



# EXHIBITS

## Annual Report CNMV 2022





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## Monetary policy tightening and its impact on fixed income markets

EXHIBIT 1

The monetary policy decisions taken by the world's main central banks in 2022 were driven by the fight against rising prices, which were exacerbated by the energy crisis triggered by Russia's invasion of Ukraine. The Bank of England and the Federal Reserve System made the first rate hikes and in the euro area, after the inflation rate increased from 5% to more than 8.5% in the first half of the year, the European Central Bank (ECB) made its first increase in July. Further increases were seen in the second half of 2022, but these were smaller. At the end of the year, the ECB had increased its interest rate on main refinancing operations to 2.5% after four consecutive hikes,<sup>1</sup> the highest level since 2008, while the Federal Reserve System kept its rate in the range of 4.25% to 4.5% and the Bank of England's rate was 3.5%.

The debt markets had already anticipated the shift in monetary policy and an upward trend in asset returns was observed from early in the year, which gained traction from the second quarter. Thus, interest rates on both corporate and public debt increased in most sections of the curve, pushing the rates on the longest dated segments to their highest level in more than five years.<sup>2</sup> The Spanish sovereign debt yield reached 3% or higher for all maturities along the curve after the 3-year term, a trend which was also seen in corporate debt rates.

The higher return required by the market on debt assets caused their prices to fall. As an example, a 10-year bond that pays an annual coupon of 1% will lose value if rates increase to 2% because investors will only be willing to buy this bond in the secondary market if the return they obtain is equivalent to the 2% they would get from a newly issued bond. As a consequence, the bond that accrues a 1% coupon will have to be sold on the secondary market at a price that is substantially lower than the issue price, so that the buyer can offset the lower coupon received with the gain obtained from the difference between its acquisition price and the amount to be received on redemption. This is especially relevant for assets with longer maturities, since the loss of yield via interest over more years will have to be offset by a lower acquisition price. In other words, the loss of value increases as the maturity of the asset increases. In the case of the 10-year bond in the example, each percentage point (pp) of additional yield required for the asset would cause a loss of more than 9% in its market value, so if the return required by the market increases by more than 2 pp (which is what happened in most fixed income assets in 2022) the loss in value will be close to 20%.

In 2022, all fixed income assets gradually lost value as interest rates rose and the return required by the market for debt assets increased. Table E1.1 shows the evolution of the yields on Spanish public and private debt throughout 2022 and reflects increases in yields that ranged between 250 bp and 300 bp in all maturities and asset types.

**Performance of medium and long-term fixed income yields<sup>1</sup>**

TABLE E1.1

	Dec-19	Dec-20	Dec-21	Mar-22	Jun-22	Sep-22	Dec-22
<b>Public sector fixed income</b>							
3 year	-0.29	-0.53	-0.46	0.20	1.58	2.05	2.54
5 year	-0.06	-0.42	-0.18	0.56	1.99	2.35	2.71
10 year	0.45	0.05	0.43	1.27	2.65	3.00	3.18
<b>Private fixed income</b>							
3 year	0.20	-0.20	0.12	0.49	1.26	2.15	3.07
5 year	0.23	-0.13	0.13	0.78	1.50	1.94	2.93
10 year	0.79	0.41	0.56	1.46	2.35	3.73	3.11

Source: Refinitiv Datastream, Refinitiv Eikon and CNMV. (1) Monthly average of daily data.

The data on the evolution of interest rates show that the loss in value in 2022 was especially relevant for portfolios with a significant proportion of fixed income assets, particularly for those with assets of longer average maturities, such as some categories of investment funds, institutions under the supervision of the CNMV.

Available data on the performance of these institutions in 2022 show that the different categories of fixed income investment funds presented negative returns<sup>3</sup> at least in the first three quarters of the year. As shown in Table E1.2, the negative returns were larger in categories with longer maturities, such as euro fixed income and international fixed income funds. In these two categories the negative return was even higher than 3% in some quarters. In all categories of fixed income funds, managers reduced the average maturity of their portfolios (measured through duration) throughout the year to mitigate the losses caused by the rise in interest rates, but the duration was reduced to the greatest extent in those containing assets with longer maturities. Data for the fourth quarter of 2022 were somewhat more positive due, in part, to the prospect of a slowdown in the pace of central bank monetary tightening. However, at the date of writing this report, this perspective remains subject to a high degree of uncertainty due to one-off crises that affected banks in the United States and Europe in March, which have further complicated the decisions of central banks.

**EXHIBITS**

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**Yield of investment funds by type<sup>1, 2</sup>**

TABLE E1.2

	2021		2022				Duration <sup>3</sup> (IV-21)	Duration <sup>3</sup> (IV-22)
	IV	I	II	III	IV			
CaixaBank monetary return (M)	-0.13	-0.18	-0.34	-0.32	0.26	0.24	0.19	
CaixaBank Master fixed income public debt 3-7 (RFE)	-0.74	-3.39	-2.99	-3.23	-1.73	4.60	4.08	
CaixaBank Master fixed income public debt 1-3 (RFE)	-0.30	-0.85	-1.19	-1.59	-0.77	1.65	1.71	
Caixabank Master euro private fixed income (RFE)	-0.61	-4.39	-6.71	-2.48	1.15	5.48	4.27	
Caixabank Master short-term fixed income (RFCP)	-0.15	-0.13	-0.29	-0.33	0.16	1.02	0.75	

Source: CNMV. (1) Funds with assets of more than €3 billion. In total, assets were (at December 2022) €21.34 billion, which represents 21.6% of the total of these four categories and 6.9% of all investment funds. (2) Quarterly returns weighted by average assets. (3) Weighted average modified duration of the fixed income portfolio.

- 1 The ECB raised its rates by a total of 75 bp at the Governing Council meetings held in September and October, and by 50 bp at its meetings held in July and December.
- 2 In the case of Spanish debt, 10-year rates reached their highest level since the second half of 2014, while the German 10-year rate stood at values unseen since the first half of that year.
- 3 The medium and long-term fixed income investment fund categories presented one the worst performances over the 2022 financial year.

In early March 2023, liquidity and solvency problems came to light in several regional and mid-sized banks in the United States, and later in a bank in Switzerland, which gave rise to an episode of turmoil in the international financial markets, with significant drops in share prices, especially in the banking sector, along with spikes in volatility. The bank sector indices experienced notable declines (of between 14% and 25%)<sup>1</sup> in a few days.

In the United States, the resolution of Silicon Valley Bank (SVB) and Signature Bank (SB), which were placed under the control of the Federal Deposit Insurance Corporation (FDIC), was followed by the problems experienced by First Republic Bank (which was eventually acquired by J.P. Morgan). In the middle of the month, the quoted price of the European bank Credit Suisse plummeted, and the entity was eventually acquired by UBS, after the intervention of the Swiss authorities, which supported the acquisition. There was also a loss of confidence in Deutsche Bank, something that had happened previously and was reflected in the increase in quoted price of the institution's CDS.<sup>2</sup> The decline in the quoted prices of these banks from December 2022 to the moment that confidence in them was lost in 2023 ranged from 32.9% (Credit Suisse) to 97.6% (Signature Bank).

The collapse or loss of confidence in certain banks was due to a variety of factors. In the United States, the main factors were the materialisation of interest rate risk in their fixed income portfolios after the sharp increase in interest rates. In addition to the easing of the oversight of non-systemic banks and deficiencies in the management of institutions, as well as in supervision itself. It should also be noted that the liabilities of these entities had significant exposure to the technology sector, with a high concentration of corporate deposits from technology companies that quickly withdrew their deposits when signs of bank weakness emerged, which amplified the imbalances and mistrust of these entities despite the measures announced by the US authorities. Meanwhile, Credit Suisse had management and restructuring problems in its business model, particularly in relation to the investment banking business, which accentuated the loss of confidence of its depositors.

One particular catalyst of the banking crisis was the high level of digitisation of investors, which, in cases of great uncertainty, means that information is rapidly disseminated through social networks and withdrawals of bank deposits occur more quickly (which can lead to a "bank panic") especially given the ease with which remote transactions can be performed. In the United States, it was also observed that part of the withdrawals of bank deposits were used to invest in monetary funds, since they are sometimes perceived as substitutes for these assets.

In Europe, one of the main elements of uncertainty derived from the treatment of Credit Suisse's CoCos as a result of the acquisition, which was interpreted as an alteration of the theoretically established priority order in a resolution framework (according to which more debt of a more subordinated

nature should not take losses before capital). This caused a significant upset in the market for these assets, until the European authorities (the European Central Bank [ECB], the European Banking Authority [EBA] and the Single Resolution Board [SRB]) reiterated the conditions for the absorption of losses for such assets in the euro area.

The different supervisory and regulatory authorities reacted swiftly and decisively on observing the first signs of weakness, although their actions were not exempt from criticism due to the nature and scope of some of the measures applied (for example, the extension of the coverage of the deposit guarantee fund to include all deposits without limitation in the United States) and succeeded in curbing the crisis, whose scope was nowhere near those of previous banking crises.

Possibly one of the most important effects of these episodes was the tightening of bank financing conditions, which could negatively affect the supply of credit in the future. The current perception is that this is not a general crisis, but one which has a limited scope. However, a seed of mistrust has been planted among agents and may give rise to new episodes of turmoil if vulnerabilities in other entities become known. Likewise, analyses are being carried out in different international forums reflecting on the advisability of reviewing banking regulations on a global scale. The evaluation of the risks associated with these episodes must be carried out both in the banking and non-banking spheres, although no relevant vulnerabilities associated with this crisis have yet been observed in the latter. In Europe, it is also worth noting that the transposition into EU regulations of the last link of the international banking regulatory reform, known as Basel III, is still pending.

- 1 In March, the banking sector saw falls of 14% in the case of the European Stoxx 600 Banks index, and of 19% and 25% in the case of the US Dow Jones Banks and Nasdaq Banks indices, respectively (which have a larger weighting of regional and medium-sized banks).
- 2 The quoted price of Deutsche Bank's CDS doubled in a few sessions, after the Credit Suisse bailout, to reach 204 bp; its highest level in the last five years.

Europe and particularly Spain are economies in which small and medium-sized companies make up the largest part of the business fabric.<sup>1</sup> The smaller relative size of these companies is usually an impediment for accessing financing through the capital markets and therefore they almost exclusively tend to resort to bank financing.<sup>2</sup> This makes them financially more vulnerable, since they are dependent on the supply of credit and the health of financial institutions. As stated in the justification for the Capital Markets Union, a financing “monoculture” generates a business fabric that is more fragile to disturbances from this single source and the European (and Spanish) economies must move towards diversification, which necessarily implies assigning greater importance to the market. In addition, the cost of capital is currently increasing at a lower rate than the cost of bank financing, so the possibility of obtaining financing from the markets and not only through banks would help to reduce financing costs and be beneficial for the efficiency and profitability of companies.

It should also be noted that the financial crisis of 2008, which gave rise to major problems in the banking sector, highlighted the difficulties faced by these companies to obtain financing in situations where traditional banking channels are restricted. With the objective of ensuring that smaller companies can access a broad group of investors and obtain financing and funds for their projects in the medium and long term, various markets have been developed at an international level in recent years that are specifically targeted at these businesses.<sup>3</sup>

These alternative markets are specifically designed for this type of company, as they have both processes and lower costs that adapt to their specific characteristics, in a more flexible regulatory environment. It is common for them to have trading models and specific disclosure regimes that take into account the particularities of these companies. The supervisory powers of the national authorities are also often less extensive than the powers they have with respect to regulated markets. In the CNMV, for example, these powers are limited to supervising market abuse and it has no powers in the area of financial statements.

The first part of this process saw the creation of alternative equity markets,<sup>4</sup> including the Alternative Stock Market (MAB) – currently BME Growth –, which was set up by BME in 2008. Subsequently, alternative fixed income markets were developed, such as the Spanish Alternative Fixed Income Market (MARF), which was created in 2013. This exhibit describes the evolution of both alternative markets in Spain.

The MAB started operating in July 2009, with two companies. Since then, it has been joined by more than 170 companies from different sectors and areas of activity. At the end of 2022, it had 135 registered companies, of which 56 were growth companies and 79 were listed real estate investment companies (SOCIMIs), with a total capitalisation of more than €20.60 billion. The market is intended for companies from any sector, although most of the listed companies belong to the technology, health, biotechnology, telecommunications, engineering and renewable energy sectors. Since its creation, it has undergone periods of ups and downs, growing significantly from its creation until

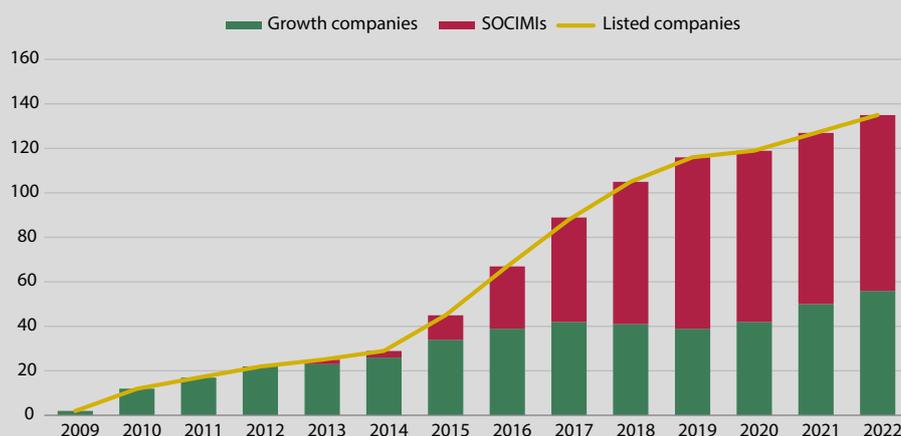
2015, when the difficulties faced by some of the companies listed<sup>5</sup> on the market sparked uncertainty among investors and caused upsets that weighed on its growth and consolidation. There were some success stories – such as companies that managed move over to the regulated market<sup>6</sup> –, but there were also negative cases where companies left the market. The creation of a specific segment for SOCIMIs from the end of 2013 gave the market some stability in a scenario of growth in the real estate market and sector operators.

At the end of 2020, after receiving recognition as an SME Growth Market<sup>7</sup> under European regulations, the MAB became BME Growth. This gave the market a boost and it is now experiencing a fresh period of growth driven by the recovery in investor confidence and the interest in companies from innovative sectors, as well as the need for companies – especially in the most innovative sectors, such as technology and renewable energy – to obtain funds to finance their growth plans. As mentioned above, this market includes growth companies and SOCIMIs. The former have been part of the market since its launch and their number has increased progressively until the latter were incorporated in 2013 and began to drive the growth of the market on the back of certain tax and regulatory advantages,<sup>8</sup> which obliges these entities to be listed in one of the markets recognised under the regulation.

Thus, in a few years the number of SOCIMIs surpassed the number of growth companies and continued to lead the expansion of the market due to the financial difficulties that affected some growth companies from 2015 onwards, which subdued investors' interest and discouraged companies of this type from joining the market (see Figures E3.1 and E3.2).

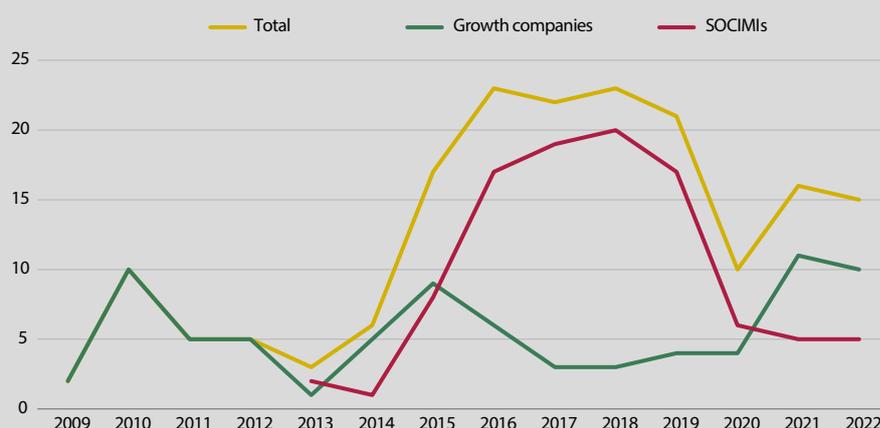
Companies listed on BME Growth, by type (2009-2022)

FIGURE E3.1



Source: BME Annual data on the number of companies.

Companies admitted to trading on BME Growth, by type (2009-2022) FIGURE E3.2



Source: BME Annual data on the number of companies.

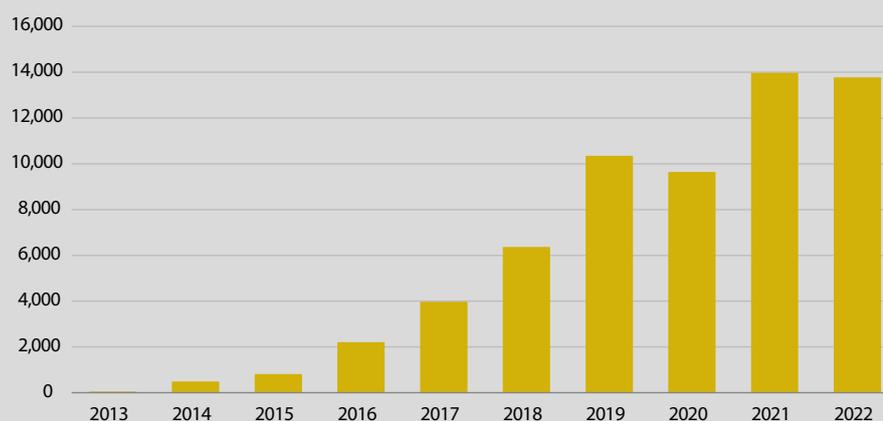
The MARF started operating in October 2013, in the midst of the financial crisis, with the aim of providing SMEs with an alternative financing mechanism to traditional bank financing through the issuance of debt securities. The MARF was an initiative of the Ministry of Economy to provide financing for Spanish SMEs, in line with other markets of this type that existed in other European countries, within the framework of the Memorandum of Understanding (MoU) for the programme to help the Spanish financial sector, which established the need to promote non-bank financial intermediation. Since its creation, this market has made it possible to channel more than €60 billion in financial resources to more than 150 issuers of different sectors, size and origin through different debt instruments such as commercial paper, bonds and securitisation bonds. Green bonds and project bonds are also included.

The market got off to a relatively slow start<sup>9</sup> in the midst of the credit crisis, with more than half of its issuance aimed at medium-term debt, but it became more dynamic from 2016 onwards following the incorporation of numerous commercial paper issues, which have continued to increase and now account for more than three quarters of the amount issued on the market. In 2019, total issuance already exceeded €10 billion and in the last two years it has reached values close to €14 billion, of which more than €10 billion corresponded to commercial paper (see Figure E3.3). Thus, this market has become an important source of working capital financing for its issuers, which include companies of different sizes: large companies such as El Corte Inglés or Gestamp, as well as medium-sized companies such as Pikolin or La Sirena. There is also a great variety in terms of the sectors the issuers belong to, in contrast to traditional debt markets, where financial institutions and large companies in the energy, public services and construction sectors predominate.

Despite being a market that is less than ten years old, data corroborate its success as a flexible and useful financing mechanism for SMEs, and also as an interesting investment option for qualified investors, so it is expected to continue to grow in the coming years as part of the financial disintermediation process to provide financing for companies, helping them grow and making them less dependent on bank financing. Likewise, although their relative

Volume issued on MARF (2013-2022)

FIGURE E3.3



Source: CNMV. Annual data in millions of euros.

weight with respect to commercial paper is still small, the issuance of other types of instruments is becoming increasingly common.

From the creation of the MAB in 2008 to the current BME Growth, which the MARF joined in 2013, both markets have gone through different stages to reach the period of consolidation and subsequent expansion in which they currently find themselves. There is no doubt that both markets have become a relevant source of financing and resources for a significant number of companies, allowing them to carry out their growth projects. In addition, their prospects seem promising, taking into account the large number of SMEs existing in Spain, which will undoubtedly contribute to their development. This is evidenced by the experience of other European alternative markets such as those in the United Kingdom and Nordic countries.

- 1 In the European Union, more than 99.5% of companies are SMEs (with either less than 250 workers and a turnover of less than €50 million, or a balance sheet size that does not exceed €43 million). These companies generate around 66% of employment and 57% of GAV. In Spain, this phenomenon is somewhat more pronounced in terms of the number of companies and their contribution to GAV, at 99.9% and 62% of GDP, respectively (they employ six out of ten workers).
- 2 Usually the financing they obtain is for limited amounts over the short and medium term and involves the provision of guarantees.
- 3 These types of markets tend to have fewer processes and lower costs, in addition to a more flexible regulation under the MiFID II Directive. They also have institutional investors, who have a better understanding of the needs and challenges faced by SMEs.
- 4 The first alternative market in Europe was the Alternative Investment Market (AIM), created by the London Stock Exchange in 1995, while the first market of this type specifically for fixed income was the "Nordic ABM" created by the Oslo Stock Exchange in 2005.
- 5 Such as the fraud that took place at Gowex, the disappearance of Bodaclik, Diario Negocio and Vousse (Clínicas Hedonai) and the difficulties facing Zinkia, some of the most significant companies in the early years of the market.
- 6 Such as MásMóvil, Grenergy Renovables, Artificial Intelligence Structures and Atrys Health.
- 7 MiFID II introduces this new category of markets under the framework of Capital Markets Union with the aim of providing financing to smaller companies to facilitate their growth through the financial markets.
- 8 Law 26/2012 obliges SOCIMIs to be listed on a regulated market or a Spanish or European MTF within two years of acquiring this status.
- 9 The first debt issuance in this market was made by the construction company Copasa, which placed €50 million in 7-year bonds in December 2013.

## Impact of the new tax regime established by the Corporate Tax Law on the registration of SICAVs

EXHIBIT 4

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Law 11/2021 of 9 July, on measures to prevent and combat tax fraud, amended the Corporate Tax Act (LIS) imposing stricter requirements for open-ended collective investment companies (SICAVs) to avail themselves of 1% tax rate on profits, by defining the minimum number of 100 shareholders as only those with a minimum participation of €2,500 (or €12,500 in the case of SICAVs by sub-funds), based on the net asset value on the date of acquisition and requiring this condition to be met for at least three quarters of the tax period.

Likewise, the Law established a transitional regime for SICAVs that decided to wind down and go into liquidation in 2022. This allows shareholders to defer taxes on the income generated by the liquidation process, provided that they carry out the necessary procedures to ensure its cancellation in the registry before 30 June 2023 and reinvest the total liquidation amount in other CISs before 31 July 2023.

In 2022, 1,190 SICAVs were removed from the CNMV's registers, representing 52.2% of the total filed in December 2021. Further requests for deregistration are likely to be made in the first half of 2023, given that the deadline established by the tax regulations is 30 June. In accordance with the price-sensitive information disclosed by the corresponding managers regarding the decisions that have been taken or will foreseeably be taken by the decision-making bodies of the SICAVs, it is estimated that only around 445 will remain on the register, of which 358 could continue to pay the 1% tax rate, and 87 would be taxed at the standard corporate tax rate, since they would not comply with the new requirements.

## Adaptation to the European Regulation on crowdfunding service providers

EXHIBIT 5

Commission Delegated Regulation (EU) No 2022/1988 of 12 July 2022 extended the transitional period referred to in Article 48 of Regulation (EU) 2020/1503, thereby allowing authorised providers under national law to continue to provide crowdfunding services in Spain until 10 November 2023.

In 2022, the CNMV authorised six crowdfunding platforms that had been authorised under Spanish regulation (Law 5/2015, of 27 April, on the promotion of business financing) to adapt to the European regulation. Two of these completed the adaptation process in 2022 and another three did so in January 2023.

The regulatory developments that complement Regulation 2020/1503 continued over 2022. On 8 November, nine delegated regulations and four implementing regulations of the Commission were published. These regulations provide further details on the way in which service providers must comply with the requirements to carry out their activities, developing specific aspects on: i) the documentation that they must present in the authorisation process; ii) how to avoid or resolve conflicts of interest; iii) the knowledge test and assessment of the ability to bear losses of inexperienced investors; iv) the methodology for calculating the default rate of the loans offered by the platform, and v) the procedure for processing complaints.

A delegated regulation on the regulatory technical standards on credit rating and pricing, credit risk assessment, and risk management requirements is still pending publication, which will specify the information that crowdfunding service providers must supply to investors.

Furthermore, on 29 September 2022, Law 18/2022, of 28 September, on the creation and growth of companies was published, which, among other aspects, repealed Title V of Law 5/2015 on the legal regime of crowdfunding platform, replacing it with a new section. This regulatory development refers to the European regulation and establishes that the CNMV will be the competent national authority responsible for carrying out the functions and obligations provided for in said regulation. Likewise, it develops the role of crowdfunding platforms that are not harmonised under European Union law. These are the platforms that cover projects that exceed €5 million or consumer projects – crowdfunding services which European regulation excludes from its scope of application. The Law also contemplates the possibility that both of crowdfunding services providers and non-harmonised platforms may use mechanisms to group investors, an issue demanded by the sector.

## New Directive on corporate sustainability reporting (CSRD)

EXHIBIT 6

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Directive (EU) 2022/2464 on corporate sustainability reporting<sup>1</sup> (CSRD) was published in the *Official Journal of the European Union (OJEU)* on 16 December 2022. This directive reinforces the current rules on the disclosure of non-financial information contained in the Non-Financial Information Directive (NFRD).

The new directive expands both the number of entities required to report on sustainability<sup>2</sup> as well as the content of this information, which must take European sustainability reporting standards as a reference. In addition, it requires that said information be presented, in electronic format, in a specific section of the management report and be verified by an independent assurance provider.<sup>3</sup> This directive entered into force 20 days after its publication in the *OJEU*,<sup>4</sup> and from that time Member States have 18 months in which to incorporate it into their internal legal systems.

### European Sustainability Reporting Standards

The European Financial Reporting Advisory Group (EFRAG) submitted a first set of drafts of the **European Sustainability Reporting Standards (ESRS)** to the European Commission (EC) on 15 November 2022, which is expected to approve these standards definitively as delegated acts in June 2023, for first-time application to financial year 2024, for reports published in 2025.

### Sustainability standards

TABLE E6.1

Published		Pending publication
Cross-cutting standards		Industry-specific
ESRS 1 General requirements		Adapted to SMEs
ESRS 2 General disclosures		Adapted to companies in the EU affected by CSRD
Topical standards		
Environment	Social	Governance
ESRS E1 Climate change	ESRS S1 Own workforce	ESRS G1 Business conduct
ESRS E2 Pollution	ESRS S2 Workers in the value chain	
ESRS E3 Water and marine resources	ESRS S3 Affected communities	
ESRS E4 Biodiversity and ecosystems	ESRS S4 Consumers and end-users	
ESRS E5 Use of resources and circular economy		

Source: CNMV.

As shown in the Table E6.1, this first set of 12 drafts consists of two cross-cutting standards to all sustainability issues and ten topical standards: five on the environment, four on social issues and one on governance.

The publication of sectoral standards<sup>5</sup> and specific standards for SMEs<sup>6</sup> and entities from third countries that exceed certain thresholds is expected, although these documents have not yet been submitted to the public consultation process.

The ESRS require the provision of relevant information on sustainability-related impacts, risks and opportunities, identified using a **double materiality** analysis, although certain information can be omitted when it is not considered relevant.<sup>7</sup> Other European and international initiatives on sustainability reports<sup>8</sup> were taken into account during the preparation of these standards in order to reduce set-up costs for companies using different frameworks.

The following table shows the dates of application of the new CSRD and of the first set of ESRS:

**Sustainability standards**

TABLE E6.2

When?	Who?
In 2025 for reports on 2024	Companies subject to the current Directive (NFRD)
In 2026 for reports on 2025	Large companies currently not subject to NFRD (>250 employees and/or turnover of €40 million and/or total assets of €20 million)
In 2027 for reports on 2026	Listed SMEs <sup>1</sup> (except micro-enterprises), small and non-complex credit institutions and captive insurance and reinsurance companies
In 2029 for reports on 2028	Non-European companies that generate annual turnover of €150 million in the EU and have a subsidiary or branch in the EU that exceeds certain thresholds
In 2025 for reports on 2024	Adapted to SMEs
In 2025 for reports on 2024	Adapted to SMEs

Source: CNMV. (1) Option to defer the obligation until 2028.

- 1 EUR-Lex - 32022L2464 - EN - EUR-Lex (europa.eu).
- 2 According to EU data, nearly 50,000 EU companies will be affected by this regulation, compared to the 11,700 companies currently subject to the NFRD.
- 3 This was already required in Spain under Law 11/2018.
- 4 Namely, 5 January 2023.
- 5 E.g. agriculture, coal, oil, gas, road transport, textiles or food and beverages.
- 6 For SMEs, separate and proportionate standards will be developed which will be voluntary if the company is not listed.
- 7 ESRS 1 requires subject companies to disclose certain information regardless of its materiality, including information on governance, strategy, impact management, risks and opportunities, and climate change-related metrics and targets.
- 8 Such as those of the International Sustainability Standards Board (ISSB), Task Force on Climate-related Financial Disclosures (TCFD) and Global Reporting Initiative (GRI).

In 2021, the CNMV started the preparatory work for a code of good practices for the encouragement of long-term shareholder engagement. With the collaboration of a group of experts set up for this purpose, a draft code was prepared, which was submitted for public consultation between 24 June and 16 September 2022. The final text was approved on 22 February 2023.

The most significant aspects of the code are the following:

**Scope of application**

The code is aimed at investors, including institutional investors and asset managers, based in Spain, although the principles of the code may also be voluntarily applied by such entities that have a central office outside Spain.

For the purposes of the code, institutional investors include life insurance and reinsurance companies and employment pension funds. However, given its voluntary nature, other entities (insurance and reinsurance companies in the non-life segment, other types of pension funds and pension fund management companies, holding or portfolio companies, family groups and other private investors or similar entities) may also adhere to the code.

In the service providers segment, the code will initially only apply to proxy advisors.

**Code structure**

The code has seven principles, which cover aspects such as i) the need to invest and have a long-term strategy and orientation, for which it is necessary to review and update internal governance practices and structures; ii) the importance of having appropriate knowledge of and monitoring the companies in which investors invest; iii) development and awareness of the engagement policy; iv) exercising the right to vote; v) the annual transparency of the engagement and voting actions carried out in the previous year; vi) management of conflicts of interest, and vii) remuneration policies.

Each principle is followed by an explanatory text on its scope and expectations and, when applicable, on how the principle of proportionality would be applied. This text is not prescriptive but tries to facilitate the application of each principle, taking into account the particular circumstances of each investor, manager or voting advisor, as well as the purpose and spirit of the principles themselves.

**Proportionality**

There are several aspects of the code that are designed to encourage entities of a smaller size, scale or complexity to adhere to it, to modulate the scope and nature of the obligations of any entity, regardless of size, according to the nature and absolute and relative scope of their investments, or based on the size, complexity and resources of the entities in which they invest.

## Voluntary adherence

The code proposes a principled approach in terms of engagement with the companies in which adherents invest and their exposure to sustainability risks.

Adherence to the Code is voluntary. However, the entities that have decided to voluntarily adhere to it must indicate in their annual report how they have applied the different principles of the code in the previous year, based on the criterion of proportionality and thus taking into account their particular conditions and circumstances.

It is important that the entities that have voluntarily decided to adhere to the code commit to applying each and every one of its principles. In other words, the code is based on the “comply or explain” model.

## Transitional regime

As the code is new to the Spanish market a transitional period of three years has been established, which will end on 23 February 2026, during which time the entities that decide to adhere to it may apply the “comply or explain” principle in their annual reports, indicating which principles have been applied and which have not, and in the latter case, adequately explain the reasons why they have decided not to apply them in the reporting period.

However, it is considered that Principle 6, on the policy for managing conflicts of interest, must be applied from the outset, as it is inherent to the operations of any investor or manager.

Entities deciding to make avail themselves of the transitional period must show a public commitment to apply all the principles for the entire period, and must publish a plan and a specific adaptation schedule to achieve this, explaining the level of progress they have made in each of the three years.

Investors, managers and proxy advisors who so wish may adhere to the code by writing to the CNMV. A list of all member entities and a link to the website of each entity will be published on the CNMV’s website, in which they must have visibly and clearly publish their implementation and voting policies, as well as the rest of the information necessary to comply with the code.

Benchmarks are a tool that is increasingly used by the financial and asset management industry to align investment objectives and asset selection, as well as to measure and monitor their performance, giving them a clear role in mobilising financial resources towards a more sustainable economy.

These functions make them a key lever in a virtuous circle that aligns the investment community with long-term sustainability considerations, allowing companies in the real economy to adhere to these objective, encouraging them to include sustainability in their business and strategy and to improve transparency with regard to this topic, thus providing them with access to the indices and allowing them to obtain financing in the markets.

As a result, the range of available indices has continued to grow, driven in recent years by the creation of indices that take into account environmental, social and governance (ESG) factors. According to data from the Index Industry Association, sustainability indices – those that somehow integrate ESG factors into their construction – increased by 55% in 2022 across the world, with ESG fixed income indices leading the way.<sup>1</sup>

In recognition of this role, the European benchmark regulation amended in 2019 to create two new benchmark labels that consider the carbon footprint of component assets – the EU Climate Transition benchmarks (CTB) and the EU Paris-aligned benchmarks (PAB) –, in addition to improving and harmonising the transparency of the indices that consider or pursue ESG-related targets.

More than three years after its approval, it can be observed that the inconsistencies between the Taxonomy and Disclosure Regulations (SFDR) and benchmark regulations (BMR) significantly restrict the use of climate benchmarks in products subject to the SFDR. At the same time, the rapid growth and wide variety of indices available on the market have raised concerns about possible greenwashing or greenbleaching practices.

Therefore, European institutions expect to progress in implementing the taxonomy and harmonised disclosure standards so that the transparency obligations of indices are consistent with those of investment product providers. A new label for benchmarks is also being considered, which could either cover all ESG factors or be developed thematically, as a complement to the current climate benchmark labels, which would then be expanded to facilitate the feasibility and effectiveness of these tools.

Improving the regulation of the indices themselves, introducing common supervisory standards and defining effective supervisory responses to ensure consistent and comparable ESG disclosure by administrators will also contribute to the reduction of voluntary or involuntary practices related to ESG-washing.

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While there has been remarkable progress in recent years in terms of regulation, especially in the EU (which is the leading jurisdiction in this area), there is still some way to go to make the tools available to provide access to transition finance truly effective.

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- 1 Index Industry Association (2022). Sixth Annual Index Industry Association Benchmark Survey Reveals Continuing Record Breaking ESG Growth, Multi-Asset Expansion by Index Providers Globally. 1 de noviembre.

## Supervisory work on activity linked to natural gas and electricity products cleared by the CCP during the recent energy crisis and the conflict in Ukraine

EXHIBIT 9

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### Impact of the energy crisis and the conflict in Ukraine on central counterparties (CCPs)

BME Clearing clears various types of contracts in the energy segment (futures, swaps) linked to the price of electricity and natural gas traded on MEFF and OTC respectively, with daily, monthly, quarterly and annual expiry dates (and also seasonal expiry dates in the case of natural gas). Electricity contracts account for approximately 80% of the segment's open position (natural gas: 20%), based on average data for 2022.

In 2021, raw materials and energy prices rose steadily, partly due to the readjustments in supply and demand after the COVID-19 pandemic and also to the measures taken to discourage the use of more polluting technologies for electricity production. This trend was exacerbated by Russia's invasion of Ukraine and the subsequent war at the beginning of 2022, particularly after the significant increase in the price of basic energy raw materials, such as gas and oil, of which Russia is one of the world's largest producers, which also sparked greater price volatility.

In these circumstances, the prices of the contracts cleared by BME Clearing marked a clear upward trend in 2022, especially in the first quarter when the conflict began, although there was also a very significant upturn at the end of August, when the prices of some contracts, especially natural gas, exceeded all previous highs.

### Spanish electricity and natural gas: reference prices of the main expiries

FIGURE E9.1



Source: MIGBAS (natural gas) and MEFF (electricity).

Thus, in 2022 the prices of the Spanish electricity contracts reached levels that were approximately eight times higher than those recorded at the end of 2020. Natural gas contracts saw a similar trend. In the first days of Russia's invasion of Ukraine, prices surged, to trade at levels that were nine or ten times higher than those at the end of 2020 and almost 15 times higher than the closing price of 2020 at the end of August 2022.

Throughout this period of uncertainty and especially at the beginning of the year, EU CCPs, through their corresponding supervisory bodies, informed their respective colleges (of which the CNMV forms part) of their risk management procedures in view of the volatile environment, as well as the impact on requests for collateral and the results of model validation tests. There were no relevant incidents during the entire period.

### Supervision of BME Clearing and evolution of margin calls

Before the start of 2022, the ECC had activated various additional protection mechanisms in the energy segment that were already in force during Russia's invasion of Ukraine, although they have been reinforced or expanded since then.

There were no incidents in the deposit of additional collateral requested from members, due to the increase in initial margins at the close of the session caused by the increase in price volatility or to the increase in intraday or extraordinary calls. In fact, some members deposited surplus or additional collateral on their own initiative in order to reduce the operational burden in the face of potential extraordinary margin calls. The open position of energy forecast to be delivered (MWh) decreased throughout 2022.

Evolution of the open position in the energy segment

FIGURE E9.2



Source: CNMV based on BME data.

In this scenario of rising prices and high volatility, margins in the energy segment increased considerably. It should be noted that CCPs need to calibrate their risk management framework to achieve a balance between the following objectives:

- Compliance with EMIR minimum coverage requirements.
- Maintaining a level of collateral that is conservative and as stable as possible so as not to spark extraordinary margin requirements that could cause liquidity tensions or potential defaults.

- Maintaining a reasonable level of loss mutualisation (the use of resources of non-defaulting members).
- Compliance with the risk appetite levels established by the CCP, considering the other risks.

The CNMV considers that BME Clearing achieved a suitable balanced in the alignment of all these elements, taking into account the volatility of energy prices.

### **Impact of the “Iberian exception”**

In June 2022, a regulation entered into force for a period of 12 months, according to which the formula for calculating daily electricity prices in MIBEL (in Spain and Portugal) included a cap on gas prices (of between 40 and 50 €/MWh). In this new scenario, the CNMV kept a very active line of communication open with BME Clearing to gauge the impacts of the measure. Lastly, the Iberian market has seen lower price and volatility levels than those observed in other European markets.

### **Liquidity tensions in non-financial participants and acceptance of bank guarantees**

Although the trend marked by volatility was biased towards moderation, there was a sharp upturn at the end of August, which triggered extraordinary requests for collateral across European CCPs. This rekindled the discussions that had previously taken place on about the impact of the guarantee deposit on non-financial participants in the energy markets. Thus, the European Commission requested the European Securities and Markets Authority (ESMA) to evaluate a raft of measures aimed at alleviating these tensions, including the easing of CCP collateral acceptance criteria. Specifically, to temporarily allow clearing members that are not financial institutions to deposit bank guarantees that are not fully secured by collateral as collateral under certain circumstances. This proposal was eventually approved through Delegated Regulation 2022/2311, allowing such bank guarantees to be deposited as collateral until November 2023. However, this option is available only to clearing members, which means that in markets with an indirect clearing model, such as Spain, the effects of the measure have been largely imperceptible.

### **Regulatory actions in progress**

On 22 December 2022, Regulation 2022/2578 was published with the aim of introducing a mechanism known as the Market Correction Mechanism (MCM), which will limit the prices at which natural gas contracts that refer to the Title Transfer Facility (TTF) can be traded in the regulated markets. The measure entered into force on 15 February 2023 and the CNMV has already initiated the corresponding follow-up actions in coordination with ESMA and other authorities.

## Measures to promote the attractiveness of capital markets in the European Union (Listing Act)

EXHIBIT 10

As part of the main objective of Capital Markets Union (CMU) of improving access to alternative financing sources to bank financing for companies in the European Union (EU), between November 2021 and February 2022, the European Commission carried out a public consultation, based on a draft standard known as the Listing Act,<sup>1</sup> on how the attractiveness of the capital markets for companies in the EU could be increased and, in particular, how to improve the access to small and medium-sized enterprises (SMEs) to these markets. The consultation referred to the amendment of several regulations currently in force: the Regulation on the prospectus,<sup>2</sup> the Market Abuse Regulation<sup>3</sup> (MAR), the Markets in Financial Instruments Directive (MiFID II)<sup>4</sup> and the Listing Directive,<sup>5</sup> in addition to other potential areas for improvement in area of shares with multiple voting rights, corporate governance and SPAC.<sup>6</sup>

Based on the results of this public consultation and other initiatives of the European Commission in this matter, particularly for SMEs,<sup>7</sup> on 7 December 2022, the European Commission published two regulatory proposals that affect both the primary and secondary securities markets: i) a proposed regulation<sup>8</sup> to amend the Regulation on the prospectus, the MAR and MiFIR,<sup>9</sup> and ii) a proposal for a Directive<sup>10</sup> to amend MiFID II and to repeal the Listing Directive. The overall objective of this initiative is to make adjustments in the EU regulatory framework to reduce regulatory and compliance costs for companies that wish to be listed or are already listed, with a view to streamlining the process, at the same time ensuring an adequate level of investor protection and market integrity. The main amendments proposed are as follows:

### Primary market reform

- **Increase the number of public offerings of securities and admissions to trading on regulated markets that are exempt from the obligation to previously approve and publish a prospectus.**

A sole threshold is proposed for the EU as a whole whereby public offers of up to €12 million would be exempt from the obligation to provide a prospectus, compared with the current situation in which issuers may choose whether to publish one or not, according to which every Member State may set a threshold of between €1 million and €8 million.

Additionally, for fungible securities with securities already admitted to trading, new exemption rules are included whereby, under certain conditions, issuers would be exempt from the obligation to publish a prospectus and to be admitted to trading on regulated markets. The main effect of this measure would be that many secondary issues would be exempt from the obligation to publish a prospectus and, in some cases, the publication of a ten-page summary document would suffice, which

would not be subject to the approval of the national competent authority. This exemption would be based on the assumption that as these secondary issues belong to issuers that have already issued securities that are listed on a regulated market, they are already subject to compliance with certain disclosure obligations.

- **Delete the simplified prospectus formats in the current prospectus regulation** (the prospectus for secondary issues, the EU growth prospectus and the now lapsed EU recovery prospectus). These will be replaced by: i) a new standardised and more simplified prospectus known as the EU Follow-on Prospectus, intended mainly for secondary issues that are not exempt from the obligation to publish a prospectus, and ii) the EU Growth Issuance Document.
- **Harmonise all prospectuses approved in the EU**, among other items, in terms of: i) language (the issuer may opt to prepare its prospectuses only in English as the default language in the field of international finance, with the exception of the summary note), and the prospectuses must be published only in electronic format; ii) order and content (a pre-established order has been set, the content standardised and makes incorporation by reference becomes a legal requirement), and iii) length, whereby share prospectuses will have a maximum length of 300 pages (excluding the summary note, reference information and any pro forma information), the EU Follow-on prospectuses will have a length of 50 pages and the EU Growth Issuance Document will have a length of 75 pages.
  - **Review some provisions on the examination and approval of prospectuses by competent national authorities (NCAs)**, in order to encourage convergence and streamline the process.
  - **Amend the equivalence regime applicable to prospectuses from third countries** so that they can be accepted in the EU.

Additionally, the European Commission has agreed on a proposal for a directive that repeals the Listing Directive, in order to streamline and clarify the requirements for listing shares on EU regulated markets, integrating them into MiFID II. The proposal aims to grant greater flexibility to issuers, reducing the minimum free float requirement from 25% to 10% and keeping the minimum market capitalisation requirement of €1 million unchanged.

#### **Reform of the market abuse regime**

- **Elimination of certain cases in which issuers are obliged to publish inside information (processes in stages)** and clarification of the types of information and when the information should be disseminated.

For processes carried out over time in different stages, it is proposed that the obligation to disseminate inside information under Article 17.1 of the MAR should not include the intermediate stages of the process, only the final event or result that is achieved at the end of the process. It is not proposed to amend the definition of inside information described

in Article 7 of the MAR. Thus, the prohibition on the use or transmission of inside information under Article 14 of the MAR would continue to affect the intermediate stages of the process. Consequently, issuers should ensure the confidentiality of the information during the different stages of the process until it is disseminated at the very end. In the event of a leak, issuers would be obliged to immediately disseminate any inside information that has been disclosed.

In addition to the reform of processes carried out in stages, the proposal would enable the European Commission to prepare, through a delegated act, a **non-exhaustive list of inside information** that the issuer would be obliged to disseminate in compliance with Article 17 of the MAR, indicating when it is expected to be disseminated.

- **Clarification of the conditions under which issuers can delay the disclosure of inside information** and changes in the time period in which the issuer must notify the competent authority of said delay.

The proposal would imply an amendment of Article 17.4 of the MAR, replacing the current general condition that stipulates that the delay must not be misleading for investors with a list of specific conditions that must be met by the inside information whose disclosure is intended to be delayed. In addition, it is proposed to bring forward the deadline on which the delay must be notified to the authority; after the reform, the notification should take place when the issuer makes the decision to delay the publication, which does not imply that the authority has to authorise the delay.

- **Changes to the market sounding processes carried out prior to a securities placement.**

It is proposed that the entity that is going to carry out the placement must evaluate whether it considers that the information to be transmitted to potential investors constitutes inside information. This decision and the reasons behind it must be documented. The requirements of the market sounding regime established under Article 11 of the MAR would be an option for the entity that communicates the information on the planned placement; if this entity chooses to comply with the regime, the market soundings will benefit from a safe haven.

- **Reform of the insider list regime for all issuers** in line with the objective of reducing administrative burdens set out in Regulation (EU) 2019/2115.

The proposal would amend Article 18 of the MAR, in such a way that all issuers would be required to create and maintain only one insider list, which would include all persons with regular access to inside information due to their functions or position in the issuer. However, third parties acting on behalf of the issuer such as auditors, lawyers, ratings agencies, etc., should create, update and submit to the competent authorities (at their request) their own insider lists following the guidelines of the current Article 18 of the MAR.

Notwithstanding the foregoing, for issuers whose financial instruments have been admitted to trading on a regulated market for at least five years, Member States would be able to request a specific insider list for each event or transaction that is classified as inside information (current system).

- **Raise the threshold for notifications of transactions by persons with management responsibilities and parties close to them, and extend the exceptions to the prohibition of operating in a restricted period.**

It is proposed to amend Article 19 of the MAR, increasing the cash threshold of transactions from which the notification obligation is applicable (from €5,000 to €20,000). Member States would be empowered to increase said threshold from €20,000 to €50,000. Lastly, it is proposed to include in the exceptions to the prohibition of trading of the PDMR<sup>11</sup> in closed periods, the remuneration packages of financial instruments other than shares and transactions in which the PDMR does not make the investment decision.

### **Reform of the SME regime**

The Listing Act also contains proposes a series of measures aimed at SMEs, which are articulated through amendments to MiFID II. The most significant of these relate to the possibility of grouping execution costs (re-bundling) and financial analysis (research) for issuers with a market capitalisation of less than €10,000 million (compared with the current figure of €1,000 million) and the regulation of analysis sponsored by the issuers themselves.

### **Status of the legislative process**

At the end of January 2023, the meetings of the EU Council group began to prepare their proposals. The objectives of this reform would be aligned with the strategic lines of the CNMV, one of which is the promotion of the Spanish stock markets. However, the CNMV shares ESMA's concern (expressed to the co-legislators in a public letter in March 2023) about the insider list reform, which could generate significant risks. As usual, the CNMV will collaborate actively throughout the process of drawing up this legislation, offering its technical assistance to the General Secretariat of the Treasury and International Financing.

## EXHIBITS

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- 1 *Targeted consultation on the listing act: making public capital markets more attractive for EU companies and facilitating access to capital for SMEs.*
- 2 Regulation (EU) 2017/1129 of the European Parliament and of the Council, of 14 June 2017, on the prospectus to be published when securities are offered to the public or admitted to trading, and repealing Directive 2003/71/EC.
- 3 Regulation (EU) No. 596/2014 of the European Parliament and of the Council, of 16 April 2014, on market abuse (Market Abuse Regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC.
- 4 Directive 2014/65 EU of the European Parliament and of the Council, of 15 May 2014, on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU.
- 5 Directive 2001/34/EC of the European Parliament and of the Council, of 28 May 2001, on the admission of securities to official stock exchange listing and on information to be published on those securities.
- 6 Special purpose acquisition companies.
- 7 Such as the May 2021 Technical Expert Stakeholder Group on SMEs (TESG) Final Report: *Empowering EU capital markets for SMEs - Making listing cool again.*
- 8 Proposal for a Regulation amending Regulations 2017/1129, 596/2014 and 600/2014 to make the European Union's public capital markets more attractive to companies and to facilitate access to capital for small and medium-sized companies.
- 9 Regulation on markets in financial instruments (MiFIR), Regulation (EU) No. 600/2014 of the European Parliament and of the Council, of 15 May 2014, on markets in financial instruments and amending Regulation (EU) No. 648/2012.
- 10 Proposal for a Directive of the European Parliament and of the Council amending Directive 2014/65/EU to make the European Union's public capital markets more attractive for companies and to facilitate access to capital for small and medium-sized companies and repealing the Directive 2001/34/EC.
- 11 Person discharging managerial responsibilities.

**Ex-post cost disclosure obligations  
(Annual cost report)**

EXHIBIT 11

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In 2022, the CNMV took part in a **common supervisory action coordinated by the European Securities and Markets Authority (ESMA) on ex post information disclosure obligations on costs and expenses for clients of a sample of credit institutions and investment firms**, in the context of the MiFID regulation. These types of common supervisory action, which have been carried out periodically over several years, promotes supervisory convergence and investor protection in the European Union. On this occasion, the objective of the work consisted of reviewing the annual cost reports sent to clients, in addition to an analysis of the design of the report and the procedures that allow the costs incurred by clients in year to be identified. The main conclusions for the Spanish entities analysed were as follows:

- No significant delays were observed in the submission of annual reports.
- The reports generally include the minimum data indicated in the standard (total cost, aggregate costs of products and services, and payments received from third parties, all in euros and as a percentage). In only one case the report was clearly deficient because it only included the costs of the service, but not the costs of the product or all the incentives. In some cases, entities were required to make adjustments to their reporting models due to incidents such as not adding up or showing the total costs, not including all items in the total, or not aggregating the costs of products and services separately.
- With regard to the level of disclosure and additional details provided, most entities chose to include some additional disclosures in the models normally sent to their clients (breakdowns of cost items, by families or even by instruments). Although the standard gives entities flexibility when designing their models, it highlights the importance of providing aggregate data to allow the client to understand the total cost. Providing a large volume of data, that have not been requested by the client, can lead to an information overload. In this case, to improve the clarity of the reports, it is noted that aggregated information should be prioritised, and placed in a prominent position at the beginning of the document.
- In general, the reports show payments received from third parties (incentives) separately, as required by the standard, but the manner in which they are presented is confusing in some cases. Thus, while some entities deduct the amounts they receive from managers from the costs charged to the fund, to show them as a separate item, others have opted to present them as part of the cost of the product and also separately as payments received from third parties.

Since the standard does not establish a specific format, entities can choose between various presentation models. However, they must ensure that they comply with the requirement to report the costs related to the product and those related to the service they provide separately. Therefore, in cases where entities choose to show incentives as part of the product cost, it must be indicated to the client that the figure includes the amounts received by the entity as remuneration for the services it provides on a regular basis, in a sufficiently clear manner and in a visible location (a text note at the end of the document would not be sufficient). Likewise, it must be ensured that any incentives received are always included in the total cost figure.

- Most entities include some type of information to illustrate the impact of costs on their profitability, but in some cases this requirement was not met and certain incidents were observed concerning the figures shown that affected the comparability of cost and profitability data. For example, non-comparable periods (when the performance for the calendar year of an instrument is shown when the costs refer to a shorter period) or data is shown that did not refer to the same set of instruments (for example, the performance of the client's non-MiFID instruments), as well as errors in the method used to calculate profitability. In addition, to provide a comparison with the total cost figure, profitability must be presented in aggregated form for the set of client positions.

In the identification of costs incurred, entities were found to have committed errors by not including certain costs: for example, not including the costs of products showing no balance at the end of the year, or not including certain investment fund costs (transaction costs, performance fees or product costs in ETFs), or particularly notable errors such as not including the cost of currency conversion in some types of transactions (e.g. currency transactions with CIS or clients with foreign currency accounts).

In some cases, deficiencies were also found in the procedures applied to identify implicit costs, as only the margins charged by the entity were disclosed, which had a relevant impact on some entities' structured bonds. This deficiency could also affect non-structured fixed income instruments, where entities do not generally consider the possibility that there are costs included in the price offered by the counterparties or in the market execution price. In recent years, entities have been observed to attempt to establish the fair value of the financial instrument, thereby allowing them to calculate the implicit costs. However, for these purposes, it should be remembered that subcontracting this task does not in itself ensure due compliance with the obligations and that the entity must assume responsibility for the outcome of the delegated task, and carry out the pertinent reviews of the methodology used.

Other errors observed included not adding VAT to the cost of services or errors in percentage data calculations.

In view of the incidents observed, the CNMV has urged entities to improve the data quality controls they have set up, considering it advisable to carry out an in-depth review of a sample of reports before the general submission to rule out errors.<sup>1</sup>

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1 This action has not been concluded by ESMA. The assessment of the information submitted by the different national authorities and the decision on the actions to be carried out are pending.

## Review of the first phase of the implementation of sustainability regulations at CISs

EXHIBIT 12

In March 2021, Regulation (EU) 2019/2088 of the European Parliament and of the Council, of 27 November 2019, on sustainability-related disclosures in the financial services sector (SFDR) entered into force. Under this regulation participants in financial markets (including investment fund managers) and financial advisors must disclose certain information on environmental, social and governance (ESG) risks and factors when making their investment and advisory decisions. For market participants, the regulation establishes transparency obligations both at entity level and at financial product level (e.g. investment funds).

In line with the Activity Plan for 2022, the CNMV has carried out a review of the funds that promote ESG characteristics (known as Article 8 funds under SFDR) and of the funds with a sustainable investment target (known as Article 9 funds under SFDR), which is the first phase of the supervisory analysis of this matter in the area of investment funds.

For financial products, the SFDR includes transparency obligations relating to the pre-contractual and periodic disclosures that must be provided, as well as those that must appear on the entities' websites. The CNMV's analysis has focused on reviewing the content of the web pages of all the Article 8 and 9 fund managers, as well as the content of their management reports for 2021 (published in April 2022), also evaluating the consistency between the portfolios of the funds analysed and the information in their prospectuses and on their websites. The analysis was carried out on a sample of Article 8 and 9 funds registered in March 2022.

**Characteristics of Article 8 funds.** It was observed that in general the ESG characteristics promoted by the funds, as well as the valuation criteria for the selection of investments, are described in an overly generic and imprecise manner (fight against climate change, respect for human rights, gender diversity, employee health and safety, etc.), except for certain "thematic" funds. Therefore, greater accuracy, clarity and specification of the ESG characteristics that the fund will promote would be desirable, as this would help to measure the achievement of the established targets. The annex on sustainability in the prospectus (mandatory from 1 January 2023, the date of entry into force of the SFDR, Delegated Regulation 2022/1288) must provide details of the sustainability indicators used to measure the achievement of each of the ESG characteristics promoted.

**As far as investment selection is concerned,** in addition to the financial criteria, managers establish extra-financial selection criteria (exclusionary and evaluative). For the exclusionary criteria, exclusion policies are generally applied, with different nuances and specificities, with the aim of eliminating or reducing investment in one or more controversial sectors such as tobacco, weapons, alcohol, gambling, etc., although on many occasions sectors related to fossil fuels that can negatively affect the environment are also excluded, to varying degrees depending on the manager.

With regard to the **methodologies and sustainability indicators used to measure the achievement of the promoted ESG characteristics**, in addition to exclusionary criteria, for **equities**, 93% of managers have opted for ESG ratings granted by third parties, of which 69% set a minimum rating required for the selection of assets (best in class strategy). Part of the **private fixed income investment** assessment corresponds to “green” or “social” debt, while the remainder is governed by the same criteria as equities. **Investment in public debt** is sometimes made on the basis of ESG ratings for States from different agencies and sometimes they take into account the scores obtained in certain indices (such as the United Nations Human Development Index) or ratings of internal reports prepared by the management companies based on indicators from the World Bank, the United Nations (UN) and other international organisations.

These strategies are in line with those indicated by the European Commission in its Q&A document of 14 July 2021, in which it stresses that the SFDR does not establish minimum application criteria or thresholds, or suitable strategies or methodologies. Additionally, although the standard does not require a minimum percentage of investments to meet ESG characteristics, four fifths of the sample of funds analysed establish a percentage of 50%, and one fifth establish a percentage of between 70% and 90%.

**Characteristics of Article 9 funds.** 86% of the Spanish funds registered in accordance with Article 9 established the UN Sustainable Development Goals (SDGs) as investment selection criteria and only 25% selected the specific SDGs on which they aimed to have a positive impact, while the rest of the funds refer to the 17 SDGs generically. Thus, **when selecting investments, more specification would be desirable in order to identify the SDGs and the most relevant goals they aim to have an impact on, in addition to the indicators or metrics used.** It should also be noted that, in general, issuers report the metrics and parameters on the specific SDGs on which they have the greatest impact but do not quantify the others.

**Transparency in website disclosures.** Article 10 of the SFDR states that for each Article 8 and 9 fund, the manager must provide on its website a description of the ESG characteristics (Article 8 funds) and sustainable investment target (Article 9 funds), the methodologies used to evaluate and measure these ESG characteristics, or the impact of the sustainable investments, as well as the asset selection criteria, sustainability indicators and data providers applied.

In the analysis, it was observed that the information published on the websites could be improved, given that only 30% of managers included all the information requested. For most of the management companies in which incidents were detected, there was missing information about the methodology used and the data providers and, on occasion, they did not provide information on the other aspects, although this can be found in the prospectus published on their website.

It should be clarified that **entities must publish all the sections of the website included in the SFDR delegated regulation separately**, even any potential cross-overs with the prospectus annex. In addition, **it is recommended to identify the providers in cases where the management company makes relevant use of the metrics, scores or ratings** offered by a specific data provider. Furthermore, **management companies that use their own methodologies** to assess and measure the promoted environmental and social characteristics or sustainable investment targets **should provide details of the key aspects of these methodologies**.

With regard to the funds that use the SDGs as investment selection criteria, it is recommended to provide sufficient details of their methodology to allow their implementation and subsequent reporting in the annual report to be clearly understood, including some examples to facilitate this.

**Transparency in the annual report.** The information reviewed referred to the 2021 financial year, at which time the only applicable standard was the SFDR, which includes few specifications on this issue – as for Article 8 funds it only indicates that the extent to which the ESG characteristics have been complied with must be reported and for Article 9 funds, the overall sustainability impact measured by sustainability indicators.

Thus, it should be noted that following the entry into force of the SFDR Delegated Regulation on 1 January 2023, sustainability-related disclosures referring to the 2022 financial year, which will be published in April 2023, will be more detailed and must be provided in the annex on sustainability in the annual report (published alongside the annual financial statements). A letter was sent out to management companies to notify them of the special supervisory interest in certain aspects of this annex.

In the analysis, it was observed that the ratings issued by some agencies are designed to compare companies within the same sector, while others allow for both intra- and cross-sector comparison. This affects the way in which the performance of the sustainability indicators is presented in the annual report, given that if intra-sector ratings are used the CNMV **does not consider it appropriate to provide an average rating at portfolio level, but that it should be broken down by sector/economic activity/industry**. Additionally, it is recommended that the information on ESG ratings also be broken down into the corresponding environmental, social and governance pillars. Therefore, it is important that entities use the best way to present the performance of ESG ratings when these are chosen as sustainability indicators, so that the information offered to the investor is relevant and consistent.

**Analysis of the consistency of the portfolios with the information included in the prospectus and the website.** In the review carried out, no relevant inconsistencies were detected between the information in the real portfolios and the information in the prospectuses and websites of the funds analysed, so it can be concluded that the part of the portfolio that promotes ESG characteristics or that makes sustainable investments meets the criteria and “sustainability indicators” (mostly ESG ratings) set out in the prospectuses and disclosed on their websites.

**Upcoming supervisory actions in the area of sustainability.** The CNMV will participate in the design and execution of the common supervisory action carried out by ESMA on sustainability in collective investment institutions in transferable securities (UCITS) and alternative investment funds (AIF) as indicated in its Activity Plan for 2023, which may be complemented with one-off domestic analyses if these become relevant.

## The “Create and Grow” Law

EXHIBIT 13

Chapter VI of Law 18/2022 of 28 September, on the creation and growth of companies (the “Create and Grow” Law) introduces a set of reforms that seek to promote and improve collective investment and venture capital activity in Spain. The main novelties are the following:

The Venture Capital Law (Law 22/2014) includes a new category of “closed-ended collective investment schemes of loans” (*entidades de inversión colectiva de tipo cerrado de préstamos*), whose principal purpose is to invest in bills, loans, credit and commercial paper commonly used in the course of trade. Likewise, additional requirements are established for their management companies to ensure proper credit risk management. Venture capital entities can also invest up to 20% of total computable assets in these assets.

Furthermore, the marketing regime for venture capital entities to retail investors has been made more flexible. Thus, as an alternative to the requirement of an initial investment of €100,000, venture capital entities can be marketed to this type of investor, as long as they access the investment through the recommendation of an entity authorised to provide the advisory service, and that, if their financial assets do not exceed €500,000, the minimum investment will be €10,000 and will still not represent more than 10% of their assets.

The reform also includes, as part of the main purpose of venture capital, investment in financial entities whose activity is mainly supported by the application of technology to new business models, applications, processes or products (Fintech companies). In addition, the SME venture capital funds have been brought into line with European venture capital funds (EuVECA), so that the requirement for companies involved in this activity to have a maximum of 250 employees has been raised to 499. The initial outlay of venture capital firms has also been reduced from 50% to 25% of the committed capital.

The diversification regime for venture capital entities has also been made more flexible, “investable assets” have been defined the denominator of the diversification coefficients and European long-term investment funds have been explicitly included in the Spanish standard under Regulation (EU) 2015/760. Management companies of closed-end collective investment schemes can be set up in the form of a limited liability company (SRL), which has also been include in CIS law for management companies of this type of institution.

Additionally, Law 28/2022 of 21 December, to promote the ecosystem of emerging companies,<sup>1</sup> regulates the tax classification (as work income) of the remuneration obtained for the successful management of venture capital entities (known as “carried interest”), while establishing the tax treatment of this remuneration, in line with the regulations of other countries in our environment (with the inclusion in the tax base of 50% of its amount when certain requirements are met). All this with the aim of promoting the development of venture capital as a channelling mechanism for business financing of special relevance, with the aim of promoting entrepreneurship, innovation and economic activity.

Lastly, in the CIS Law (Law 35/2003) other measures have been included to improve the competitiveness of the sector, such as the elimination of the obligation to produce a quarterly report, which is now optional, or the establishment of telematic means as a default form of communication with unitholders and shareholders, unless they do not provide the necessary information to do this or state in writing their preference to receive communications in physical format.

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1 <https://www.boe.es/eli/es/l/2022/12/21/28>

**CNMV Circular 3/2022, of 21 July, on the CIS prospectus  
and the registration of the KIID**

EXHIBIT 14

Circular 3/2022<sup>1</sup> replaces Circular 2/2013 of May 9, on Key Investor Information Document (KIID) and the CIS prospectus, although much of the content is unchanged. The new Circular is required following the application to collective investment institutions (CISs) as of 1 January 2023, of Regulation (EU) No. 1286/2014 of the European Parliament and of the Council, of 26 November 2014, on key information documents for packaged retail and insurance-based investment products (PRIIPs)<sup>2</sup> (PRIIP Regulation).

The main objectives of the circular are as follows:

- To align the Spanish CIS regulation in terms of its content, format and reasons for updating the KIID with the PRIIP Regulation, thereby eliminating all references to these issues from the circular as the regulation will now be directly applicable.
- To regulate, among other aspects, the format, content and presentation of the CIS prospectus, the reasons for and manner in which any updates must be made, and the manner in which it is submitted to the CNMV for registration – of both of the prospectus and of KIID as regulated according to the above regulation.

To simplify the content of the CIS prospectus, avoiding duplication with other regulatory documents and aligning it with those of other countries in our environment. To do this, information that is not required under Directive 2009/65/EC, of 13 July 2009, on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (the UCITS directive), and that is already included in the PRIIP, such as the indicator of current expenses, the profitability scenarios of structured CISs, or the synthetic risk indicator, is eliminated.

Circular 3/2022 entered into force on 1 January 2023, however, an additional period of one month was established for entities to submit their KIID to the CNMV for registration. The CIS prospectuses that had already been registered on the date of entry into force of the circular were updated *ex officio* by the CNMV to comply with the provisions of the regulation.

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1 <https://www.boe.es/eli/es/cir/2022/07/21/3>

2 <https://www.boe.es/doue/2014/352/L00001-00023.pdf>

## New powers of the CNMV as the resolution authority for central counterparties

EXHIBIT 15

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As of 12 August 2022, Regulation (EU) 2021/23 of the European Parliament and of the Council, of 16 December 2020, on a **framework for the recovery and resolution of central counterparties** (hereinafter, the regulation), which supplements a resolution framework in the European Union that is aligned with the principles of the Financial Stability Board (FSB) with regard to the effective resolution of financial institutions.

The CNMV has been designated the resolution authority for central counterparties (CCPs). BME Clearing is the entity authorised by the CNMV to operate as a CCP in Spain. The entity is included in the register of authorised CCPs in the European Union held by the European Securities and Markets Authority (ESMA) and is one of the 13 CCPs worldwide that are considered to be systemic CCPs in more than one jurisdiction.

The designation of the CNMV as a resolution authority implies that the authority has assumed the resolution and sanctioning competencies set out in the regulation. Unlike the institutional regime followed in the Banking Union, the power to decide and manage the resolution of a CCP lies with the authorities of the Member States, not with the European Resolution Board.

Although CCPs are closely interrelated with the banking sector, they are entities with very different risk, management and business profiles. The regulation and supervision of CCPs corresponds to the securities markets, with the CNMV also being the competent authority for the of authorisation, registration and supervision of CCPs in Spain.

In recent years, the CNMV has carried out a series of preparatory tasks before taking on its new powers as a CCP resolution authority. The CNMV's organisational structure guarantees the hierarchical and functional independence of the supervision and resolution areas, as well as the necessary knowledge, technical capacity and resources, as required by regulation.

Work on CCP resolution planning and the assessment of resolvability began in 2017 and, in 2018, the BME Clearing Crisis Management Group (CMG) was created, in compliance with FSB principles, to ensure coordination and cooperation with the supervisory and resolution authorities by members of the CCP, both in Spain and abroad.

The application of Regulation (EU) 2021/23 requires the adoption of actions that affect the CNMV as a resolution authority, among which the following stand out:

- Preparation of internal regulations to avoid conflicts of interest between the functional areas of resolution and supervision, as well as the rules relating to professional secrecy and the exchange of information between the different functional areas.

- Creation of a college of resolution authorities, chaired by the CNMV, tasked with deciding on the resolution plan prepared by the CNMV and guaranteeing cooperation and coordination with the authorities that are members of the college and, where appropriate, with the authorities of third countries.
- Drawing up of a list of potential appraisers who meet the established independence requirements. This list will be reviewed periodically. The purpose of this measure is to ensure the availability of a sufficient number of people or entities trained to carry out the necessary assessments in the event of resolution and to facilitate their availability and contracting in times of stress.
- Preparation of a resolution plan that establishes the measures that the resolution authority may adopt in the event that the CCP becomes non-viable or potentially non-viable. Resolution planning is an ongoing process that involves reviewing and evaluating the entity's situation and the conditions that can affect its effectiveness. Once the first plan has been drawn up, it must be reviewed and updated at least annually. The plan must be consulted on with the supervisory authority and drawn up in coordination with the college of resolution authorities.

The resolution plan must contain at a minimum:

- A description of how the critical functions of the CCP may be legally and economically separated.
- An estimate of the time frame for the implementation of each important aspect of the plan.
- A detailed description of the resolvability assessment and a description of the measures needed to address or remove the identified obstacles to resolvability.
- A description of the processes employed to establish the value and marketability of the CCP's critical functions and assets.
- A detailed description of the different resolution strategies that could be applied based on the different possible scenarios and their related time frames.

In its role as resolution authority, the CNMV must also examine the recovery plan of the CCP to establish whether it contains measures that could negatively affect its resolvability and, where appropriate, formulate the corresponding recommendations to the supervisory authority.

Lastly, at European Union level, in 2023 ESMA created a resolution committee (ESMA CCP-ResCo) made up of the designated resolution authorities of each Member State. Among other tasks, this committee will be in charge of preparing the decisions entrusted to ESMA and promoting the preparation and coordination of resolution plans and designing methods for resolving non-viable CCPs.<sup>1</sup>

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<sup>1</sup> [https://www.esma.europa.eu/sites/default/files/2023-03/ESMA91-372-2226\\_Terms\\_of\\_Reference\\_CCPRC.pdf](https://www.esma.europa.eu/sites/default/files/2023-03/ESMA91-372-2226_Terms_of_Reference_CCPRC.pdf)

In 2017, the FSB published a set of recommendations aimed at mitigating potential risks arising from asset management (*FSB's Policy Recommendations to Address Structured Vulnerabilities from Asset Management Activities*).<sup>1</sup> Among others, these recommendations address the risks deriving from liquidity mismatches between the assets in which investment funds invest and the frequency with which they allow redemptions.

In 2022, a joint working group made up of members of the FSB's Cooperation Committee on Supervision and Regulation (SRC) and Committee 5 of the International Organization for Securities and Exchange Commissions (IOSCO) carried out work on investment management, with an assessment of the effectiveness of the FSB's recommendations. 16 jurisdictions were evaluated,<sup>2</sup> including Spain. The CNMV was also part of the evaluation working group.

The recommendations assessed were divided, according to their purpose, into four groups:

- i) Those aimed at reducing the structural risk of liquidity mismatches in CISs.
- ii) Those that promoted the use of liquidity risk management tools.
- iii) Those aimed at improving the periodic submissions to the data regulators to allow the liquidity risk of CISs to be properly monitored.
- iv) Those aimed at extending the stress testing exercises both at the individual CIS level and at macro level, taking into account the interrelations of the CISs with the other entities of the financial system.

The main conclusion of the assessment work was that, despite the improvements observed in the jurisdictions studied since the publication of the FSB recommendations in 2017, certain vulnerabilities still persist and need to be addressed by strengthening some of the recommendations. Spain already largely complies with the FSB recommendations, even with those aspects that are intended to be improved.

The final FSB report proposes improvements in the four areas analysed:

- i) **Liquidity mismatch.** In order to reduce this mismatch, it is proposed to adopt a bucketing approach, where open investment funds into three categories (or buckets) depending on their liquidity profile. The redemption terms (frequency, application of advance notice and long settlement periods) set for each group must be aligned with the liquidity levels of the assets in each category. Thus, for funds that invest primarily in liquid assets, daily redemptions are considered to be appropriate. For those funds that invest significantly in illiquid assets, a daily redemption frequency is not considered appropriate unless long notice periods or settlement periods are established. Lastly, for the third category – funds that invest mainly in less liquid assets – a daily redemption frequency is only appropriate if anti-dilution measures are applied or, alternatively, if notice periods or settlement periods are established.

- ii) **Liquidity management tools.** It is proposed that the supervisory authorities promote the use of these tools in their jurisdiction, especially those with an anti-dilution effect, i.e. those that eliminate the advantages obtained by investors who are the first to redeem their investments in crisis scenario, known as “first mover advantage”. All these measures are aimed at passing the transaction costs of subscriptions and redemptions on to the investors who originate them. Swing pricing is one of the best-known measures and consists of adjusting the net asset value upwards (in subscriptions) and downwards (in redemptions) by applying an adjustment factor that reflects the effect of the transaction costs that the fund will bear as a result of transactions to purchase and sell securities deriving from said subscriptions and redemptions. It is considered appropriate for regulators to issue guidelines containing clear criteria for the appropriate and consistent application of this type of tool.
- iii) **Availability of data on investment funds.** It is proposed to improve the data available on liquidity mismatches and the use of liquidity management tools, as well as to enhance the information provided to investors on the effects of the use of these tools.
- iv) **Stress testing.** Lastly, with regard to stress testing, it is proposed to encourage stress testing and the exchange of information between jurisdictions on their design and use.

In order to review the FSB recommendations in line with the proposed improvements, a new joint FSB/IOSCO working group was set up. The revision work will be carried out throughout 2023 and will be complemented by guidelines developed by IOSCO on the use of anti-dilution tools. In a second phase, work will be done to identify the data that should be included in the supervisory reporting in order to monitor liquidity risk in investment funds. As previously mentioned, Spain already largely complies with the FSB recommendations, even with those aspects that are intended to be improved. Thus, the CNMV has been receiving monthly data on fund portfolios for many years. This allows it to continuously monitor the liquidity risks incurred by investment funds. In addition, with regard to liquidity management policies and tools, the recently published *Technical Guide 1/2022 on the Management and Control of Liquidity of Collective Investment Schemes (CIS)*<sup>3</sup> specifies and develops the principles established in CNMV Circular 6/2009 of 9 December on internal control of CIS management companies.

In particular, it specifies the criteria that must be taken into account for an adequate liquidity management policy, both in the design phase of the CIS and in its day-to-day activity, in addition to establishing the criteria for a correct application of the liquidity management tools, including anti-dilutive tools.

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- 1 <https://www.fsb.org/wp-content/uploads/FSB-Policy-Recommendations-on-Asset-Management-Structural-Vulnerabilities.pdf>
- 2 Australia, Brazil, Canada, China, France, Germany, Hong Kong, India, Ireland, Italy, Japan, Luxembourg, Spain, Switzerland, the United Kingdom and the United States.
- 3 [https://cnmv.es/DocPortal/Legislacion/Guias-Tecnicas/GT\\_1\\_2022\\_Liquidez\\_ILC\\_en.pdf](https://cnmv.es/DocPortal/Legislacion/Guias-Tecnicas/GT_1_2022_Liquidez_ILC_en.pdf)

## Volunteer Programme: the social dimension of the CNMV's activity EXHIBIT 17

The CNMV Financial Education Volunteer Programme arose in 2017 with the dual purpose of contributing to the improvement of its closest social environment and giving the institution's professionals the opportunity to carry out work to disseminate financial education, in addition to promoting on of the CNMV's objectives – investor protection.

Likewise, the aim of this programme is to continue the commitment taken on by the CNMV, the Bank of Spain and the Ministry of Economic Affairs and Digital Transformation, within the framework of the Financial Education Plan, to contribute to the improvement of financial culture in Spanish society.

The Volunteer Programme, in which 114 employees – one quarter of the workforce – are involved, is focused on carrying out activities to disseminate financial education and training in this area. These activities include: talks for students, consumers or vulnerable groups; participation in sector conferences or appearances in the media.

The implementation of the Volunteer Programme has also opened a new channel of communication with the public and is a way of detecting new challenges that will need to be faced in the future to provide better investor protection.

Through the programme the CNMV also contributes to the fourth Sustainable Development Goal of the 2030 Agenda, which is to “ensure inclusive and equitable quality education and promote lifelong learning opportunities for all”. This objective is based on the belief that quality education is key to preventing poverty, reducing social inequalities and providing people with greater opportunities. Financial education can be considered a basic tool for the implementation of this goal and a previous step for the different inclusions, since it promotes informed decision-making, the generation of good saving and spending habits, responsible consumption and an interest in sustainable investment.

Since 2017, numerous activities have been carried out to enhance the financial education of a large number of people. In 2022 alone, 31 volunteer activities were carried out, of which 38% were aimed at young people between the ages of 12 and 25, 13% were aimed at people at risk of exclusion, 6% at children between the ages of 3 and 12, and the remaining 42% at adults between the ages of 25 and 65.

The activities aimed at vulnerable groups includes CNMV's collaboration with **Cáritas** since November 2021, which consists of giving a monthly talk on financial education to its target groups and which has allowed it to reach out to around 700 people. With respect to children, in addition to talks in various schools, the CNMV's participation since 2018 in the **4.º ESO + empresa** programme stands out, under which students from different schools in Madrid enjoy a three-day stay at the CNMV every year to learn from its professionals how the institution works. For university students, the CNMV collaborates with different universities such as the Complutense University and the Carlos III University in the organisation of sessions on the stock markets for their students.

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In addition, as part of the Volunteer Programme, specific initiatives have been carried out to explain what the CNMV is, its main functions and the services it provides, to raise awareness of its market monitoring and surveillance as a mechanism to protect investors.

In the coming years, the CNMV Volunteer Programme will continue to be promoted as an instrument to involve its employees in improving the financial education of the Spanish population and in the sustainable development of the institution. Therefore, it will be expanded and its scope will be increased, with its priority groups being mainly the vulnerable population or those at risk of social exclusion, the elderly and the youngest members of society.

The prices of the main crypto-assets dropped significantly at the close of 2022, after the highs reached in November 2021. Bitcoin and Ether were down more than 60%, with Spanish tokens, such as Solana, which lost more than 90% of its value, affected to a much greater extent. In addition to the prices potentially correcting after reaching their highs, in 2022 several events occurred that had a strong negative impact on the crypto-asset ecosystem, such as the collapse of Terra, a crypto-asset that claimed to be stable against the dollar while having no reserves of this currency, the lack of liquidity of the Celsius loan protocol and above all the default of the FTX crypto-asset trading platform, which did not have the balance of crypto-assets acquired by its clients. As these crypto-assets are not legally separate from FTX assets in certain jurisdictions, they became part of the bankruptcy process. This made the need for regulations that protect investors and oblige these service providers to segregate their clients' crypto-assets and protect them in crisis situations affecting the entity even more apparent.

These events have further highlighted the significant risks of the provision of crypto-asset services without a solid regulatory framework. In Europe, the Regulation on crypto-asset markets, known as MiCA, and on the text of which an agreement was reached between the European Parliament and the Council in October, will regulate the issuance, offer and trading of crypto-assets, as well as the provision services relating to these assets and the rules for the prevention of market abuse. The case of FTX, where various irregularities and bad practices could have been incurred, must be analysed and taken into account in the supervisory authorities' application of MiCA, which, in this particular case, will not be applied until 18 months after its publication, during which period the second and third level regulations referred to in this regulation will be developed.

In Spain, a major step was taken in 2022 in terms of investor protection in the area of crypto-assets, through the regulation of advertising that promotes investment in these products. In January 2022, the CNMV Circular on the advertising of crypto-assets for investment purposes<sup>1</sup> was published. This regulatory initiative will complement MiCA, where it is applicable, since the regulation does not specifically address this matter.

Specifically, the Circular establishes the rules, principles and criteria to which the advertising of crypto-assets for the purposes of investment must adhere, but does not regulate their issuance or the provision of services in this area. It introduces the obligation to issue warnings about the risks involved and provide advance notice of mass advertising campaigns. The application of this Circular at the end of February had a significant impact in the sector, where many mass campaigns with a large impact capacity were already underway.

Pursuant to this Circular, between February and December 2022, the CNMV processed 116 information proceedings and analysed 957 advertising items. In most cases, administrative actions were ceased, mainly after the entities corrected the mismatches detected in their advertising campaigns. The average duration of the advertising campaigns was 150 days.

The most used advertising media were social networks, web pages and online search engines. Apart from the entities' web pages, the most widely used advertising channels were banners, videos and advertisements. Due to the media impact, the holding of events focused on crypto-assets should be highlighted, in addition to advertising in sports competitions, such as the placement of billboards in Formula 1 events, and the sponsorship of football teams.

In addition to supervisory actions on advertising, the CNMV played an important advisory role in 2022, as evidenced by the 41 enquires responded to in relation to Circular 1/2022.

The CNMV also considered it important to monitor and follow up on the level of knowledge and use of crypto currencies in Spain. To do this, in May 2022, it carried out a survey among people between the ages of 16 and 70 to quantify the level of investment in these assets, knowledge about them, investment motivation and barriers, and risk perception. The report containing the results of this survey is available on the CNMV's website<sup>2</sup> and in the *CNMV Bulletin*.<sup>3</sup> It should particularly be noted that close to 60% of the people surveyed stated that they had heard something about crypto currencies, but knew very little about this activity; 6.8% had invested at some time and 10.2% indicated their intention to do so in the future, with the younger population showing the greatest interest. In addition, a fairly substantial percentage (68%) were unaware or harboured a misconception about the fact that crypto currencies are not subject to a regulatory framework – with a few minor exceptions, such as in the area of advertising. However, the perception that this type of product has more risks than other types of investment is widespread (60.3%) and this represents an entry barrier.

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- 1 CNMV Circular 1/2022, of 10 January. <https://www.cnmv.es/portal/inversor/Publicidad-Cripto-activos.aspx>
  - 2 <https://www.cnmv.es/portal/verDoc.axd?t={714e1e4c-b334-4252-b1f5-677cf438bcb5}>
  - 3 See the article De Miguel, D. and Palomar, M.J. (2022). "Results of the survey on crypto-currencies and effectiveness of the measures promoted by the CNMV". *CNMV Bulletin*, Quarter III, pp. 119-155. Available at: [https://www.cnmv.es/DocPortal/Publicaciones/Boletin/BT\\_III\\_ENen.pdf](https://www.cnmv.es/DocPortal/Publicaciones/Boletin/BT_III_ENen.pdf)

The sandbox has become a good tool for the implementation of the new Pilot Regime Regulation for infrastructures based on distributed ledger technologies (DLT) and to prepare for the entry into force of the new regulation. This is a regulation that does not establish limits to the use of DLTs and that by not referring to (second level) development standards, has allowed it to be applied quickly, with the challenge that this entails both for supervisors and for entities that wish to operate one of these infrastructures.

The sandbox has made it possible to test an infrastructure that complied with the regulation. In parallel, the participation and close collaboration with the European authorities (ESMA, the European Commission and the ECB) was maintained, which are working on clarifying the application of certain aspects of this regulation and on the creation of guidance to provide a suitable and harmonised interpretation of the main issues raised by the supervisors.

Additionally, promoters that do not have the necessary licence to operate one of these infrastructures have been offered guidance, so that they can start the authorisation process in parallel with the tests, which is efficient in terms of the promoter's time and resources.

In the third cohort, one project related to the regulation was presented and in the fourth cohort three more were presented. Each of these projects includes different business models and technological proposals, suggesting that this pilot regime will permit very different infrastructures. The infrastructures may choose to use public or private networks, may or may not allow investors direct access to trading, may be aimed at certain sectors or types of issuers, and may issue financial instruments or other types of products.

It has also been observed that the promoters who take part the pilot regime have different profiles, some of them being highly consolidated financial entities, while others are specialised entities in the technology sector. The mix of these different participants could help to build solid proposals that offer innovative technological solutions in the future.

Additionally, the new Securities Market and Investment Services Act, which was approved on 9 March 2023 (see Exhibit 20), introduces significant changes to allow the effective use of DLT in the stock markets. The sandbox is likely to help develop the use of this third form of representation of traded securities, providing a controlled application of the new alternatives and giving the supervisor the chance to understand and properly assess the registration of traded securities using this technology, their transmission and compliance with the requirements and functionalities that the entity responsible for this register must implement.

## The New Securities Market and Investment Services Act

EXHIBIT 20

On 9 March 2023, the plenary session of the Congress of Deputies approved the new text of the Securities Markets and Investment Services Act (LMVSI). The text, which enters into force 20 days after its publication in the Official State Gazette (*BOE*), incorporates a series of measures that are necessary to for the development of the Spanish securities markets in the current competitive environment. The aim of the new Law is to substantially improve the normative and systematic technique of this sector of the legal system, simplifying and rearranging the matters regulated at the legal level, following the observations made by the Council of State in various opinions. At the same time, the new Law will serve, among other aspects, to adapt national regulations to recent developments in European law, thus avoiding legal uncertainty deriving from the non-inclusion of European regulations whose transposition period has elapsed.

The new LMVSI requires regulatory implementations which, as of the date of preparation of the *Annual Report*, are still in the processing phase. Specifically, three implementing regulations will be published: a Royal Decree on the supervisory powers of the CNMV, a Royal Decree on investment firms and a Royal Decree on financial instruments, admission to trading, the registration of traded securities and market infrastructures.

The LMVSI incorporates various European standards pending transposition into the legal system, including:

- Directive 2019/2177 of the European Parliament and of the Council, of 18 December 2019, which transfers the authorisation and supervision of certain providers of data supply services, other than those related to authorised information systems and authorised publication agents, to the European Securities and Markets Authority (ESMA).
- Directive 2020/1504 of the European Parliament and of the Council, of 7 October 2020, which excludes from the scope of application of Directive 2014/65/EU legal persons authorised crowdfunding service providers by virtue of the Crowdfunding Regulation.
- Directive 2021/338 of the European Parliament and of the Council, of 16 February 2021, which is part of a set of measures aimed at boosting economic recovery after the COVID-19 pandemic.
- A Directive that accompanies the proposals for European Union Regulations related to crypto-asset markets, the temporary regime for market infrastructures based on distributed ledger technologies and digital operational resilience.
- Directive (EU) 2019/2034 of the European Parliament and of the Council, of 27 November 2019, on the prudential supervision of investment firms.

- Directive (EU) 2021/2261 of the European Parliament and of the Council, of 15 December 2021, amending Directive 2009/65/EC as regards the use of key information documents by management companies of undertakings for collective investment in transferable securities (UCITS).

Additionally, a series of measures have been included to make the Spanish stock market a more competitive market. In this regard, the requirements for the admission to trading of fixed income securities are simplified, the reporting obligations of participants in Spanish post-trading infrastructures are adjusted, the obligation of central securities depositories to have an information system for the supervision of the trading, clearing, settlement and registration of securities (PTI) is eliminated, the regulation applicable to regulated markets for takeover bids is extended to multilateral trading systems (subject to regulatory implementation) and the regime governing Special Purpose Acquisition Companies (SPACs) is developed. Likewise, certain measures are incorporated to improve the competitiveness of the Spanish collective investment sector.

In the investment firms segment, a new category is included – the national financial advisory firm. In addition, following the transposition of the aforementioned Directive 2019/2034, more appropriate requirements are established for the economic nature and specific risks that may affect smaller investment firms. Thus, the Law establishes the separation of the prudential requirements based on the size of the investment firm and another series of requirements related to systemic risks and their economic importance. In addition, the supervisory framework has been changed at the national level.

The new text improves the protection of the retail investor, introducing measures aimed at preventing unauthorised entities providing investment services in the European Union from representing themselves as legitimate on Internet search engines, social networks and in the media.

Additionally, the law reflects the most recent technological developments in the securities markets, introducing the option for financial instruments to be represented by distributed ledger technology (DLT). The CNMV is designated as the competent authority for the supervision of crypto-asset services providers, as well as for the supervision of the issuance, offer and admission to trading of certain crypto-assets that are not financial instruments, and the applicable regime for infringements and disciplinary actions is introduced.

Lastly, a series of changes were introduced in the governance of the CNMV itself in order to improve the effective independence of the supervisor, such as setting six-year terms for the chair, deputy-chair and *ex officio* directors, which may not be renewed.

### Survey among investors and other users of the information generated by the CNMV

EXHIBIT 21

In 2020, in compliance with the objective of the 2019 Activity Plan, a survey was carried out among more than 300 supervised entities and professionals in the sector to gauge their opinions and perceptions of the supervisor's operations. To give continuity to this exercise, the 2021 Activity Plan included as an objective the organisation of a perception panel on the operation of the CNMV among investors and other users of the information generated by the authority (academics, analysts and journalists) that are not supervised entities but that have a particular relevance in terms of the activities carried out by the institution.

The objective of the study was to identify the CNMV's strengths and aspects in which there was room for improvement. Thus, a general analysis was carried out of the perception and assessment of the CNMV by these groups and of the information generated and used by them. This study was drawn up by an expert company in this field, Punto de Fuga, which used two differentiated qualitative analysis techniques that took into account the disparity of the groups (investors and other users) under study.

First, ten focus groups were set up (a qualitative research method based on bringing together a small group of people to answer questions formulated by an external person) among the investors for a total of 50 investors of different characteristics (varying level of knowledge of the supervisor, different types of investment management, different genders, ages and places of residence). Second, 21 in-depth interviews were carried out among other users of the information generated by the CNMV, specifically: eight interviews with analysts, seven interviews with academics and six interviews with journalists.

The study revealed that the CNMV enjoys an excellent reputation and image among its stakeholders. The participants consider the CNMV to be a respectable and respected institution, with recognised, necessary and highly valued role. Above all, they highlighted its impartiality in the exercise of its functions, that it carries out its work without political influence, and the professionalism of its staff. However, a great opportunity was detected to maximise the connection and capacity of impact with the potential public.

In the case of investors and society in general, the challenge lies in raising the visibility of the institution and making its protection tools and financial education materials more tangible. The CNMV plans to carry out improvements in access to web resources, as well as to raise the image of the institution in all types of media, with the aim of publicising its work and the information it has access to.

In the case of analysts, journalists and academics, the challenge lies in promoting collaboration with these groups. Specifically, more meetings and work meetings are recommended, as well as promoting the tools that help them in their professional day-to-day lives. The CNMV plans to make progress in this area in 2023.

## Investor education and investor protection as part of the Action Plan against Financial Fraud

EXHIBIT 22

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In April 2022, 19 public institutions and private entities signed the general protocol of the Action Plan against Financial Fraud drawn up by the CNMV. These institutions include the Ministry of Economic Affairs and Digital Transformation, the State Attorney General's Office, the Bank of Spain and the National Police. The Plan aims to promote and improve the prevention and fight against offers of potentially fraudulent financial products and services given the detected increase in these practices, which cause serious damage to investors and the entire regulated financial sector.

The aims of this Plan include cooperating in the detection of irregular and criminal activities such as offers of financial products and services; limit or eliminate the advertising of entities that are not registered to provide financial services or establish information mechanisms for investors on the risks and possibilities of fraud. Likewise, one of the main activities of the Plan is to promote the necessary financial education to train citizens to recognise suspicious financial products and services.

As part of this objective, the CNMV has carried out various initiatives. Specifically, the development of the "scams and fraud" guide, describing the main financial frauds and scams, giving recommendations as to how to detect these in a timely manner, and some steps that must be following if you are a victim of fraud. In addition, an online course has been made available to the public about scams and frauds which teaches viewers about the different types of scams and frauds and offers recommendations on how to recognise them.

In addition, the 2022 edition of Financial Education Day was dedicated to financial scams and fraud. With the motto "Financial education for safer finances" numerous activities were carried out across Spain based on this theme. On occasion of this event, the CNMV carried out a workshop on scams and financial fraud aimed at young people from educational centres. Likewise, talks were given on the radio and on Twitch highlighting the importance of training to prevent financial fraud.

As part of the Financial Education Day, the CNMV promoted initiatives by the collaborators in the Financial Education Plan and more than 200 workshops, conferences, talks and webinars were held, dedicated to the prevention of scams and fraud. Additionally, thanks to the participation of collaborators, the CNMV stepped up its activity in the social networks through the Finanzas para Todos profile (Twitter, Instagram and Facebook), disseminating messages and warnings with the aim of preventing fraud and issuing recommendations to do this.

In this context and in collaboration with the Spanish National Police, a series of videos were disseminated on social networks in which the institution explains the concepts of scams and financial fraud and clears up any questions. Lastly, the influencer Nachter collaborated in the production of a video clarifying aspects related to financial fraud and its distribution on its social network accounts.

