008 | MIRACLE ASSET, LTD.   | SFC - HONG KONG      |
| 13/08/2008 | SABIN COMMODITIES, INC.<br>WWW.SABIN-COMMODITIES.COM  | SFC - HONG KONG      |
| 13/08/2008 | STANDARD UNITED CORPORATION<br>WWW.STANDARDUNITED.COM   | SFC - HONG KONG      |
| 13/08/2008 | WWW.SHEEP669.CN   | SFC - HONG KONG      |
| 13/08/2008 | TRUST FINANCE FIDELITY BANK<br>HTTP://TRUSTFINANCEFIDELITYBANK.ORG                                  | JFSC - JERSEY        |
| 13/08/2008 | BAC MINING SOUTH AFRICA FUND  | HCMC - GREECE        |
| 13/08/2008 | BAC SOLAR   | HCMC - GREECE        |
| 13/08/2008 | BAC AFRICA NATURAL RESOURCES  | HCMC - GREECE        |
| 13/08/2008 | BAC HYDROGEN  | HCMC - GREECE        |
| 13/08/2008 | BEST ASSET CLASS AG (BAC)   | HCMC - GREECE        |
| 20/08/2008 | MASARU ASSOCIATES<br>WWW.MASARUASSOCIATES.COM   | SFC - HONG KONG      |
| 20/08/2008 | REYNOLDS GROUP LIMITED<br>WWW.REYNOLDSFINANCE.COM   | SFC - HONG KONG      |
| 20/08/2008 | SCOTT FITZGERALD GROUP<br>WWW.SCOTTFITZGERALDGROUP.COM  | SFC - HONG KONG      |
| 20/08/2008 | WILMINGTON FINANCIAL GROUP<br>WWW.WORFINGRP.COM   | SFC - HONG KONG      |
| 20/08/2008 | WORTHINGTON FINANCIAL GROUP<br>WWW.WORFINGRP.COM  | SFC - HONG KONG      |
| 17/09/2008 | E-HOLDING LIMITED   | GFSC - GIBRALTAR     |

Public warnings about unauthorised firms (*continuation*)

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Anexos  
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| Date       | Firm   | Regulator/Supervisor |
|------------|--|----------------------|
| 17/09/2008 | WORLD OWNERS INSTANT PAYMENTS (WOIP)                       | GFSC - GIBRALTAR     |
| 17/09/2008 | CAPITAL MANAGEMENT FOUNDATION OF NORTH AMERICA INC. (CMF)  | AMF - FRANCE         |
| 17/09/2008 | EURO CAPITAL MARKET SERVICES                               | AMF - FRANCE         |
| 17/09/2008 | THOMAS CASTLE MANAGEMENT<br>WWW.THOMAS-CASTLE.COM          | FSAN - NORWAY        |
| 17/09/2008 | DAVIS MAYER GROUP<br>WWW.DAVISMAYER.COM                    | FSAN - NORWAY        |
| 17/09/2008 | HAWKINS & DOYLE<br>WWW.HAWKINSDOYLE.COM                    | FSAN - NORWAY        |
| 17/09/2008 | IMG AS - INTERNETMARKET GLOBAL<br>WWW.FIN-ENERGY.NO        | FSAN - NORWAY        |
| 17/09/2008 | WALL STREET MANAGEMENT CORP<br>WWW.WALLSTREETMGT.COM       | FSAN - NORWAY        |
| 17/09/2008 | METROPOLITAN CREDIT CORP                                   | AFM - NETHERLANDS    |
| 17/09/2008 | BKR-KREDIET  | AFM - NETHERLANDS    |
| 17/09/2008 | ENSCHEDÉ FINANCE   | AFM - NETHERLANDS    |
| 17/09/2008 | DAUPHIN ASSET EUROPE                                       | AFM - NETHERLANDS    |
| 17/09/2008 | POLLIA VENTURES<br>WWW.POLLIAVENTURES.COM                  | SFSA - SWEDEN        |
| 17/09/2008 | ABERDEEN PACIFIC GROUP<br>WWW.ABERDEENPACIFICGROUP.COM     | SFSA - SWEDEN        |
| 17/09/2008 | PORTWAY CAPITAL<br>WWW.PORTWAYCAPITAL.COM                  | SFSA - SWEDEN        |
| 17/09/2008 | HEINTZMAN, WARREN, WISE & FORNELLA, P.C.<br>WWW.HWWLAW.COM | SFSA - SWEDEN        |
| 17/09/2008 | HIGHLAND INTERNATIONAL ADVISORS<br>WWW.HIGHLANDINTADV.COM  | SFSA - SWEDEN        |
| 17/09/2008 | THE LYON GROUP, INC.<br>WWW.THELYONGROUPINC.COM            | SFSA - SWEDEN        |
| 17/09/2008 | POLLIA VENTURES<br>WWW.POLLIAVENTURES.COM                  | FMA - AUSTRIA        |
| 17/09/2008 | KIMURA FINANCIAL<br>WWW.KIMURAFINANCIAL.COM                | FMA - AUSTRIA        |
| 17/09/2008 | INCENTIVE BREIL/BRIGELS, S.A.                              | FMA - AUSTRIA        |
| 17/09/2008 | MOHOON INTERNATIONAL INVESTMENT, LTD.<br>WWW.MOHOON.COM    | SFC - HONG KONG      |
| 17/09/2008 | HONGKONG GXFOREX CO., LTD.<br>WWW.JXCM138.COM              | SFC - HONG KONG      |
| 17/09/2008 | ADVANTAGE SECURITIES, INC.<br>WWW.ADVANTAGESECURITIES.COM  | SFC - HONG KONG      |
| 24/09/2008 | EDENBOURG ADVISORY SERVICES<br>WWW.EDENBOURGAS.COM         | CBFA - BELGIUM       |
| 24/09/2008 | WORLD CAPITAL SOLUTIONS<br>WWW.WORLDCAPITALSOLUTIONS.COM   | SFSA - SWEDEN        |
| 01/10/2008 | FAIRFIELD AND HAYES<br>WWW.FAIRFIELDHAYS.COM               | FSAN - NORWAY        |
| 01/10/2008 | AUGMENTUM MACAU<br>WWW.AUGMENTUMMACAU.COM                  | FSAN - NORWAY        |

Public warnings about unauthorised firms (*continuation*)

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| Date       | Firm   | Regulator/Supervisor |
|------------|--|----------------------|
| 01/10/2008 | HAMILTON TRADING, LTD.<br>WWW.HAMILTON-TRADING.COM   | CBFA - BELGIUM       |
| 01/10/2008 | INDIGO FUTURES LIMITED   | GFSC - GIBRALTAR     |
| 01/10/2008 | GOLDMAN SACHS ASIA INVESTMENT MANAGEMENT<br>(HONG KONG) LIMITED                                | SFC - HONG KONG      |
| 01/10/2008 | Global Options Group<br>WWW.GLOBALOPTIONS.ORG<br>WWW.GLOBALCGP.COM<br>WWW.GLOBALOPTIONS.BE     | SFC - HONG KONG      |
| 01/10/2008 | Global Commodities ,Inc.<br>WWW.GLOBALOPTIONS.ORG<br>WWW.GLOBALOPTIONS.BE<br>WWW.GLOBALCGP.COM | SFC - HONG KONG      |
| 01/10/2008 | GLOBE ALLIANCE LIMITED<br>WWW.GLOBALCGP.COM<br>WWW.GLOBALOPTIONS.ORG<br>WWW.GLOBALOPTIONS.BE   | SFC - HONG KONG      |
| 01/10/2008 | ELECTRONIC CAPITAL MARKETS LIMITED<br>WWW.ECMFOREX.COM   | SFC - HONG KONG      |
| 01/10/2008 | ECM TRADING LIMITED<br>WWW.ECMFOREX.COM  | SFC - HONG KONG      |
| 01/10/2008 | MANHATTAN FUJIWARA INTERNATIONAL<br>WWW.MANHATTANFUJI.JP                                       | SFSA - SWEDEN        |
| 01/10/2008 | INTERNATIONAL EQUITY PORTFOLIO   | SFSA - SWEDEN        |
| 01/10/2008 | ROSS-PARKINSON   | SFSA - SWEDEN        |
| 01/10/2008 | WIDE BERTH INTERNATIONAL, INC.   | SFSA - SWEDEN        |
| 15/10/2008 | Morley Thompson, Inc.<br>www.morleythompson.com  | DFSA - DENMARK       |
| 15/10/2008 | WITTER WALWYN<br>WWW.WITTERWALWYN.NET  | DFSA - DENMARK       |
| 15/10/2008 | BOULTON CAPITAL PARTNERS   | IFSRA - IRELAND      |
| 15/10/2008 | GOTTHARD CAPITAL PARTNERS  | IFSRA - IRELAND      |
| 15/10/2008 | OMEGA CAPITAL MANAGEMENT   | IFSRA - IRELAND      |
| 15/10/2008 | WESTCOMB CAPITAL MANAGEMENT  | IFSRA - IRELAND      |
| 15/10/2008 | CANARY TRUST SECURITY  | FSC - ISLE OF MAN    |
| 15/10/2008 | DAN WILLIAMS   | FSC - ISLE OF MAN    |
| 15/10/2008 | MONEDA MANAGEMENT LLC<br>WWW.MONEDAMANAGEMENT.COM/MONEDA.HTM                                   | FSC - ISLE OF MAN    |
| 15/10/2008 | BANQUE DE PRINKIPO<br>WWW.KREDISGLAMA.COM<br>WWW.BANQUEDEPRINKIPOS.COM                         | FSC - ISLE OF MAN    |
| 15/10/2008 | PRINKIPO CONSULTING AND TRADE LIMITED<br>WWW.KREDISGLAMA.COM<br>WWW.BANQUEDEPRINKIPOS.COM      | FSC - ISLE OF MAN    |
| 15/10/2008 | PC & T (IOM) LIMITED<br>WWW.KREDISGLAMA.COM<br>WWW.BANQUEDEPRINKIPOS.COM                       | FSC - ISLE OF MAN    |
| 15/10/2008 | ROYAL CANARY TRUST   | FSC - ISLE OF MAN    |

## Public warnings about unauthorised firms (continuation)

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Anexos  
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| Date       | Firm   | Regulator/Supervisor |
|------------|--|----------------------|
| 15/10/2008 | ROYAL CANARY TRUST   | FSC - ISLE OF MAN    |
| 15/10/2008 | ROYAL CANARY TRUST BANK  | FSC - ISLE OF MAN    |
| 15/10/2008 | ROYAL CANARY TRUST, LTD.   | FSC - ISLE OF MAN    |
| 15/10/2008 | LIMBAUGH AND YORK ASSOCIATES<br>WWW.LIMBAUGHANDYORKASSOCIATES.COM                    | FSC - ISLE OF MAN    |
| 15/10/2008 | ANTIQUES SUPERMARKET.COM<br>HTTP://WWW.ANTIQUESSUPERMARKET.COM                       | FSC - ISLE OF MAN    |
| 22/10/2008 | WINDRIVER CAPITAL  | FSA - UNITED KINGDOM |
| 22/10/2008 | AVERY KINGSTON CAPITAL   | FSA - UNITED KINGDOM |
| 22/10/2008 | CANTWELL INTERNATIONAL   | FSA - UNITED KINGDOM |
| 22/10/2008 | COHEN HAYWARD INTERNATIONAL  | FSA - UNITED KINGDOM |
| 22/10/2008 | CROSBY CAPITAL PARTNERS<br>WWW.CROSBYCP.COM  | FSA - UNITED KINGDOM |
| 22/10/2008 | EDENBOURG ADVISORY SERVICES  | FSA - UNITED KINGDOM |
| 22/10/2008 | FINANCIAL INVESTMENT SOLUTIONS   | FSA - UNITED KINGDOM |
| 22/10/2008 | GREYSON MANAGEMENT   | FSA - UNITED KINGDOM |
| 22/10/2008 | HUNTER ROWE  | FSA - UNITED KINGDOM |
| 22/10/2008 | JOHNSON MATTHEWS ASSOCIATES  | FSA - UNITED KINGDOM |
| 22/10/2008 | JUVET MANAGEMENT   | FSA - UNITED KINGDOM |
| 22/10/2008 | KENSINGTON CAPITAL   | FSA - UNITED KINGDOM |
| 22/10/2008 | MAGANURA MERGERS & ACQUISITIONS  | FSA - UNITED KINGDOM |
| 22/10/2008 | PEARL ASSOCIATES   | FSA - UNITED KINGDOM |
| 22/10/2008 | PEARLMAN & SINCLAIR  | FSA - UNITED KINGDOM |
| 22/10/2008 | PETERSON MCCORMACK ASSOCIATES  | FSA - UNITED KINGDOM |
| 22/10/2008 | TROY LANSDOWNE   | FSA - UNITED KINGDOM |
| 22/10/2008 | VISION COMMODITIES   | FSA - UNITED KINGDOM |
| 22/10/2008 | MORGAN FINCH INTERNATIONAL<br>WWW.MORGANFINCH.NET                                    | DFSA - DENMARK       |
| 22/10/2008 | PACIFIC EQUITY MANAGEMENT<br>WWW.PACIFICEM.COM                                       | SFSA - SWEDEN        |
| 22/10/2008 | SAKUMA GROUP<br>WWW.SAKUMAGROUP.COM  | SFSA - SWEDEN        |
| 22/10/2008 | DOMINION ROYAL EKONOMISK FÖRENING<br>(ECONOMIC ASSOCIATION)<br>WWW.DOMINIONROYAL.COM | SFSA - SWEDEN        |
| 22/10/2008 | ATLANTIS MERGERS & ACQUISITIONS<br>WWW.ATLANTISMA.COM                                | SFSA - SWEDEN        |
| 22/10/2008 | GREYHILL CONSULTANTS   | SFSA - SWEDEN        |
| 22/10/2008 | ROSSFORD MERGERS & ACQUISITIONS  | FSA - UNITED KINGDOM |
| 19/11/2008 | OVETII   | HCMC - GREECE        |
| 19/11/2008 | GOTTHARD CAPITAL PARTNERS<br>WWW.GOTTHARDCP.COM                                      | FSA - UNITED KINGDOM |
| 19/11/2008 | BARRINGTON SECURITIES  | FSA - UNITED KINGDOM |
| 19/11/2008 | BOULTON CAPITAL PARTNERS   | FSA - UNITED KINGDOM |
| 19/11/2008 | BRIDGESTONE TRADING  | FSA - UNITED KINGDOM |

Public warnings about unauthorised firms (*continuation*)

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| Date       | Firm   | Regulator/Supervisor |
|------------|--|----------------------|
| 19/11/2008 | CANTWELL INTERNATIONAL                               | FSA - UNITED KINGDOM |
| 19/11/2008 | CK INVESTMENTS (CK GROUP)                            | FSA - UNITED KINGDOM |
| 19/11/2008 | CROMWELL AND PIERCE INTERNATIONAL                    | FSA - UNITED KINGDOM |
| 19/11/2008 | DELTA GROUP LLC                                      | FSA - UNITED KINGDOM |
| 19/11/2008 | EX TRADE   | FSA - UNITED KINGDOM |
| 19/11/2008 | EXECUTIVE GROUP                                      | FSA - UNITED KINGDOM |
| 19/11/2008 | FLEETWOOD ASSOCIATES                                 | FSA - UNITED KINGDOM |
| 19/11/2008 | GLOBAL WEALTH MANAGEMENT                             | FSA - UNITED KINGDOM |
| 19/11/2008 | GLOBAL WEALTH PARTNERS PLC                           | FSA - UNITED KINGDOM |
| 19/11/2008 | HARRINGTON LLOYD                                     | FSA - UNITED KINGDOM |
| 19/11/2008 | HEINZ HOKKAIDO INTERNATIONAL                         | FSA - UNITED KINGDOM |
| 19/11/2008 | HEMMINGWAYS  | FSA - UNITED KINGDOM |
| 19/11/2008 | INTERACTIVE WORLD TRADING, LTD.                      | FSA - UNITED KINGDOM |
| 19/11/2008 | INTERNATIONAL DIGITAL SPORTS TECHNOLOGIES            | FSA - UNITED KINGDOM |
| 19/11/2008 | KAUFFMAN HATHERWAY / K H CORPORATE                   | FSA - UNITED KINGDOM |
| 19/11/2008 | LIMBAUGH AND YORK ASSOCIATES                         | FSA - UNITED KINGDOM |
| 19/11/2008 | PARKER FORRESTER, LTD.                               | FSA - UNITED KINGDOM |
| 19/11/2008 | SAKUMA GROUP   | FSA - UNITED KINGDOM |
| 19/11/2008 | SOVEREIGN PACIFIC, INC.                              | FSA - UNITED KINGDOM |
| 19/11/2008 | VANZANDT   | FSA - UNITED KINGDOM |
| 19/11/2008 | WESTERN ROYAL  | FSA - UNITED KINGDOM |
| 19/11/2008 | WORLD CAPITAL SECURITIES                             | FSA - UNITED KINGDOM |
| 19/11/2008 | AKER FINANCIAL AS<br>WWW.AKERFINANCIAL.COM           | FSAN - NORWAY        |
| 19/11/2008 | SEISMA OIL RESEARCH LLC<br>WWW.SEISMARESEARCH.COM    | FSAN - NORWAY        |
| 19/11/2008 | HCS WORLDWIDE<br>WWW.HCSWORLDWIDE.COM                | DFSA - DENMARK       |
| 19/11/2008 | HCS WORLDWIDE<br>WWW.HCSWORLDWIDE.COM                | SFSA - SWEDEN        |
| 19/11/2008 | EURO SPARKASSA EKONOMISK FÖRENING                    | SFSA - SWEDEN        |
| 19/11/2008 | JAMES B. CLARKE ET CO, LTD.<br>WWW.JBC-CO.COM        | JFSC - JERSEY        |
| 19/11/2008 | SOCIETE FINANCE GROUP<br>HTTP://SOCFINGROUP.COM      | JFSC - JERSEY        |
| 19/11/2008 | JD ABRAMS & ASSOCIATES<br>WWW.JDABRAMSASSOCIATES.COM | SFC - HONG KONG      |
| 19/11/2008 | PARKER MONROE<br>WWW.PARKERMONROE.COM                | SFC - HONG KONG      |
| 19/11/2008 | SKY PRIVATE BANK & TRUST (GIBRALTAR) LIMITED         | GFSC - GIBRALTAR     |
| 19/11/2008 | PRESTIGE MANAGEMENT PLC                              | GFSC - GIBRALTAR     |
| 26/11/2008 | JAMES B. CLARKE ET CO. LTD.                          | GFSC - GIBRALTAR     |
| 26/11/2008 | CORE MARKET RESEARCH                                 | GFSC - GIBRALTAR     |
| 26/11/2008 | FINANSTJENESTER<br>WWW.FINANSTJENESTER.NET           | FSAN - NORWAY        |

## Public warnings about unauthorised firms (continuation)

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Anexos  
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| Date       | Firm   | Regulator/Supervisor           |
|------------|--|--------------------------------|
| 26/11/2008 | GOLDBERG HECHÉ ASSOCIATES<br>HTTP://GOLDBERGHECHE.COM/INDEX.HTML       | FSAN - NORWAY                  |
| 26/11/2008 | CES FUTURES BROKERAGE CO. LTD.<br>WWW.CESFUTURES.COM                   | SFC - HONG KONG                |
| 26/11/2008 | MORGAN CAPITAL PARTNERS<br>WWW.MORGANCP.COM                            | SFC - HONG KONG                |
| 26/11/2008 | RIVE FINANCIAL<br>WWW.RIVEFINANCIAL.CH                                 | SFC - HONG KONG                |
| 26/11/2008 | VENTURE ALLIANCE PARTNERS (VENPAR)<br>WWW.VENPAR.COM                   | SFSA - SWEDEN                  |
| 26/11/2008 | LYLAND FINANCE<br>WWW.LYLANDFINANCE.COM                                | SFSA - SWEDEN                  |
| 26/11/2008 | FALON GROUP LIMITED<br>WWW.FALON-GROUP.COM                             | SFSA - SWEDEN                  |
| 26/11/2008 | DAVIS MAYER GROUP<br>WWW.DAVISMAYER.COM                                | FMA - AUSTRIA                  |
| 10/12/2008 | FINURBA CORPORATE FINANCE  | FSAN - NORWAY                  |
| 10/12/2008 | BARCLAYS GROUP FINANCIAL, INC.   | SFSA - SWEDEN                  |
| 10/12/2008 | HAMPSHIRE CONSULTANTS LLC<br>HTTP://HAMPSHIRECONSULTANTSLLC.COM        | FSAN - NORWAY                  |
| 10/12/2008 | SKYLINE ADVISORY GROUP   | SFSA - SWEDEN                  |
| 10/12/2008 | PACIFIC CAPITAL PARTNERS   | SFSA - SWEDEN                  |
| 10/12/2008 | HIGHLAND INTERNATIONAL ADVISORS<br>WWW.HIGHLANDINTADV.COM              | FSAN - NORWAY                  |
| 10/12/2008 | LINCOLN VENTURES   | IFSRA - IRELAND                |
| 10/12/2008 | BAER INNES STOCK BROKING AND WEALTH<br>MANAGEMENT<br>WWW.BAERINNES.COM | FSAN - NORWAY                  |
| 10/12/2008 | SAVOY ADVISORS LLC<br>Wakefield & Stern Corporation                    | FSAN - NORWAY<br>JFSC - JERSEY |

Source: CNMV.





## A Spanish legislation

Main domestic legislation approved in 2008.

### A.1 Comisión Nacional del Mercado de Valores

**CNMV Board Resolution dated 10 November 2008**, approving the CNMV Internal Regulation.

This resolution made some amendments to the CNMV Internal Regulation, whose approval is the competency of the CNMV itself in accordance with article 14.10 of the Securities Market Act. The main purpose of the amendment was to introduce formal and technical improvements.

In particular, the President is allowed to delegate his own functions to any organ of the CNMV provided that this is done in accordance with the provisions of the Act. The regulations governing the status of the President, Vice-President and executive personnel of the CNMV after they step down were also completed. The former directorates and divisions are now called departments, and regulations governing the functions of the Internal Control Department and the Department of the Assistant to the President were expressly included.

With regard to the various administrative procedures, a reference to the electronic register was added and references to the regulation governing penalty proceedings were completed. The amendment also provided for participation by the Internal Control Department in drafting internal procedures, and the regulation governing staff hiring was revised to adapt it to Act 7/2007, of 12 April, on the Basic Statute of Civil Servants.

### A.2 Official secondary markets in securities and other trading systems

**CNMV Circular 9/2008, of 10 December**, on the accounting standards, confidential and public disclosures and annual accounts of the governing companies of official secondary markets, excluding the Bank of Spain, of governing companies of multilateral trading facilities, of the Sociedad de Sistemas, of central counterparties, of the Sociedad de Bolsas, of companies that own all the shares of governing companies of official secondary markets and multilateral trading facilities, and other market clearing and settlement systems created in accordance with the Securities Market Act.

This accounting Circular applies to all securities market trading and post-trading infrastructures that are resident in Spain, with the exception of the Public Debt Book-Entry Market. Its goal is to update the pre-existing regulations and forms for the confidential and public financial statements in order to adapt them to the changes in accounting regulations in Spain in the last year for the purpose of attaining international harmonisation on the basis of the European Union regulations and, specifically, in the framework of the New General Accounting Plan (NGAP).

The amendment of the accounting regulations was addressed by considering the specific legal and operational features of the various trading and post-trading infrastructures in Spain and the accounting principles and standards contained in the NGAP. For that reason, this Circular does not contain accounting regulations for transactions and events that are covered by the NGAP; it merely sets out the accounting rules to be applied by those infrastructures to transactions and events which, because of their specific nature, are not covered by the detailed rules of mercantile legislation.

In short, this Circular, which applies to the monthly, quarterly and annual confidential and public disclosures drafted on or after 1 January 2009 and the year-end closing information for 2008 of companies or entities under its scope, seeks to standardize and adapt the accounting and operational information which those companies must submit to the CNMV or publish to the accounting principles and standards now in force.

### **A.3 Transparency on the part of issuers of listed securities**

CNMV Circular 1/2008, of 30 January, on periodical reporting by issuers of securities listed on regulated markets, regarding half-yearly financial reports, interim management reports and quarterly financial reports.

This Circular arises from the reform of the regulations governing transparency on the part of issuers of listed securities, which was included in the Securities Market Act and implemented by means of Royal Decree 1362/2007, of 19 October, on regulated disclosures. The Circular sets out the forms for periodical disclosure with regard to summarised annual accounts, separate and consolidated half-yearly accounts, interim management reports, and the content of quarterly financial reports, where required. The forms conform to the International Financial Reporting Standards adopted by the European Union, in the case of summarised accounts of consolidated groups, and to Spanish accounting regulations in the case of summarised separate annual accounts; specific forms were established for credit institutions and insurance undertakings.

One of the new features is that the half-yearly report form includes a statement of liability on the part of the issuer's directors, as required by Royal Decree 1362/2007; moreover, quarterly reports have been replaced by interim management statements except where the issuer voluntarily publishes quarterly financial statements; the Circular sets out the minimum information that such interim reports must contain.

### **A.4 Takeover bids**

CNMV Circular 8/2008, of 10 December, approving the forms for announcements and applications for authorisation of takeover bids.

Implementing Royal Decree 1066/2007, of 27 July, on the rules governing takeover bids, this Circular established the form of announcement of takeover bids for the shares of listed companies so as to ensure that, from the outset, all investors have the necessary information to form an appropriate opinion of the transaction. The basic principle was established that the announcement must be truthful, clear, complete and, where the information requires, quantified. It was decided to establish a single form for all classes of takeover bid, and to allow direct presentation of the application for authorisation of a takeover bid instead of filing the announcement, provided that practically the same information required by the Circular for the announcement is contained in the application.

Firstly, the Circular established that the announcement must state that the takeover bid is dependent upon authorisation by the CNMV, which is a necessary requirement. Secondly, the Circular establishes the content of the announcement: it must identify the bidder and the person or body that made the decision to make the bid; it must indicate the approximate period envisaged for applying for authorisation for the bid, and the type of bid involved; it must disclose the bidder's stake in the target company, if any, the characteristics of the target company, the number of securities and percentage of capital targeted by the bid, and the consideration being offered, indicating if shares are being offered in exchange and, if so, providing some information about them. The announcement must also disclose any conditions to which the bid is the subject; whether any administrative authorisation must be obtained; the existence of agreements with other shareholders of the target company, with its board of directors or with any of its directors; the bidder's intentions as regards delisting the target company and exercising squeeze-out rights. All this information must be adapted appropriately to the situation where there are competing bids, delisting bids and bids to acquire own shares for the purposes of redemption. The announcement must also contain a notice regarding the obligation to disclose significant holdings and transactions with shares that apply in the case of a takeover bid, as well as the suspension of any liquidity contract arranged by the target company.

#### **A.5 Investment firms and other entities in the securities market**

**Royal Decree 216/2008, of 15 February**, on the equity of financial institutions.

This rule implements the regulations on financial institutions' equity following the latest amendments to Act 13/1985, of 25 May, on investment coefficients, own funds and reporting obligations of financial intermediaries and other regulations for the financial system, and of Act 24/1988, of 28 July, on the Securities Market, which transposed two European directives that were inspired by the Basel II Capital Accord of 2004.

The regulations on own funds generally hinge on three pillars or supervisory approaches that are mutually reinforcing. Firstly, there are uniform rules for determining minimum capital requirements; secondly, a system of supervisory review is established in order to encourage internal risk management by firms; and, thirdly, firms are required to disclose to the market information about key aspects of their business profile, risk exposure and risk management methods. The most novel aspect of the new regulations is the importance attached to internal risk measurement mechanisms at financial institutions (the capital adequacy regulations no longer consist of compliance with preset ratios).

The Royal Decree is structured into titles, the first of which regulates capital requirements for credit institutions, while the second addresses investment firms; an additional provision regulates equity requirements for reciprocal guarantee companies and rebonding companies.

With regards to credit institutions, credit risk is regulated by allowing them to choose, on the basis of their size and degree of sophistication, between the standard approach and the internal ratings-based (IRB) approach. Under the standard approach, risk positions are weighted by reference to ratings established by external rating agencies or, in certain cases, by export credit agencies. Under the IRB method, which must be approved by the Bank of Spain, institutions calculate their equity requirements using credit ratings which they calculate themselves using internal risk models based on past experience with each type of exposure. The regulation envisages techniques for reducing credit risk and specifies how risk weightings for more complex exposures, particularly asset-backed securities, should be calculated.

In addition to credit risk, the Royal Decree regulates the risk to credit institutions of adverse movements by exchange rates, the price of gold and positions in financial instruments and commodities in their trading portfolio, as well as the risk of losses due to events in the normal course of business (operational risk). Limits to risk concentration are also established: no single counterparty may account for risks that exceed 25% of equity, nor may an institution take on risks that account for more than 10% of equity individually or 800% taken together. The decree also regulates the measures to be taken by credit institutions if they breach any of the equity requirements under the Royal Decree.

Although most of the regulations regarding investment firms are analogous to those for credit institutions, their equity must be equal to or greater than the largest of four items: the sum of the equity requirements related to the various risks (trading portfolio risk, exchange rate risk, credit risk, operational risk), one-fourth of the structural expenses in the preceding year, two-thirds of the minimum capital requirement to establish the corresponding class of investment firm, or five per mil of the volume of managed portfolios.

The Royal Decree also delimits the powers of the Bank of Spain and the CNMV in connection with the supervision of financial institutions' equity requirements.

**Royal Decree 217/2008, of 15 February**, on the legal regime for investment firms and other entities that provide investment services, which partly amends the Regulation under the UCITS Act 35/2003, of 4 November, approved by Royal Decree 1309/2005, of 4 November.

Act 47/2007, of 19 December, amending Act 24/1988, of 28 July, on the Securities Market, transposed into Spanish law Directive 2004/39/EC of the European Parliament and of the Council, of 21 December, which was implemented by Directive 2006/73/EC of the Commission, of 10 August, and by Regulation 1287/2006/EC, of 10 August. Royal Decree 217/2008, of 15 February, advances with the process of transposition and implements the rules governing entities providing investment services, while revoking the previous rules contained in Royal Decree 867/2001, of 20 July, on the legal regime for investment firms and in Royal Decree 629/1993, of 3 May, on rules of action. This Royal Decree distinguishes between investment firms, to which the entire text applies, and other entities that provide investment services

(specifically credit institutions and UCITS management companies), to which certain rules on internal organisation and codes of conduct apply.

Regarding the definition of investment services and types of investment firm, the Royal Decree specifies the distinction between financial advice, which is an investment service, and non-personalized recommendation, which is an ancillary service; the latter category includes recommendations disseminated solely via distribution channels or to the public. With respect to the new category of investment advisory firm which was established in the Securities Market Act, the Royal Decree sets out the financial requirements: initial capital of 50,000 euro or professional liability insurance with a minimum coverage of 1.5 million euro or an equivalent combination of initial capital and professional liability insurance; these firms have one year from the entry into force of the Royal Decree to register with the CNMV. Another new feature is that brokers that do not plan to become secondary members or join a securities clearing and settlement system and which are authorized only to receive and transmit orders without holding clients' funds or financial instruments are required to have capital of 120,000 euro or professional liability insurance with a minimum coverage of 1.5 million euro.

As regards cross-border activity by investment firms, the rules contained in the Securities Market Act were implemented so as to allow the cross-border provision of investment services throughout the European Union on the basis of supervision by the Home member state although, in the case of branches, the Host member state retains supervisory powers in some areas referring to codes of conduct: communications with clients, records of contracts, order management and execution, and disclosure of trades.

The Royal Decree also fleshes out the new organisational requirements provided in the Securities Market Act with regard to conflicts of interest, delegation of essential functions, maintenance of records of activities and trades, oversight of employees' personal trades, protection of clients' funds and financial instruments, and processing and executing client orders, adjusting the requirements on the basis of the characteristics of each firm's activity and also taking account of the different needs of professional and retail clients, using the classification provided in the Securities Market Act. In particular, the Royal Decree introduces the European regulations on inducements under which companies providing investment services, including credit institutions, may only collect inducements from third parties or pay inducements to third parties where such inducements are disclosed to the client and enhance the quality of the service provided to the client.

The Royal Decree also amended the Regulation under the UCITS Act 35/2003, of 4 November, adapting it to the new rules of conduct under the MiFID and also amending some rules relating to eligible assets.

**Order EHA/3064/2008, of 28 October**, amending the Ministry of Economy and Finance Order of 26 July 1989 which implemented article 86 of the Securities Market Act, and Ministry of Economy and Finance Order of 24 September 1993, on the real estate investment trusts and companies, in order to empower the CNMV to make detailed rules on certain aspects of supervised entities' accounting and the calculation of coefficients and limits for UCITS.

This order regulates two distinct aspects of securities market legislation. On the one hand, it amends Ministry of Economy and Finance Order of 26 July 1989, which

implemented article 86 of the Securities Market Act, in order to extend the CNMV's powers to implement accounting standards for all the entities identified in article 84.1 of the Securities Market Act: governing companies of official secondary markets, the Sociedad de Sistemas, central counterparties, the Sociedad de Bolsas, investment firms and their agents, the managing company of the investment guarantee fund, and members of official secondary markets, as well as the entity that clears and settles their trades.

It also amended the Ministry of Economy and Finance Order dated 24 September 1993 on real estate investment trusts and companies, empowering the CNMV to specify certain aspects of the accounting and calculation of coefficients and limits for this class of UCITS.

**CNMV Circular 7/2008, of 26 November**, on accounting standards, annual accounts, and confidential reports by investment firms, UCITS management companies and venture capital firm operators.

The Circular amended the accounting rules for investment firms, UCITS management companies (SGIIC) and venture capital firm operators (SGEGR) to adapt them to the new accounting framework established by the General Accounting Plan approved by Royal Decree 1514/2007, of 16 November, while taking account of those entities' specific legal and operational features. However, in some cases it was necessary and advisable to maintain criteria and approaches from the preceding regulations, such as the obligation to consolidate horizontal groups.

A new feature of the Circular was that it extended the definition of fair value to financial instruments without a market or with an inactive market, the goal being to encourage the use of fair value where it facilitates proper risk management. The definitions of other new concepts such as "effective interest rate" and "impairment" were also expanded. The Circular also established specific conditions for reclassifying assets among the various defined categories of financial assets. Very strict criteria were established for derecognising financial assets and recognising capital gains due to measurement of available-for-sale financial assets as adjustments to equity, and their definition in solvency terms was clarified. The Circular includes a specific rule on revenues from the provision of services and, in the event, financial expenses and trading losses, which includes the criteria for recognition in profit or loss.

The Circular also contains a specimen balance sheet in which financial assets are classified on the basis of their nature as a function of measurement standards. Lastly, it is essential to highlight the importance of transparency, which requires managers of supervised entities to take responsibility for their accounting policy, explain it, disclose it to the market and supplement it with specific information as required. In this connection, the annual report and directors' report include a description of the financial risk assumed and the company's risk management and hedging policy.

**CNMV Circular 10/2008, of 30 December**, on investment advisory firms.

This Circular regulates certain aspects of the organisational requirements that apply to financial advisory firms and the documentation that must be provided to the CNMV for authorisation and registration in this category; it also systematizes the regulations on financial advisory firms contained in the Securities Market Act and in



Royal Decree 217/2008, on investment firms and other entities providing investment services.

The Circular specifies firstly that it is not necessary to establish and register a financial advisory firm in order to provide advisory services: (a) in the framework of another professional activity not regulated under the Securities Market Act provided that the provision of that advice is not specifically remunerated; (b) on an ancillary basis in the framework of a professional activity provided that the latter is regulated by laws or regulations or a professional code of ethics which does not preclude the provision of that service.

With regard to authorisation of a financial advisory firm, if the latter chooses a combination of the two financial requirements established by the Royal Decree (capital and professional liability insurance), a report by an independent expert must be presented accrediting compliance with the financial requirements. Regarding the knowledge and experience required of directors and general managers of investment advisory firms, and of investment advisory firms which are natural persons, experience must be in investment advisory functions or others related to the securities markets, whereas knowledge may be accredited by the possession of degrees and certificates accrediting knowledge of these areas.

**CNMV Circular 11/2008, of 30 December**, on accounting standards, annual accounts and confidential disclosures of venture capital firms.

The purpose of this accounting Circular regarding venture capital firms is to adapt these firms to the new General Accounting Plan while also introducing specific accounting standards that take account of these firms' characteristics. This adaptation takes account of the various classifications of financial assets used by venture capital firms and methods are established for measuring fair value, particularly for unlisted securities, which are the standard components of a venture capital firm's portfolio. Rules were also introduced about the structure and content of venture capital firms' annual accounts and confidential reports.

**CNMV Circular 12/2008, of 30 December**, on the solvency of investment firms and their consolidable groups.

The Circular seeks to adapt the regulatory framework for solvency of financial institutions in the European Union to Spanish investment firms and their consolidable groups. The New Capital Accord of the Committee on Banking Supervision at the Bank for International Settlements is reflected in Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions (recast) and Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions.

With the dual objective of avoiding regulatory arbitrage and facilitating the integration of various kinds of entity into consolidable groups subject to supervision, a parallel was established between the regulations concerning the capital requirements at credit institutions and those contained in this Circular. Nevertheless, the specific features of investment firms are reflected in the Circular.

In particular, this Circular establishes the same reporting forms as are used for credit institutions, which will facilitate information gathering and dissemination

not only on the part of national supervisors but also on the part of European solvency supervisors, making it possible for the first time to compare financial institutions' data at a European scale.

## A.6 UCITS

**Order EHA/35/2008, of 14 January**, implementing the regulations governing UCITS' accounting, determination of equity, and calculation of risk diversification coefficients and certain aspects of UCITS whose investment policy consists of reproducing, replicating or tracking an equity or fixed-income index, and empowering the CNMV to issue detailed rules.

This Order empowers the CNMV to issue accounting rules for UCITS, as the Order confines itself, as regards determining a UCITS equity and calculating the diversification coefficient, to regulating the concept of fair value, defined as the estimated realizable value of the financial assets and instruments comprising the UCITS portfolio.

Secondly, it establishes that for UCITS with compartments, the diversification coefficient will be measured for each compartment. The rules for risk diversification of index-tracking UCITS [article 38.2.e) of the UCITS Regulation] are brought into line with those for UCITS that replicate an index [article 38.2.d) of the UCITS Regulation].

Finally, the CNMV is empowered to regulate the following aspects of internal control systems and risk management and control systems of UCITS management companies:

- modulation of the requirements on the basis of the size, scale and nature of the UCITS,
- functions and responsibilities of the management company's Board of Directors with regard to designing and implementing internal control systems and risk management and control systems,
- existence of a control unit in charge of supervising the proper functioning of the internal control and risk management and control procedures and systems.

**Royal Decree 362/2007, of 15 March**, amending article 59 of the Regulation implementing UCITS Act 35/2003, of 4 November, approved by Royal Decree 1309/2005, of 4 November.

This decree introduced flexibility into the rules governing borrowing by real estate UCITS. To this end, it amended the UCITS Regulation (Royal Decree 1309/2005, of 4 November) by establishing that real estate UCITS need not count the debt relating to government housing protection plans when calculating their indebtedness limits. Secondly, it clarified the rules governing debt taken on to overcome treasury difficulties by explicitly capping it at 10% of assets and establishing a maximum period of 18 months.

**Order EHA/596/2009, of 5 March**, determining certain aspects of the rules governing UCITS depositories, and specifying the content of their financial statements.



This order updates the rules governing UCITS depositors by adapting them to the expanded operating scope of UCITS and their operators as a result of the enactment of the UCITS Act in 2003 and the UCITS Regulation in 2005. Accordingly, the order regulates the vigilance and supervisory functions in relation to new aspects: marketing of UCITS by operators; the growing investment by UCITS in other UCITS and OTC, and the consequent importance of asset valuation procedures; new forms of UCITS such as hedge funds and funds of hedge funds, etc. It also explicitly acknowledges that the depositary may delegate the vigilance and supervisory functions, and establishes the obligation that depositories verify that the assets in which the UCITS invests conform to its investment policy as stated in its prospectus, and the depositary's obligation to open the accounts with which the UCITS will operate. The order also tries to systematize the procedures for depositories, requiring them to implement an internal procedures manual.

And it regulates the content of the position statements that UCITS management companies or depositories must send to each investor, and authorizes the CNMV to establish the corresponding forms and implement additional content in those statements by issuing a Circular for this purpose.

**CNMV Circular 2/2008, of 26 March**, partly amending Circular 4/1994, of 14 December, on accounting rules, reporting obligations, calculation of the net asset value, investment and operational coefficients, and actions in appraising real estate, applicable to real estate UCITS.

This Circular requires that real estate appraisal certificates to be filed with the CNMV by real estate investment companies and trusts be submitted using the Cifradoc/CNMV electronic system. It also specifies certain information regarding property valuations that must be contained in appraisal reports and sent to the CNMV since they are necessary for determining the net asset value of real estate UCITS or linking it to the information presented by the UCITS; additional information is also requested through other forms, such as the technical parameters on the discount rate for the cash flows from real estate, the express reasoned statement by an appraisal company when the conditions imposed on an appraisal (which prevent it from being legally valid) are removed, the management company's declaration when there are such conditions, and the dates on which new properties are regularly appraised (appraisal calendar).

**Order EHA/888/2008, of 27 March**, on transactions by financial UCITS with financial derivatives and clarifying certain items in the Regulation under Act 35/2003, of 4 November, on UCITS, approved by Royal Decree 1309/2005, of 4 November.

This order sets out the process for introducing flexibility into the framework for action by UCITS that invest in derivatives, implementing the provisions of UCITS Act 35/2003, of 4 November and its implementing regulations. Firstly, it expands the range of qualifying underlyings set out in the Regulation, while clarifying certain concepts and introducing specific requirements for underlyings such as credit risk and financial indices. The Order categorizes derivatives into two groups based on complexity, and this classification has implications for the purposes for which UCITS can use these instruments: investment, hedging or pursuit of a specific target yield.

The Order also transposes Directive 2007/16/EC, of 19 March, by expanding the range of financial assets considered appropriate for cash investments by UCITS,

provided that they fulfil certain conditions, mainly in connection with the available information, their valuation, and the existence of a representative market price.

**CNMV Circular 3/2008, of 11 September**, on accounting rules, financial statements and confidential reports by UCITS.

This Circular amends the accounting rules applicable to UCITS (both financial and real estate) with the dual goal of adapting the rules to the new General Accounting Plan while also taking account of UCITS' specific features as compared with other entities. The Circular is based on the idea that UCITS accounting should take account of the need to determine their assets, which makes it possible to determine their net asset value. The need to value UCITS assets in order to determine the price of investors' units makes it necessary to consider unrealized capital gains on the assets held in portfolio. The forms of UCITS financial statements are defined: balance sheets, income statement, statement of changes in equity, and notes to financial statements, which maintain the structure and content set out in the General Accounting Plan with a number of adaptations to the specific nature of UCITS, complemented by the confidential accounting statements, which are not published and are filed with the CNMV, whose forms are also defined in this Circular.

Broadly speaking, the financial assets and liabilities in a UCITS portfolio are measured at their fair value, and changes in that value (even if not realized) are recognized in profit and loss. However, a UCITS' other financial assets and liabilities, such as cash, fee revenues receivable and current-account overdrafts to attend to redemptions are measured at amortized cost, i.e. discounting cash flows to the initial date of the transaction. The real estate in the portfolio of real estate UCITS is valued at its appraised value. Although shares and units in UCITS are not fully equivalent to shares in the equity of mercantile companies and are reimbursable at the request of the shareholder or investor, they are classified as equity instruments and not as financial liabilities. On that basis, the Circular includes specific criteria and mechanisms for accounting for specific transactions and provides more detail of the aforementioned valuation criteria. As a transitional measure, it is established that adjustments arising due to application of the new accounting rules will be recognized in reserves.

As for UCITS with compartments, separate accounting to distinguish between the assets, liabilities, revenues and expenses of one compartment with respect to others is allowed, even though each UCITS has a unique set of accounts and covers various compartments.

The Circular also establishes that the rules on business combinations and consolidation do not apply to investments by UCITS since the latter cannot exert a notable influence with respect to the assets in which they invest; accordingly, the accounting rules on business combinations apply only in the case of mergers between UCITS.

**CNMV Circular 4/2008, of 11 September**, on the content of UCITS quarterly, half-yearly and annual reports and their position statements.

This Circular establishes the reporting documents to be published by management companies for each UCITS that they manage, and also by investment companies. In particular, the Circular establishes the content of the annual, half-yearly and quarterly reports and position statements, revoking CNMV Circular 1/1991, of 23 January on the content of quarterly reports by UCITS to their investors and CNMV Circular 1/1999, of 14 January, on mutual funds' prospectuses and quarterly reports.

As regards quarterly reports, the Circular distinguishes between the simplified and full reports; the simplified report is addressed to investors while the full report must be filed with the CNMV and published in the pre-stated places; they differ in that the simplified report does not detail the UCITS portfolio but merely indicates totals and subtotals. The Circular details that the annual report is divided into two parts: the first part is the public report for the second half of the year, and the second part consists of the financial statements, directors' report and auditors' report. The Circular also regulates the form of accrediting compliance with the obligation to deliver reports, investors' waiver of delivery of reports, and applications from investors for delivery of some of these reports which are not delivered by default. It also establishes the content of the position statement that must be sent to investors and shareholders.

**CNMV Circular 5/2008, of 5 November**, on the statistical reporting requirements with regard to assets and liabilities of European Union UCITS.

CNMV Circular 2/1998, of 27 July, as amended, established the statistical reports that money market UCITS must file with the CNMV to enable that information to be used by the ECB in tracking monetary policy within Economic and Monetary Union. Regulation (EC) No 958/2007 of the European Central Bank extended the requirement to file periodical statistical information to UCITS that were not obliged to do so under CNMV Circular 1/2007.

This Circular is applicable to all compartments or uncompartimentalised UCITS that are registered with the CNMV whose investment policy is not monetary and is not to invest in monetary compartments or UCITS or in those contained in the list of monetary financial institutions (MFI) published by the ECB. The information refers to balances of securities in portfolio and to transactions, security by security (i.e. disclosing the portfolio breakdown by individual security), generally on a monthly basis although quarterly filing is admissible for institutions that represent only a small percentage of the sector.

**Order EHA/3465/2008, of 26 November**, amending Order EHA/2688/2006, of 28 July, on cooperation agreements relating to Government Debt Investment Funds.

This ministerial order amends some aspects of Order EHA/2688/2006, of 28 July, on cooperation agreements relating to Government Debt Investment Funds so as to enable funds that invest in government debt (*Fondtesoro*) to classify the government-backed bonds issued by FTPymes as government debt for the purposes of the established investment coefficients.

**CNMV Circular 6/2008, of 26 November**, regarding the determination of the net asset value and operational aspects of UCITS.

The Circular on UCITS net asset value establishes the rules for calculating that figure, which is the price of the units or shares into which a UCITS is divided. For these purposes, the Circular determines the assets of the UCITS from accounting magnitudes and then calculates the net asset value, focusing particularly on cases where there are compartments and classes of units or series of shares in the UCITS. The Circular also regulates a number of operational aspects of UCITS, such as the rules on applying management fees based on yields, the legal coefficients, and parameters for action by UCITS that replicate or track indices.

## A.7 Measures with regard to the economic crisis

**Order PRE/2424/2008, of 14 August**, publicizing the Cabinet decision of 14 August 2008 on measures of structural reform and to promote financing of small and medium-sized enterprises.

This Cabinet decision, taken in the context of the economic crisis, adopts a programme of actions in strategic sectors which establishes obligations for various ministerial departments. They include the decision that the Ministry of Economy and Finance will grant guarantees with the backing of the State up to at most 3 billion euro in 2009 and 2010 for fixed-income securities issued by securitisation trusts collateralized by loans or credit granted to small or medium-sized enterprises. It also established that the Official Credit Institute (ICO) will implement a mediation line to finance investment projects by medium-sized enterprises up to at most 2 billion euro in 2009 and 2010.

**Royal Decree-Act 6/2008, of 10 October**, establishing the Fund for the Acquisition of Financial Assets (FAAF).

With a view to promoting bank lending to companies and individuals, this Royal Decree-Act established the Fund for the Acquisition of Financial Assets (FAAF), attached to the Ministry of Economy and Finance, which governs it through a Governing Board and an Executive Committee, subject to oversight by Parliament and the State Comptroller's Office. With an initial allocation of 30 billion euro out of the Central Government budget, which may be increased to 50 billion euro, the FAAF will invest in financial instruments issued by credit institutions and securitisation trusts that are collateralized by loans to individuals, companies and non-financial institutions. The financial instruments in which the FAAF will invest will be of the maximum quality, on the basis of the principles of objectivity, transparency, efficiency, profitability and diversification.

**Royal Decree 1642/2008, of 10 October**, establishing the guaranteed amounts referred to in Royal Decree 2606/1996, of 20 December, regarding the Credit Institutions' Deposit Guarantee Fund, and Royal Decree 948/2001, of 3 August, on investor compensation systems.

The Economic and Financial Affairs Council of the European Union decided on 7 October 2008 to increase the minimum threshold of coverage by the deposit guarantee systems to 50,000 euro per account holder and bank. In this line, this Royal Decree increases to 100,000 euro per account holder and bank the protection provided by the Credit Institutions' Deposit Guarantee Fund established in Royal Decree 2606/1996, of 20 December, and the Investment Guarantee Fund established by Royal Decree 948/2001, of 3 August, for broker dealers and brokers.

**Royal Decree-Act 7/2008, of 13 October**, on Urgent Financial and Economic Measures in connection with the Concerted European Action Plan of the Euro Area Countries.

In coordination with the other member states of the euro area, this Royal Decree-Act authorizes two types of measures: State guarantees for new funding transactions arranged by credit institutions, and the acquisition by the State of securities that qualify to reinforce credit institutions' equity.

Regarding the guarantee program, and without prejudice to the fact that a Ministerial Order implementing this Royal Decree-Act was subsequently issued, the latter established a maximum of 100 billion euro for State guarantees for the issuance of commercial paper, bonds and debentures listed on official secondary markets in Spain by credit institutions that are resident in Spain and branches of foreign institutions that carry on significant activity in Spain. The guarantee may also be extended to other banking instruments, such as interbank deposits.

The acquisition by the State of securities to strengthen the equity of credit institutions, which is classified as an exceptional measure, will be adopted at the request of the institution in question and following consultation with the Bank of Spain; the limits provided by law for computing equity will not apply in this case.

**Order EHA/3118/2008, of 31 October**, implementing Royal Decree-Act 6/2008, of 10 October, establishing the Fund for the Acquisition of Financial Assets (FAAF).

This order implements some aspects of the organisation and functioning of the Fund for the Acquisition of Financial Assets (FAAF). It establishes that the assets to be acquired by the FAAF will be chosen by auction. It also determines the bids that can be made by credit institutions and securitisation trusts, which may be competitive (i.e. indicating the yield at which they are willing to offer the assets) or non-competitive (i.e. being awarded at the lowest yield accepted in the auction). And it established the obligation to publicize the decisions by the FAAF Governing Board, and to publish the decisions regarding the FAAF's investment guidelines, among others, in the Official State Gazette. Additionally, a technical committee comprising specialists from various institutions was established to advise the FAAF.

**Directorate-General of the Treasury and Finance Policy Resolution of 31 October**, providing for the publication of decisions adopted by the Fund for the Acquisition of Financial Assets on 27 October 2008 regarding the composition of the Executive Committee and the Fund's investment guidelines.

This resolution, issued in implementation of Royal Decree-Act 6/2008, of 10 October, establishing the Fund for the Acquisition of Financial Assets (FAAF), determines the composition of the FAAF's Executive Committee, consisting basically of a number of bodies of the Ministry of Economy and Finance, and deciding the FAAF's investment guidelines.

Regarding the investment guidelines or criteria to be applied, it provides that the FAAF may make outright purchases of mortgage covered bonds and asset-backed securities collateralized by mortgage covered bonds issued after the constitution of the FAAF, provided that they are listed in a regulated market and rated AAA. It also provides for the possibility of the FAAF engaging in sell-buybacks/buy-sellbacks of mortgage covered bonds, asset-backed securities and mortgage securitisation bonds collateralized by loans granted to individuals, companies and non-financial institutions provided that they are listed in regulated markets, were issued on or after 1 August 2007, fulfil the conditions to be listed as eligible assets by the European Central Bank, have at least an A rating, and mature at over 12 months.

**Order EHA/3364/2008, of 21 November**, implementing article 1 of Royal Decree-Act 7/2008, of 13 October, on Urgent Financial and Economic Measures in connection with the Concerted European Action Plan of the Euro Area Countries.

This order, issued in implementation of Royal Decree-Act 7/2008, of 13 October, regulates certain aspects of granting State guarantees for new funding transactions by credit institutions resident in Spain.

Firstly, it specifies the characteristics of the guarantees with respect to the regulation contained in the Royal Decree-Act: they are granted with a waiver of the benefit of discussion, are deemed to be irrevocable and unconditional and, in issues in foreign currency, do not cover the currency risk, which is for the account of the issuer in all cases.

Secondly, it specifies the characteristics of the transactions that qualify for these guarantees: they must be issues of commercial paper, bonds or debentures that are neither subordinated nor guaranteed; they must mature at not less than three months and not more than three years; amortisation is in the form of a balloon payment with no options or other derivatives or any other element that hampers the measurement of the risk; and each issue may not be for less than 10 million euro.

Thirdly, it regulates the procedure for applying for guarantees, specifying that they are granted to each credit institution in proportion to its share of total lending to Spanish residents other than banks; finally it establishes that the Directorate-General of the Treasury and Finance Policy must notify the Bank of Spain if any of the guarantees are executed, and establishes the fees earned by the State for the guarantees which it provides.

**Royal Decree-Act 10/2008, of 12 December**, adopting financial measures to improve liquidity for small and medium-sized enterprises, and other supplementary economic measures.

In view of the credit crunch and the financial crisis, this Royal Decree-Act adopts a number of measures. In particular, its sole additional provision and first final provision make major amendments to mercantile legislation. Firstly, it establishes that, for the two business years running from the date of entry into force, impairment losses on property, plant and equipment, investment property and inventories do not count for determining cases of obligatory capital reduction under the Corporations Act or for determining the cases of dissolution established in the Corporations Act and the Limited Liability Companies Act. Secondly, it amended article 36 of the Commerce Code so that the calculation of equity will not take account of variations in the value of the instruments used in cash flow hedges, i.e. they would not affect the distribution of income or cases where the company is obliged to reduce capital or dissolve.

This Royal Decree-Act also established a mediation line at the Official Credit Institute amounting to 5 billion euro to attend to working capital needs of small and medium-sized enterprises which, while being solvent and viable, face a temporary credit crunch.

**Order EHA/3748/2008, of 23 December**, amending Order EHA/3364/2008, of 21 November, implementing article 1 of Royal Decree-Act 7/2008, of 13 October, on Urgent Financial and Economic Measures in connection with the Concerted European Action Plan of the Euro Area Countries.

This Ministerial Order amends certain aspects of Order EHA/3364/2008, of 21 November, with regard to providing State guarantees for new issues of commercial



paper, bonds and debentures by credit institutions. Firstly, the Order establishes that the State guarantee may cover the exchange rate risk of issues in foreign currencies. Secondly, it corrects the preceding order in that the provision of the State guarantee will not be conditional upon the credit institution having issued previously in Spain, it being sufficient for it to have its registered offices in Spain. Thirdly, the deadline for issuing securities that qualify for the guarantee was extended to 15 December 2009.

Finally, by means of an additional provision, this Order also amended some aspects of Order EHA/3118/2008, of 31 October, implementing Royal Decree-Act 6/2008, of 10 October, establishing the Fund for the Acquisition of Financial Assets (FAAF). In particular, it provides that the regional registry, clearing and settlement services may participate in the settlement of acquisitions by the FAAF of securities that are listed on a single stock exchange.

### A.8 Other regulations

**Order EHA/114/2008, of 29 January**, regulating compliance with certain obligations of notaries in connection with preventing money laundering.

Notaries' participation in economic and financial transactions carries the risk that their activity may be used as part of money laundering processes; as a result, they have a duty to cooperate with the Central Government in this area, as provided in Act 19/1993, of 28 December, on certain measures to prevent money laundering, approved by Royal Decree 925/1995, of 9 June. This Order specifies the form in which notaries must comply with the requirement to identify their clients, keep documentation and apply oversight and evaluation procedures aimed at preventing money laundering; the Order also provides that notaries must notify the competent authorities if any of the participants in a transaction are on the lists drafted for this purpose by any international body or the European Union.

**Order EHA/564/2008, of 28 February**, amending Order ECO/805/2003, of 27 March, on valuation standards for real estate and certain rights for certain financial purposes.

This order is related to the appraisal of real estate for certain financial purposes. Specifically, with regard to the securities markets, the order affects the appraisals of real estate for the purpose of mortgage loans that are to form part of the collateral pool of mortgage-backed securities and for the purpose of determining the assets of UCITS.

In particular, the Order amends Order ECO/805/2003, of 27 March, on rules for the appraisal of real estate and certain rights for certain financial purposes, and it regulates the cases where the appraisal of a property must take account of the possibility of compulsory purchase, under the principle of prudence, in which case the criteria established in the Land Act 8/2007, of 28 May, must be applied if they give rise to a valuation that is lower than that resulting from applying the criteria set out in this Order.

**Royal Decree 322/2008, of 29 February**, on the legal regime of electronic money entities.

Article 21 of Act 44/2002, of 22 November, on Measures to Reform the Financial System, regulates the activity of electronic money entities, the conditions for

carrying on this activity, and the rules governing their authorisation, supervision and discipline. This Royal Decree implements that regulation.

Electronic money is defined as the monetary value represented by credit stored in an electronic medium, issued upon receipt of funds whose value is not less than the monetary value issued and accepted as a means of payment by companies other than the issuer. Only credit institutions may issue electronic money, and among them are electronic money entities, whose activities must be confined basically to the issuance of electronic money, although they may provide other services that are closely related to that activity, such as the issuance and management of other means of payment. This Royal Decree refers to other credit institutions only as regards the prohibition on issuing electronic money in excess of the amount of funds received in consideration. Entities that issue electronic money that will be accepted only by companies controlled by the issuer of the electronic money may be exempted from this Royal Decree.

The Ministry of Economy and Finance is entrusted with the authorisation and registration of the creation of electronic money entities, subject to prior consultation with the Bank of Spain and the Commission for the Prevention of Money Laundering (SEPBLAC), and a system of tacit denial is established. The standard requirements for the financial sector apply: the entity must be a corporation (*sociedad anónima*); a special minimum capital stock of 1 million euro; additional equity requirements; board of directors; suitability of shareholders, general managers and directors; good administrative and accounting organisation and mechanisms for preventing money laundering. If an electronic money entity is controlled by a financial institution in the EU, the Bank of Spain must consult with the corresponding supervisory authority; if the electronic money entity is controlled by an entity domiciled or authorised in a State that is not a member of the EU, the Bank of Spain may require the presentation of a bond. Amendments to the Articles of Association and mergers of electronic money entities with other credit institutions will also require administrative authorisation.

As regards equity requirements and operational limits, electronic money entities must have equity in excess of 2% of the electronic money issued. Funds raised as a result of the issuance of electronic money may be converted only into demand deposits and certain low risk credit securities; investment in derivatives is confined to hedging risks assumed in the rest of the portfolio. The Bank of Spain may authorise other types of investment for up to 5% of the funds raised. There are also limits on concentration of risk in a single person or economic group.

The Royal Decree also regulates the revocation of authorisation for electronic money entities (this power is attributed to the Bank of Spain). Generally, the authorisation is revoked for breach of any of the conditions that led to the original authorisation; however, there are certain restrictive conditions: lack of suitability on the part of directors, general managers or similar will not lead to revocation if they are removed by a given deadline; and breach of the equity requirements will not lead to revocation if certain conditions are met.

The disciplinary regime for electronic money entities is that provided in the Act on Discipline and Intervention of Credit Institutions, as provided in the Act on Measures to Reform the Financial System, and it is also applicable to the directors of those entities, their general managers and similar, and holders of at least 5% of the voting rights or capital.



**Order EHA/3291/2008, of 7 November**, establishing the procedure for depository financial institutions to disclose abandoned realty and balances.

Article 18 of Act 33/2003, of 3 November, on the Assets of the Public Administrations, attributes to the Central Government the ownership of securities, money and other personalty deposited at financial institutions if twenty years elapse without any action entailing exercise of ownership rights by the owners. This order, which is not applicable to the State Cashier's Office (*Caja General de Depósitos*), regulates the obligations in this connection of Spanish financial institutions and branches in Spain of financial institutions from other EU Member States. The Order establishes the following obligations, in particular: it establishes the content of disclosures of balances to be made to the Ministry of Economy and Finance in the first quarter of each year; it requires financial institutions to contact the client at his/her last known address three months before the 20-year period is reached; and it entitles individuals to obtain a certificate from a financial institution accrediting the delivery of assets to the Central Government.

## **B European legislation**

**Directives 2008/10, 2008/11, 2008/18, 2008/22, 2008/23, 2008/24, 2008/25 y 2008/26 of the European Parliament and the Council, of 11 March 2008**, amending various directives with regard to the executive powers attributed to the Commission.

These directives refer to the way in which the institutions of the European Union exercise the powers under the following directives:

- Directive 2004/39/EC, on markets in financial instruments (MiFID).
- Directive 2003/71/EC, on the prospectus to be published when securities are offered to the public or admitted to trading.
- Council Directive 85/611/EEC, on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS Directive).
- Directive 2004/109/EC, on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market (Transparency Directive).
- Directive 2006/49/EC, on the capital adequacy of investment firms and credit institutions (Capital Requirements Directive).
- Directive 2006/48/EC, relating to the taking up and pursuit of the business of credit institutions.
- Directive 2002/87/CE, on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate (Financial Conglomerates Directive).
- Directive 2003/6/EC, on insider dealing and market manipulation (Market Abuse Directive).

Decision 2006/512/EC, introduced the “regulatory procedure with scrutiny”, regulating the adoption of measures with a general scope aimed at amending non-essential features of certain EU regulations. Specifically, the regulatory procedure with scrutiny allows both the European Parliament and the Council to oversee measures implementing the aforementioned Directives.

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## Composition of the CNMV Board

|                      |   |
|----------------------|---|
| <b>Chairman</b>      | Mr. Julio Segura Sánchez                          |
| <b>Vice-Chairman</b> | Mr. Fernando Restoy Lozano <sup>1</sup>           |
| <b>Commissioners</b> | Ms. Soledad Núñez Ramos                           |
|                      | Mr. Francisco Javier Aríztegui Yáñez <sup>2</sup> |
|                      | Ms. Rosa Rodríguez Moreno                         |
|                      | Ms. Soledad Abad Rico                             |
| <b>Secretary</b>     | Mr. Javier Rodríguez Pellitero                    |

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## Composition of the CNMV Executive Committee<sup>3</sup>

|                      |                                |
|----------------------|--------------------------------|
| <b>Chairman</b>      | Mr. Julio Segura Sánchez       |
| <b>Vice-Chairman</b> | Mr. Fernando Restoy Lozano     |
| <b>Members</b>       | Ms. Rosa Rodríguez Moreno      |
|                      | Ms. Soledad Abad Rico          |
| <b>Secretary</b>     | Mr. Javier Rodríguez Pellitero |

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1. Appointed by Royal Decree 1628/2008, of 3 October. Took the place of Mr. Carlos Arenillas Lorente.

2. Appointed by Royal Decree 438/2009, of 27 March. Took the place of Mr. José Viñals Íñiguez.

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

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## Composition of the CNMV Advisory Committee<sup>4</sup>

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|                            |                                |
|----------------------------|--------------------------------|
| <b>Chairman</b>            | Mr. Fernando Restoy Lozano     |
| <b>Secretary</b>           | Mr. Javier Rodríguez Pellitero |
| <b>Technical Secretary</b> | Mr. Víctor Rodríguez Quejido   |

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### Members

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#### Representatives of the members of the official secondary markets

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|           |   |
|-----------|---|
| Member    | Mr. Ignacio Santillán Fraile              |
| Alternate | Mr. José Ignacio García-Junceda Fernández |

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|-----------|--------------------------------------|
| Member    | Mr. Jaime Aguilar Fernández-Hontoria |
| Alternate | Mr. José María Antúnez Xaus          |

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|           |                              |
|-----------|------------------------------|
| Member    | Mr. Manuel Ardanza Fresno    |
| Alternate | Mr. Antonio Gallego González |

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|           |                            |
|-----------|----------------------------|
| Member    | Mr. Francisco Oña Navarro  |
| Alternate | Mr. Ignacio Solloa Mendoza |

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|           |                                      |
|-----------|--------------------------------------|
| Member    | Mr. José María Méndez Álvarez-Cedrón |
| Alternate | Mr. Julio Alcántara Lera             |

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| Member    | Ms. Ana Ibáñez Díaz-Bustamante |
| Alternate | Ms. Aránzazu Ullibarri Royuela |

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#### Representatives of the issuers

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|           |                                    |
|-----------|------------------------------------|
| Member    | Mr. Francisco Uría Fernández       |
| Alternate | Mr. Ángel Antonio del Valle Suárez |

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|-----------|-----------------------------|
| Member    | Mr. Juan A. Margenat Padrós |
| Alternate | Ms. Ana Delgado Alcaide     |

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|           |                              |
|-----------|------------------------------|
| Member    | Mr. Luis Miralles García     |
| Alternate | Mr. Manuel González Escudero |

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|           |                                |
|-----------|--------------------------------|
| Member    | Mr. José Manuel González Porro |
| Alternate | Mr. Manuel Ángel Romero Rey    |

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**Composition of the CNMV Advisory Committee (continuation)**Annexes  
CNMV Organisation**Representatives of the investors**

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|           |                               |
|-----------|-------------------------------|
| Member    | Mr. Manuel Pardos Vicente     |
| Alternate | Ms. Ana Isabel Ceballo Sierra |

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|           |   |
|-----------|---|
| Member    | Ms. Pilar González de Frutos                  |
| Alternate | Ms. M. <sup>a</sup> Aránzazu del Valle Schaan |

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|           |   |
|-----------|---|
| Member    | Mr. Antonio M. <sup>a</sup> Malpica Muñoz |
| Alternate | Mr. José Manuel Pomarón Bagües            |

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|           |                                  |
|-----------|----------------------------------|
| Member    | Mr. Mariano Rabadán Forniés      |
| Alternate | Mr. Ángel Martínez-Aldama Hervás |

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**Representatives of the Autonomous Regions with an official secondary market***Basque Country*

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|           |                              |
|-----------|------------------------------|
| Member    | Mr. Juan Miguel Bilbao Garai |
| Alternate | Mr. Miguel Bengoechea Romero |

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*Catalonia*

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|-----------|-----------------------------------|
| Member    | Mr. Ferrán Sicart i Ortí          |
| Alternate | Mr. Josep María Sánchez i Pascual |

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*Valencia*

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|           |                            |
|-----------|----------------------------|
| Member    | Mr. Enrique Pérez Boada    |
| Alternate | Mr. Nicolás Jannone Bellot |

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**CNMV Organisation Chart**

