

CNMMV
ANNUAL REPORT

ON ACTIVITIES

2001



CNMMV

Comisión Nacional
del Mercado de Valores
Spain

CNMV
ANNUAL REPORT

ON ACTIVITIES

2001

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LETTER FROM THE PRESIDENT

The world's financial markets and, inevitably, Spanish financial system had a difficult year in 2001. The slump in communications stocks and the fears about the economic cycle undermined individual investors' confidence in the stock markets while creating a boom in assets structured to reduce the risk. Although trading volume did not fall excessively, it was left more to professional and institutional investors than to private investors.

In contrast, trading in fixed-income securities surged due to higher debt taken on by certain business sectors for temporary reasons.

Against this backdrop, the terrorist attacks of 11 September brought economic activity and, of course, investment to a halt.

In addition to the terrorist attacks, there were three other factors which perturbed the normal working of the markets: the Gescartera case, the Enron case and the situation in Argentina. The consequences of the Gescartera case are duly set out in this Annual Report. The Argentine situation and the Enron case became known at the end of the year and their ultimate consequences were not known at the time of this report.

Spain's new Finance Law, currently before parliament, seeks to update certain aspects of legislation that had been rendered obsolete by the many new features of the financial system. This will lead to a change in the workings of the CNMV, but it will shortly be overshadowed by the implementation of the European Union's Financial Services Action Plan, which seeks to standardise European legislation in this area.

The process of implementing European legislation had an impact in 2001 and will have an even greater impact in the coming years.

The CNMV's activities in 2001 were deeply affected by the factors which I have mentioned. I trust that this brief presentation contributes to an understanding of the content of this Annual Report.



*Blas Calzada
Madrid, May 2002*

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ABBREVIATIONS

AIAF:	Asociación de Intermediarios de Activos Financieros/Spanish Brokers' Association
ANCV:	Agencia Nacional de Codificación de Valores/Spain's National Securities Numbering Agency
ANNA:	Association of National Numbering Agencies
AV:	Agencia de valores/Broker
AVB:	Agencia de valores y bolsa/Broker and market member
CADE:	Spanish government bond book-entry centre
CII:	Collective investment institution
CNMV:	Comisión Nacional del Mercado de Valores
DGTPF:	Dirección General del Tesoro y Política Financiera del Ministerio de Economía y Hacienda / Directorate-General of the Treasury and Finance Policy at the Ministry of Economy and Finance
EC:	European Commission
ECR:	Venture capital entity
ECSDA:	European Central Securities Depositories Association
ESI:	Empresa de servicios de inversión/Investment services firm
EU:	European Union
FESCO:	Forum of European Securities Commissions
FSAP:	Financial Services Action Plan
FIAMM:	Fondos de inversión en activos del mercado monetario/Money market fund
FII:	Fondos de inversión inmobiliaria/Real estate investment fund
FIM:	Fondos de inversión mobiliaria/Securities investment fund
IIMV:	Instituto Iberoamericano del Mercado de Valores
IOSCO:	International Organization of Securities Commissions
IPO:	Initial Public Offering
ISD:	Investment Services Directive
ISIN:	International Securities Identification Number
LATIBEX:	Latin American securities market

LMV:	Ley del mercado de valores/Securities market law
MEFF RF:	Spanish market in fixed-income futures
MEFF RV:	Spanish market in equity futures
MMU:	Market Monitoring Unit
MOU:	Memorandum of understanding
SCLV:	Servicio de Compensación y Liquidación de Valores/Securities Clearing and Settlement Service
SENAF:	Sistema Electrónico de Negociación de Activos Financieros/Electronic system for trading in financial assets
SGC:	Sociedades gestoras de carteras/Portfolio management company
SGFT:	Sociedades gestoras de fondos de titulización/Securitization fund management company
SGIIC:	Sociedades gestoras de instituciones de inversión colectiva/Collective investment institution management company
SIB:	Sistema de Interconexión Bursátil/Spain's electronic market
SIBE:	Sistema de Interconexión Bursátil Español/Spain's electronic market
SIM:	Sociedad de inversión mobiliaria/Securities investment company
SIMCAV:	Sociedad de inversión mobiliaria de capital variable/Open-end securities investment company
SPO:	Secondary Public Offering
SV:	Sociedad de valores/Broker-dealer
SVB:	Sociedad de valores y bolsa/Broker-dealer and market member
UCITS:	Undertakings for Collective Investment in Transferable Securities

SUMMARY:

The 2001 Annual Report describes the Commission's activities during the year. It is published in compliance with an express mandate set out in Article 13 of the Securities Markets Law, according to a basic principle of transparency and responsibility to Spanish society.

During the year, securities markets worldwide were adversely affected by the heightened uncertainty generated by the economic slowdown, which was compounded by the events arising in the wake of the 11 September attacks on the US. The Spanish markets were no exception. Equity markets were particularly hard hit by the atmosphere of uncertainty: prices, trading and primary market issues all slid. But the markets for other securities and products (bonds, derivatives, warrants and other financial contracts) performed positively.

The CNMV bears witness to this, since the number of issuance files virtually doubled in 2001. Bond issues, in particular, rose sharply, from €52 billion in 2000 to €75 billion in 2001. With the exception of the SIM/SIMCAV segment, which expanded considerably, the number of issuers in the Spanish markets was practically unchanged, so that, without SIM/SIMCAV, equities issuers numbered 257 and bond issuers 288 (AIAF and stock exchanges) by the end of the year.

Despite current problems in the markets, entity registration continued to rise sharply. In 2001, the CNMV processed more than 2,000 registration and nearly 1,000 withdrawals; at close of year, there were nearly 13,000 entities on the books. Amongst investment services firms, 141 were Spanish, 681 were foreign and there were 6,697 agents of Spanish companies. In collective investment institutions, 2,604 were investment funds, 2,269 investment companies and 191 foreign collective investment institutions. Collective investment management companies came to 123 and the number of depositories to 161. Moreover, there were 106 venture capital institutions and eight securitisation management companies. The CNMV registers recorded the effects of the high number of institutions in that the volume of disclosures and of amendments to the initial authorisation conditions rose significantly.

Unconnected with the global economic environment, the Spanish markets took major steps last year to improve and expand their services and to become more competitive in the international arena. In this context, it was decided to consolidate Spain's securities and derivatives markets, plus the new clearance and settlement system emerging from the integration of SCLV and CADE, under a common holding company. In addition to this agreement, the two Spanish clearance and settlement systems moved towards operating integration and the first alternative trading system, Senaf.SON, was authorised (it is already operating as an electronic platform for trading bonds). As required by current legislation, the CNMV followed these processes closely to ensure the efficiency of the procedures and the protection of the investors.

The CNMV was especially attentive to improving the quality of the information given to investors, as a fundamental factor for their protection. The CNMV stresses that investors should read the issue prospectus fully, paying particular attention to Chapter 0, which warns them against possible risks. With reference to financial statements and audit reports, the CNMV considers it a priority to improve the quality of the information. To date, 10%-15% of the audit reports received are qualified. In 2001, the CNMV contacted 219 listed companies asking them either to ensure that financial statements and audit reports were issued on time, or to supply information about the qualifications contained in audit (their plans to resolve the problems raised and to enlarge on specific information).

In secondary markets, the CNMV has closely followed the various improvements and extensions of services introduced by the markets and worked to ensure distribution of relevant

information for share price formation. In 2001, there were 54 suspensions of trading (which affected 35 issuers), mostly due to the need to publicise a significant event or announce a take-over bid. Last year, 24 companies were delisted, mostly on their own initiative, some due to being absorbed in a merger.

In 2001, the CNMV monitored 19 tender offers, 9 of them made by foreign groups, worth a total of €7.8 billion (more than double the 2000 figure). The CNMV ensured that all the shareholders of the target companies were treated equally. This is important, particularly in operations where the purchaser has already reached agreements with shareholders to buy a stake or manage the target company. In 2001, there were nine operations under these circumstances. In 2001, Ferroatlántica-EnBw, Adygesinval-EDP and RWE all made a bid to take over Hidrocarbón.

The CNMV stepped up its supervisory role in response to the adverse situation in the markets, in order to prevent it from affecting investment services firms; this specifically entailed an analysis of solvency and risk control mechanisms. In accordance with the latest regulation (Royal Decree 91/2001), collective investment supervising focused on adopting measures to ensure compliance with the new limitations on investments. If there are signs that a company's situation is in danger, the CNMV is empowered to intervene directly. Gescartera Dinero (a broker) was one such example, which also involved an IIC management company; since there were signs of criminal activity, the matter was referred to the public prosecutor.

The Market Monitoring Unit (MMU) investigates the conduct of securities markets entities to ensure that they do not carry out illicit activities. In 2001, the MMU investigated 41 cases, three of which resulted in files being opened. During the year, six new disciplinary proceedings were opened and thirteen closed. Of these, ten were for very serious violations, three for carrying out reserved activities without being registered, and two were for evasion of the requirement to make tender offers. The three serious penalties were due to breach of standards of conduct, general securities markets regulations and the misuse of privileged information.

Lastly, the CNMV's attention to investors should be stressed. In 2001, the claims service received 1,385 claims, most of them made against financial institutions. Of these claims, 49% were resolved on the basis of a CNMV statement, mainly providing information to the claimant. The service also attended to 31,620 queries from the general public, most of them related to information contained in official registers, although people are increasingly enquiring about matters relating to their investments.

In conclusion, 2001 was a difficult year for Spain's securities markets, as well as for the CNMV. The former have proved their maturity: at a time of considerable uncertainty they developed efficient investment and financing alternatives. Moreover, they committed themselves to a common strategy in order to strengthen the competitive position of Spain in the international financial services sector. For its part, the CNMV made all possible efforts to comply with its supervisory obligations.

Organisational structure

On 21 September 2001, Pilar Valiente resigned as President of the Comisión Nacional del Mercado de Valores (CNMV). She was replaced by Blas Calzada Terrados. The Vice President, Juan Jesús Roldán Fernández, and Commissioner M^a Soledad Plaza and Jabat, continue in office. Commissioner Félix de Luis y Lorenzo left the CNMV when his mandate expired on 14 February 2002; he was replaced by Juan Junquera González. Jose M^a Garrido García was appointed as Secretary of the Board on 17 December 2001. Annex 1 contains the full list of the CNMV Board.

Following the appointment of the new President, it was decided to reshuffle the internal organisation of the CNMV. The current structure has been in place since January 2002 (see Tables 1.3 and 1.4 for the 2001 and current structures).

The reorganisation consisted of grouping several important divisions into three directorates-General. They cover the main activities of the CNMV, performed in compliance with the objectives stipulated by the Securities Markets Law. The three directorates-general are as follows: the Directorate-General of Legal Affairs and Inspection, the Directorate-General of Markets and Investors and the Directorate-General of Securities Market Entities. The latter two comprise other Directorates. The Directorate-General of Markets and Investors encompasses the former Primary Markets and Secondary Markets Directorates, as well as the recently-created Directorate of Investors, whose aim is to offer less sophisticated investors adequate protection by means of basic training and improved information. The last two Directorates-General include all the other previous divisions.

In addition to the above-mentioned Directorates-General, a further five Directorates report directly to the Board of the CNMV and have horizontal scope. They are the Directorate attached to the President, Research and External Relations, International Relations, Information Systems and the General Secretariat (see Annex 4 for Directorate heads and other senior officials).

Administration

In 2001, the CNMV focused on improving the quality of its services. While reducing equity trading, the unfavourable climate on the stock market stimulated bond issues and corporate concentration transactions. Moreover, issuers showed an increasing interest in warrants and the number of issues filed with the Commission rose spectacularly. There was also considerable activity in the merging funds and registering new SIMCAV. Owing to greater market activity and the desire to ensure optimal service quality, the CNMV not only enhanced its information technology but also enlarged the workforce.

Human resources

In 2001, the CNMV payroll added a further 22 employees, a 9% increase on the previous year, with the aim of strengthening the divisions dealing with primary markets, supervision and securities markets participants. Hence, the additions covered primarily technical staff (up 14.4%) and, to a lesser extent, administrative staff. At the same time, the number of trainee technicians and managerial staff fell slightly.



ORGANIZATION AND MANAGEMENT

Table 1.1
CNMV STAFF
BY PROFESSIONAL CATEGORY

Category	Number of employees	
	2000	2001
Services	9	9
Administration.....	51	54
Trainee technicians.....	17	16
Technicians	152	174
Management.....	17	15
Total	246	268

The personnel was selected through 12 government recruitment processes. Eight (to fill 20 vacancies) were open to university graduates with experience in audit firms or financial institutions. Four (to fill 9 vacancies) targeted civil servants as part of the initiative to improve human resources in the context of the 2001 Government Recruitment Campaign.

Finances

The CNMV attained a net profit of €13.09 million in 2001. Revenue came to €32.97 million, €29.62 million of that from fees. Revenue from this source was flat on 2000, rising just 0.9%.

Over the year, operating expenses moved up 17.3%, to €19.88 million. Employee costs (66.7% of total expenses) lifted 13.7%, fuelled by the increased workforce. Other expense items increased 20% overall; travel expenses, leases and security accounted for 90% of the increase. Travel expenses were up on account of the CNMV's increased international presence. Lease expenses climbed due to the rent on the IOSCO provisional head office in Madrid. Security expenses augmented due to adapting services to meet the latest legal requirements.

In January 2002, the CNMV submitted a proposal to the Cabinet to transfer €8.5 million out of 2000 profit to the Treasury.

- *Fee revenues at the CNMV*

Fees are the CNMV's main source of revenue with which finance its functions of monitoring securities markets and their participants' activities. In 2000 and 2001, fees accounted for 90% of total revenue. Fees are collected from three sources: prospectus registration, financial entity registration, and supervision of financial markets and financial entities. In the last two years, these three items have contributed 30%-35% each.

The above sources of income depend on the performance of the securities markets. In 2001, total fee revenues were flat (+0.9%) on the previous year, but a number of items registered considerable variations.

Fees for registration of prospectuses and financial entities were affected by the adverse circumstances on the stock market during the year, although the effect was offset to some extent by the significant increase in vetting fees for AIAF listings and tender offers.

Heightened activity in the AIAF bond market also led to higher fees from market supervision. Fees from members of SCLV rose, whereas those from MEFF RF and stock exchange members fell.

In 2001, therefore, CNMV revenue from financial entity supervision slid, primarily due to the lower rates applied for supervision of investment funds.

Table 1.2
CNMV FEE REVENUES

(€ thousand)

Activity or service	2000	2001	Change (%)
Prospectus and financial entity registration	8.872,8	9.213,9	3,8
Prospectus registration	6.809,1	6.993,2	2,7
Issue prospectuses	5.170,4	4.871,9	-5,8
Listing prospectuses	446,3	300,8	-32,6
Vetting for AIAF listing	1.192,4	1.820,5	52,7
Financial entity registration	1.601,5	1.600,1	-0,1
Authorisation of tender offers	462,1	620,6	34,3
Financial market supervision	10.698,1	11.499,8	7,5
Members of AIAF	36,9	66,8	80,8
Members of SCLV	5.249,4	6.611,4	25,9
Stock exchange members	5.200,0	4.592,6	-11,7
Members of MEFF RF	15,2	6,1	-60,3
Members of MEFF RV	196,1	222,5	13,5
Members of FC&M	0,5	0,4	-18,7
Financial entity supervision	9.772,7	8.900,4	-8,9
IIC supervision	8.652,3	7.909,3	-8,6
FIM and FIAMM	8.054,6	7.173,1	-10,9
SIM and SIMCAV	555,9	682,8	22,8
Real state investment funds	41,8	53,4	28,0
IIC and FTH management companies	373,2	234,2	-37,3
IIC management companies	366,2	226,7	-38,1
Securitisation fund management companies	7,0	7,5	7,3
Supervision of investment services firms	747,2	756,9	1,3
Portfolio management companies	30,2	23,6	-21,9
Broker-dealers and brokers	717,1	733,4	2,3
Total	29.343,6	29.614,0	0,9

Information systems

In 2001, the CNMV acquired new IT equipment and implemented new systems in order to facilitate its activities of registration (particularly, processing files) and supervision, as well as the supply of information to the general public.

The Commission replaced most of its computers and basic workstation software and upgraded central server equipment. In addition, it expanded its communications capacity in order to ensure transmission of information via internet and improve the interconnection between the Madrid and Barcelona offices.

The new systems were primarily intended to strengthen electronic administration services through the implementation of “CNMV on line”, which is shaping up as a veritable ‘virtual desk’ on the CNMV internet page (www.cnmv.es), enabling both the CNMV and the parties under its supervision to effect a wide range of administrative procedures by computer. This makes the CNMV tasks easier and helps the parties under supervision comply with requirements.

To date, the “CNMV on line” service consists of 18 different processes, which the Commission intends to increase to 26 (to cover the most frequently used services). At present, it processes an average of 2,000 electronically-signed documents per month. The newest and most frequently is the registration of collective investment institutions prospectuses (“electronic prospectus”⁽¹⁾). At the end of 2001, 25% of the prospectuses registered were available in electronic form. The progress made is spectacular:

- (i) Automation and instantaneous transfer of documentation has reduced the average processing time from 58 days to 16.
- (ii) IIC managers receive the registered version of the prospectus straight after it has been registered, so that they can send it out to their network of offices more quickly and at less cost than in the past.

Additionally, the Commission redesigned all the information supplied on its web site in a portal format, by adding new access and information dissemination features.

CNMV office in Catalonia

The CNMV office in Catalonia celebrated its fifth anniversary on 17 April 2001. The office has considerably expanded its functions since its creation. Initially, it concentrated on registration, attention to the general public and supervision of financial entities. It now provides the whole range of services offered by the CNMV.

The CNMV office in Catalonia is open to investors and financial entities, enabling them to consult the CNMV’s public records (either on paper or electronically), as well as personal service in responding to enquiries or claims against financial entities.

Catalan financial institutions have convenient direct access in Barcelona to the services offered by the CNMV: they can register any document with the Office for processing, and make queries (and receive answers) about how to proceed with the CNMV.

Owing to its rising level of activities, the office has expanded its human and technical resources. At the end of 2001, employees numbered 23. In terms of technology, the office has installed a videoconferencing system, which reduces travel by facilitating communication between staff in Barcelona and Madrid. In addition, these two offices are connected by a fibre optic system which enables the Catalan office to share the CNMV’s common IT network in real time.

(1) The Order dated 18 April 2001, on prospectuses, quarterly reports and reporting obligations of collective investment institutions, made electronic filing obligatory for vetting, registration and updating of collective investment institution prospectuses.

National Securities Numbering Agency (ANCV)

As in previous years, the National Securities Numbering Agency (ANCV) recorded high levels of activity, due in part to the growing knowledge, dissemination and acceptance of ISIN codes in domestic and foreign securities markets. In 2001, the ANCV database increased by 33% to 17,540 entries in total, due to three factors:

- (i) the higher number of SIMCAV registrations and commercial paper issues;
- (ii) the increase in warrant issues (by both domestic and foreign issuers, in contrast to 2000);
- (iii) the redenomination of the securities due to the adoption of the euro.

The number of direct enquiries to the ANCV fell, however, in line with the trend set in previous years (from 3,170 in 2000 to 2,785). This is primarily due to increased use of other channels, primarily the web site, which affords access to the data base around the clock and eliminates the need for direct involvement of agency personnel.

In July 2001, the Association of National Securities Numbering Agencies (ANNA) established a new data dissemination service (the “ANNA Service Bureau”, ASB), basically to distribute ISIN codes for international issues of securities. The ANCV uploads data to the ASB on a daily basis. At the end of 2001, the ASB covered more than a million securities issues from 169 countries.

Table 1.3

STRUCTURE OF THE COMISION NACIONAL DEL MERCADO DE VALORES IN 2001

DIRECTORATES	FUNCTIONS
Directorate-General of Securities Market Institutions	Creation and institutional monitoring of investment services firms, collective investment institutions and venture capital entities.
Directorate-General of Primary Markets	Security issues, public offerings and listings. Significant holdings and own shares. Takeovers. Periodic disclosure by issuers.
Directorate-General of Secondary Markets	Supervision of secondary markets. Reporting of significant events to the market. Exclusion from, and suspension, of trading.
Directorate-General of Supervision	Supervision, inspection and intervention at registered entities.
Directorate-General of Inspection	Proposal and processing of disciplinary proceedings. Inspection of non-registered entities. Market Monitoring Unit: inside information and price manipulation.
Directorate-General of Legal Department and Secretariat to the Board	Secretariat to the Board and the Advisory Committee. CNMV Legal Department. CNMV litigation service and relations with the justice system. Development of regulations.
General Secretariat	Administration. Relations with the public. Documentation and Official Registries.
Directorate-General of Development	Institutional relations with ICAC, SCLV, securities market companies and Latibex. Accounting advice. Monitoring of EU directives. Preparation and updating of statistical information. Office in Catalonia: provision of CNMV services in Barcelona.
Directorate-General of Research	Preparation of the Annual Report and Report on the securities markets. Analysis of the financial situation and research on the securities markets.
Directorate-General of International Relations	Coordination of the CNMV's international relations. Participation in IOSCO, FESCO and other international bodies.
Directorate-General of Information Systems	Design, development and implementation of the CNMV's information systems. National Securities Numbering Agency.
Directorate-General of Communications	Relations with the media

BOARD

Table 1.4

STRUCTURE OF THE COMISION NACIONAL DEL MERCADO DE VALORES IN 2002

DIRECTORATES-GENERAL	DIRECTORATES	FUNCTIONS
Directorate-General of Securities Market Participants	Directorate of Authorisation and Registration of Entities	Creation and institutional supervision of investment service firms, collective investment institutions and venture capital companies.
	Directorate of Supervision	Supervision, inspection and intervention in registered financial institutions (investment service firms, collective investment institutions and venture capital companies).
Directorate-General of Markets and Investors	Directorate of Primary Markets	Security issues, public offerings and listings. Significant holdings and own shares. Takeovers. Periodic disclosure by issuers.
	Directorate of Secondary Markets	Supervision of secondary markets. Reporting of significant events to the market. Exclusion from, and suspension, of trading.
	Directorate of Investors	Provision of information to investors. Investor training.
Directorate-General of Legal Affairs and Inspection		Secretariat to the Board and the Advisory Committee. CNMV Legal and litigation department. Relations with the justice system. Development of regulations. Processing disciplinary proceedings. Market Monitoring Unit.
BOARD	Directorate attached to the President	Institutional relations with the markets. Advice on accounting regulations. Analysis of EU and international policy on securities markets. Office in Catalonia: provision of the CNMV's services in Barcelona.
	Directorate of Research and External Relations	Analysis of the financial situation and research on securities markets. Preparation of the Annual Report and Report on the securities markets. Preparation and updating of statistical information. Relations with the media.
	Directorate of International Relations	Coordination of the CNMV's international relations. Participation in IOSCO, FESCO and other international bodies. Coordination of follow-up on EU directives.
	Directorate of Information Systems	Design, development, implementation and maintenance of the CNMV information systems. Technological support to the supervision of the information systems at markets and members of the markets. National Securities Numbering Agency.
	General Secretariat	Administration. Documentation and official registries. Internal procedures. Claims service.

2

REGULATION

The legislation approved in 2001 constitutes a step ahead in consolidating a stable regulatory framework which offers the adequate conditions for enhancing the competitiveness of Spain's stock markets as well as ensuring effective investor protection. To this end, the Draft Law on Measures to Reform the Financial System will be considered during the course of 2002.

There are two major new regulations on investment services: Royal Decree 867/2001, of 20 July, relating to the legal regime for investment services firms, and the Royal Decree 948/2001, of 3 August, on investor compensation systems. Both measures were envisaged in the Securities Market Reform Law, which adapted Spain's legislation on securities markets to the contents of the Investment Services Directive. The Regulation of the Law on collective investment institutions (IIC)⁽²⁾ was also amended to make it easier to adapt the supply of collective investment products to competition and to improve investor protection.

Spanish legislation is obliged to adapt to the harmonising standards laid down by the European Union, which is adhering to its undertaking to encourage European stock markets to integrate as soon as possible. In 2001, within the context of the Financial Services Action Plan, a number of priority legislative projects were processed; the Stockholm summit accepted the proposals of the Lamfalussy Committee in order to accelerate the drafting of EU legislation. In 2002, the European Union is expected to make important progress on regulation, particularly during the first half of the year, under the Spanish presidency.

Securities market legislation in 2001

Secondary markets, registration systems, securities clearing and settlement

- *Law 24/2001, of 27 December, on fiscal, administrative and labour measures.* This law adds a seventeenth additional provision to Securities Market Law 24/1988, of 28 July. The provision relates to the ownership structure of Spain's secondary markets and registration systems, as well as to clearing and settlement systems. It allows the creation of a holding company to own the registration, clearing and settlement systems, in addition to establishing an administrative authorisation regime for the constitution of a new company.

Investment services firms

- *Royal Decree 867/2001, of 20 July, on the legal regime for investment services firms* (see box).

(2) Royal Decree 91/2001, of 2 February, which partly amends Royal Decree 1393/1990, which approves the Regulation of Law 46/1984, of 26 December, which governs collective investment institutions.

Development of the legal regime relating to investment services firms

Last year, the Spanish government approved the regulation relating to the legal regime of investment services firms by passing a Royal Decree⁽¹⁾, in accordance with the provisions of the Securities Market Reform Law⁽²⁾, which transposed the Investment Services Directive into Spanish law. The transfer entailed, among others, the introduction of the concept of investment services firm and a regulation on cross-border activities by these firms under the “community passport”. The new regulation enlarges on this concept, adapting the regulation on investment services firms.

The Royal Decree on investment services firms regulates: (i) their definition, typology, reserved activities and authorisation procedure; (ii) liquidity requirements and the legal regime relating to operations; (iii) the regime on significant holdings and reporting obligations; and (iv) cross-border actions by entities authorised in Spain and by foreign entities in Spain. These matters are treated in a manner which clearly aims at liberalising the system, by avoiding the imposition of entry barriers and requirements which are not sufficiently warranted by the risks. At the same time, an attempt is made to treat investment services firms in the same way as credit institutions, as far as possible, since the latter are also allowed to offer a full range of investment services.

The Royal Decree contains new features, including the reduction of the initial capital requirements for broker-dealers and brokers, bringing them closer to the requirements of the main member states of the European Union, which are lower⁽³⁾. To foster liberalization, the decree also allows investment services firms to perform “ancillary activities” (e.g. advisory services) relating to instruments not expressly cited in the Law. It also imposes more rigorous requirements on agents of investment services firms (also called representatives) in terms of both solvency and rules of action.

(1) Royal Decree 867/2001, of 20 July, on the legal regime for investment services firms, which replaced Royal Decree 276/1989, on broker-dealers and brokers and the Regulation on portfolio management companies contained in Title IV of the Regulation implementing Law 46/1984, on collective investment institutions.

(2) Law 37/1998, of 16 November, which amends Securities Market Law 24/1988, of 28 July.

(3) The new standard stipulates a minimum capital of €2,000,000 for broker-dealers and €300,000 for brokers. But when brokers want to enter the secondary market, joint clearing and settlement systems, act as securities depositories on behalf of customers, and hold instrumental and temporary cash accounts for them, they need an initial capital of €500,000. Previously, broker-dealers needed a minimum capital of approximately €4,500,000 and brokers, €900,000.

Investor compensation systems⁽³⁾

- *Royal Decree 948/2001, of 3 August, on investor compensation systems.* This decree regulates investor compensation systems, of both investment services firms and credit institutions, as envisaged in Law 37/1998, of 16 November, which reforms the Securities Market Law. The systems are implemented by means of one or two investment guarantee funds: the one created recently for broker-dealers and brokers, and the existing deposit guarantee funds for credit institutions. It also establishes the regime for companies which manage the investment guarantee funds: they must be corporations and their capital must be subscribed by the institutions belonging to the fund according to the same criteria as those governing contributions to the fund. The Comisión Nacional del Mercado de Valores is responsible for monitoring these fund management companies.

(3) See Chapter 3 for more detailed information on investor compensation systems and the establishment of the Fondo General de Garantía de Inversiones (General Investment Guarantee Fund).

- *Order of 14 November 2001 empowering the Comisión Nacional del Mercado de Valores (CNMV) to issue the provisions for implementing Royal Decree 948/2001, of 3 August, on investor compensation systems.* This order empowers the CNMV to implement this Royal Decree with the aim of expediting the launch of the investment guarantee funds.
- *CNMV Circular 2/2001, of 23 November, on the information to be supplied by broker-dealers and brokers to the company which manages the investment guarantee fund and on the valuation of unlisted securities and financial instruments, for the purposes of determining the basis of the calculation of the combined annual contribution to the fund.* This Circular stipulates that institutions which belong to an investment guarantee fund are bound to exercise permanent control over the accounts relating to temporary balances of cash received from third parties, and securities and other financial instruments in deposit and custody.
- *Law 24/2001, of 27 December, on tax, administrative and labour measures.* This includes the regime on distribution between deposit and investment guarantee funds of the compensation arising from the retroactivity of the investor guarantee system, the regime established in this Law being applicable prior to 1 January 2002.

Collective investment institutions

- *Royal Decree 91/2001, of 2 February, which partially amends Royal Decree 1393/1990 which approves the Regulation of Law 46/1984, of 26 December, regulating the collective investment institutions* (see box on page 25).
- *Order of 18 April 2001 on prospectuses, quarterly reports and reporting obligations* (see box on page 26).
- *CNMV Circular 1/2001, of 18 April, relating to forms of prospectus.* This establishes the contents and format of collective investment institution prospectuses, in the full and simplified versions (the latter forming a pull-out version of the former). For additional simplicity, a single format is established for both investment funds and investment companies.

Other legislation approved in 2001

Euro

- *Royal Decree 1322/2001, of 30 November, which establishes the rules for expression in euros of entries in public administration registers.* This Royal Decree implements the provisions of Article 26 of Law 46/1998, of 17 December, relating to the introduction of the euro, as amended, and establishes criteria for the expression in euros of entries in public administration registers which express any monetary amount in pesetas, as applicable to the people and institutions defined therein. It is applicable to the entries held or made by a Public Administration in registers accessible to the public, with the exception of Property, Mercantile, Civil and Personal Property registers.

Electronic filing

- *Order of 26 December 2001 which establishes the general criteria relating to the electronic processing of specific procedures by the Ministry of the Economy and related Public Entities and*

Amendments to the Regulation on Collective Investment Institutions

In February 2001, the government approved an important partial amendment to the Regulation of the Law on collective investment institutions⁽¹⁾. The amendment has a dual purpose: to make the regulation more flexible, so that, in the current context of globalisation, the Spanish investment fund activity is more competitive, and to ensure that investors are adequately protected vis-à-vis both management companies and securities depositories.

In this manner, the amended Regulation (i) reduces the minimum level of assets required in order to create new investment funds; (ii) simplifies the requirements (authorisation, registration and revocation) as well as shortening the maximum deadlines for procedures; (iii) widens the scope of operations by collective investment institutions, both by extending the range of markets in which it is possible to invest⁽²⁾, and by making investment ratios and equity requirements more flexible; (iv) recognises new ways of managing funds, more adapted to market demands, particularly the possibility of delegating the management of foreign assets and using different marketing channels⁽³⁾, and (v) opens the market up to new kinds of collective investment institutions: funds of funds, master and feeder funds, index funds, unlisted securities funds, multi-brand funds, currency funds, etc.

The most relevant measures to ensure that investors are better protected are as follows: (i) the establishment of a regime for related-party transactions by management companies (the internal regulations of management companies should specifically address such transactions to avoid conflicts of interests); (ii) stricter requirements in terms of technical and human resource and internal control procedures, in both management companies and securities depositories; and (iii) the demand for greater transparency and stricter control in specific, particularly sensitive areas to ensure the smooth running of collective investment institutions and their management companies⁽⁴⁾.

(1) Royal Decree 91/2001, of 2 February, which partially amends Royal Decree 1393/1990, of 2 November, approving the Regulation of Law 46/1984, of 26 December, governing collective investment institutions.

(2) All markets and trading systems in the OECD countries are deemed to be acceptable provided that they fulfil requirements comparable with those stipulated by the Investment Services Directive for regulated markets.

(3) Management companies may market their funds directly, through their own branches, or indirectly, via agents or representatives. Previously, only investment services firms and credit institutions were entitled to market.

(4) Other measures are as follows: (i) the regime on holdings is standardised with the rest of the financial sector; (ii) the time span for adjusting surplus investment and concentration ratios has been shortened; and (iii) limits were imposed on the extent to which collective investment institutions management companies may diversify investments for their own account.

creates a Telematic Register for the presentation of documents and requests in accordance with the regulations governing the use of electronic signatures, telematics and computer technology by the State General Administration, and relating to the presentation of requests, documents and other filings to the Administration and the regime and working methods of the Registry offices.

- *Law 24/2001, of 27 December, on tax, administrative and labour measures.* This includes amendments to Law 30/1992, of 26 November, relating to the Legal Regime of Public Administrations and Common Administrative Procedure, in order to stimulate electronic administration. It refers to the creation of telematic registers for receiving and sending requests, documents and communications transmitted by telematic methods, to the notification of interested parties by these means, and to the telematic presentation of requests and communications addressed to the State General Administration and Public Bodies.

Revised format for prospectuses issued by collective investment institutions

As of 1998, mutual funds were allowed to issue an abridged prospectus as part of their marketing strategy⁽¹⁾, although this did not exempt them from preparing a full prospectus and making it available to investors. Last year, further progress was made with the approval of a Ministerial Order which introduced major innovations in terms both of the format of the prospectuses⁽²⁾ and the methods for vetting and registering them.

This Ministerial Order establishes a new format consisting of a single prospectus, which includes a summary that is an integral part of the full prospectus but can be distributed as a separate item. This avoids the need to draw up both a full prospectus and a simplified one as well as eliminating any variance in their contents. Investment companies are also allowed to use the abridged prospectus. In addition, the prospectus must be filed with the CNMV by electronic means using the CIFRADO/CNMV encryption and electronic signature system. The CNMV has issued a Circular⁽³⁾ establishing the forms to be used by collective investment institutions.

Under the 2001 legislation, the registration of collective investment institutions prospectuses is the first administrative procedure to be automated with the aim of encouraging the advent of the virtual office (minimal or zero use of paper) in institutions under supervision. Obviously, institutions will have to reorganise in order to adapt to the new system, but the CNMV considers that it will make vetting procedures and the registration of up-dated prospectuses more flexible.

(1) Ministry of Economy and Finance Order of 1 October 1998 relating to the reasons for updating prospectuses, and the abridged quarterly report for real estate investment funds and money market funds.

(2) Ministry of Economy and Finance Order of 18 April relating to collective investment institutions' prospectuses, quarterly reports and reporting obligations.

(3) CNMV Circular 1/2001, of 18 April, relating to the forms of collective investment institutions prospectus.

Draft Law on Measures to Reform the Financial System

The aim of the Draft Law on Measures to Reform the Financial System is to establish an appropriate legal framework to accelerate the integration of Spanish financial markets into Europe and to increase the efficiency and competitiveness of Spain's financial systems by encouraging the investment of savings in the real economy as well as affording adequate protection to financial services clients. In March 2002, the Spanish Cabinet voted to submit this new legislation to parliament for approval.

The text approved by the Cabinet covers the following regulatory areas:

- Foster efficiency in the securities, credit and insurance markets

The measures aim at ensuring that Spanish securities clearing and settlement systems are integrated, which necessitates an amendment to the Securities Market Law 24/1988, of 28 July, as well as encouraging the Spanish securities markets to open up (see Chapter 3 for more detailed information on strategic initiatives in this area). Other measures include actions to facilitate the exchange of information on insurance, securities and collective investment institutions between EU supervisory bodies and third countries while providing assurances of confidentiality. Moreover, it regulated a number of functions of the Bank of Spain's Central Credit Register System in order to improve the stability of the credit system.

- Stimulate competitiveness in the financial sector.

To this end, the draft law envisages the creation of a form of territorial bonds (“cédulas territoriales”) which will securitise bank loans to regional and municipal governments; it also amended both Law 46/1984, of 26 December, which governs collective investment institutions (widening the scope of their operations) and the Securities Market Law 24/1988, of 28 July, referring to contractual compensation clauses when parties go bankrupt.

- Protect financial services clients

The new regulations establish the creation of specific entities to defend the clients of financial services, which will be attached to the Bank of Spain, the CNMV and the General Insurance Directorate. Moreover, credit institutions, investment services firms and insurance companies are obliged to attend to their clients’ claims before having recourse to these bodies.

The scope of the sanctions applicable due to faults in the administration system and in internal control at credit institutions, investment services firms and insurance companies was also extended.

In the area of capital markets, the draft law encourages transparency and acknowledges that information is of vital importance. Hence, it reinforces the regulation relating to relevant information and privileged information; it regulates in detail the relevant information which must be disclosed to the market and extends the concept of privileged information to cover instruments other than marketable securities. Moreover, the obligation of transparency is extended to cover executives, directors and employees, and practices which distort the free formation of prices on the securities markets are forbidden. Lastly, it defines precisely what is meant by price manipulation, both through direct intervention in the markets and through distribution of false or misleading information.

Accordingly, the CNMV’s powers are reinforced so that it can enforce compliance with the above obligations. To this end, the Securities Market Law is amended and extended.

- Improve financing of small- and medium-sized enterprises.

In this context, Law 1/1999, of 5 January, governing venture capital entities, is amended in order to improve the financing of innovative SMEs.

- Electronic trading.

The legal consequences of electronic trading are regulated, and Directive 2000/46/EC on the taking up, pursuit of and prudential supervision of the business of electronic money institutions is transposed.

European Union legislation approved in 2001

- *Directive 2001/34/EC of the European Parliament and 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.* This Directive coordinates the conditions for the admission of securities to official listing on stock exchanges in order to harmonise the guarantees demanded by the various Member States at a level sufficient to ensure the appropriate and most objective information possible on marketable securities. It does not recognise that issuers have the

right to listing but, rather, constitutes the first step in ensuring that regulations in the various member states become more uniform in this sphere of action.

- *Directive 2001/107/EC of the European Parliament and the Council of 21 January 2002 amending Council Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) with a view to regulating management companies and simplified prospectuses.* This directive expands regulation on management companies of collective investment institutions, ensuring basic, necessary and sufficient harmonisation for guaranteeing mutual acceptance of authorisation and prudential supervision systems, making it possible to grant a single authorisation valid throughout the EU and to apply the principle of supervision by the original member state. It also introduces a new (simplified) type of prospectus for UCITS, in addition to the full prospectus, which is easy to use and a very useful source of information for the average investor.
- *Directive 2001/108/EC of the European Parliament and the Council of 21 January 2002 amending Council Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities with regard to investments of UCITS.* This Directive enlarges the scope of the UCITS investment objectives to cover investment in financial assets other than transferable securities which offer sufficient liquidity, at the same time as assuring a minimum harmonised level of investor protection.
- *Council Regulation (EC) No. 2157/2001 of 8 October on the Statute for a European company (SE).* This regulation (which will come into force on 8 October 2004) facilitates the restructuring of the activity of mercantile companies throughout the EU by establishing a uniform legal framework, thereby avoiding the problems arising from disparity and the limited territorial application of national legislation. Thus, in addition to forming companies on the basis of national laws, companies can be constituted and operate according to an EU Regulation directly applicable in all Member States.
- *Council Regulation (EC) No. 467/2001 of 6 March prohibiting the export of certain goods and services to Afghanistan, strengthening the flight ban and extending the freeze of funds and other financial resources in respect of the Taliban of Afghanistan, and repealing regulation (EC) No. 337/2000.* This regulation was issued as a result of United Nations Security Council Resolution 1333 (2000). The object is to freeze all the funds and other financial assets of any physical or legal person, entity or body indicated by the UN Sanctions Committee and ensure that neither they nor any other funds are made available to any person, entity or body indicated in the annexes to the Resolution. The annexes were amended by the European Commission which issued five regulations, four of them after the terrorist attacks of 11 September.
- *Council Resolution of 27 December 2001 establishing the list anticipated in Section 3, Article 2 of Council Regulation (EC) No. 2580/2001 of 27 December on specific restrictive measures directed against certain persons and entities with a view to combating terrorism.* This Community-wide measure complements existing administrative and legal procedures relating to terrorist organisations in the European Union and in third countries.
- *Regulation (EC) No. 2558/2001 of the European Parliament and the Council of 3 December amending Council Regulation (EC) No. 2223/96 with regard to the classification of settlements under swap arrangements and forward rate agreements.* This regulation amends Annex A, so that the register of the flows of these financial transactions are included in the entry for financial derivatives.

- *Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001 amending Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering.* This Directive amends definitions and includes measures with the object of ensuring that the entities, institutions and persons subject to the Directive ascertain the identity of their clients when they establish business relations with them, particularly when opening accounts and providing asset custody services.
- *Directive 2001/65/EC of the European Parliament and of the Council of 27 September amending Directives 78/660/EEC, 83/349/EEC and 86/635/EEC as regards the valuation rules for the annual and consolidated accounts of certain types of companies as well as of banks and other financial institutions* This Directive introduces the possibility for Member States to oblige or allow certain types of companies to value financial instruments, including derivatives, in accordance with the fair value model. This permission or obligation may be confined to the consolidated accounts. It also indicates the manner in which the fair value is determined and lays down the rules for accounting for the variations in fair value of the financial instruments and the disclosures required in the individual and consolidated accounts. Member States must issue the necessary legislation to comply with the Directive before 1 January 2004.

Progress made by the EU Financial Services Action Plan

Although some progress was made in implementing the Financial Services Action Plan⁽⁴⁾ in 2001, there is general concern about the current pace of work and about whether the deadlines will be met. The Stockholm European Council endorsed the Lamfalussy Committee⁽⁵⁾ recommendation to bring forward the date by which the most relevant measures relating to securities markets should be implemented from 2005 to 2003.

At the end of 2001, the two Directives on mutual funds and the Directive on money laundering had been adopted. Moreover, agreement was reached on the Directives on market abuse and distance selling of financial services. By the end of the year, 25 out of the 42 actions in the Plan had been completed and one had been rejected by the European Parliament (the Draft Directive on tender offers). See Table 2.1 for an update on draft EU legislation relating to the securities markets.

Table 2.1

EU DRAFT LEGISLATION ON SECURITIES MARKETS

<i>European Commission</i> ⁽¹⁾	<i>European Parliament and Council</i> ⁽²⁾
<ul style="list-style-type: none"> • Tender offers • Revision of the Directive on Capital Adequacy • Overhaul of the Investment Services Directive • Periodical information released to the public • Accounting amendments 	<ul style="list-style-type: none"> • Distance Selling of Financial Services • Market abuse • Financial conglomerates • Public offering and listing prospectuses • Collateral

(1) Pending a proposal from the Commission.

(2) Proposals made by the European Parliament and the Council.

(4) The Financial Services Action Plan, published in May 1999 at the request of the Council of Ministers of the Economy and Finance (ECOFIN), outlines a series of measures, primarily legislative, intended to stimulate integration of financial services markets within the European Union.

(5) This Committee of “Wise Men”, chaired by Alexander Lamfalussy, was formed in July 2000 to advise EU authorities on the modifications necessary in European regulation in order to accelerate securities markets integration.

During the first half of 2002, the EU will be taking a number of particularly important initiatives in terms of legislation. The three main Directives on the single securities market (market abuse, issuance and listing prospectuses, and financial conglomerates) will have their first reading in the European Parliament. In the second quarter, the Commission plans to issue two new draft Directives dealing with periodical information released to the public and a revision of the Investment Services Directive. Following the release of the experts' report on tender offers at the beginning of January 2002, the European Commission may draft another directive in this area.

The Lamfalussy Reform of the EU regulatory process

The Lamfalussy Committee presented its final report in February 2001. The main contribution is the suggestion to modify the manner in which EU legislation is drawn up. According to the conclusions, the European regulatory framework is too restricted to keep pace with the rapid and profound changes taking place in securities markets. The Committee also pointed out that the institutional framework had failed to contribute to the creation of a single market because it was too slow and ambiguous.

In order to resolve these problems, the Committee proposed amending the regulatory framework on four levels:

- Level 1: referring to legislative texts which treat only vital elements in Directives and Regulations, since the European Parliament and the Council will decide on the measures to be delegated in Level 2.
- Level 2: implementation of measures delegated from the previous level. To this end, two committees have been created to aid the Commission: the European Securities Commission (ESC), as a regulating committee which will function according to the comitology procedure, and the Committee of European Securities Regulators (CESR), with consultative status.
- Level 3: on the transposition and consistent application of Level 1 legislation and Level 2 implementation standards, coordinated by the Committee of European Securities Regulators.
- Level 4: will depend on the European Commission, which is responsible for overseeing the application of community law.

In June 2001, the Stockholm summit supported this approach and put forward a number of measures to ensure a balance between the powers of the various EU institutions. But the European Parliament indicated its dissatisfaction with the procedure and issued a resolution in which it reserved the right to go beyond both the resolution and the agreement. In addition, the European Parliament has requested a decision from the Constitutional Affairs Commission on the following:

1. Ensure that the Parliament is treated on the same footing as the Council within the context of decision-making under the comitology procedure.
2. Put forward an amendment to Article 202 of the EU Treaty in order to establish a criterion of equality between the European Parliament and the Council in terms of their supervisory powers over the Commission.

3. Limit the scope of implementation of the matters delegated to comitology to four years (“sunset” clause).
4. Ensure transparency by granting access to all documents in the legislative process.
5. Offer those who are involved in the market, as well as consumers, ample consultation procedures through the Committee of European Securities Regulators.

Whatever the Constitutional Affairs Commission concludes, there must obviously be close cooperation between the European Commission, the Parliament and the Council in order to reduce the time taken to adopt the new standards.

Progress in accounting harmonisation

In June 2000, the European Commission had already stated its position about accounting harmonisation in Europe through the proposal that International Accounting Standards (IAS), as issued by the International Accounting Standards Board (IASB), be applicable as of 2005. Progress was made in this direction during 2001.

Adaptation of accounting directives

From the legal point of view, application of the IAS entails modifying the existing accounting directives. In September 2001, Directive 2001/65/EEC was published, amending various Directives⁽⁶⁾ in order to introduce the fair value model relating to certain financial instruments, such as derivatives, about which there is already sufficient international consensus. Member States must authorise this criterion, by either allowing or requiring its application, and certain types of companies (e.g. small companies) may be exempt from its scope of application. There are also plans to issue another updated standard, currently under discussion within the Contact Committee, in order to reflect on the most recent advances in the consensus about accounting criteria.

Obligation for listed companies to apply IAS

With the aim of establishing the obligation of applying the IAS to at least the consolidated financial statements of listed companies, last year the European Commission presented a draft Regulation⁽⁷⁾ in which it stated that the European Commission will rule, no later than 31 December 2002, on the adoption of the IAS which will be applicable as of 1 January 2005. Nonetheless, the application date is delayed to 2007 for those companies which only have bonds listed or whose securities are listed in a non-member state of the EU in the year prior to the publication of the Regulation and, for this reason, are using another body of international accounting standards (e.g. US GAAP).

The IAS adopted should not be counter to the principles established in accounting Directives IV and VII. In order to help the Commission in the process of legal validation of the IAS, two consultative bodies have been created: the Accounting Regulation Committee (a political body) and

(6) IV Directive (78/660/EEC) on individual annual accounts, VII Directive (83/349/EEC) on consolidated accounts and Directive 86/635/EEC, on the annual accounts and consolidated accounts of banks and other financial institutions. Directive 91/674/EEC, on the annual accounts and consolidated accounts of insurance undertakings, lies outside the scope of this standard.

(7) 2001/ 0044 (COD).

the European Financial Reporting Advisory Group (EFRAG). When discussions relate to securities markets, the Committee of European Securities Regulators (CESR) will have observer status in both committees.

It is also important to have a suitable control mechanism to ensure that the new accounting standards are in fact applied. To this end, a sub-committee (on which the CNMV will sit) has been created within the CESR which will put forward common guidelines for action by securities market regulators.

Creation of a Committee of Experts to review accounting practices in Spain

The European Commission's draft Regulation on applying IAS to the consolidated financial statements of listed companies gives Member States the possibility of extending them to cover individual annual accounts and companies that do not have listed securities. The Ministry of Economy, considering it of relevance to reflect on these options, in particular, and on Spain's accounting systems, in general, issued a Ministerial Order on 16 March 2001 creating a Committee of Experts.

The Committee (of which the CNMV is a member) has advanced relatively far and will shortly publish a White Paper setting out the effects of the new EU accounting strategy in Spain, general reflections on the Spanish accounting system (with reference to advances made elsewhere in the world) and proposals on the basic approach to adopt if the accounting system in Spain is to be modified.

In Europe, the major markets and clearing and settlement systems continue taking measures to improve their competitive position. In this context, there were two major acquisitions: Euronext bought LIFFE⁽⁸⁾, the second largest derivatives market in Europe, and the German stock exchange, Deutsche Börse, took over total control of Clearstream, the second largest provider of clearing and settlement services in Europe.

Last year, an event of potentially vital importance to the markets in Spain took place: the announcement that all organised markets, plus the new clearing and settlement system (which will arise from the integration of the SCLV⁽⁹⁾ and CADE⁽¹⁰⁾) are to be integrated into a single holding company. This decision may ensure that Spanish markets are in a much better position to compete with other markets in Europe (where strategic moves continue to take place).

Strategic steps in European Union markets

Despite the obstacles, European markets continue to concentrate. Having dispensed with the idea of mergers or link-ups, at least in the immediate future, the three major markets in Europe (the London Stock Exchange, Euronext and Deutsche Börse) have opted for enhancing their competitive position through smaller scale concentration (although not always meeting with the desired results). The aim is to increase and diversify revenue sources as well as ensuring that they do not become take-over bait.

So far, of the three stock exchanges, Euronext⁽¹¹⁾ has been the most active. In 2001, it made a tender offer for LIFFE (Europe's second-largest derivatives market), which it won despite competition from the London Stock Exchange. As a consequence, Euronext will base its derivatives trading in London. Euronext also incorporated the Lisbon and Oporto Stock Exchanges (BVLP) as well as coming to an agreement with the Helsinki Stock Exchange under which members have reciprocal access to each other's spot markets.

Contrasting with Euronext's horizontal expansion, the German stock market is applying a growth model based on vertical integration. Last year, it initiated negotiations to acquire 100% of Clearstream, the clearing and settlement system through which it operates and in which it already had a 50% stake (Cedel, the Luxembourg clearing house, held the other 50%). Clearstream is one of the two main providers of this service in Europe (the other is Euroclear). The negotiations were brought to a successful conclusion and the acquisition was announced at the beginning of 2002.

In 2001, other important strategic moves also took place. In order to stimulate the development of a pan-European market in growth stocks, Nasdaq acquired a majority holding in Easdaq, which has now been renamed Nasdaq

(8) London International Financial Futures and Options Exchange.

(9) Securities Clearing and Settlement Service.

(10) Central de Anotaciones de Deuda del Estado (Spanish government bond book-entry centre).

(11) Created in September 2000 through the merger of the Paris, Amsterdam and Brussels stock exchanges, Euronext includes equity markets in different segments, including growth stocks and derivatives.

3

MARKET DEVELOPMENT

Europe. Spain's MEFF⁽¹²⁾ and Portugal's BVLP signed an operating agreement to interconnect their trading platforms.

Demutualisation

In the last few years, many markets have separated the status of market member from shareholder in order to adapt to the environment of increasing competition in which they operate. To this end, some of the main European stock exchanges decided to float their shares on their own markets e.g. Euronext and the German, London and Oslo stock exchanges. In the US, Nasdaq is to be floated in 2002.

These markets plan to obtain financing for their investments in technology and for improving their services. By trading their shares, they will gain more objective valuation by the markets, which may facilitate the exchange of shares if they merge with other markets.

Alternative trading systems (ATS) and organised trading systems (SON)

Private trading systems (ATS or SON⁽¹³⁾) also compete with the traditional markets. But, to date, they have not expanded into equity markets as prolifically as their counterparts in the US, possibly because the electronic trading systems used by Europe's traditional markets are very efficient. But there were some developments in 2001. The Zurich stock exchange and British electronic market, Tradepoint, created Virt-X, an electronic platform for trading European large capitalisation stocks. The shareholder structure of Jiway was totally reorganised when Morgan Stanley took full control by acquiring the 40% stake held by the Swedish group, OM (which owns the Stockholm stock exchange).

In contrast to equity markets, Europe's ATS are making headway in bond markets, particularly in the segment of public debt. For example, MTS⁽¹⁴⁾ has spread throughout Europe. In 2001, it launched a new market segment in order to trade German debt, as well as including Greek debt in its main platform.

Clearing and settlement systems

Although major investors are exerting strong pressure to reduce the high level of fragmentation of clearing and settlement systems in Europe, integration is proving problematic. A major hindrance is the fact that a number of the clearing and settlement systems have exclusive operating connections with their markets (sometimes ownership links) which obviously affects their competitive strategies.

Clearstream's merger with the German stock exchange clearly ruled out its idea of merging with Euroclear, the other major international depository in Europe and the Euronext's main clearing and settlement system (although not controlled by it).

(12) Spanish options and futures markets.

(13) ATS stands for "alternative trading systems". In Spanish legislation, these systems are called "organised trading systems (SON)".

(14) This group, based in London, is of international scope. It covers high volume wholesale transactions in the main public debt items, denominated in euros, having developed a network of systems in Italy, France, Holland, Belgium and Portugal in compliance with national legislation. It will shortly include Spain in this network.

Central counterparty systems

In 2001, with the aim of reducing counterparty risks, the London Stock Exchange, Virt-X and Nasdaq Europe set up a central counterparty system. Major investors interested in improving the efficiency of the fragmented and costly post-trading processes of cross-border operations in Europe gave their full support to the initiative.

Spanish markets are integrated into one holding company

Background: constitution of MEFF-AIAF-SENAF Holding de Mercados Financieros S.A.

On 4 October 2001, the creation of MEFF-AIAF-SENAF Holding de Mercados Financieros, S.A was formally registered by public deed. To this end, MEFF Holding (which has a 100% interest in both MEFF RV and MEFF RF) made a capital increase and exchanged the new shares for shares of AIAF Mercado de Renta Fija and SENAF AV.

This holding company was formed in order to improve the competitive profile of the other three companies by enabling them to make an integrated offering of all their products (particularly when launching new ones), to share technical solutions and to take advantage of economies of scale, which will reduce operating costs for market members.

Protocol for the creation of “Bolsas y Mercados Españoles, Sociedad Holding de Mercados y Sistemas Financiero”

On 20 June 2001, a protocol to integrate all the financial markets in Spain was signed by the Presidents of the governing companies of the Madrid, Barcelona, Bilbao and Valencia stock exchanges, MEFF Sociedad Holding de Productos Financieros Derivados, AIAF Mercado de Renta Fija, Sistema Electrónico de Negociación de Activos Financieros (SENAF), FC&M, Sociedad Rectora del Mercado de Futuros and Opciones sobre Cítricos and IBERCLEAR, Promotora para la Sociedad de Gestión de los Sistemas Españoles de Liquidación (in which SCLV and the Bank of Spain currently have stakes).

This project is beneficial since it increases the possibilities of acquiring financial resources and ensuring the more efficient management of resources, thereby reducing the costs incurred by market members and end users of the services. The size of the resulting company raises expectations that Spain may become a major financial centre in Europe, through its increased negotiating power when it comes to cooperation or strategic alliances with international markets.

The Protocol will lead to creation of “Bolsas y Mercados Españoles, Sociedad Holding de Mercados y Sistemas Financieros”, the company which will combine the assets of all the signatories, through pooling the interests of the current shareholders. The new company will ensure that all of Spain's financial markets work in concert in terms of actions, decisions and strategic coordination, although the member companies will maintain their own identity, operating capacity, governing bodies and managerial and general staff.

The Nineteenth Additional Provision of Law 24/2001, of 27 December, on Fiscal, Administrative and Labour Measures governs the legal implementation of this process. This Provision consists of an addition to the Spanish Securities Market Law according to which one or more entities may acquire, directly or indirectly, all the capital some or all of the companies which operate securities registration, clearing and settlement systems and secondary markets in Spain. The legal foundations were also laid for demutualising the stock exchanges (see below).

Other strategic initiatives in Spanish markets

Authorization for SENAF.SON

The Spanish financial sector is well aware of the strategic importance of electronic trading in fixed-income securities. In 1999, an important step was taken to improve the competitiveness of the Spanish market by creating the Financial Assets Electronic Trading System (SENAF), which incorporated all the electronic trading systems (“blind markets”) which had previously operated in the book-entry debt market. Later, AIAF became a majority shareholder and SENAF subsequently became part of the Financial Markets holding company (consisting of SENAF, MEFF, and AIAF). These measures have considerably reinforced the financial and commercial position of this electronic system, which may offer private fixed income trading in the future.

In February, Spain's Cabinet granted SENAF authorisation to operate as an organised trading system (SON), a new concept introduced into the Securities Market Law in 1998. Any member of an official bond market may become a member of SENAF, as may members of foreign markets, subject to certain conditions. To date, SENAF has operating platforms not only in Spanish markets (Madrid, Barcelona and Valencia) but also elsewhere in Europe (London, Paris, Frankfurt and Milan). Electronic trading is gaining ground rapidly in the wholesale segment of Spanish public debt and now represents 59% of total trading (see Table 3.1). Despite fiercer competition from foreign systems (primarily MTS), SENAF is still the main electronic trading system in the Spanish market.

Table 3.1

PUBLIC DEBT TRADING, BY SYSTEM Bonds and debentures trading as % of total spot market trading

	Electronic market				Bilateral trading	Total	Total (€ million)
	SENAF*	EuroMTS	Brokertec	Total			
1995	54	na	na	54	46	100	386,733
1996	56	na	na	56	44	100	523,203
1997	51	na	na	51	49	100	454,553
1998	49	na	na	49	51	100	421,976
1999	41	1	na	42	58	100	468,340
2000	45	11	0	56	44	100	487,832
2001**	43	16	1	59	41	100	695,293

* SENAF began operations in 1999. The percentages given for previous years relate to the “blind brokerage” activity, integrated into SENAF.

** January-November.

Fuente: D.G. Tesoro.

Latibex

In 2001, Latibex, the Madrid-based market in Latin American equities listed in euros, took further steps towards consolidation and growth:

- A number of new securities were added to Latibex, particularly Chilean securities, after overcoming a number of legal and tax-related obstacles.
- Latibex signed cooperation agreements with the securities markets in Sao Paulo (BOVESPA) and Santiago de Chile relating to supervision and the requirement for free flow of information between the different markets.

- Introduction of the status of specialist in order to improve market liquidity and arbitrage with home markets. The necessary parameters of the specialists' activity (minimum size of positions and maximum price range) were defined.

Another two initiatives are under development:

- The incorporation of members of Latin American stock exchanges as distance members of Latibex. Firstly, potential members have to obtain authorisation from the CNMV. Activity will be limited to receiving and executing orders from investors in Latin America. Operations will be cleared and settled through a Spanish-based member of the SCLV.
- Creation of a fixed income segment within Latibex, where only issues aimed at this market will be traded. Both the trading of such securities and their clearing and settlement may be carried out bilaterally, thereby enabling direct access to trading by financial entities.

Demutualisation of Spanish stock exchanges

At the end of 2000, the Spanish Parliament approved an amendment⁽¹⁵⁾ to Articles 47 and 48.1 of the Securities Market Law which makes the former regime more flexible as regards demutualising Spanish stock markets. According to the new regulation, members are no longer required to be shareholders and shareholders do not have to be members. It will fall to the central government (or, if appropriate, regional governments) to determine, for both members and non-members, the regulations relating to conditions for acquiring and holding capital in stock exchange government companies and the conditions for distribution.

The fact that shareholders are freed from the obligation of being members and vice versa will give Spanish stock exchanges greater flexibility to acquire new members in Spain and elsewhere. At the same time, by allowing non-members to acquire stakes in the market, this regulation will afford the markets the possibility of reaching strategic alliances with other markets in Spain or other countries.

SIBE⁽¹⁶⁾ the electronic market

Most of the changes in the stock market during 2001 fall within the scope of the SIBE 2000 project. The objective of this three-stage plan is to adapt the Spanish market model to the latest requirements in financial markets and to the harmonisation of trading systems in Europe. Stage 1 commenced in 2000; stage 2 started on 4 May 2001.

Stage 2 entailed the implementation of new methods of managing price fluctuations. Instead of the maximum 15% daily fluctuation (25% for Nuevo Mercado stocks), each stock now has two fluctuation ranges (static and dynamic), which are calculated on the basis of its historical volatility. Any variation in price which surpasses the limits, whether with respect to the latest auction (static price) or the price of the previous trade (dynamic price) will automatically trigger a 5-minute volatility auction which terminates at random within a 30-second period.

Stage 3 of the SIBE 2000 project was initiated on 17 September 2001. The objective is to adapt existing technology by opening it up to external applications standardized by the Sociedad de

(15) Article 69 of Law 14/2000, of 28 December on Tax, Administrative and Labour measures.

(16) This segment of the Spanish stock market processes most trading in the main Spanish stocks.

Bolsas (using the SIBE-GATE Interface), and to modernise the information systems of market members. The main feature of this development is that clients of a market member will be able to place orders directly, subject to certain conditions. The market member establishes a series of general filters applicable to orders introduced by its own operators and non-member clients (with direct access). They cover features such as the maximum capital and the kind of order to be admitted. The Sociedad de Bolsas also establishes an exceptional filter applicable only to non-member clients: if an order is for a volume which is more than a specific percentage of the daily average volume for the quarter (1% for Ibex-35 securities, 5% for others) it will be returned to the operator for confirmation.

MEFF

In 2001, MEFF was highly active on the strategic front. In the last quarter of the year, the group approved alliances and interconnection agreements with foreign markets as well as launching new contracts.

In January, trading in futures on shares began. A month later, the interconnection agreement with Eurex came into force, enabling MEFF members to trade and settle contracts on the Dax, DJ Eurostoxx 50 and DJ Stoxx 50 using the same terminals as they do for MEFF products without being members of Eurex. At the end of March, interconnection between the MEFF trading platform and that of the Lisbon and Oporto Stock Exchange (BVL) was completed. In June, in the context of the agreement with the Chicago Mercantile Exchange (CME), futures and options on the Standard & Poor's Europe 350 and sector indices were introduced. These contracts are traded on the MEFF platform but settled in the CME. This agreement necessitated a major change in the regulations, supervision processes and risk control mechanisms, and is one of the most complicated international cooperation agreements for both markets and supervisors. Lastly, in November the Ibex-35 mini futures contract was launched. Intended for small investors, for whom the margin requirements and value at risk of the conventional Ibex-35 futures are excessive, they require lower nominal capital.

Proposed olive oil futures market

In the context of derivative products, the olive oil futures market (MFAO) project is a major initiative. It originated from a study carried out in 1995 by the Andalusia Regional Government's Fundación del Olivar and the University of Jaén, in Andalusia. If this project comes to fruition, it will be the second Spanish market in derivatives on commodities, the first being the FC&M futures market on citrus fruit, located in Valencia. A major novelty of this latest futures market would be the admission of trading members from the olive oil sector. In December 2001, the company developing MFAO submitted its proposal for authorisation.

Constitution of the General Investment Guarantee Fund

In August 2001, the Spanish government approved a Royal Decree⁽¹⁾ which ensures the implementation of an investor indemnification system, as envisaged in the 1998 revision of the Securities Market Law. This is an important development for investors, since it offers them a maximum reimbursement of €20,000 per client on the cash and securities they have entrusted to investment services firms, excluding losses due to the normal risks in financial investments. The measure is also important in terms of making the Spanish securities segment more competitive with the rest of the EU, where investors already have a similar guarantee.

The Spanish system of investor indemnification is established by sector, with the sector's companies being responsible for providing sufficient funds for coverage and, if necessary, paying the indemnity. At present there are three guarantee funds for the different classes of credit institutions (banks, savings banks and credit cooperatives). Investment service firms are subject to different rules, depending on whether they are broker-dealers and dealers or portfolio management companies. A new fund, the General Investment Guarantee Fund, has been created for broker-dealers and dealers, to which they will have to contribute; a further fund may be set up specifically for members of the stock exchange. Given the operational limitations of portfolio management companies, they are required to have civil liability insurance.

In August, only a few days after approval of the Royal Decree, the CNMV set up a working group representing the financial sector and gave it the task of establishing the company which will manage the Fund. Since the Royal Decree had set specific deadlines, the working group had to work fast to resolve the various necessary issues⁽²⁾. Fortunately, however, owing to the dedication of the group and of all member institutions, the fund management company was constituted within the deadline.

Supervised by the CNMV, the management company is a mercantile company in which all members have a holding. Members have to contribute to the General Investment Guarantee Fund the equivalent of 2 per 1000 of the cash, plus 0.1 per thousand of the securities, which they hold on behalf of their clients. If Fund assets reach a level considered to be sufficient⁽³⁾, the contribution may be reduced, or, if they sink below a reasonable level, extraordinary contributions may be required. The financial burden will be divided between the various members on the basis of client numbers and the level of cash and securities either deposited or registered with them.

After its creation, the management company drew up initial budgets, for itself and the Fund, as well as calculating the overall contributions which member companies will have to make, and how they will be broken down between them. These tasks were also carried out in record time, so that the General Guarantee Fund was constituted on 30 November, within the time limit.

From that time, the management company embarked on the steps necessary to attend to its responsibilities. To this end, the company drew up a harmonised official claim procedure, which was released to the press and posted on the CNMV's web page. The company also drafted the claim form.

In order to be covered by the Fund, an investment services firm must be declared insolvent, either by the courts (bankruptcy or suspension of payments), or through administrative proceedings, that is, by the CNMV's making a statement to that effect; investors must give sufficient proof of their claim. On paying the indemnity, the Fund subrogates to all the claims investors had against the investment services firm.

Shortly before the end of the year, Parliament introduced an important amendment in the system of investor indemnification⁽⁴⁾ by establishing a proportional division between the different deposit guarantee funds and the General Investment Guarantee Fund relating to the payments to be made due to the system's retroactivity. In addition, Parliament established 1 January 2002 as the date from which claims can be made.

(1) Royal Decree 948/2001, of 3 August, on investor compensation.

(2) Matters such as drafting bylaws, appointing the first board of directors, coordinating capital disbursements and appearances before the public authenticating officer.

(3) The assets of the Fund shall not exceed 1 per 1000 of the full value of the cash, securities and financial instruments belonging to investors and registered and deposited by the investment services firm which is a member.

(4) Law 24/2001, of 27 December, on Fiscal, Administrative and Labour measures.

4

MARKET ACTIVITY, ISSUERS and SECURITIES MARKET ENTITIES

The year 2001 was a complicated one for market participants. The worldwide economy decelerated, affecting corporate earnings and share prices. Events such as the 11 September attacks and the Enron affair increased market uncertainty.

The Spanish markets were clearly impacted by the international situation. Nevertheless, not all the segments performed negatively. While stock market trading fell moderately, issues and trading in secondary markets of private fixed-income increased significantly. Trading in derivatives on MEFF also rose substantially, showing the maturity of Spanish markets, which offer investors a broad range of investment options.

The complicated market situation did not prevent a significant increase in the number of securities market service providers. In particular, the number of EU investment services firms notifying their intention of operating in Spain increased considerably and mutual fund offerings continued to increase and diversify.

Secondary market activity

Bourses

The Spanish bourse outperformed other European stock markets: the Ibex-35 index fell 7.8%, compared with an average loss of about 20% in the main European markets. Trading remained very high although it decreased by 10% on 2000. However, this performance was not uniform in all segments of the stock markets.

Warrants trading rose considerably in 2001, boosted by growing interest by issuers; this increased outstanding issues and led to the creation of a new class of market member –warrants specialist– authorized by Madrid Stock Market Circular 1/2001.

Table 4.1
TRADING IN THE SECONDARY AND DERIVATIVES MARKETS
SUPERVISED BY THE CNMV

	Trading ^(*)		
	2000	2001	Change (%)
Markets			
Equities	492,271	444,277	-9.7
SIB	488,843	440,539	-9.9
Latibex	46	66	43.5
Other	3,382	3,672	8.6
of which SIM/SIMCAV	3,062	3,467	13.2
Fixed-income	40,704	57,463	41.2
Electronic market	1,965	2,384	21.3
Other	38,739	55,079	42.2
Warrants	902	1,636	81.4
AIAF			
Fixed-income	99,826	141,382	41.6
Commercial paper	46,425	97,789	110.6
Other securities	53,401	43,593	-18.4
MEFF			
Interest rate contracts	1,036	285	-72.5
Share and index contracts	24,678	31,271	26.7

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

Trading in the fixed-income segment also increased substantially (40% year-on-year) due to a larger number of Cataluña government bond issues, which continued to represent a very large proportion of trading.

AIAF

Fixed-income trading on AIAF grew by 42% on 2000; this was directly related to primary market performance since, in the context of falling interest rates, outstanding issues increased by 27%. Short-term securities were the main growth drivers, particularly commercial paper, which was boosted by increased repo transactions, which were included in the unified fixed-income settlement platform in July 2001. To a lesser extent, nonconvertible bonds and matador bonds also contributed to growth in trading volume. Conversely, asset-backed bond trading fell. As a result, AIAF trading was concentrated in commercial paper (69% of the total).

MEFF

Trading in derivatives on MEFF Holding performed as in the previous two years. Activity in interest rate contracts continued to fall; only 10-year notional bond futures were actually trading by 2001 year-end. On the other hand, trading in German bonds on EUREX via MEFF Euroservices increased, and trading in derivatives on individual shares and on European indexes continued to climb.

Securities issuers

Issuing slowed considerably in the Spanish market in 2001. Financing via capital issues stopped in the second quarter of the year. Companies resorted to fixed-income and warrant issues for financing.

Table 4.2
ISSUERS IN THE SECONDARY AND DERIVATIVES MARKETS
SUPERVISED BY THE CNMV

	No. of issuers ^(*)		
	2000	2001	Change (%)
Markets			
Equities	1,869	2,512	34.4
SIB	144	143	-0.7
Latibex	11	17	54.5
Other	1,714	2,352	37.2
of which SIM/SIMCAV	1,609	2,255	40.1
Equities excluding SIM/SIMCAV	260	257	-1.2
Fixed-income	112	88	-21.4
Electronic market	91	71	-22.0
Other	21	17	-19.0
Warrants	4	7	75.0
AIAF			
Fixed-income	174	200	14.9
Commercial paper	32	43	34.4
Other securities	164	182	11.0

^(*) Markets and AIAF: Million euros.

Issues and public offerings

The amount of issues and public offerings of securities registered at the CNMV fell 17%, despite a 43% increase in fixed-income to €75 billion.

The equities segment performed negatively: the actual amount fell 85% year-on-year and the number of transactions halved (see table 4.2). There were only four secondary offerings and one primary offering (all in the first half of the year), compared with ten and twelve, respectively in 2000. The most notable transactions were the Inditex and Iberia IPOs because of their volume and acceptance.

Two companies, Banco de Sabadell and Puleva Biotech, had all their share capital admitted for official listing without an offering.

Table 4.3

ISSUES AND OFFERINGS REGISTERED

Million euros

	No. of files		Amount ^(*)	
	2000	2001	2000	2001
Fixed-income	139	159	52,300	74,626
Commercial paper (**)	48	55	34,366	45,172
Other	91	104	17,934	29,454
Equities	130	68	53,383	8,021
Capital increases	93	57	43,937	4,822
IPO	20	8	9,446	3,044
SPO	17	2	17,810	155
Warrants	431	1,219	2,558	5,480
Other financial contracts(***)	72	84	2,882	2,094
Total	772	1,530	111,123	90,221

(*) Effective amount offered in the domestic tranches only.

(**) The effective amount coincides with the nominal amount.

(***) Includes certificates.

Table 4.4

PUBLIC OFFERINGS REGISTERED

Million euros

Company	Amount ^(*)	IPO	Primary/ Secondary ^(**)
Bami	155.0	No	P
Zeltia	4.1	No	S
Iberia	527.1	Yes	S
Inditex	2,390.9	yes	S
Ence	122.3	No	S
Total	3,199.3		

(*) Includes the volume offered in the domestic and international tranches.

(**) S: secondary public offering. P: initial public offering.

Other issues registered with the CNMV

Warrant issuing increased extraordinarily in 2001, in terms of the number of issues and the effective amount of premiums (see table 4.2). All the warrant issuers (eleven, including five new issuers in 2001) were clearly interested in boosting this market in Spain.

The number of issuers of other financial contracts increased from 13 to 23 but the total issued amount fell. Interest is growing in investment certificate issues, although the number continues to be small (eight in 2001). This type of product, whose issuers are all foreign companies, are long-term (5-8 years) or perpetual marketable securities whose yield replicates that of an existing index (Nikkei, Dow Jones, etc.) or is especially created by the issuer, and do not guarantee repayment of the principal on maturity.

Securities market entities

Authorizations

In line with previous years, the CNMV continued to authorize and register a sizeable number of entities. Over 2,000 entities were registered and nearly 1,000 were removed in 2001. The main activity was concentrated in investment services firm representatives, SIMCAVs, mutual funds and institutions authorized in other countries.

At 2001 year-end, there were nearly 13,000 entities registered with the CNMV (table 4.5). Such a large volume of entities was felt in the number of processed requests and in the number of communications and registrations with the CNMV, all of which were related to changes in the initial authorization conditions of the entities.

Table 4.5
ENTITIES REGISTERED AND REMOVED IN 2001

Entity type	No. registered at 31/12/00	Registrations	Removals	No. registered at 31/12/01
Investment services firms	7,217	1,086	780	7,523
<i>Spanish</i>	146	12	13	145
SV	48	3	0	51
AV	57	6	4	59
SGC	41	3	9	35
<i>Foreign</i>	579	113	11	681
Branch	9	7	0	16
Free provision of services	570	106	11	665
Representatives	6,492	961	756	6,697
Collective investment:	4,601	927	180	5,348
<i>Mutual funds</i>	2,472	247	115	2,604
FIM	2,266	246	91	2,421
FIAMM	201	1	24	178
FII	5	0	0	5
<i>Investment companies</i>	1,670	622	23	2,269
SIM	172	1	20	153
SIMCAV	1,498	620	3	2,115
SII	0	1	0	1
<i>SGIIC</i>	124	2	3	123
<i>Depositories</i>	165	5	9	161
<i>Foreign UCITS⁽¹⁾</i>	170	51	30	191
Venture capital:	85	21	0	106
FCR	25	6	0	31
SCR	40	11	0	51
SGECR	20	4	0	24
Securitization company:	9	0	1	8
SGFT	9	0	1	8
Total	11,912	2,034	961	12,985

(1) Undertakings for Collective Investment - Transferable Securities

Table 4.6

FIRMS AND CONTROL GROUPS REGISTERED: INVESTMENT SERVICES FIRMS, SGIIC AND SGEGR. 2001

Broker-dealers	Control group
<i>Registrations</i>	
Allianz Inversiones, SV, S.A.	Allianz
Ahorro Corporación Net, SV, S.A.	Ahorro Corporación
CAI Bolsa, SV, S.A.	Caja de Ahorros de la Inmaculada
<i>Removals</i>	
Argentaria Bolsa, SVB, S.A.	Argentaria
Benito y Monjardín, SVB, SA	Espirito Santo (which absorbed Benito y Monjardín, S.V., S.A., formerly Hiscapital, AV, S.A.)
J. Henry Schroder, SV, S.A.	J. Henry Schroder
Multitel Valores, SV, S.A.	Multitel Cable
Brokers	Control group
<i>Registrations</i>	
Afina, AV, S.A.	AFINA (Commerzbank and independent companies)
M&B Capital Advisers Spain, AV, S.A.	Independent
Gescartera Dinero, AV, S.A.	Transformation of Gescartera Dinero, SGC, S.A.
Altura Markets, AV, S.A.	BBVA, Crédit Agricole
Axa Ibercapital, AV, S.A.	Axa
Altegui Gestión, AV, S.A.	Transformation of Altegui, SGC, S.A.
Portfolio management companies	Control group
<i>Registrations</i>	
Capital at Work Intl, SGC, S.A.	Capital at Work International (Luxembourg)
Garanza de Servicios Financieros de Inversión, SGC, S.A.	Independent
Gonzalez Cantero Hermanos, SGC, S.A.	Independent
<i>Removals</i>	
Aurum Gestión, SGC, S.A.	Independent
Altegui Gestión, SGC, S.A.	Transformation into a broker
CL&N, SGC, S.A.	Independent
Priban, SGC, S.A.	Independent
Ega Cartera, S.A., SGC	Independent
Inver-Money, S.A., SGC	Independent
Gescartera Dinero, SGC, S.A.	Transformation into a broker
AGV Gestión, S.A., SGC	Independent
Urquijo Patrimonios, S.A., SGC	Banco Urquijo
Investment services firms in the EU	Control group
<i>Registrations</i>	
Credit Suisse Asset Management Limited, branch in Spain	Crédit Suisse
Invesco Asset Management Limited, branch in Spain	Amvescap
KBC Securities, S.A., branch in Spain	Almanij
Legg Mason Limited, branch in Spain	Legg Mason
Lisbon Brokers, Sociedade Corretora, S.A., branch in Spain	Independent
Mellon Global Investments Limited, branch in Spain	Mellon
Vika Vermittlung Internationaler Kapitalangen, branch in Spain	Independent
IIC management companies	Control group
<i>Registrations</i>	
Caixaterrasa Gesfons, SGIIC, S.A.	Caixa Terrasa
Caja Ingenieros Gestión, SGIIC, S.A.	Caja de Crédito de los Ingenieros, S.C.C.
<i>Removals</i>	
Ges 21, SGIIC, S.A.	Banco 21
Invercaixa Gestión, SGIIC, S.A.	La Caixa
EBN Gestión, S.A., SGIIC	Sdad. Española de Banca Negocios PROBANCA
ECR management companies	Control group
<i>Registrations</i>	
Santander Central Hispano Desarrollo, SGEGR, S.A.	BSCH
Catalana D'initiatives Gestió, SGEGR, S.A.	Catalan firms
Highgrowth Partners, SGEGR, S.A.	Independent
Nazca Capital, SGEGR, S.A.	Fortis Bank

Changes in control of registered firms

Restructuring at the main financial groups impacted less on registrations and removals than in previous years. Most acquisitions were performed by foreign financial groups and affected seven groups of institutions, i.e. a total of eleven firms, including IIC management companies (see table 4.7). Transactions with Spanish capital were performed by investors or institutions independent of financial groups.

Table 4.7

CHANGES IN CONTROL AT INVESTMENT SERVICES FIRMS, SGIIC AND SGECR IN 2001

Take-overs by foreign financial institutions

Institutions or group		Buyer
Name	Type	
Spanish financial intermediaries	AVB	HSBC
Eurosafei	SVB	BIPOP-CARIRE
	AV	
	2 SGIIC	
	SGC	
Pentor	AVB	AFINA (Commerzbank and independent companies)
Inverbolsa	AVB	BANCO FINANTIA
General de Valores y Cambios	SVB	CREDIT SUISSE
	SGIIC	
ABF-A.T. Gestión Fondos	SGIIC	ABF
BCN	AV	CREDIT AGRICOLE

Changes in control and take-overs by residents or Spanish institutions

Institutions or group		Buyer
Name	Type	
Iberagentes	SV	Banco Popular (acquired 25% indirectly, changing the control of the institution)
	SGIIC	
Fibanc	AVB	Independent companies
GAMA	SGIIC	Other independent companies

Investment services firms

Spanish investment services firms

In 2001, three broker-dealers, four brokers and four portfolio managers, all newly-created, registered with the CNMV (see tables 4.5 and 4.6). Moreover, two portfolio managers transformed into brokers. Thirteen institutions were removed, so the number of Spanish investment services firms fell slightly.

Cross-border transactions by Spanish investment services firms

In 2001, only one broker-dealer applied for an EU passport to open branches in Italy, Germany and France, while six institutions applied for free provision of services, five of which planned to be members of several EU markets and one aimed at providing investment services in several countries.

Foreign investment services firms

In 2001, 106 investment services firms based in other EU-member states notified the CNMV of their intention to provide investment services in Spain, increasing to 665 the total number of institutions that have applied for this process since the entry into force of the Investment Services Directive in January 1996. In 2001, seven institutions opted to provide services via branches in Spain, increasing the number of investment services firms registered with the CNMV for this purpose to 16 (see table 4.5).

Table 4.8

BREAKDOWN OF FOREIGN INVESTMENT SERVICE COMPANIES BY COUNTRY OF ORIGIN

Country	Number of investment services firms	% of total
Austria	18	2.64
Belgium	13	1.91
Denmark	7	1.03
Finland	2	0.29
France	47	6.90
Germany	8	1.17
Greece	3	0.44
Ireland	22	3.23
Italy	3	0.44
Luxembourg	4	0.59
Netherlands	26	3.82
Norway	6	0.88
Portugal	4	0.59
Sweden	6	0.88
United Kingdom	512	75.18
Total	681	100.00

Collective investment firms (IIC)

Securities investment

Even though the assets managed by securities investment funds decreased in 2001⁽¹⁷⁾ for the second consecutive year and fund mergers increased, the number of securities investment funds rose in 2001. The funds registered with the CNMV increased by 132 in 2001 (see table 4.9); 620 new SIMCAVs⁽¹⁸⁾ were registered. At 2001 year-end, 2,604 funds, 2,115 SIMCAV and 153 SIM⁽¹⁹⁾ were on the rolls.

The increase in mutual funds was due exclusively to FIM funds (246 registrations). The managers of many newly-created FIMS announced that they would focus on investments in

(17) The assets managed by securities investment funds (FIM and FIAMM) amounted to €181 billion in December 2001, i.e. a 2.6% decrease on December 2000. The number of investors fell by 240,000 to 7,453,000. FIMs performed differently from FIAMMs, losing assets and investors whereas, the FIAMMs registers rising assets and investors (+31% and +20%, respectively).

(18) Open-end investment companies (SIMCAV). At 2001 year-end, SIMCAVs managed a total of €16.9 billion and had 254,000 shareholders. SIMs had €2.5 billion in assets and 40,000 shareholders.

(19) Security investment companies (SIM).

international equities, as in 2000. Nevertheless, in 2001, there was slightly greater interest in fixed-income, especially in guaranteed funds and short-term funds.

FIAMMs decreased significantly due mainly to removals of funds as a result of mergers in the year.

The new fund types introduced in 1998 as a result of the reform of the Securities Market Law were consolidated in 2001. In particular, the number of FIMs registered as funds of funds increased substantially due to newly-created funds in the year (75 of the 246 registered FIMs) and the transformation of existing funds. At 2001 year-end, 209 FIMFs were registered with the CNMV. In 2001, 14 master funds (FIMP) and 21 feeder funds (FIMS) were created. At 2001 year-end, 24 FIMP and 53 FIMS were registered.

Table 4.9
BREAKDOWN OF NEW FIMs BY INVESTMENT APPROACH

Type of FIM	2000		2001	
	Number	% of total	Number	% of total
Short-term fixed-income	15	4.81	27	10.98
Long-term fixed-income	6	1.92	3	1.22
Mixed fixed-income	14	4.49	3	1.22
International fixed-income	16	5.13	6	2.44
International mixed fixed-income	10	3.21	12	4.88
Mixed equities	14	4.49	6	2.44
Spanish equities	2	0.64	8	3.25
International mixed equities	15	4.81	21	8.54
Euro equities	18	5.77	19	7.72
International equities	133	42.63	61	24.80
Guarantee fixed-income	20	6.41	42	17.07
Guaranteed equities	28	8.97	23	9.35
Global funds	21	6.73	15	6.10
Total	312	100.00	246	100.00

Mutual fund mergers

In 2001, the main fund management companies intensified the pace of fund mergers due to need to rationalize their offering. The CNMV registered 47 merger transactions that affected 156 funds, of which 109 were removed from the register. At 31 December, 60 more mergers had been authorized and were pending registration; this will cause 70 removals out of the 138 funds involved. At that date, 11 mergers affecting 25 entities were pending authorization.

Real estate investment

No new real estate investment funds were registered in 2001. Nevertheless, the first real estate investment company (SII) was registered in April 2001; it belongs to the Vallehermoso group and has a share capital of €18,607,331. Its shares are not listed and its sole corporate purpose is to invest in urban buildings for lease with the commitment of allocating at least 50% of assets to student homes and residences, and retirement homes. In early 2002, three new SIIs were pending authorization.

IIC management companies (SGIIC)

Two new SGIICs were registered (both owned by savings banks⁽²⁰⁾) and three were removed due to group restructuring. At 2001 year-end, 123 SGIICs were registered with the CNMV.

Foreign IICs

Fifty-one new foreign IICs (UCITS) were registered in 2001, substantially more than the 38 added in 2000. The bulk of the new institutions were domiciled in Luxembourg (32) and Ireland (12). The number of removals also rose significantly: from 5 in 2000 to 30 in 2001. At 2001 year-end, 191 UCITS were registered with the CNMV.

Table 4.10
BREAKDOWN OF UCITS BY COUNTRY OF ORIGIN

Country	Number of UCITS	% of total
Luxembourg	146	76.44
Ireland	20	10.47
France	13	6.81
Germany	9	4.71
United Kingdom	3	1.57
Total	191	100.00

Venture capital firms

Even though registration by venture capital firms with the CNMV is voluntary, the number of registrations has risen steadily since 1999, when the authorization and supervision powers were transferred to the CNMV. The year 2001 was no exception: 11 venture capital companies (SCR), six funds (FCR) and four management companies (SGEGR) registered with the CNMV (see table 4.5).

Venture capital firms are regulated by CNMV Circular 1/2001, dated 18 April, which amended Circular 5/2000 on accounting standards and forms of reserved and public financial statements of capital venture firms and their management companies. The amendment changed the frequency of the disclosure of the financial statements to the CNMV (from half-yearly to annually) and the related deadlines. The first financial statements that will be sent will contain information as at 31 December 2001.

(20) See table 4.6.

5

ISSUERS' DISCLOSURE

In the primary markets, the CNMV focuses on improving the quality of the information supplied to investors because of its fundamental value for investor protection.

In 2001, the CNMV continued to devote careful attention to the process of vetting prospectuses because of this document's importance to investors. The principal recent development in this area is the growing level of international issues and offerings under EU legislation.

The quality of audits is a constant source of concern for the CNMV, with regard to both primary offerings and the periodic reporting by listed companies. In this field, the CNMV seeks to eliminate qualified auditors' reports or, at least, to reduce their number significantly and ensure that the auditor's opinion be truly informative to the market in terms of both form and content.

Prospectuses

The usefulness of prospectuses to investors

Constant development by the financial markets and the growing participation of small investors make it increasingly important to have transparency in the information available about listed securities and their issuers. The goal is to attain a balance between investor protection and the agility companies need in order to obtain finance in the securities markets.

To this end, recent regulatory changes have made prospectuses more flexible. The various forms of prospectus respond to different approaches to disclosure, but they share the basic goal of offering the investor full, clear, up-to-date information.

Prospectuses contain information about an issuer's financial position and its corporate and organisational structure. The type of security being placed determines the level of reporting requirements imposed on the issuer. For example, greater information is required about equities because of the low priority of collection and the security's indefinite life-span. Recent events affecting the company's business must be disclosed, and the resulting risk situation, if any, must be evaluated.

Prospectuses also detail information about the product or security being issued. A concise, detailed description of the risks must be given, with particular emphasis on explaining the real ultimate yield. This information is occasionally complex due to innovations in the financial field. In other cases, the very nature of the product makes it impossible to determine its yield in advance.

The CNMV considers important to foster investor education; investors are recommended to read the information disclosed in the prospectus with care, particularly that relating to risks and warnings in chapter 0, and in the three-fold summary brochure.

Mutual recognition

The possibility of issuing or listing marketable securities jointly in the Member States of the European Union is envisaged in EU legislation (Council Directives

80/390 and 89/298), which provides a system of mutual recognition under which it is possible to place securities on any market in the European Union by registering a single prospectus in the issuer's home country, although the competent authority in the host country may request more information⁽²¹⁾ than that disclosed in the home country.

This system of mutual recognition is partial and complex⁽²²⁾, making it difficult to obtain the single European passport envisaged in the Lamfalussy report. In order to overcome these problems and make progress in establishing an integrated capital market in Europe, work continued in 2001 on updating the aforementioned two directives in line with the timetable envisaged in the Financial Services Action Plan. The proposed new directive on prospectuses seeks to obtain automatic mutual recognition among Member States of the European Union so that, once a prospectus has been registered in one Member State, the certificate of mutual recognition and a translation of the transaction summary should be sufficient for the prospectus to be valid in other Member States. This would expedite the paperwork involved in issuers, offerings and listings throughout Europe and reduce the related costs, thereby enhancing the European economy's competitiveness.

There were four placements in the Spanish market in 2001 by non-resident entities under the mutual recognition system: EADS (France), Deutsche Bank A.G. (Germany), Lloyds TSB Bank, plc. (Holland) and Arcelor (Luxembourg).

European harmonisation of placements

The Committee of European Securities Regulators is currently working on harmonising the information to be disclosed in a public offering prospectus. The rules governing such placements vary widely among the various Member States of the European Union. For example, no prospectus is required for certain transactions; in other cases, the coordinator of the transaction may be able to distribute securities among the placement syndicate on an arbitrary basis.

Two types of investor protection measures can be considered in placements procedures. Firstly, there are rules of conduct to be followed by the issuer. The basic rule in this connection is that discrimination among investors is not allowed – all orders must be treated equally. Secondly, disclosures are required: the placement method must be announced beforehand, and the result of allotment must be announced after the fact. The latter step ensures rigorous compliance since it is possible to ascertain whether the issuer followed the rules which it disclosed in the offering prospectus.

The Member States do not yet have a common position on harmonising placement processes. The CNMV proposes that the two forms of investor protection referred to above be adopted by the European Union, that specific rules be adopted for primary placements, and that the public be suitably informed about key aspects of the securities allotment procedure. Some states advocate less regulatory intervention on the grounds that the current rules of conduct, set out in the Investment Services Directive, already provide sufficient protection.

(21) Under Spanish law, the only additional information required relates to the legal and tax regime governing the securities and the functions of the placer and the entity acting as liaison with the issuer.

(22) Mutual recognition is not provided for all types of prospectuses that currently exist, such as fixed-income shelf registrations, continuing prospectuses and those relating to atypical financial contracts. Moreover, the differences in transposition of the directives into domestic legislation mean that the additional information that may be required differs from one country to another.

Periodic reporting by listed companies

Financial statements and auditors' reports

The CNMV considers it important that issuers present clean auditors' reports on their financial statements, since this is a factor of transparency which enables investors to make decisions with full, sound information on the company's financial statements. As shown in Table 5.1, about 10%-15% of auditors' report have been qualified (many of them with exceptions) in recent years.

In 2001, the CNMV continued to insist on the quality of the auditors' report and financial statements of listed companies. It also accelerated the process of placing auditors' reports at the disposal of the public and expanded the information about the source of the qualifications and the plans for resolving them. The main measures adopted were as follows:

- A total of 219 demands were issued to companies in connection with their 2000 auditors' report. Over half of these demands were due to delays in filing the financial statements, 39 related to qualified auditors' reports, and 51 requested additional information not contained in the notes to financial statements and/or explanations of discrepancies between the notes to financial statements and other periodic disclosures.
- The following information was made available to the public in the CNMV's web site: responses to demands (Table 5.2 details the types of responses received in connection with qualified auditors' reports), special auditors' report updating qualified auditors' reports as of the end of the first half of the year following the one in which the qualification was issued, and the CNMV's 2000 annual report on auditors' reports of issuers.
- The projections in the management reports contained in the financial statements were included in the analysis of the reliability of projections and/or expectations of issuers made registered with the CNMV in any way (as periodic public information, significant events, issue prospectuses, etc.) prove to be reliable.
- Precautionary suspension of trading on the electronic market of shares and other securities carrying entitlement to subscribe or acquire shares of European Paper and Packaging Investment Corporation, S.A. (in liquidation) following the auditor's denial of opinion regarding its individual financial statements.

Table 5.1
AUDITS OF ISSUERS FILED WITH THE CNMV

	1998		1999		2000 ⁽¹⁾	
	No.	%	No.	%	No.	%
1. AUDITORS' REPORTS FILED WITH THE CNMV						
- Individual financial statements	406	64.1	397	64.7	423	65.0
- Consolidated financial statements	227	35.9	217	35.3	228	35.0
Total auditors' report filed	633	100.0	614	100.0	651	100.0
- Special reports under Ministerial Order 30/9/92	79	-	69	-	91	-
2. AUDITORS' OPINION						
- Clean opinion	547	86.4	541	88.1	556	85.4
- Qualified opinion	86	13.6	73	11.9	95	14.6
3. TYPES OF QUALIFICATION ⁽²⁾						
- No. of auditors' report with exceptions	54	62.8	43	58.9	64	67.4
- No. of auditors' report with uncertainties, etc.	40	46.5	37	50.7	36	37.9
- No. of auditors' report with limitations	7	8.1	10	13.7	7	7.4
4. EFFECTS OF EXCEPTIONS ⁽³⁾						
ON EARNINGS						
- No. of auditors' report with positive effect	15	27.8	16	37.2	25	39.1
- No. of auditors' report with negative effect	28	51.9	20	46.5	31	48.4
ON NET WORTH						
- No. of auditors' report with positive effect	23	42.6	22	51.2	28	43.8
- No. of auditors' report with negative effect	14	25.9	4	9.3	3	4.7
5. NATURE OF UNCERTAINTIES ETC. ⁽⁴⁾						
- Going concern	18	45.0	14	37.8	9	25.0
- Tax contingencies	13	32.5	8	21.6	11	30.6
- Recovery of assets	21	52.5	12	32.4	15	41.7
- Assets revalued under regional regulations	0	0.0	0	0.0	0	0.0
- Litigation	11	27.5	8	21.6	9	25.0
- Denial of opinion or adverse opinion	3	7.5	2	5.4	2	5.6
- Other uncertainties	14	35.0	7	18.9	15	41.7

(1) Auditors' report on financial statements and special reports filed with the CNMV through 31.12.2001.

(2) Percentages calculated with respect to the number of qualified auditors' reports.

(3) Percentages calculated with respect to the number of auditors' reports with exceptions.

(4) Percentages calculated with respect to the number of auditors' reports with uncertainties etc.

Table 5.2
DEMANDS ISSUED TO LISTED COMPANIES IN 2001 IN CONNECTION WITH THE AUDIT
OF THE 2000 FINANCIAL STATEMENTS

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

<u>Issuer</u>	<u>Market/Segment</u>
EBRO PULEVA*	Electronic market
FUNESPAÑA*	Electronic market
GRUPO AUXILIAR METALÚRGICO	Electronic market
CÍA. DE DISTRIBUCIÓN INTEGRAL LOGISTA*	Electronic market
RECOLETOS COMPAÑÍA EDITORIAL*	Electronic market
SUPERDIPLO	Electronic market
TABLEROS DE FIBRAS*	Electronic market
TELE PIZZA*	Electronic market
AMPER*	Nuevo Mercado
AVANZIT*	Nuevo Mercado
BODEGAS BILBAÍNAS	Open outcry market
FINANZAS INMUEBLES CISNEROS*	Open outcry market
BANCO INDUSTRIAL DE BILBAO	Fixed-income

Companies with qualified auditors' report which, in principle, will not be resolved in the short term

Issuer	Market/Segment
GLOBAL STEEL WIRE	Electronic market
INDO INTERNACIONAL*	Electronic market
NATRA*	Electronic market
NUEVA MONTAÑA QUIJANO*	Electronic market
SNIACE*	Electronic market
SOCIEDAD ESPAÑOLA DEL ACUMULADOR TUDOR	Electronic market
URBANIZACIONES Y TRANSPORTES	Electronic market
GRUPO PICKING PACK*	Nuevo Mercado
AYCO GRUPO INMOBILIARIO*	Open outcry market
CARTEMAR	Open outcry market
COMPAÑÍA DE INVERSIONES, Cinsa*	Open outcry market
HULLAS DEL COTO CORTÉS	Open outcry market
IBÉRICA DE MANTENIMIENTO INDUSTRIAL*	Open outcry market
IBERTUBO	Open outcry market
LUCTA	Open outcry market
MINERO SIDERÚRGICA DE PONFERRADA	Open outcry market
PASCUAL HERMANOS*	Open outcry market
UNIÓN RESINERA ESPAÑOLA	Open outcry market
CAJA INSULAR DE AHORROS DE CANARIAS*	Fixed-income
CAJA RURAL DE ZAMORA COP. CRÉD.	Fixed-income
EUROPEAN PAPER AND PACKAGING	
INVESTMENT CORPORATION, (in liquidation)	Suspended
GRUPO FOSFORERA*	Suspended
JUMBERCA*	Suspended
ASTILLEROS DE MURUETA*	Excluded
RECOL NETWORKS	Not listed

Companies requested solely to expand the information in the notes to financial statements and/or explain discrepancies detected between the information disclosed therein and that contained in the periodic public disclosures in the second half of 2000

Issuer	Market/Segment
AUREA CONCESIONES DE INFRAESTRUCTURA	Electronic market
AZKOYEN	Electronic market
BODEGAS RIOJANAS	Electronic market
CONSTRUCCIONES Y AUXILIAR DE FERROCARRILES	Electronic market
CORPORACIÓN MAPFRE, CIR	Electronic market
PAPELES Y CARTONES DE EUROPA	Electronic market
HEINEKEN ESPAÑA	Electronic market
IBERPAPEL GESTIÓN	Electronic market
INMOBILIARIA ZABÁLBURU	Electronic market
LA SEDA DE BARCELONA	Electronic market
NH HOTELES	Electronic market
SOGECABLE	Electronic market
SOL MELIÁ	Electronic market
TUBACEX	Electronic market
UNIPAPEL	Electronic market
ALCINVER	Open outcry market
ALMACENES GENERALES E INTERNACIONALES	Open outcry market
ARMANDO ÁLVAREZ	Open outcry market
CARTERAS REUNIDAS	Open outcry market
COMPAÑÍA INMOBILIARIA VALENCIA	Open outcry market
DALTAR	Open outcry market
EGUARAS	Open outcry market
COMPAÑÍA ESPAÑOLA PARA LA FABRICACIÓN MECÁNICA DEL VIDRIO	Open outcry market
FLETAMENTOS MARÍTIMOS	Open outcry market
INCRECISA	Open outcry market

INDUSTRIAS DEL CURTIDO	Open outcry market
INMOBILIARIA BARRIO DE BILBAO	Open outcry market
MINERALES Y PRODUCTOS DERIVADOS	Open outcry market
OROZCO	Open outcry market
PMRK INVESTMENT	Open outcry market
PRIM	Open outcry market
PROMOCIONES EUROBUILDING	Open outcry market
RENFILA	Open outcry market
RENTA VARIABLE	Open outcry market
DAMM	Open outcry market
HULLERA VASCO-LEONESA	Open outcry market
UNIÓN CATALANA DE VALORES	Open outcry market
VALENCIA DE NEGOCIOS	Open outcry market
ESTABANELL Y PAHISA	Segundo Mercado
ESTEBAN ESPUÑA	Segundo Mercado
GRUPO FIATC	Segundo Mercado
HIJOS DE JOSÉ BASSOLS	Segundo Mercado
LEFA	Segundo Mercado
SAAREMA INVERSIONES	Segundo Mercado
URBAR INGENIEROS	Segundo Mercado
MELIÁ INVERSIONES AMERICANA	Excluded
NOBO	Excluded
ANDRÉS RUIZ DE VELASCO	Excluded

* The demand sent to these companies also included a request to expand the information in the notes to financial statements and/or explain discrepancies detected between the information disclosed therein and that contained in the periodic public disclosures relating to the second half of 2000.

Disclosure of the degree of adoption of, and compliance with, the code of good governance for listed companies

During 2001, 85 listed companies reported on the degree of adoption of the Code of Good Governance in 2000; 27 of them were in the IBEX35 index and represented 77% of its market capitalization. A total of 67 companies used the electronic form supplied by the CNMV, and 18 made the disclosure in their annual report.

The recommendations contained in the Code of Good Governance are voluntary and, therefore, there is no legal obligation to adopt them. Nevertheless, the CNMV considers that complying with the Code of Good Governance increases management quality, transparency and a company's value. In this connection, companies were recommended to use the same disclosure form as in the previous year to ensure that the information supplied to the market was uniform and comparable.

Using the information compiled from the questionnaires, the CNMV published a report in October 2001 whose principal conclusions are set out in the box.

Highlights of the CNMV's questionnaire on the Code of Good Governance

The information filed with the CNMV by listed companies relating to the degree of adoption of the Code of Good Governance in 2000 was substantially similar to that obtained with regard to 1999.

In line with the previous year, the Code of Good Governance appears to be more oriented towards listed companies with a large free float (small shareholders) which, therefore, do not have majority shareholders.

Issuers report that they fully adhere to 77% of the recommendations. Only five issuers report that they adhere to all the recommendations, and five issuers apply less than 50%.

As in 1999, the recommendations which were applied least related to transparency about remuneration, age limits for directors, and the existence of control commissions composed solely of external directors.

The presence of independent directors should be increased in line with the ratio between floating and stable holdings, as the Code recommends. The companies with the largest number of independent directors were also those with the largest Boards.

Some recommendations by the Olivencia Committee (e.g. relating to directors' conflicts of interest, related-party transactions and transparency in remuneration) are not being applied as much as would be desirable.

Disclosure of stock options held by directors of listed companies

In compliance with the regulations governing disclosure of the acquisition and disposal of options on their companies' shares by directors, the CNMV received notification from 79 directors relating to the acquisition or disposal of options on the stock of 23 companies in 2001.

Table 5.3 lists the companies whose directors have disclosed stock options held by directors since the entry into force of the above-mentioned legislation; most related to remuneration systems established by the companies themselves.

Table 5.3

DISCLOSURE OF STOCK OPTIONS

As of 31/12/2001

Companies	Index/Market	Directors
ACS	Ibex	3
ALTADIS	Ibex	3
BANKINTER	Ibex	1
BBVA	Ibex	2
SCH	Ibex	7
CAF	Electronic market	4
CAMPOFRIO	Electronic market	8
CORPORACION ALBA	Ibex	3
GRUPO PRISA	Ibex	6
IBERDROLA	Ibex	2
INDITEX	Ibex	8
INDRA	Ibex	14
INFORMES Y PROYECTOS	Electronic market	1
JAZZTEL	Electronic market	7
LOGISTA	Electronic market	1
METROVACESA	Electronic market	1
PICKING PACK	Electronic market	2
RECOLETOS	Electronic market	3
SOGECABLE	Ibex	1
SUPERDIPLO	Electronic market	1
TAVEX ALGODONERA	Electronic market	1
TELE PIZZA	Ibex	7
TELEFONICA	Ibex	5
TERRA	Ibex	3
TPI	Ibex	1
TRANSPORTES AZKAR	Electronic market	1
UNIÓN FENOSA	Ibex	5
URALITA	Electronic market	2
VALLEHERMOSO	Electronic market	3
TOTAL	29	106

In 2001, the number of authorised take-over bids increased considerably once again, due basically to the decline in the securities markets, the processes of globalisation and the liberalization of markets and sectors in Europe. The latter was reflected by the fact that 9 of the 19 tender offers that were authorised were made by European groups.

Table 6.1
TENDER OFFERS

Millions of euros

	1997	1998	1999	2000	2001
Filed in the year ⁽¹⁾					
Number	14	18	13	16	19
Potential amount ⁽²⁾	648	4.683	711	3,059	7,865
Performed ⁽³⁾					
Number	13	18	13	14	18
Actual amount	575	4.411	601	2,606	4,648

(1) Authorised in the year.

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

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

Aspects of particular relevance for supervision

In accordance with the applicable regulations, during 2001 the CNMV sought to ensure equal treatment for all shareholders of companies targeted by bids for control or for acquisition of large blocks of shares. Ensuring transparency enables investors to have all the information required to make decisions. In this connection, the CNMV focused on:

- *Enforcing the principle of treating all shareholders equally*, particularly in offers where the bidder had signed agreements with specific shareholders of the target company to buy their holdings. There were nine tender offers in which the bidder had previously reached an agreement with one or more shareholders or directors of the target company either to acquire their holdings or for them to remain at the company.
- *Supplying all the necessary relevant information* in stock deals⁽²³⁾, specifically the details of the securities offered as consideration, their proportion and the justification of the proposed share exchange ratio, including an independent appraisal.
- *Analysing the consideration proposed in offers where the price required specific authorisation by the CNMV*, in order to establish a fair price. Four such transactions were authorised in 2001, all of them for delisting purposes. As a result of independent appraisals, the prices initially proposed by the bidder were increased in certain cases.

(23) Two tenders offers of this type were authorised in 2001, one of them involving a combined consideration (cash and stock).

6

THE MARKET IN CORPORATE CONTROL: TAKE-OVERS

Main features of the tender offers processed in 2001

The CNMV authorised 19 tender offers in 2001, three more than in 2000. This increase was accompanied by a sizeable increase in the potential amount (see Table 7.1), which totalled €7,865 million, of which 59% actually materialised. The offer by Ferroatlántica for Hidrocantábrico and the competing bid by Adygesinval accounted for 69% of the potential total.

In 2001, the CNMV denied a request to modify the initial terms of the tender offer by Ferroatlántica under the regulations governing competing bids. The bidder subsequently adjusted its offer to the provisions of those regulations and received approval.

The goals pursued in the tender offers performed in 2001 were as follows:

- Nine offers aimed at gaining control by acquiring over 50% of capital.
- Five offers were made by the controlling shareholder or group in order to attain 100% of capital.
- The other five offers were made to acquire own shares: four of them for the purpose of delisting and the other to reduce capital by amortizing the acquired shares as a prelude to dissolution and liquidation of the company.

Competing offers

In 2001, there was one case of competing bids for control of a listed company.

The target company was Hidroeléctrica del Cantábrico. The first tender offer was filed by Ferroatlántica, a Villar Mir group investee, acting in concert with German company EnBW with the aim of attaining a strategic stake. The bid was made conditional upon acceptance by at least 20% of the capital. Adygesinval, an investee of Caja de Ahorros de Asturias and Portuguese company EDP, made a subsequent offer to gain control, offering a higher price and with no conditions as to minimum acceptance.

German group RWE then filed an offer for the entire capital of Hidrocantábrico, improving on the consideration in the preceding two offers. Several shareholders and directors of Hidrocantábrico undertook to accept this offer unless there were a competing offer or an improvement on the conditions of the first offer for the company. Finally, the Villar Mir group modified its initial offer by extending it to 100% of the capital of Hidrocantábrico, eliminating the minimum acceptance condition and raising the price to above that of the other offers presented to date.

As a result, Ferroatlántica attained 60% of Hidrocantábrico and Adygesinval 34%. RWE withdrew its offer (see Table 7.3). After completion of the tender offer, EDP, EnBW and Caja de Ahorros de Asturias agreed upon a restructuring of the ownership of Hidrocantábrico, in which the Villar Mir group would not be involved and which was conditional upon obtaining approval from the European authorities on concentration. Effective control of Hidrocantábrico is now governed by the specific bylaw provisions established by the company itself in the past which are still in force.

Tender offers for stock or stock plus cash

There were two tender offers in 2001 which offered stock, one of them in combination with cash, with a view to converting the target's shareholders into shareholders of the bidder.

The offer by Vallehermoso for Testa involved a payment in cash plus newly-issued shares of Vallehermoso. It was the first such offer since 1995 (see Table 7.2). The aim was for Testa shareholders to become shareholders of the parent company, Vallehermoso since, following the merger of Testa with Vallehermoso Rentas, their holdings in the resulting company would be significantly diluted.

Uralita's offer for Aragonesas was for stock and sought to minimize the negative impact on Uralita of Aragonesas' poor stock market performance, increase Uralita's market capitalization and liquidity, and improve the group's ability to raise finance.

Table 6.2
STOCK DEALS OFFERED BETWEEN 1995 AND 2001

Year	Target	Bidder	Purpose	Share exchange ratio
1995	Corporación Industrial y Financiera Banesto	Banco Español de Crédito	Increase holding	2 shares of Banesto + 200 ptas. per 1 share of Corporación Banesto
1996	BNP España	Banque Nationale de Paris	Increase holding	1 new share of BNP for 78 shares of BNP España
1998	Banco Español de Crédito	Banco Santander	Increase holding	5 new shares of Santander for 16 shares of Banesto
	Meliá Inversiones Americanas NV	Sol Meliá	Increase holding	9 new shares + 9 warrants of Sol Meliá (newly-issued) for 10 shares of MIA
1999	Ferrovial Agromán	Grupo Ferrovial	Increase holding	5 new shares of Grupo Ferrovial for 12 shares of Ferrovial Agromán
2000	Hidroeléctrica del Cantábrico	Unión Eléctrica Fenosa	Acquire control Withdrawn due to legal imperative	24 euros per share or, alternatively (for 1/3 of the shares), 1 new share of Fenosa for 1 share of Hidrocantábrico
	Superdiplo	Koninklijke Ahold NV	Acquire control	37 new shares of Ahold for 50 shares of Superdiplo
2001	Testa Inmuebles en Renta	Vallehermoso	Increase holding	13 new shares of Vallehermoso + 140 euros for 20 shares of Testa
	Energía e Industrias Aragonesas	Uralita	Increase holding	9 new shares of Uralita for 10 shares of Aragonesas

The tender offer, for stock, made by Arcelor for 100% of Aceralia is particularly noteworthy⁽²⁴⁾. The operation required Arcelor's share issue and listing prospectus to be vetted, which took place under the mutual recognition procedure (see chapter 5). The offer was part of a Europe-wide operation which included tender offers by Arcelor for Usinor (France) and Arbed (Belgium and Luxembourg).

This was the first operation of its kind in Europe and it required coordination between the securities market supervisors in the four countries involved. Considerable efforts were made to standardise the information provided to the shareholders in the four countries. As a result, the public had access to a broad, complex dossier on the companies and transactions, and the companies performed the transactions within schedule. As a result, Arcelor acquired approximately 95% of the capital of Aceralia, 93% of Usinor and 98% of Arbed.

(24) This transaction is not listed in the tables as it was authorised on 3 January 2002.

Other noteworthy features of the tender offers filed in 2001

The following aspects of the tender offers authorised in 2001 are worthy of note:

- *Inclusion of a warning from the CNMV.* The CNMV included a warning in the tender offer by Sandobella Holding for Grupo Fosforera to assist shareholders in understanding and analysing the operation.
- *Size in monetary terms.* The largest transactions were the offers by Ferroatlántica and Adygesinval for Hidrocantábrico, which amounted to €1,844 million and €522 million, respectively (see Table 7.3).
- *Withdrawal of tender offer.* Before the CNMV had decided about authorising Cortefiel's tender offer for Adolfo Domínguez, the former withdrew the offer when the target's main shareholders, who owned more than 50%, made public their irrevocable decision not to accept the offer (the offer was conditional upon acceptance by at least 51%).
- *Tender offers by foreign groups.* Of the 19 tender offers authorised in 2001, nine were presented by foreign groups, for a total of €6,817 million, of which €3,677 million were realised (79% of the total).
- *Delisting tender offers and other delisting procedures.* The following companies were delisted directly by means of tender offers: Meliá Inversiones Americanas, Asturiana de Zinc, Saint Gobain Cristalería and Superdiplo.

Some delisting processes of companies which had first been the target of a tender offer are detailed below:

- Three offers in 2001 (presented by Compagnie de Saint-Gobain, Allied Domecq and Heineken) were accompanied by appraisals; in all three cases, the aim was to delist the target.

The offer by Compagnie de Saint-Gobain stated that subsequent delisting would be attained, if necessary, by a second tender offer. On completion of the offer, the target applied for delisting and a new delisting offer was made for the same price as the preceding offer.⁽²⁵⁾

Undoubtedly in view of the aforementioned operation, Allied Domecq and Heineken approached their tender offer differently, and there were certain novel declarations about the share price of the target securities. Although the price was not authorised by the CNMV in either case (since they were not strictly for delisting purposes nor did they fall under any of the cases in which the CNMV is required by law to express an opinion on the price), the bidders stated their intention to delist the target, in the short term and depending on the outcome of the first offering, without the need to make a second offer for delisting purposes.

The bidders considered that the tender offers as presented provided sufficient protection for investors in the event of delisting, since they targeted all the affected securities,

(25) Two other companies filed delisting tender offers in 2001 after being the target of tender offers for stock. In one case, the cash price in the delisting tender offer was equivalent to that of the stock deal in the preceding offer (made in 2000). In the other case, the delisting price was lower than that obtained in the stock deal filed approximately two years before.

without any limitation, offering a price in cash that was higher than the appraised value (based on generally accepted valuation standards and the minimum values stipulated in the regulation governing tender offers for delisting).

Early in 2002, one of the targets (Bodegas y Bebidas) applied for delisting and, in view of the circumstances (see box), the delisting procedure was commenced without making a tender offer, as the company itself established a measure of protection for minority shareholders which was complementary to the tender offers that had already been performed and an alternative to a delisting offer. This measure consisted of maintaining a buy order on the market, for the same price as the tender offer, until the date of effective delisting. The other company (Heineken España) also proposed similar delisting procedure, which is pending approval by its Shareholders' Meeting.

Nevertheless, it should be noted that the statements made by bidders in their tender offer prospectuses or in any other context do not prejudice the CNMV's subsequent decision when the application for delisting is filed.

- In the other three offers (made by Xstrata, ING and Catalana Occidente) which did not include an appraisal, the stated intention was to delist the target companies subsequently. One of them (Asturiana de Zinc) had to perform a delisting tender offer at a price that was higher than in the preceding tender offer. Another company (Lepanto de Seguros y Reaseguros) was delisted without performing a tender offer for this purpose. And the third (Filo) has taken the necessary steps to perform a delisting offer.

Noteworthy features of delisting offers

The CNMV has the power to make delisting of securities conditional upon the issuer making a tender offer. In this case, the price offered must be approved expressly by the CNMV.

The need to make a tender offer for delisting depends on circumstances which may be indicative of harm to the interests of the holders of the securities to be delisted, and on the procedures which the company itself has established to protect those interests.

In general, the CNMV takes account of the following factors; appraisals are of primary importance in this connection:

- Number of securities and percentage which they represent over the total number of securities in circulation which are owned by shareholders other than the controlling shareholder(s).
- Approximate number of holders of those securities.
- The existence of a preceding tender offer for the securities to be delisted, and its outcome.
- The information contained in the preceding tender offer prospectus and other information disclosed by the company or its controlling shareholders about its market prospects.
- The existence of independent appraisals of the company to be delisted.
- External or internal circumstances at the company applying for delisting which might significantly modify its valuation.
- The time elapsed between the previous tender offer and the application for delisting.
- Transactions following delisting which entail or may entail the total or partial transfer of the delisted securities, of the company itself or of its main assets, and merger, spin-off and other transactions.

Table 6.3
TENDER OFFERS IN 2001

Target	Bidder	Purpose	% of capital covered by the offer	Actual cash amount (million euros)	Outcome as % of securities initially targeted
Hidroeléctrica del Cantábrico (I)	Ferroatlántica	Acquisition of control	100.00	1,843.776	59.66
Hidroeléctrica del Cantábrico (II) "competing with (I)"	Adygesinval	Acquisition of control	85.02	521.745	22.59
Banco Esfinge	Banco Finantia and other parties	Acquisition of control	100.00 (min. =50.01%)	23.911	92.70
Testa Inmuebles en Renta	Vallehermoso	Increase stake	35.04	452.733 ⁽ⁱ⁾	97.72
Hidroeléctrica del Cantábrico (III), competing with (II)	RWE España	Acquisition of control	100.00	Offer withdrawn	Offer withdrawn
Asturiana de Zinc	Xstrata Holding BV and Xstrata Spain	Increase stake	100.00 (min. =80%)	503.117	92.42
Saint-Gobain Cristalería	Compagnie de Saint-Gobain	Increase stake	25.53	208.846	89.08
Meliá Inversiones Americanas NV	Meliá Inversiones Americanas NV	Delisting	1.79	3.765	63.89
Lepanto Seguros y Reaseguros	Catalana Occidente Seguros y Reaseguros	Acquisition of control	100.00 (min. =26.22%)	83.718	99.25
Grupo Fosforera	Sandobella Holding BV	Acquisition of control	100.00	2.307	83.23
Asturiana de Zinc	Asturiana de Zinc	Delisting	4.30	15.450	59.47
Energía e Industrias Aragonesas	Uralita	Increase stake	46.00 (min. =30.30%)	68.587	75.01
Saint-Gobain Cristalería	Saint-Gobain Cristalería	Delisting	2.79	21.185 ⁽ⁱⁱ⁾	82.76
Heineken España	Heineken NV	Increase stake	15.26	54.528	81.59
Bodegas y Bebidas	Allied Domecq España	Acquisition of control	100.00 (min. =50.01%)	259.806	93.06
Koipe	Sos Cuétara	Acquisition of control	81.90	314.945	92.73
Filo	ING Real Estate Inversiones y Bishop Investment Spain	Acquisition of control	100.00 (min. =80%)	260.814	97.88
Superdiplo	Superdiplo	Delisting	0.50	6.255	94.13
Fastibex	Fastibex	Capital reduction	25.00 (maximum)	2.124	99.96 (prorated)

⁽ⁱ⁾ The actual cash amount was calculated by assigning to Testa shares a price of €11.45, i.e. the result of the share exchange ratio (€140 plus 13 newly-issued shares of Vallehermoso for 20 shares of Testa) based on the closing price of Vallehermoso in the market session prior to the announcement of the transaction (€6.85).

⁽ⁱⁱ⁾ The actual cash amount was calculated by assigning to Aragonesas shares a price of €5.30, i.e. the result of the share exchange equation (9 shares of Uralita for 10 shares of Aragonesas) based on the closing price of Uralita in the market session prior to the announcement of the transactions (€5.89).

Mandatory time periods in tender offers

Tender offers must comply with a number of time periods established by law so that the CNMV can verify that the conditions of the offer comply strictly with current regulations and thereby ensure that all shareholders are treated equally and that they are provided with the information necessary to make sound decisions.

Firstly, the CNMV has 15 business days from the date of formal filing in which to authorise or reject the offer. If the CNMV decides to request additional information in order to examine the operation appropriately, the 15-day period is suspended and recommences upon receipt of the requested information.

Once it has decided whether to authorise or reject the tender offer, the CNMV notifies the bidder and target of its decision in writing. Formal receipt of the notice marks the commencement of two different periods. The bidder has at most 5 business days in which to announce the offer publicly and broadly through publication of the offer in the Official Gazette of the Mercantile Register, in the stock exchange listing bulletins and in at least two newspapers with circulation nationwide and locally in the city where the target company has its domicile. Additionally, from the day following publication of the first such notice, the bidder must make copies of the offer prospectus and the accompanying documentation available to interested parties. The target also has 10 days (5 in the case of a modified offer) in which to publish the opinion of its Board of Directors relating to the offer.

These publications must be distinguished from general information about the offer disclosed by the bidder in the form of “significant events” registered with the CNMV prior to authorisation of the transaction.

The date of publication of the announcement of the tender offer by the bidder is the first day of the period of acceptance, which may not be less than one month nor more than two months. The bidder may extend the initially-envisaged period, with CNMV approval, subject always to the aforementioned maximum. In the case of competing bids, the maximum period may be exceeded since the acceptance periods are extended automatically so that the all conclude on the same day⁽¹⁾.

An extension of the authorisation period depends on the complexity of the offer and its initial conformity to the applicable standards; the bidder may be required to file additional information⁽²⁾. This is particularly so in the case of delisting offers, where the CNMV must expressly authorise the consideration on offer. Justification of the price in these cases requires a careful examination and subsequent discussion with the bidder and the independent appraiser, occasionally leading to a modification of the valuation; all these factors may extend the periods involved.

(1) See, for example, the competing bids for Hidrocantábrico in which the period for accepting the first offer commenced on 19 January 2001 and ended on 9 April 2001 (deadline for the last offer that was filed).

(2) In 2001, some offers were authorised within 15 days of filing, whereas others took several months to be authorised.

Intervention by the Administration in business concentration processes: effects on tender offers

The Administration's oversight of business concentration transactions with a view to increasing competition between companies can have an impact on the procedure for authorising tender offers in certain cases. In 2001, further amendments were made to the regulations governing competition and certain features of the regulations on tender offers were amended⁽²⁶⁾. The new regulations adapted the system for tender offers to the new legislation on business concentration in the context of defence of competition. The changes in the regulations on tender offers are as follows:

- Bidders must report the concentration transaction to the Competition Defence Service.
- The CNMV is obliged to report the transaction to the Competition Defence Service if it considers that the circumstances envisaged in the legislation apply.
- Publication of the announcements of the tender offer, after authorisation by the CNMV, may be suspended if the suspension on authorisation of the concentration transaction has not been lifted, until the Administration has given its express or tacit approval.
- The CNMV's power to prevent withdrawal of an offer by the bidder when it considered that the conditions imposed by the Government for authorisation of a concentration operation were not excessively burdensome has been abolished.
- A supplement to the offer prospectus, vetted by the CNMV, must be presented in concentration operations when agreement is reached on the concentration operation after authorisation of the tender offer by the CNMV. The supplement must specify the conditions established in the agreement.
- The maximum period of 2 days for publication by the bidder for the purposes of processing the offer with the competition authorities, and for withdrawing it, as the case may be, runs from the date of express or tacit administrative resolution or from the date from which the offer may be withdrawn (previously, the two days commenced on completion of the acceptance period).
- Where a competing bid which does not meet the conditions for obligatory notification to the Competition Defence Service coincides with another which does meet those conditions, the former is suspended until the latter is published.

(26) Royal Decree 1443/2001, dated 21 December, implementing Law 16/1989, dated 17 July, on defence of competition, was approved in 2001, replacing and derogating the pre-existing regulation on concentration, which dated from 1992, and amending Royal Decree 1197/1991, dated 26 July, on tender offers for securities (specifically, articles 24 and 37).

As stated in Chapter 4, 2001 was not a good year for the securities markets. But this did not prevent organised markets from taking a number of initiatives to improve and expand services (in addition to acquisitions and mergers, as outlined in Chapter 3).

The CNMV kept a close watch on how the markets improved working methods and enlarged product supply, ensuring at all times that they complied with the requirements for transparency and correct formation of market prices. In this context, the CNMV paid particular attention to actions connected with security clearing and settlement (a vital function for markets).

Temporary suspensions of trading

In 2001, there were 54 cases of temporary suspension of trading, which affected 35 issuers. The most frequent cause of suspension was the disclosure of significant events relating to possible take-overs and mergers. A large number of temporary suspensions were also triggered by the presentation of tender offers at the CNMV.

Table 7.1
TEMPORARY SUSPENSIONS OF TRADING

	2000	2001
Number of issuers suspended	44	35
Number of suspensions	68	54
Presentation of tender offer	14	15
Release of price-sensitive information	41	35
Expiry of period for acceptance of tender offers	6	3
Other	7	1

Delistings

In 2001, 24 companies were delisted (compared with 46 in 2000), the most frequent cause being an application by the issuer (eight companies).

The delisting procedures were processed in a variety of ways: the Basque regional government (3), the Valencia regional government (1), tender offers for delisting (3), intermediary procedures (2) and the CNMV (5).

In the context of concentration, five companies which had merged were technically delisted. Another four were delisted because they withdrew from the SIM register; another three ceased trading on one or more of the stock markets where they were listed, although they continued to trade on at least one.

7

SECONDARY MARKETS AND CLEARING AND SETTLEMENT SYSTEMS

Significant events

Disclosure of relevant information about issuers of listed securities is vital in order to avoid an imbalance in information between listed companies and investors. For our purposes, relevant information is considered to be any fact, decision and information about the issuer's present or future actions which may influence a security's value. In the interests of ensuring sufficient transparency, if the issuer does not fulfil the disclosure requirements, the CNMV is empowered⁽¹⁾ to order disclosure and, if necessary, disclose the relevant information⁽²⁾.

The CNMV tries to detect any information which should be disclosed as significant; therefore, it generally monitors the media (written press, radio, television). This also includes following the information on Internet, which has become a powerful channel for disseminating financial information in recent years. Hence, the CNMV insists that any investment decision should be taken on the basis of facts, rather than rumours or tips.

In considering relevant information, the CNMV uses the following criteria:

- Reasonableness: if the issuer is doubtful about whether or not the information is relevant, he should supply it under the heading "Other information".
- The issuer's actions: (i) limit the number of people in the know to the minimum, and bind them to confidentiality; (ii) monitor the stock performance and any reports, analyses or valuations in order to clarify or deny inaccurate or untrue information.
- Information should be disclosed as soon as it becomes available, but preferably after market close. The communiqué should be honest, clear, complete, quantified and concise.
- Analysts and the press should refrain from disclosing reserved information not yet reported to the CNMV.
- An issuer's outlook should be disclosed as a significant event whenever it is supplied to third parties. This information should also contain any risks which the company faces in meeting its targets.

All the relevant information (significant events and other information) is available on the CNMV web site at <http://www.cnmv.es> in the section "CNMV al día".

(1) Articles 85.6 and 89 of the Securities Market Law.

(2) Article 82 of the Securities Market Law stipulates the disclosure requirements.

Securities clearing and settlement

In 2001, settlements remained at volumes similar to those of 2000. Investments by non-residents increased, accounting for more than 60% of the market (including buying and selling). In consequence, entities which specialise in settlement gained in weight and the activity became more concentrated. The number of incidents in settlement was low (actually lower than in 2000) despite the higher proportion of non-resident investments (which sometimes have problems in complying with procedures).

In 2001, measures were taken to integrate securities clearing and settlement systems. On 9 July, Iberclear took charge of clearing and settlement of all euro-denominated fixed-income securities traded on AIAF (using the Bank of Spain's book entry platform). By 2001 year-end, 90% of outstanding issues had transitioned to the system and the process was due to be completed early in 2002. The transition took place without any noteworthy incidents.

In 2002, work will continue on integrating securities clearing and settlement systems into the unified platform. As new segments are gradually included in the platform, the entities involved will save on operating costs by reducing the number of post-trade processes. It will also be possible to reduce the number of links with national central depositories, making cross-border transactions more efficient.

Moreover, the proximity of the unified platform to the Bank of Spain's real-time settlement system widens the range of operations which can be carried out with products other than government debt securities, such as intraday liquidity (see box), repos and operations with same-day settlement.

Intraday liquidity using AIAF securities

In conjunction with the other central banks in the Eurosystem, the Bank of Spain provides intraday liquidity to entities which have treasury accounts with it. Members of the AIAF market can obtain liquidity in exchange for AIAF euro-denominated securities.

The process for obtaining intraday liquidity begins at 18.20 when the Bank of Spain notifies firms of the portfolio they have available for this purpose and indicating the cash which they can obtain. Firms which wish to obtain liquidity specify their needs; the funding is obtained through repos (one for each firm and class of security) between the firm and the Bank of Spain. When the government debt window closes on the following day (16.00), any repos still open are cancelled automatically.

In the six months since it was introduced, the intraday liquidity system using AIAF securities has expanded and now represents close to 40% of total trading in AIAF, averaging €5 billion per month. However, only four of the eleven firms that made use of this facility resorted with a frequency of 50%; moreover, two firms account for 85% of the total volume.

Period	Intraday liquidity (€ million)	AIAF trading (€ million)	Liquidity/Trading (%)
Jul-01	4.441,3	9.807,0	45,29%
Aug-01	5.028,6	9.265,2	54,27%
Sep-01	3.856,5	12.307,1	31,34%
Oct-01	6.615,2	12.590,7	52,54%
Nov-01	6.741,8	19.267,0	34,99%
Dec-01	4.842,9	20.027,0	24,18%
Total	31.526,3	83.264,0	37,86%

8

SUPERVISION OF INTERMEDIARIES AND OF COLLECTIVE INVESTMENT

The adverse performance of the stock markets and the major amendments to the regulations on collective investment institutions⁽²⁷⁾ shaped the CNMV's supervisory actions in 2001. The market decline made it advisable to step up prudential supervision of investment services firms, whose bottom line is generally very sensitive to the securities market cycle. Although the sector is healthy overall, the experience of past downturns suggests that loss-making firms should be given special attention.

Regarding collective investment institutions, the CNMV decided to adopt controls to verify compliance with the new, more flexible limits on their investments. Also, following the 11 September attacks, particular attention was paid to compliance with the mechanisms provided in the regulations to ensure liquidity of holdings in mutual funds.

The legislation provides that, in extreme cases, the CNMV may take administrative control of bodies under its supervision or replace their directors. In accordance with the applicable regulations, such measures can be adopted when an entity under supervision is in a particularly serious situation that endangers the recovery of its equity or its stability, liquidity or solvency, or when there are clues that the entity's accounts do not reflect its true situation. Such measures have only rarely been taken. However, in 2001, the CNMV was forced to intervene in a brokerage firm (Gescartera Dinero) and, consequently, in a collective investment institution closely related to it due to the existence of very serious circumstances. Parliament created a commission to investigate the case; in its conclusions, that commission urged the government to make a number of changes in the CNMV's internal regulations and in the regulation governing the entities under its supervision.

Distance supervision⁽²⁸⁾

Investment services firms

- *Supervision of legal coefficients.* The supervision of the coefficients which investment services firms are bound to comply with did not reveal significant violations. Firms generally amply exceeded the required coefficients and the isolated cases of non-compliance were resolved satisfactorily.
- *Specific controls:*
 - *Monitoring brokers and broker-dealers with accumulated losses.* The adverse performance by the securities market had a negative impact on investment services firms' earnings. To ensure effective investor protection, the CNMV specifically monitored loss-making firms, analyzed their individual situations and demanded information about their prospects and plans from the persons in charge.

(27) Royal Decree 91/2001, of 2 February, which partially amends Royal Decree 1393/1990 which approves the Regulation of Law 46/1984, of 26 December, regulating the collective investment institutions.

(28) Internal control is based fundamentally on analysing the information supplied periodically by the entities themselves. The CNMV supplements this type of surveillance with on-site inspections or visits.

- *Checking, via depositories, of the information filed with the CNMV regarding the positions held by portfolio management clients.*
- *Checking that portfolio management contracts complied with the provisions of Ministerial Order dated 7 October 1999 and of CNMV Circular 2/2000⁽²⁹⁾ and compliance with the obligations to inform portfolio management clients.* Most firms have informed the CNMV of adoption of the standard form established by Circular 2/2000; however, it was found that some firms had not yet updated the contract for all clients.
- *Analysis of internal rules of conduct at brokers and broker-dealers.* The review of the internal rules of conduct revealed some violations of the regulations, and the appropriate action was taken.
- *Margin trading: analysis of debit balances.* The analysis focused on broker-dealers where customer debit balances accounted for a large proportion of the balance sheet. This item was also analyzed at brokerage firms which had had incidents in this regard in the past; a considerable improvement was observed.
- *Checking the transitory and minimization criteria of balances receivable from customers established in rule 12 of CNMV Circular 1/98⁽³⁰⁾.*
- *Investigating complaints.* As usual, the complaints filed against firms were investigated. The most frequent complaints related to lack of control over representatives' actions, the breach of the obligation to register client orders and the lack of adequate internal control systems.

(29) The Ministerial Order dated 7 October 1999, implementing the general code of conduct and rules of action for the management of investment portfolios, and CNMV Circular 2/2000, dated 30 May, on standardized forms of contracts for discretionary and personalized management of investment portfolios and other implementations of the Ministerial Order dated 7 October 1999.

(30) Circular 1/1998, dated 10 June, on internal systems for control, monitoring and continuous evaluation of risks.

Requirements for directors and managers of investment services firms

Royal Decree 867/01, dated 20 July, on the legal regime of investment services firms, establishes the requirements for the members of the boards of directors and general managers and similar of investment services firms, amending some requirements established in Royal Decree 276/89, which has been repealed. All the members of the boards of directors must comply with the requirements of business or professional standing and most of the members must have adequate experience in securities markets (fitness and property standards). General managers and similar must also comply with those requirements.

The business and professional standing of directors or managers is positive when they have a record of complying with mercantile and general economic law as well as good commercial and financial practices throughout their career. The regulation identifies some cases in which the standing is negative: proposed directors lack standing when, among other things, they have been declared bankrupt or filed for protection from creditors without being reinstated; they are being prosecuted or tried for specific crimes; they have a criminal background for forgery, general financial crimes, breach of trust and crime against property; or they have been disqualified or suspended from holding office or from the administration or management of financial institutions.

For the requirement of experience, the knowledge and experience of directors or managers are considered to be adequate for discharging their duties when they have been involved in senior administration, management, control or advisory functions at financial institutions or have had similar responsibilities in other public or private institutions of similar size at least, for no less than three years. The previous regulation required 2 years' experience.

Collective investment institutions (IIC)

- *Supervision of mandatory coefficients.* As a result of the partial amendment to the IIC regulation, it was necessary to adapt the systems for monitoring investment policy at those institutions. A few isolated cases were detected that exceeded the limits established in the regulation, which were notified to the management companies for immediate correction. Special attention was given to specialist IIC, mainly funds of funds. The CNMV checked, inter alia, the suitability of the assets in which the investments were materialized, compliance with investment coefficients and the commissions applied when the IIC in which investments were made belonged to the same group as the management company.
- *Systematic analysis of yields.* This tool developed in 2000 proved to be very effective for detecting atypical fund yields (for further investigation). In most cases, they were due to errors in the calculation of net asset values; sometimes they had a negative repercussion on investors.
- *Specific checks.* In addition to systematic supervision, in 2001 the CNMV performed special checks, mainly:
 - *Checking the delivery of abridged prospectuses before the first subscription of funds being marketed.*
 - *Analysis of compliance with the investment policies declared in prospectuses.*

- *Checking the liquidity of investors' holdings in the days after 11 September* (see box).
- *Valuation of institutions' portfolios at closing prices.* Longer trading hours in some European markets and the increase in foreign investments created the need to check if the institutions' portfolios were being valued at official closing prices.
- *Checking that the financial statements and audits of investment firms and management companies complied with the formal requirements of the Spanish Corporations Law.*
- *SIMCAV with outstanding capital or net worth below the legal minimum.* Some institutions were identified and were notified to restore capital.
- *Checking that IIC depositories complied with the control obligations.* Special attention was given to human resources and IT tools, the frequency and content of the information requested from management companies, the quality and sufficiency of the information they sent to the CNMV, the procedures established for checking compliance with the coefficients, the calculation of the net asset values, the performance of trades in market condition, and the methods of valuation for OTC transactions.

Impact of 11 September on the liquidity of mutual fund holdings

The 11 September 2001 attacks in the United States caused suspension of trading on the New York Stock Exchange and on Nasdaq until 17 September 2001. The temporary closure of the US markets logically affected the liquidity of shares in mutual fund holdings invested in securities listed in those markets. Since there are no specific action rules for a situation of this type, nearly all the countries' regulatory authorities chose to suspend subscriptions and reimbursements above an exposure threshold of over 10% of the affected securities.

Fortunately, Spanish investors were not affected by such a drastic measure since Spanish regulations establish a procedure for subscription and reimbursement transactions when securities trading is suspended. In those cases, the regulation allows partial settlement of the reimbursement transactions based on non-suspended securities. After the announcement of the temporary closure of the US markets, the CNMV drafted a communiqué to facilitate the task of management companies, in which it reminded them of the obligation to perform partial settlement transactions at investors' request. At the same time, the necessary checks were established to ensure correct compliance with that regulation.

The flexibility of Spanish regulations on this matter was seen favorably by international regulation forums. Numerous regulators were interested in this regulation and recognized its technical validity over other investor protection approaches.

On-site supervision

Investment services firms

Visits to investment services firms, especially institutions belonging to financial groups, continued to grow steadily. In general, inspectors analyzed all the key regulatory factors during the visits (coefficients and prudential operating limits, organization and resources, rules of conduct, internal control systems, etc.). Nevertheless, special attention was given to specific matters, mainly:

- *Checking the conditions of the securities deposited in investment services firms and any subdeposits entrusted to other Spanish or foreign financial intermediaries.*
- *Because of adverse market performance and the possible repercussion on corporate results, special attention was given to the solvency and liquidity situation of the institutions and the minimum requirements.*
- *Checking the execution conditions and the commissions charged for transactions on behalf of clients, especially in the case of mutual funds belonging to the same financial group.*
- *Checking compliance with the obligations of Circular 2/2000, dated 20 May, on standardized forms of contracts for discretionary and personalized management of investment portfolios*

Collective investment institutions (IIC)

Since IICs' foreign portfolio is growing as a proportion of the total and because of the impact on securities markets of the 11 September attacks, the CNMV's visits to entities placed special attention on compliance with the regulations of the key factors of the IIC's international investments. The two main factors examined were as follows:

- *Conditions of custody of the securities in the institutions' portfolios.* The conditions of the deposit in any subdepositories of securities issued in Spain and elsewhere were analyzed, particularly the ownership and availability of those securities.
- *Management companies' actions regarding requests for reimbursement after 11 September 2001.* The purpose was to check compliance with the partial settlement system envisaged in the regulation for this type of situation in order to guarantee the liquidity of reimbursements.

The major reform in the regulation meant that, during the inspections, the CNMV had to review the IICs' adaptation to the new regulation.

Supervision of on-line activities

Despite the uncertainty that has affected the stock markets in the last two years, the number of institutions offering services via the Internet is growing. In 2001, 40% of investment services firms and 46% of IIC management companies performed transactions via the Internet (34% and 39%, respectively, in 2000).

Aware of the growing importance of on-line services, the CNMV is studying whether to adopt specific regulations for the supervision of these services in order to facilitate their development in a framework that adequately protects investors. The CNMV has identified the key factors for the

regulation and supervision of those activities and has asked the sector to collaborate in defining the most appropriate criteria for each case. It sent a survey with 139 questions to ten entities which are representative of the sector based on their legal configuration. Their comments were of great use in drafting a document, which is summarized in table 8.1.

Progress in technology and the development of regulations for Spanish and European securities markets and e-commerce make it necessary to continually assess the regulatory and supervisory framework of on-line services, whose development this initiative seeks to foster. The following should be considered: the Directive on certain legal aspects of the information society⁽³¹⁾, the amendment to the Directive on money laundering⁽³²⁾ and the proposed Directive on distance marketing of financial services for consumers⁽³³⁾. In Spanish legislation, the future impact of the Draft Law on Information Society and E-commerce and the Draft Law on Electronic Signatures, which will replace Royal Decree-Law 14/1999, dated 17 September, on electronic signatures, must also be considered.

Table 8.1

REGULATION AND SUPERVISION OF ON-LINE SERVICES ^(*)

Key factors	Standards
<i>Regulations</i>	Entities that provide on-line investment services will always be subject to the general and specific regulations governing their activities.
<i>Dissemination of information</i>	Entities must guarantee users that the information received on-line is of quality and reliable.
<i>Customer relations</i>	Entities must ensure that clients have all the necessary information. They must have at least the same guarantees and protections as via traditional channels. Appropriate identification of clients must also be guaranteed.
<i>Loyal provision of investment services</i>	Entities must provide clients with true information that is appropriate for their investor profile.
<i>Human resources</i>	Entities must have capable organizations and internal control systems, whether they use their own or outsourced IT.
<i>Technical resources</i>	Entities must have the appropriate mechanisms for guaranteeing the capacity and general security of the systems, applications and databases.
<i>Procedures and structure</i>	Entities must design the appropriate electronic processes and have an organizational structure which ensures segregation of on-line duties or actions.

Intervention at Gescartera Dinero, A.V. and Gescartera Gestión S.G.I.I.C.

On 14 June 2001, the CNMV Board resolved to intervene in the broker Gescartera Dinero⁽³⁴⁾ since, despite reiterated actions and demands by the CNMV, it had failed to accredit the existence of the funds owned by its clients in the amount stated in the accounting information sent

(31) Directive 2000/31/EC, dated 8 June 2000, on certain legal aspects of the information society.

(32) Directive 2001/97/EC, dated 4 December 2001, amending Council Directive 91/308/EC, dated 10 June 1991, on prevention of the use of the financial system for the purpose of money laundering.

(33) Common position by the EC No. 16/2002, dated 19 December 2001, adopted by the Council to adopt the European Parliament and Council Distance Selling Directive for Financial Services and amending Directives 90/619/EEC, 97/7/EC and 98/27/EC.

(34) Gescartera Dinero was registered as a broker in February 2001. It had previously operated as a portfolio management company. The Economy Ministry authorized its transformation in September 2000, at the proposal of the CNMV.

to the CNMV. At that same meeting, the Board also resolved to intervene in the IIC management company Gescartera Gestión, closely linked to the former, and notify the events related to that company to the public prosecutor and, if appropriate, the courts, in case the events constituted a crime. On 15 June 2001, the complaint was sent to the State Prosecutor.

Subsequently, the CNMV Board resolved to commence disciplinary proceedings against Gescartera Dinero Agencia de Valores, the members of its board and its authorized signatories for allegedly committing two very serious violations of the Securities Market Law.

The key problem detected at Gescartera Dinero was its difficulty in accrediting the whereabouts of the funds entrusted to the company by its clients. After intervention, the CNMV focused on the following three objectives:

- Safeguarding the broker's assets and those of its clients that had been accredited at the date of intervention.
- Analyzing the amount of the investments made by the broker's clients to assess the theoretical loss to them.
- Collaborating with the courts to clarify the real situation of the broker and the circumstances that led to the situation.

Safeguarding the broker's and clients' assets:

After notifying the broker's Board of Directors and its employees of the CNMV Board's resolution to intervene, the newly-appointed administrators sent a copy of same to the financial intermediaries at which the broker's and clients' assets were deposited. The purpose of this measure was to ensure that any disposition of those assets would require the administrators' approval.

Additionally, an in-depth analysis of the broker's financial and net worth situation was performed in order to check the true and fair view presented by its financial statements. A significant test of this analysis was the request to financial intermediaries for certificates accrediting the existence of the assets registered in the name of the clients and the broker.

The main conclusions of this analysis were as follows:

- Certain relevant assets in the broker's balance sheet did not exist.
- The memorandum accounts understated the managed asset volume.

Assessing the theoretical loss to clients

At the first interview with the broker's directors and authorized signatories after CNMV intervention and in other interviews and depositions, the information found at the broker's offices about its situation and that of its clients was examined. The result was that, in parallel with the official accounting and information sent to the CNMV, other information had been concealed from the CNMV.

The affected investors presented 1,394 complaints, representing €94 million, to the Public Attention Department.

The analysis of customer complaints revealed that the broker was performing liabilities acquisition transactions—an activity expressly forbidden for investment services firms.

Judicial collaboration

Chamber number three of the National Court is investigating this case. As is mandatory, the CNMV is providing all the assistance required by the court. In particular, it is keeping the court up to date about the assessment of the loss to Gescartera clients and of the actions by the administrators at the two companies intervened. CNMV experts also declared as witnesses and provided assistance to the court.

As a result of this investigation by the National Court, and in accordance with article 96 of the Securities Market Law, the CNMV's disciplinary proceeding has been suspended until the court makes a firm pronouncement.

Intervention in entities and replacement of directors

Article 107 of the Securities Markets Law empowers the CNMV to intervene in investment services firms, IIC management companies and other bodies under supervision or to replace directors. That article refers to the provisions of Title III of Law 26/1988, on discipline and intervention of credit entities, in order to determine the regime regulating the application of such measures. In both cases, they are adopted only if the entity is in an exceptionally serious situation which places the effective use of its equity, or its stability, liquidity or solvency at risk. They can also be taken in those cases where there are well-founded indications that the above-mentioned situation of exceptional gravity is present, and it is not possible to deduce the entity's true situation from its accounts.

Intervention consists in attaching administrators appointed by the CNMV to the entity's governing body. Hence, administration of the entity is shared with the administrators and the actions and decisions of any organ of the entity which are adopted after publication of the intervention agreement in the Official State Gazette will not be valid or effective without the express approval of the administrators. Replacement of the directors entails the imposition of a provisional administrative body to replace the ordinary governing body, whose duties are suspended. In addition, the directors appointed provisionally have the status of administrators with regard to the actions and decisions of the entity's general meeting.

The CNMV may initiate intervention proceedings *ex officio*, although the entity itself may also request them; in this case, intervention may be requested by the directors, the entity's internal audit unit, or even a minority of its shareholders who number at least the legal requirement necessary to call for an extraordinary shareholders' meeting. When the intervention proceedings are begun *ex officio*, the entity is first called to express its position, although this requirement may be lifted if it is considered that the delay would seriously jeopardize the effectiveness of the measure or the economic interests affected.

The situation of Gescartera Gestión, SGIC, S.A.

The fact that the shareholders and managers of the broker and the IIC management company were the same led to the latter also being placed under CNMV intervention, in accordance with the regulations. At the time of intervention, the management company was managing only one investment fund, Gescartera Global, FIM. At that date, the assets of the fund amounted to approximately €1.2 million, owned by 92 investors.

The first part of the investigation focused on a detailed review of the books at the management company and the mutual fund, as well as on obtaining the relevant cash and securities certificates, in order to check whether the investors' assets were accounted for. After this had been checked, in accordance with their duties, the investigators lent particular attention to checking the reimbursement of holdings, which was carried out in an orderly manner and without incidents.

On 2 October 2001, the Board of the CNMV resolved that a file should be opened to revoke the authorization granted to Gescartera Gestión, S.G.I.I.C., S.A., for breach of the requirement relating to minimum equity and because it was in a situation of obligatory liquidation as established in Article 260 of the Corporations Law. If the S.G.I.I.C.'s authorization is finally revoked, the depositary of the fund must assume responsibility for the duties which are now incumbent on the management company⁽³⁵⁾.

Parliamentary Commission to investigate Gescartera

On 6 September 2001, Congress resolved to create a Commission to investigate the Gescartera case; the Commission commenced work in November. The CNMV cooperated with the Commission, giving it all the documentation it requested. On 15 November, at a plenary session, Congress approved a text based on the opinion issued by the Investigatory Commission⁽¹⁾, which evaluated the CNMV's conduct in the case, amongst other matters, and urged the Government to approve a number of improvements in the organization and internal procedures of the CNMV and in the regulations of the bodies under supervision.

Evaluation of the CNMV's conduct

The text approved by Congress highlights the following points in the context of the CNMV's conduct in relation to the Gescartera case:

- The CNMV investigated the entity without the need for claims from clients or shareholders or a qualification in the audit report, and made the factors known to the courts. Likewise, it is noted that the entity was submitted to constant vigilance by the CNMV and that, from its creation, it caused problems, which were exacerbated with the passage of time.
- With reference to the decisions of the Board of the CNMV: (i) they were all adopted in unanimity, (ii) those relating to the file on converting the entity into a broker, to the penalties imposed⁽²⁾ and to the intervention that was finally approved, took place in accordance with proposals put forward by the experts, (iii) no member of the CNMV, whether a member of the Board or an expert, acknowledged having received instructions from any member of the Government or from the General Public Administration about how to treat Gescartera, and (iv) the experts stated that they had not received instructions from any members of the Board about the files.
- Certain individuals had contributed to giving an erroneous opinion being formed in the CNMV about the entity's real situation. In particular, the following are cited: (i) the auditors, whose reports did not contain qualifications, (ii) specific clients, who did not contribute the necessary information to check the veracity of their investments, and (iii) various credit entities, which issued certificates without the professional zeal required of them.
- With relation to the publicity given to the serious penalties imposed, the CNMV did not depart from the criterion followed relating to the penalties usually imposed on broker-dealers and brokers and that serious penalties are not legally required to be published in the Official State Gazette.
- The experts in the CNMV are rigorous in their conduct and the Investigatory Commission gave them a positive evaluation.

(35) Article 57.3 of Royal Decree 1393/1990, of 2 November, approving the regulation of Law 46/1984, of 26 December, regulating collective investment institutions.

But the text approved by Congress also considers that (i) there is an evident lack of regulated procedures in the internal functioning of the CNMV, even when this did not affect the results of the investigation, (ii) the criteria for personnel selection are not clear and may not be correctly defined, (iii) there is a shortage of human and material resources within the CNMV, and (iv) it was noted that for specific occasions criteria and actions overlapped in various areas within the CNMV and that this did not facilitate good internal working dynamics within the Commission.

Proposed improvements

Congress encourages the Government to implement the following improvements:

- CNMV President: (i) prior to his appointment, the Government should appear before the Economy Commission to inform it of the candidate proposed, and (ii) the President of the CNMV should appear before the above-mentioned Commission once every period of sessions in order to present it with the Annual Report and inform it about the work undertaken by the CNMV.
- CNMV internal regime and supervisory practices: (i) improve and regulate internal working procedures, (ii) put forward an organic statute for the CNMV, defining its internal structure, the distribution of powers, access of the personnel and the regime of incompatibility, and (iii) impose a “cooling-off” period before former experts in the service of the CNMV can offer their services subsequently to entities which they have supervised and monitored. With reference to the new internal regulations of the CNMV, it is expressly indicated that the procedures and investigatory conduct should be regulated and certain measures which are considered necessary be included, for example, the obligation of sending to all the members of the Board the various reports in the area of supervision which may contribute to a decision. Likewise, the requirement to increase and heighten control by the CNMV is emphasized when it is considered suitable to effect circularization of an entity’s clients in order to verify the funds really existing in the name of the clients. Such controls must be particularly strict when there are signs of collusion between the clients themselves and the entity under investigation with the aim of confusing the investigator.
- Regulation of the entities under supervision: (i) expressly consider the background of serious or very serious penalties in evaluating the suitability of the shareholders in the entities, (ii) extend the specific requirements made of the entities’ directors to their authorized signatories, (iii) reinforce the control and reporting requirements relating to financial entities, particularly in portfolio management and securities deposit activities, (iv) establish standards which enable total vigilance when securities are deposited with entities domiciled in tax havens, and (v) set limitations on potential excesses in the turnover of securities portfolios or in the subscription of issues designed, underwritten or placed by entities belonging to the same financial group. Moreover, it was considered advisable to encourage investment services firms to regulate themselves through membership of associations which promote scrupulous adherence to securities markets regulations.
- Audit reports: increase the obligations of audit firms in connection with financial entities under supervision. In particular, it is suggested that (i) the scope of audit reports carried out on investment services firms be extended to cover the securities portfolios these firms manage as well as any other aspect which makes it possible to ascertain the true situation of their assets and banking operations, and (ii) the auditor should be obliged to draw up a memorandum of recommendations. It is also pointed out that there should be greater cooperation between external auditors and the CNMV. In this context, it is proposed that they should meet annually and that the CNMV should inform the auditors of any items noted during supervision.

- Investment Guarantee Fund: it is considered necessary for the contributions to finance the contingencies covered by the Fund may also be covered by the deposit guarantee funds and any other appropriate sources of finance.

(1) The reference text can be consulted in Issue 270 of the Official Bulletin of the Parliament, Congress, published on 27 November 2001. This publication also includes the opinions of the different parliamentary groups.

(2) On 13 July 2000, in the same meeting as that at which it was resolved to give a favorable opinion on the transformation of the portfolio management company into a broker, the Board of the CNMV also resolved to sanction the entity itself and the former CEO and Managing Director, for serious breaches.

Administrative penalties are imposed with the aim of safeguarding market integrity: in addition to specifically addressing the party in breach, they also seek to discourage a repetition of the breach by the same or other parties.

The efficacy of the penalties depends on the legislators' skill in defining the various types of violation and the related sanctions, and on the supervisors' ability to detect and prove the existence of violations. The CNMV is aware of the need to strengthen its investigative abilities on an ongoing basis. This is not easy since the growing complexity of the activities performed in the securities markets require constant adaptation of the procedures and the human and material resources that are used.

The CNMV is particularly concerned about international cooperation between regulators, which has proved to be necessary in many investigations, particularly in connection with insider trading and operations by unregistered intermediaries. In 2001, the CNMV's inspection area established a specialized unit to coordinate international actions in the area of information exchange and support for investigations.

Disciplinary action is important for safeguarding market integrity; so too is prevention, to foster practices among market participants which discourage violations of the regulations. Particularly positive in this connection is the inclusion in the Draft Finance Law of a number of measures aimed at preventing improper use of confidential price-sensitive information produced within issuers and financial institutions.

Market Monitoring Unit (MMU)

Because of lower activity in the securities markets in 2001, the MMU's activities were less intense than in 2000. The unit extended its work of monitoring Internet forums to detect potential leaks of confidential price-sensitive information. The MMU investigated the existence of privileged information in cases where persons had made significant comments on the Internet prior to certain corporate transactions.

Table 9.1
ACTION BY THE MARKET MONITORING UNIT

	2000	2001
Investigations concluded	56	41
Inside information	29	14
Price manipulation	15	16
Other	9	8
"Client first" principle	3	3
Subpoenas	550	343
Requests for assistance from foreign institutions (1)	4	6
Visits	30	11
Depositions	27	15
Notifications/proposals for disciplinary proceedings	17	6
Notifications	13	3
Prior notification of violations	1	0
Opening of file	3	3
Cooperation with foreign institutions	5	6

9

MARKET INTEGRITY

Some investigations led to the issuance of notices to the entities involved, notifying them of the deficiencies which had been detected and asking for them to be remedied, or proposing the commencement of disciplinary proceedings. These cases are discussed below:

- *Notices*: three investigations detected organizational deficiencies at securities issuers, and the latter were asked to modify their internal rules of conduct to include rules about: (i) transactions with own shares to avoid mismatches between supply and demand but without altering the free formation of prices; (ii) handling of inside information; (iii) notification of transactions on company shares; (iv) policy of disclosing price-sensitive information to the market.
- *Proposed opening of file*: an investigation initiated in 2000 was concluded in 2001 with a proposal to commence three separate disciplinary proceedings for insider trading.

Market Monitoring Unit and disciplinary proceedings

Disciplinary proceedings

The CNMV's disciplinary activities in 2001 led to the commencement of six new disciplinary proceedings and the completion of thirteen, most of which had commenced in 2000⁽³⁶⁾. A total of 19 penalties were imposed, thirteen of them monetary (amounting to a total of 2.7 million euros), four public reprimands and two suspensions from office⁽³⁷⁾.

Table 9.2
NUMBER OF VIOLATIONS

	2000	2001
Violations leading to opening of a file	18	6
* Very serious	12	5
* Serious	6	1
* Minor	-	-
Violations on which proceedings concluded	29	13
Very serious violations	16	10
* Proceedings dating from 1999	12	-
* Proceedings dating from 2000	4	6
* Proceedings dating from 2001	-	4
Serious violations	12	3
* Proceedings dating from 1999	8	-
* Proceedings dating from 2000	4	2
* Proceedings dating from 2001	-	1
Minor violations	1	-
* Proceedings dating from 1999	1	-

(36) See tables 9.2 and 9.3.

(37) See table 9.4.

Unregistered intermediaries

As in prior years, actions against unregistered intermediaries played a major role in the CNMV's activities. One disciplinary proceeding which commenced in 2001 related to Global Analysis Ltd., its sole administrator and its two authorised signatories. This is the fourth in a series of unregistered intermediaries formed by the same persons against which the CNMV has commenced disciplinary proceedings⁽³⁸⁾. The CNMV published the corresponding warnings to the public about these cases on its web page, informed the public prosecutor and provided assistance in the investigation by the legal authorities.

On 5 March 2001, as part of the case at the Central Investigating Court no. 1 of the National Court, the Madrid offices of one of these entities were searched and eleven members of the organization were arrested. The operation, under the code name of "Operation Nippon", was assisted by the CNMV's inspectorate at all times and disclosed potential fraud totalling over 2.7 million euros.

Table 9.3

TYPES OF VIOLATIONS INVESTIGATED

	Opened		Closed	
	2000	2001	2000	2001
Very serious violations	12	5	16	10
I. Failure to disclose significant holdings	2	-	3	1
II. Forbidden activities	8	1	8	3
III. Simulated transfers	-	-	-	-
IV. Inside information	-	2	-	2
V. Breach of coefficients	-	-	-	-
VI. Concealment of price-sensitive information	-	-	1	-
VII. Violation of Companies Law	-	-	1	-
VIII. Violation of general securities market regulations	-	-	1	-
IX. Accounting offences	-	1	1	1
X. Obstruction of inspection	-	1	1	1
XI. Unregistered issues	-	-	-	-
XII. Breach of authorization requirements	-	-	-	-
XIII. Evasion of tender offer	2	-	-	2
Serious violations	6	1	12	3
I. Chinese walls	-	-	-	-
II. Accounting offences	1	-	1	-
III. Violation of the "client first" principle	-	-	1	-
IV. Violation of regulation on orders and transaction records	1	-	2	-
V. Forbidden activities	1	-	1	-
VI. Inside information	-	1	-	1
VII. Breach of coefficients	-	-	1	-
VIII. Violation of general securities market regulations	2	-	3	1
IX. Price manipulation	-	-	-	-
X. Breach of code of conduct	1	-	3	1
Minor violations	-	-	1	-
I. Breach of code of conduct	-	-	1	-

(38) The three precedents were: CAFI Consultoría y Asesoría Financiera Internacional, S.L. (fine of 84 million pesetas against the company and of 30 million against its sole administrator in January 2000), Port Kenny Holding, S.A. (fines of 421 million pesetas against the company and of 50 million against its director in December 2000) and Europa Marketing Central Advisory, S.L. (disciplinary proceeding commenced in October 2000).

Warnings about unregistered intermediaries

Providing information to investors is an essential part of the CNMV's work, as highlighted by the fact that article 13 of the Securities Market Law requires the commission to foster the dissemination of any information that is necessary to ensure the attainment of the goals assigned to it.

Of particular relevance within the CNMV's informative functions are the warnings about entities not authorised to provide investment services which have been detected performing these activities. Experience has shown that such entities pose a serious risk to investors, who accept very high risks without the appropriate information or, simply, are swindled.

These entities or individuals are normally established in other countries and provide different services from each one so as to take advantage of regulatory differences (regulatory arbitrage) and make it more difficult to pursue them. Securities regulators are keenly aware of the problem and are determined to eradicate these activities; to this end, international cooperation in this area has increased.

On its web page, the CNMV publishes Warnings about entities without authorisation against which disciplinary proceedings have been commenced, and it also publicises any penalty imposed. It is currently considering the possibility, from a legal position, of releasing warnings about the mere existence of an entity which may be providing investment services without the proper authorisation, even before commencing disciplinary proceedings. Since early 2002, the CNMV web page also contains warnings about unregistered entities from regulators in other countries.

Other actions

In addition to processing disciplinary proceedings, the unit investigated the activities of forty-two entities which appeared to be performing activities reserved to investment services firms without being registered with the CNMV. Also, in accordance with article 97.1 of the Securities Market Law, notices were received from the mercantile registrars of 141 cases where the limits on treasury stock allowed to unlisted companies were potentially being exceeded, and a total of 88 subpoenas were issued to those companies.

Table 9.4

PENALTIES IMPOSED

	2000			2001		
	Number	Amount ⁽¹⁾	Period ⁽²⁾	Number	Amount ⁽¹⁾	Period ⁽²⁾
Fines	52	16.352	-	13	2.677	-
Disqualification of directors	-	-	-	2	-	6
Reprimands	-	-	-	4	-	-
Withdrawal of authorisation	-	-	-	-	-	-
Total						

(1) Thousand euros

(2) Months

Distance selling of financial services

The CNMV has detected the appearance of a number of entities which present themselves to investors as “financial advisors” and use procedures similar to those habitually employed by unregistered intermediaries (“boiler rooms”). These self-styled advisors use distance selling techniques, presenting themselves as experts in the financial markets in possession of inside information; they use aggressive persuasion techniques, announce guaranteed high yields in very short periods of time, etc. Unlike the traditional unregistered intermediaries, these “advisors” charge a very high commission for their advice but convince their client to order the proposed transaction through their own bank or broker. In many cases, the investment is by no means as sure, nor the information as reliable, as purported and the investor soon loses his/her investment.

International support unit

The growing internationalisation of the securities markets makes it increasingly necessary for cooperation between supervisors in different countries. This is particularly evident in the area of inspection, where it is impossible to investigate certain violations without the assistance of supervisors in other countries. In the case of the CNMV, both the MMU and the Disciplinary Proceedings Unit have found it increasingly necessary to request international assistance increasingly in the last three years, while also receiving a steadily growing flow of requests for assistance from other countries.

For this reason, it was decided in 2001 to create a new International Support Unit within the CNMV Inspectorate to coordinate the international implications arising from the day-to-day work of the MMU and the Disciplinary Proceedings Unit, and to respond rapidly to requests for assistance from foreign regulators. The new unit also participates, on behalf of the CNMV, in international regulatory forums (principally the CESR and IOSCO) which deal with inspection and the exchange of information.

Table 9.5

INTERNATIONAL REQUESTS FOR ASSISTANCE IN INSPECTION IN 2001

Requests to foreign regulators		Requests from foreign regulators	
Sent to	33	Received from	34
France	3	Australia	3
Guernsey	1	Austria	1
Holland	2	Belgium	1
Ireland	1	Brazil	1
Isle of Man	2	France	5
Jersey	1	Germany	1
Liechtenstein	1	Ireland	10
Luxembourg	1	Isle of Man	1
South Africa	1	New Zealand	1
Switzerland	8	Portugal	2
UK	8	UK	7
USA	4	USA	1
Status⁽¹⁾	33	Status⁽¹⁾	34
Closed	23	Closed	28
Pending	10	Pending	6

(1) At 31 December 2001.

Criteria of interest applied in resolving disciplinary proceedings⁽³⁹⁾

Use of interposed parties to acquire shares of listed companies

Article 53.1 of the Securities Market Law establishes the obligation to inform the CNMV, among other entities, of the acquisition or transfer of shares of listed companies performed directly or through interposed parties in which certain percentages of those companies' capital stock are attained or exceeded. This obligation is based on the need to achieve maximum transparency in the markets and to defend investors' interests, so that the latter may know the identity of the shareholders that control any listed company or are in a position to influence its policies and activities.

In this connection, last year the CNMV penalised a foreign company which had acquired shares of listed Spanish company through a bank. The foreign company and the bank signed an option contract and a financial contract which were linked so that the foreign company granted the bank, free of charge, the right to sell it a certain number of shares of the Spanish company, representing 4.999799% of its capital, which the bank would have acquired previously on the market. The sale would take place at the same price, costs and expenses as the purchase by the bank, following deposit by the foreign entity at the bank of funds equivalent to the amount invested by the bank (including costs and expenses) in buying the shares.

The fact that the contract established a percentage of shares just below the level triggering obligator disclosure⁽⁴⁰⁾ shows that the parties were aware of Spanish law and deliberately sought, via an option and a financial contract, a trustee relationship which, by remaining just below the legal limit, did not have to be disclosed to the market. However, the fact that the trustee relationship was just below the limit of legitimacy, as regards disclosure obligations, did not prevent it from being detected and, consequently, taken into account when the foreign company acquired more shares of the Spanish company via another interposed person (declared as such, in this case) and, therefore, exceeded the 5% limit. As a result, it violated the regulations due to failure to disclose its holding.

Use of circumstantial evidence in administrative disciplinary proceedings

Circumstantial evidence can be used in administrative disciplinary proceedings but must be treated with caution because of its special characteristics. Circumstantial evidence is not a person or thing but an event, which must be fully proven. It may be proven by any legitimate form of evidence. From that event, which is beyond question and is supported by the laws of human criterion, certainty is obtained about another event, the consequential or presumed event, whose existence is precisely and directly linked to the former event.

Spanish law lacks specific regulations on circumstantial evidence, but there is extensive case law to fill the gap. The Supreme Court has established the following requirements for indirect or circumstantial evidence to stand:

- a) It must not be an isolated incident; there must be several: i.e. a plurality of clues is required.

(39) Table 9.5 summarises the nine disciplinary proceedings which concluded in 2001.

(40) Spanish law sets the threshold for disclosure of significant holdings at 5%.

- b) All signs must coincide and point in the same direction; otherwise they would offset and cancel each other.
- c) The circumstances upon which the presumption is based must be proven directly under the legally-established rules of evidence.
- d) The inferences must be rational and in accordance with common sense and logic.
- e) There must be a precise link between the base event and the presumed event; i.e. between the clue and the presumption there must be a natural connection leading to an inference that admits no alternative that is reasonably compatible with the signs *“and, for this purpose, the alibi or explanations offered by the accused must be considered.”* (Supreme Court decision dated 10 June 1993).

Territoriality in the Securities Market Law

Doubts can arise as to the CNMV's jurisdiction in commencing and processing disciplinary proceedings and imposing penalties on entities which are domiciled outside Spain, whose directors, shareholders and personnel are foreign (i.e. the activity is performed by foreigners), focus on foreign clients and operate in foreign markets. The answer to this question lies in the territorial scope established in the Securities Market Law, i.e. in determining whether the events covered by the disciplinary proceeding are included in that scope and, therefore, fall under the supervisory and inspection powers of the CNMV.

Article 1 of the Securities Market Law states that its purpose is to regulate the primary and secondary securities markets, and for this purpose it establishes the principles of their organization and operation, the rules governing the activities of all the parties and entities involved in the markets and the legal regime for their supervision. The other articles in the same chapter of the law serve to delimit this purpose, but not to determine its geographical or territorial scope; they order the application of the Law's provisions to all securities issued, traded or marketed in Spanish territory. That is to say, if an entity located in Spain offers Spanish or foreign investors securities that are issued or traded in foreign markets, it is nonetheless marketing them in Spain and, therefore, subject to the Securities Market Law.

The National Court decision dated 20 September 1999 states that, regardless of any other factor, the Preamble of the Securities Market Law establishes many functions for the CNMV, including that of ensuring market transparency, correct price formation in the markets, and investor protection. Each and every section of the Preamble mentions that the legal provisions must be interpreted from the priority perspective of investor protection. Accordingly, following the same logic, the same Court's decision dated 19 April 1999 concludes that, if it were maintained, as a criterion for interpretation, that article 3 of the Law enshrines a principle of territoriality in the application of the law, then the conclusion would be that the Law protects not the investor but the securities which are traded in Spanish territory. Clearly, the law seeks to protect a broader legal good: if the Law seeks to protect investor interests, it cannot confine its scope to those trading with them under the corresponding administrative authorisation and placing the investment in Spanish territory. The Law seeks to protect investors, and that protection is operational from the moment an investor decides to invest in any of the securities covered by the scope of the Law.

Accordingly, any action performed in Spanish territory that consists of marketing securities, i.e. of engaging in commercial activities to acquire clients, whether Spanish or foreign, so that they trade in securities, and handle the receipt and transmission of the related securities purchase and sale orders, regardless of where they are executed and where the securities are traded, clearly falls under the scope of application of the Securities Market Law.

Treatment of unpublished price-sensitive information in the Draft Financial Law

The Preamble of the new Draft Financial Law reflects the need to update the treatment of confidential information “so as to avoid a loss of market integrity and, in the final analysis, an increase in the cost of corporate financing that would result from a loss of investor confidence”. The Draft introduces the following new features in this area:

- The definition of inside information is extended to other instruments other than marketable securities and to the financial instruments covered by the law, not just marketable securities.
- Any party in possession of inside information is forbidden to prepare or perform any transactions not just in the securities about which he has information but also in any other security, financial instrument or contract of any type, whether traded on a secondary market or not, whose underlying asset is the marketable security or financial instrument to which the information refers.
- “Price-sensitive information” is defined and the manner in which it must be disclosed to the market is detailed. The CNMV must be notified prior to publication by any other means; the text specifies the characteristics of such notification.
- Preventive measures are established which must be complied with by market players in order to prevent the flow of information between different areas of business within a company or between companies in the same group (“Chinese walls”).
- The Draft Law defines preventive measures imposed on securities issuers during the examination or negotiation of transactions which might significantly affect the price of the securities or instruments involved so as to prevent his information from being disseminated on a discretionary basis prior to its broad communication to the market. These obligations apply to executives, directors and employees.
- Market players are also forbidden to prepare or execute practices which distort the free formation of prices.
- The CNMV's powers to enforce the aforementioned measures are reinforced by increasing the amount of the fines and providing the possibility of public warnings about violations.

Table 9.6

OUTCOME OF DISCIPLINARY PROCEEDINGS IN 2001

Reference	Resolution
(1/01)	<u>CNMV Board Resolution dated 3 January 2001</u> Resolution on the alleged commission of a serious violation, due to breach of the rules of conduct by an investment services firm (article 100 t) of the Securities Market Law), and alleged commission by an individual of a very serious offence due to the performance without authorisation of activities reserved to investment services firms (article 99 q) of the Securities Market Law). The allegation of serious violation was rejected and that of very serious violation was downgraded to serious; the individual was fined 1 million pesetas.
(2/01)	<u>Ministerial Order dated 7 March 2001</u> Resolution on the alleged failure by a company to notify the CNMV of significant holdings in the capital of a listed company (article 99 p) of the Securities Market Law). The company was fined 300 million pesetas, and its chairman 25 million.
(3/01)	<u>CNMV Board Resolution dated 26 July 2001</u> Resolution on the alleged habitual performance by two companies of activities reserved to investment services firms without authorisation and without being registered in the corresponding administrative register, which is a very serious violation of article 99 q) of the Securities Market Law. The violation was downgraded to serious on the grounds that habitual performance was not proven, and both companies were fined 25 million pesetas each, and received a public reprimand; three of their directors were fined a total of 55 million pesetas.
(4/01)	<u>CNMV Board Resolution dated 24 October 2001</u> Resolution about the evasion of the requirement to launch a tender offer for a listed company by two companies which were allegedly acting in collusion (very serious breach of article 99 r) of the Securities Market Law). The case was dismissed as collusion was not proven.
(5/01)	<u>CNMV Board Resolution dated 24 October 2001</u> Resolution on the alleged commission of a serious breach by an investment services firm due to failure to file mandatory information with the CNMV (article 100 j) of the Securities Market Law). The company was fined 4 million pesetas and one of its directors was fined one million.
(6/01)	<u>CNMV Board Resolution dated 29 November 2001</u> Resolution on the alleged commission of a very serious violation by an individual due to use of inside information (article 99 o) of the Securities Market Law). The violation was downgraded to serious in view of the profits obtained and the violator was fined a total of 7,277,054 pesetas, publicly reprimanded and suspended from office for a period of three months.
(7/01)	<u>CNMV Board Resolution dated 29 November 2001</u> Resolution on the alleged commission of a very serious violation by an individual due to use of inside information (article 99 o) of the Securities Market Law). The violation was downgraded to serious in view of the profits obtained and the violator was fined a total of 1,376,205 pesetas, publicly reprimanded and suspended from office for a period of three months.
(8/01)	<u>CNMV Board Resolution dated 29 November 2001</u> Resolution on the alleged commission of a very serious violation by an individual due to use of inside information (article 100 x) of the Securities Market Law). The violator was fined 728,048 pesetas.
(9/01)	<u>Resolution by the Second Vice-President of the Government for Economic Affairs and Minister of the Economy dated 27 December 2001</u> Decision to suspend the administrative disciplinary proceeding in connection with the alleged commission by an investment services firm of two very serious breaches in connection with accounting irregularities (article 99 e) of the Securities Market Law), and resistance to the CNMV inspection (article 99 t) of the Securities Market Law), until the criminal courts issue a final judgment, since the two proceedings are substantially identical.

Judicial review of disciplinary resolutions

In 2001, the CNMV was notified of twelve decisions by various courts on as many appeals by persons or entities penalized for breaches of the securities market regulations. Seven court decisions confirmed the full resolution adopted by the CNMV or the Ministry of Economy, one decision partly upheld the appeal and annulled the Ministerial Order which declared that an appeal against a preceding penalty was inadmissible but nevertheless declaring the penalty to be valid;

another decision partly upheld the appeal and revoked a number of penalties; two decisions upheld the entire appeal and revoked the related penalties. Table 9.6 summarises these decisions.

Table 9.7

COURT JUDGMENTS HANDED DOWN IN APPEALS AGAINST PENALTIES DURING 2001

No.	Date	Court	Appeal no.	Appealed order
1	18/01/2001	National Court	1547/1998	Ministry of Economy order 27/07/1998
				Partly upheld the appeal by a penalised entity on the grounds of disproportionality by revoking some of the penalties imposed in the administrative sphere, while maintaining the others for a very serious violation of article 99 q) of the Securities Market Law, in connection with arts. 71 and 76 of the law (performance of the activities reserved to brokers and broker-dealers).
2	31/01/2001	National Court	395/1988	Ministry of Economy order 26/11/1997
				Confirmed the penalties imposed on a limited liability company and its sole administrator for a breach of article 99 q) (very serious) in connection with article 71, both of the Securities Market Law, i.e. performance of the activities reserved to brokers and broker-dealers.
3	21/02/2001	Madrid HCJ*	800/1996	CNMV resolution 6/09/1995
				Confirmed the penalties imposed on the general manager of a broker-dealer for a serious violation of article 100 g) in connection with article 73 of the Securities Market Law for breach of the rules on liquidity coefficient and concentration of risks at this type of entity.
4	7/03/2001	Madrid HCJ*	157/1998	CNMV resolution 26/01/1998
				Confirmed the penalties imposed by a CNMV resolution which penalised the members of a company for acquisition of own shares without authorization from the Shareholders' Meeting, exceeding, moreover, the 10% limit on company capital, in breach of articles 75, 76 and 89 of the Companies Law.
5	6/04/2001	National Court	1937/1998	Ministry of Economy resolution 1/08/1997
				Partly upheld the appeal on the grounds that the administrative penalty was null due to failure to notify the interested party, and ordered retroaction of the administrative actions on the grounds that the matters were not statute-barred, despite initial claims to the contrary.
6	18/04/2001	Madrid HCJ*	527/199	CNMV resolution 24/07/1997
				Confirmed the penalty imposed on the general manager and CEO of a firm for a serious violation of article 100 n) of the Securities Market Law due to breach of the "client first" rule.
7	7/06/2001	Madrid HCJ*	567/1996	Ministry of Economy Subsecretary resolution 2/01/1996
				Confirmed the penalty imposed on a portfolio management company for breach of article 82.2 and the 7th transitional provision of the Regulation on collective investment institutions (obligation on portfolio management companies to submit their standard contracts to the CNMV).
8	20/06/2001	National Court	962/1999	Ministry of Economy resolution 6/05/1994
				Partly upheld the appeal and annulled the Ministerial order which declared that no contentious-administrative appeal could be filed against the foregoing penalty, but declaring the Ministerial Order to be legitimate as regards the substance of the matter. The resolution penalized the directors of a broker, and the broker firm itself, for breach of article 99 l) in connection with the provisions of articles 71 and 71 of the Securities Market Law (very serious violation relating to actions reserved to and forbidden to brokers and broker-dealers).
9	29/06/2001	National Court	37/1999	Ministry of Economy resolution 9/12/1998
				Upheld the appeal and annulled the penalty imposed on the appellant for a very serious violation of article 99 o) in connection with article 81.2 of the Securities Market Law, i.e. insider trading.

10	4/7/2001	National Court	39/1999	Ministry of Economy resolution 9/12/1998	Upheld the appeal and annulled the penalty imposed on the appellant for a very serious violation of article 99 o) in connection with article 81.2 of the Securities Market Law, i.e. insider trading.
11	5/07/2001	Supreme Court	264/1999	Cabinet Resolution 23/04/1999	Confirmed the penalties imposed on a broker firm and its directors for a very serious violation of article 99 l) in connection with article 66 j) of the Securities Market Law (obligation for brokers and broker-dealers to have the appropriate organisational and human and material resources that are technically adequate for their type and volume of business).
12	1/10/2001	Madrid HCJ*	1446/1993	Ministry of Economy resolution 12/07/1993	Confirmed the penalty imposed on a broker-dealer for a serious violation of article 100 n) of the Securities Market Law (breach of the "client first" rule).
13	1/10/2001	Madrid HCJ*	1446/93	CNMV Board resolution	Rejected the contentious-administrative appeal against the CNMV Board resolution dated 3 February 1993, as confirmed on appeal by the Ministry of Economy and Finance Resolution dated 12 July 1993, which imposed a penalty on the appellant for a serious violation of article 100 n) of Law 24/1988, dated 28 July.
14	15/10/2001	National Court	0911/1997	Ministry of Economy resolution 9/12/1998	Rejected the contentious-administrative appeal and confirmed as legitimate the Ministry of Economy and Finance resolution dated 21 May 1997, which penalised the appellant for a very serious violation of article 99.g) of Law 24/1988, dated 28 July.
15	1/12/2001	National Court	0460/1999	Ministry of Economy resolution 21/4/1999	Rejected the contentious-administrative appeal and confirmed as legitimate the Ministry of Economy and Finance resolution dated 21 April 1999 which resolved the disciplinary proceeding by the CNMV Board and imposed a penalty on the appellant for very serious violations of article 99.a) in connection with article 81.2.a) of Law 24/1988, dated 28 July.
16	7/12/2001	National Court	0481/1999	Ministry of Economy resolution 8/4/1999	Rejected the contentious-administrative appeal and confirmed as legitimate the Ministry of Economy and Finance resolution dated 8 April 1999, which rejected the appeal against the CNMV Board Resolution dated 16 December 1998 that imposed a penalty on the appellant for a very serious violation codified in article 100.o) of Law 24/1988, dated 28 July.

* Madrid High Court of Justice

10

INFORMATION, QUERIES AND COMPLAINTS

The CNMV provides information to investors, professionals and, generally, to anyone who is interested in the securities markets. Its Public Attention Department handles many queries each year and provides information from the Commission's official records. It also handles complaints; the complaints department is not only a useful service to investors, it is also a means by which the CNMV can detect possible breaches of the regulations and the activity of unregistered firms.

Complaints about collective investment institutions and against unauthorised intermediaries were particularly prevalent in 2001. There were also complaints made for the purpose of seeking indemnity from the new Investment Guarantee Fund.

Considerable efforts have been made to enhance the CNMV's ability to provide information on the Internet. In addition to handling queries and claims in general, the CNMV also handled those made by clients of Gescartera who visited the CNMV when that firm was placed under administration.

Complaints department

In 2001, the CNMV received 1,385 complaints, 18% more than in 2000. As usual, most complaints related to financial intermediaries; complaints against banks and savings banks increased by 29% over 2000 and accounted for 71% of the total, whereas those against specialised securities firms (investment services firms, securities investment companies and collective investment institution management companies) were less numerous than in 2000 and accounted for 10% of the total⁽⁴¹⁾. Complaints against unregistered entities increased by 49% to represent 8% of the total.

Table 10.1
RESPONDENTS IN COMPLAINTS

	No. of complaints		%	
	2000	2001	2000	2001
Market management companies and supervisory bodies	9	19	1	1
Financial institutions	962	1,109	82	80
<i>Banks and savings banks</i>	760	979	65	71
<i>Brokers and broker-dealers</i>	163	118	14	9
<i>SGC, SGIIIC and securities investment companies</i>	39	12	3	1
Unregistered firms	70	104	6	8
Issuers	125	124	11	9
Other	3	29	0	2
Total	1,169	1,385	100	100

The number of complaints made against securities issuers was similar to 2001 and represented 9% of the total. Those against market management companies and against the CNMV itself represented 1% of the total.

(41) This figure does not include complaints and processes relating to Gescartera. After Gescartera was placed under court administration, 1,394 clients of that firm presented documentation relating to their investments with the CNMV (see later).

Almost half of the complaints led to some form of pronouncement by the CNMV about the matter at issue or were resolved by mutual agreement or through acceptance by the respondent of the complainant's position (Table 10.2). Although the CNMV is empowered to act as arbitrator, wherever possible it encourages the parties in dispute to reach an agreement. Financial institutions are generally willing to respond appropriately to complaints when the complainant is in the right.

Table 10.2
OUTCOME OF COMPLAINTS

	No. of complaints		%	
	2000	2001	2000	2001
Complaints in which there was a pronouncement or resolution	735	675	63	49
Resolved by mutual agreement	167	112	14	8
Report by CNMV favourable to complainant	161	250	14	18
Report by CNMV not favourable to complainant	400	306	34	22
Complaint withdrawn	7	7	1	1
Complaints not requiring pronouncement	424	580	36	42
Information provided to complainant ⁽¹⁾	389	532	33	38
Deficient complaints ⁽²⁾	15	12	1	1
Outside CNMV jurisdiction	20	36	2	3
Pending	10	130	1	9
Total	1,169	1,385	100	100

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

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

A large proportion of other complaints (38% of the total) were resolved by providing information to the complainant. 3% of complaints related to matters outside the CNMV's jurisdiction; in these cases, the complainant was informed of the appropriate channels to use.

Some particularly significant complaints

Renewal of the guarantee period in guaranteed funds

In 2001, the CNMV received some complaints about the investor's right to withdraw, at no cost, in the event of modifications in the conditions of guaranteed mutual funds. These funds normally establish a new guarantee period when the previous period expires, and generally modify their investment policies and the guarantee conditions at that time. The complainants alleged that they had not received the appropriate notice from the fund management companies about the proposed changes and the offer of a period for withdrawal at no cost. This requirement is particularly important for investors as guaranteed funds normally charge sizeable back-end fees for withdrawal during the guarantee period.

The CNMV informed the complainants of the changes made by the fund management company in each individual case, as well as the procedure which had been used. It also reminded them that it is important for investors to review their investment decisions at the end of the guarantee period, in terms of remaining in the fund or withdrawing.

Delivery of prospectuses on subscription of units in Mutual Funds

There were complaints that the information received prior to subscribing units in a mutual fund differed from that later found in the prospectus, of whose existence the complainants claimed to be unaware at the time. It is obligatory to deliver a prospectus prior to the subscription of an investment. Although it is not easy to ensure that this obligation is complied with, the CNMV analysed the circumstances in each of the complaints and issued its opinion. Additionally, the CNMV reminded fund managers of this obligation.

Formation of warrant prices on the stock exchange

Trading in options and, specifically, warrants requires the appropriate technical knowledge, and the decision to invest in such products should be taken with full knowledge of the methods of operating with them and the related risks. Some complaints evidenced insufficient comprehension by the investor of how the price of warrants is formed on the secondary market, even though the issue prospectus contained information in this regard. The features of trading in warrants differ radically from those of equities, basically because financial institutions provide liquidity by acting as counterparties. The CNMV informed the complainants about the factors which affect warrant pricing and the system detailed in the related prospectus.

Trading with preference shares

As in the preceding case, the complaints received by the CNMV were symptomatic of insufficient knowledge about how preference shares are priced on the secondary market. Complaints focused on shareholder's difficulties in selling and on the price they were able to attain. In particular, there were complaints about differences between AIAF reference prices and the prices actually obtained by complainants. It should be noted that AIAF is very different from the equities markets since it is decentralised (orders are not pooled in a single book) and bilateral (direct trading between parties), so that immediate execution and the application of a given price cannot be guaranteed. Without prejudice to the appropriate analysis of each case, the complaints in this area are generally resolved by providing information about the product acquired by the investor and the market where it is traded.

Non-standard financial contracts

In 2001, the CNMV received a significant number of complaints about non-standard financial contracts, which have only recently been marketed in Spain. Most complainants believed that they had not been sufficiently informed about the product they had acquired and complained of the complexity of the contract clauses. Non-standard financial contracts are unlisted financial instruments which combine the features of a traditional bank deposit with a derivative (generally an option). The return is generally linked to the performance of certain shares or indexes and there is not generally a guarantee of full reimbursement of the principal. Regardless of the implications of securities market legislation for each individual claim, the CNMV's responses highlighted the importance of investors understanding the nature of such contracts and being fully aware of their rights and obligations before making the commitment. In particular, the CNMV noted the need to request a copy of the contract and the prospectus (registered with the CNMV) from the financial institution.

Unregistered firms

This heading covers queries and complaints received in connection with firms which, while not registered with the CNMV, appeared to be providing investment services or some of the related

activities which are reserved to registered firms. Not all supplementary services require administrative authorisation and supervision, and some complaints related to such services; the complainants were informed of this fact.

However, the case of unregistered firms, i.e. firms which operate in areas reserved for investment services firms without being registered for this purpose, is very different. Unfortunately, many of the complaints which the CNMV receives in this area arise when the client has already lost much or all of the investment. Nevertheless, complaints are essential for pursuing these violations and, in particular, for preventing losses to other investors⁽⁴²⁾.

Investment Guarantee Fund⁽⁴³⁾

Since the publication of Royal Decree 948/2001, dated 3 August, on investor indemnity systems, the CNMV has received numerous claims for the CNMV to declare that the complainant's individual situation is covered by that regulation so as to obtain indemnity under the Investment Guarantee Fund. These complainants are informed that their claims must be filed with the Sociedad Gestora del Fondo de Garantía de Inversiones. As indicated in Chapter 4, that company has published the procedure for filing claims and issued a form for this purpose, which can also be downloaded from the CNMV web site or obtained from the CNMV's Public Attention Department.

Recommendations inspired by complaints presented in 2001

The complaints which the CNMV receives are often of interest to the general public. The following useful recommendations for both investors and investment services firms are inspired by the complaints received in 2001.

Recommendations to investors

- Demand written confirmation of all transactions with marketable securities. If in doubt, ask your firm for clarification; if the clarifications are not satisfactory, present a complaint in writing to the firm.
- Obtain full information about the characteristics of the securities in which you are investing. In particular, ascertain their full name and the securities market where they are traded. Be aware that unlisted securities may be very illiquid.
- Before signing a contract to commit your savings, be sure you are fully aware of the characteristics of the product(s) in question. In particular, be sure that the investment meets not only your aspirations in terms of yields but also your need for liquidity and your risk tolerance.
- Always demand copy of the CNMV-registered prospectus and be aware of its contents before investing in a mutual fund.

(42) See box in chapter 9 on warnings to the public about unregistered firms.

(43) For a summary of the Fund's characteristics, see Chapter 3. For the process of its creation and the measures adopted for processing claims, see Chapter 4.

- Be aware that the expiration of the guarantee does not necessarily imply the dissolution of a guaranteed fund or the transfer of your assets to another, newly-created fund. Unless you give express instructions to divest, you will continue to be an investor even if the fund changes its investment policy, establishes a new guarantee or even changes its name.

Recommendations to firms:

Firms providing investment services are obliged to comply with the Code of Good Practices in the Securities Markets. In particular, investment services firms must:

- Offer professional service.
- Provide full, truthful information about the products offered to clients.
- Maintain and organize appropriate records and archives about customer service.
- Advise their clients from a position of loyalty by offering them only products which match their investment profile and needs.

Requests for indemnity in the Gescartera case

The CNMV placed brokerage house Gescartera Dinero under direct administration on 14 June 2001. Up to that time, the CNMV had not received any complaints about that firm. However, following the adoption of this move, 1,394 clients of that firm presented documentation about their investments in Gescartera Dinero to the CNMV's Public Attention Department. The CNMV used this information in its investigation, particularly to assess the damage caused to the investors.

On 10 October 2001, based on events including the applications for refund made by clients to Gescartera Dinero, and for reasons directly related to the firm's financial situation, the CNMV Board adopted the decision to declare that Gescartera Dinero was not able to comply with its obligations to its investors. Under the regulations, this declaration enables the clients of Gescartera to claim indemnity from the Investment Guarantee Fund for the amount of cash and securities or financial instruments entrusted to that firm for deposit, registration or service provision, up to a limit of €20,000 per client.

Following this decision by the Board, the CNMV sent a letter to all the Gescartera clients which had contacted its Public Attention Department to inform them of the development and of the procedures established by Sociedad Gestora del Fondo de Garantía de Inversiones for applying for indemnity.

Queries from the public

In 2001, the CNMV handled 31,620 individual queries, a 12% increase over 2000. Most queries were made by phone or directly at the CNMV's offices (Table 10.3). However, the number of queries made by e-mail is rising steadily.

Table 10.3
QUERIES HANDLED BY THE CNMV

	2000	2001	Change (%)
By phone	21,330	22,572	5.8
By e-mail	2,825	3,325	17.7
By letter or fax	143	145	1.4
At the CNMV offices	3,900	5,578	43.0
Total	28,198	31,620	12.1

Although the queries related to a broad range of topics, many sought to obtain information from the CNMV's official registers. A substantial part of the data in the CNMV's official records can be obtained on the Commission's web site. The site was substantially restructured in 2001 (see Chapter 2) in order to expand its information capacity and make it a veritable services portal. Public interest in the web site is evidenced by the statistics: 888,126 sessions (894,126 in 2000) and 20,549,999 page views (14,162,205 in 2000).

Table 10.4
INFORMATION AVAILABLE IN THE CNMV'S OFFICIAL REGISTERS

<i>First year available in each format</i>	Direct queries at the CNMV			Internet	Diskette & CD-ROM
	<i>Paper</i>	<i>Screen</i>	<i>Optical disk</i>		
Advance notifications	1989	1989	1994	1989	
Issues	1989	1989	1990	1989	
Listings	1989	1989	1990	1989	
IIC prospectuses	1989	1989	1998	1989	
Registration of broker-dealers and brokers	1989	1989	1998	1989	1998
Audits:					
<i>Issuers</i>	1986	1986	1986	1986	1990
<i>IIC</i>	1989	1989	1993		
<i>Market subjects</i>	1988	1988	1993		
<i>Market subjects and groups</i>	1993	1993			
<i>Market management companies</i>	1989	1989			
<i>Special reports</i>	1991	1991			
Financial information:					
<i>Issuers</i>	1989	1989		1985	(¹)
<i>Financial information on IIC</i>	1991	1991	1993	4 quarters	
Tender offers	1989	1989	1998	1989	
Book-entry deeds	1989	1989	1998	1994	
Broker fees	1993	1989		1994	
Significant holdings	1990	1990		1990	(²)
Significant events	1990	1989		1990	
Venture capital entity prospectuses	1998		1998	1998	
Intermediaries' standard contracts	1996	1989		1996 (³)	

(¹) ASCII and Windows formats.

(²) ASCII format.

(³) Reference to entities which have registered standard contracts.

11

INTERNATIONAL ACTIVITY

The CNMV greatly increased its international activities in 2001 in response to ongoing processes of integration in the financial markets. The global dimension of both economies and markets make it necessary for regulators to cooperate closely so as to ensure stability and protect investors. This cooperation is not confined to the European Economic Area but requires the participation of the entire international community – a fact which became patent following the 11 September events.

The CNMV worked on three fronts. In Europe, it focused on regulatory development, through directives and resolutions, and on participating actively in the Committee of European Securities Regulators (CESR), which was created at the proposal of the Committee of Wise Men for the reform of the process of developing European regulations. Also, as a member of the Technical Committee of the International Organization of Securities Committees, the CNMV continued to work for smoother communications among supervisors.

Cooperation with, and assistance to, Latin America continued in 2001, both bilaterally and under the Instituto Iberoamericano del Mercado de Valores. There were frequent meetings, seminars and technical assistance programs with a view to harmonising supervision systems on both sides of the Atlantic.

Committee of European Securities Regulators (CESR)

The release of the report by the Committee of Wise Men (“Lamfalussy Report”) was undoubtedly one of the principal events of 2001 in the area of financial markets within the European Union. The report (see chapter 3.4) provides solutions for configuring an integrated European financial market within a short period of time by overcoming the existing slow, rigid and complex regulatory structure, which fails to match the dynamism of the markets.

Two new bodies were created as a result of the report: the European Securities Committee (ESC) and the Committee of European Securities Regulators (CESR). The latter, formed on 11 September to replace the Forum of European Securities Commissions (FESCO), comprises the presidents of the agencies charged with supervision of the securities markets. The ESC was founded on 21 September under the auspices of the President of the European Commission and it is composed of representatives from the Ministries of Economy and Finance in the Member States.

Meetings held to date by the CESR (the second in Madrid in December 2001) enabled the committee to make significant progress in the work programme and to complete the process of establishment. One of the first procedures commenced in line with the Lamfalussy Report recommendations is a process of open, transparent consultation on future rules and regulations among market players, consumers and end users.

In parallel with the development of this new approach to securities markets supervision and regulation in Europe, the CESR is working to harmonise European regulations through six working groups formed to address the following issues.

Alternative trading systems (ATS)

After drafting the document entitled “Standards for alternative trading systems”, this working group focused on setting standards for authorization and registration, transparency, reporting and the prevention of market abuse. The document was submitted to the sector for consultation, which revealed the following concerns:

- (i) Coordination of the CESR's work with the Investment Services Directive
- (ii) The definition of ATSS
- (iii) Greater clarity in the standards set by CESR

After the period of consultation, the group decided to focus on “multilateral ATSS” and to improve coordination with the work being performed on the Investment Services Directive. The document underwent a second consultation period which ended on 15 March 2002.

Market abuse

During 2001, a document entitled “Preventive measures for market integrity” was drafted, including a number of recommendations to issuers, intermediaries, securities markets and other participants, such as the media and independent analysts, with the aim of fostering market integration. The consultation stage revealed the following problems and concerns:

- (i) Coordination between the CESR and the work being performed on the Market Abuse Directive
- (ii) Trading by issuers with own shares
- (iii) Chinese walls
- (iv) Related-party transactions

Inspection (CESR-Pol⁽⁴⁴⁾)

This group focuses on cooperation and the exchange of information between Member States of the European Union. In 2001, the group worked on the regulators' supervisory and inspection powers, the exchange of information on relevant cases and investigations, and relations with non-member countries. The group is currently developing criteria for the supervision of remote members and examining the impact of the European Human Rights Convention on securities market regulation.

Investor protection

In February 2001, FESCO released a consultation document entitled “The harmonisation of conduct of business rules for investor protection”. After taking account of feedback, the document was released for a second round of consultation up to mid-December 2001. The document mainly refers to general principles, the information to be supplied to clients, the “know-your-client” principle, contracts with clients, intermediation, portfolio management and investor classification.

(44) Formerly called FESCO-Pol.

Primary Market Practices

The creation of a single European market in securities requires harmonising the systems for placement and allotment of securities throughout Europe. To this end, the Primary Market Practices group drafted a document entitled “Stabilisation and allotment - A European supervisory approach” which reflects the consensus on the subject of price stabilisation in the period after listing; however, it was not possible to reach agreement on the subject of allotment. Nevertheless, that document is the first express to this matter, as the current draft of the Prospectuses Directive makes no mention of conduct of business rules relating to securities allotment.

CESR-Fin⁽⁴⁵⁾

Two subcommittees were created within this working party, to deal with adoption and application, so as to make accounting harmonisation more effective in Europe's markets; this is one of the priority objectives of the Financial Services Action Plan. The CESR considers that international accounting standards (IAS) should be used not only in the financial statements of listed companies but also in those companies clearly intending to list in the future.

IOSCO

The CNMV continued to play a very active role in international forums on securities in 2001. As Spain's representative in the IOSCO Technical Committee, the CNMV participates in all the permanent working groups and in the ad hoc groups created to address specific matters of concern to securities market regulators and supervisors that require a rapid, unanimous position statement. The Technical Committee is the driving force behind IOSCO's work in areas of concern to the international financial community and is the point of liaison with other international organizations and forums in the financial field.

The activities performed by the five permanent groups in 2001 include most notably the following:

Multinational offerings of securities and accounting

This group focuses on three main areas: auditing, accounting and prospectuses. Auditing was the focus of most of the group's attention and efforts in 2001, including monitoring the process of restructuring the International Audit Practices Committee (IAPC⁽⁴⁶⁾). In general terms, the proposals for reform met with support, although the need for a global approach was noted.

Work has also commenced on defining auditing standards. Although this work is at a preliminary stage, some fundamental principles have already been defined. Additionally, it was resolved to accelerate the work of cooperation with the International Federation of Accountants (IFAC). The IFAC's document on auditor independence describes the factors which jeopardise such independence and notes measures which can be taken to preserve it. However, a flexible approach was adopted with regard to the regulatory framework.

With regard to the development of accounting standards, the mechanism of cooperation between IOSCO and the International Accounting Standards Board (IASB⁽⁴⁷⁾) was developed and two representatives of IOSCO were appointed to the IASB Advisory Board.

(45) The new name of the working group on accounting harmonisation.

(46) Now called “International Auditing and Assurance Standards Board”.

(47) Formerly the International Accounting Standards Committee (IASC).

With regard to period disclosures, the group worked in 2001 on a specific mandate governing “sensitive information”, which includes both ongoing periodic disclosure by securities issuers to regulators and markets, and selective disclosure of specific developments.

Secondary markets

In 2001, this group released a report entitled “Transparency and market fragmentation” which, based on the conclusions of the 1992 report entitled “Transparency on Secondary Markets”, studied the impact and status of transparency in the light of recent developments in market structure, with particular emphasis on the link between transparency and market fragmentation.

Another important document released in 2001 was the “Recommendations for Securities Settlement Systems”, drafted in conjunction with the Basle Committee, which sets out recommendations on the minimum requirements to be met by securities settlement systems.

Intermediaries

This group's work in 2001 focused on three main areas: operating risk, managing liquidity risk, and cross-border operations. In the area of operating risk, the Basle Capital Accord is under review and in 2002 the Basle Committee is due to issue a final discussion draft of the new accord, which should come into force in 2005.

The importance of liquidity risks for securities firms, because they operate in the very short term and do not have access to loans from central banks or the interbank market, led the group to work on this area. In 2001, a draft survey of a sample of firms was presented during the year, which reflected how liquidity risk is managed in practice.

Supervision and exchange of information

This group concentrated on boosting cooperation among regulators so as to prevent irregular and illicit cross-border activities. In June 2001, the Technical Committee approved a document to guide investigations involving several jurisdictions.

In 2001, another Internet Surf Day was held. On this occasion, 41 regulators from 34 countries participated. About 300 participants visited over 27,000 web sites and identified over 2,400 for subsequent examination and monitoring to detect possible fraud, market abuse and unauthorised financial activities.

Following the 11 September attacks, a Special Project Team was established to evaluate the impact of the attacks on the markets, plan for contingencies and increase the exchange of information among regulators.

Collective Investment Institutions

This group concluded its work on investor education in the form of a report entitled “Role of Investor Education in the Effective Regulation of CIS and CIS Operators”, which compiles many countries' experience with investor education and analyses how educating investors can assist regulators in performing their duties. Additionally, the group continued to work on other areas of interest, such as risk assessment, simplified prospectuses and the publication of the results of IICs.

Project Teams created at the initiative of IOSCO's Technical Committee

Project teams on the Internet and securities analysts were established in 2001. During the year, the Internet group completed its "Report on Securities Activity on the Internet II", which reviewed the recommendations made three years before about the use of the Internet in the securities business and also analysed such aspects as technological capabilities, adaptability and security at investment services firms on-line, the responsibility for third-party information accessed via hyperlinks, etc. It is also considered necessary to increase the information about Internet service providers so as to be able to investigate and pursue securities fraud and market abuse on the net. The Technical Committee resolved to continue studying this area in the form of a third report.

The working group on securities analysts commenced work late in 2001. Its objective is to reflect the status of analysts, identify any regulations governing them, and examine the possibility of establishing some principles for their activity so as to prevent conflicts of interest.

Cooperation with Latin America

The CNMV also attaches priority, within its international activities, to developing programmes of cooperation with securities supervisors in Latin America. Numerous actions were conducted with a view to harmonising procedures and legislation on securities markets, including visits to the CNMV by officials from Chile, Argentina, Brazil, Costa Rica and Ecuador, and meetings with the securities supervisors of Mexico, Argentina, Colombia and Brazil. The CNMV also participated in a number of seminars and meetings organised by Latin American bodies, and it maintained its support for the Madrid Stock Exchange in the development of the Latibex Market, where 17 Latin American companies are now listed.

Instituto Iberoamericano del Mercado de Valores (IIMV)

The activities of the IIMV merit special mention because of the Institute's active role in promoting Latin America's markets and in disseminating standards for regulation and supervision. The CNMV contributed its knowledge and experience in courses and workshops organized by the Institute in Guatemala, Bolivia and Colombia, in courses on regulation and supervision and on technology held in Spain, and in the Internet Forum held in Buenos Aires.

Other international activities

In 2001, the CNMV continued its ongoing cooperation with the World Bank and provided technical assistance to Central and Eastern European countries which are candidates for entry into the European Union, such as Poland. It also maintained an active presence in the Federation of European Securities Exchanges (FESE) and received delegations from many securities commissions throughout the world (Portugal, Italy, China, Hong Kong and Lithuania, among others).

ANNEX 1

COMPOSITION OF THE CNMV BOARD

President:	Blas Calzada Terrados ⁽⁴⁸⁾
Vice-president:	Juan Jesús Roldán Fernández
Commissioners⁽⁴⁹⁾:	Gloria Hernández García ⁽⁵⁰⁾ Gonzalo Gil García ⁽⁵¹⁾ Soledad Plaza y Jabat Juan Junquera González ⁽⁵²⁾
Secretary:	José María Garrido García ⁽⁵³⁾

(48) Since 22 September 2001. The position was held by Pilar Valiente Calvo until 21 September.

(49) Between 14 February 2001 and 15 January 2002, the position was held by José Félix de Luis y Lorenzo.

(50) Director General of Treasury and Finance Policy.

(51) Deputy Governor of the Bank of Spain.

(52) Since 18 January 2002.

(53) Since 17 December 2001. Between 1 February and 16 December, the position was held by Sol Bourgón Camacho. The position was held by Antonio Alonso Ureba until 31 January 2001.

ANNEX 2A

COMPOSITION OF THE CNMV ADVISORY COMMITTEE⁽⁵⁴⁾

President: Juan Jesús Roldán Fernández

Secretary: José María Garrido García⁽⁵⁵⁾

REPRESENTATIVES

Issuers: Carlos Jiménez Zato
Enrique Carretero Gil de Biedma
Ramón Cerdeiras Checa

Investors: Tomás Galán Ortega⁽⁵⁶⁾
Enrique Ureña Francés

Stock Exchange Members:

José Antonio de Bonilla y Moreno
Sebastián Albella Amigo
Jaime Aguilar Fernández-Hontoria
Gregorio Arranz Pumar

Consumers and Users Council:

Jorge Caminero Rodríguez
Valencian Government:
José Manuel Uncio Lacasa

Catalan Government:

Josep Badía i Sánchez

Basque Government:

Juan Miguel Bilbao Garai

ALTERNATIVE REPRESENTATIVES

Issuers: Diego Lozano Romeral
Saturnino Polanco Prieto
Fernando Isidro Rincón

Investors: Carlos Puerta Forolla

(54) In force between the CNMV Board Meetings on 28 March 2000 and on 20 March 2002.

(55) Appointed on 17 December 2001 in place of Sol Bourgón Camacho.

(56) Appointed on 1 June 2001 due to death of Emilio Polo Ghezzi.

Stock Exchange Members:

José M^a Ramírez Nuñez de Prado
John Siska
Antonio López Sellés
Ignacio Santillán Fraile

Consumers and Users Council:

Manuel Pardos Vicente

Valencian Government:

Javier Gomar Parra

Catalan Government:

Jaume Pera i Lloveras

Basque Government:

Miguel Bengoechea Romero

ANNEX 2B

COMPOSITION OF THE CNMV ADVISORY COMMITTEE⁽⁵⁷⁾

President: Juan Jesús Roldán Fernández

Secretary: José María Garrido García

REPRESENTATIVES

Issuers: Jesús López-Brea y López de Rodas
Javier López Madrid
Manuel Gistau Moreno

Investors: Enrique Goñi Beltrán de Garizurieta
Javier Tribó Boixareu

Stock Exchange Members:

Sebastián Albella Amigo
Gregorio Arranz Pumar
Jorge Bergareche Busquet
Ignacio Gómez Sancha

Consumers and Users Council⁽⁵⁸⁾

Jorge Caminero Rodríguez

Valencian Government⁽⁵⁹⁾

José Manuel Uncio Lacasa

Catalan Government⁽⁶⁰⁾

Josep Badía i Sánchez

Basque Government⁽⁶¹⁾

Juan Miguel Bilbao Garai

ALTERNATIVE REPRESENTATIVES

Issuers: David Herrero García
Luis Felite Marcos García
Carlos Cerón Bombín

(57) CNMV Board resolution on 20 March 2002.

(58) Consumers and Users Council Permanent Commission resolution on 14 February 2002.

(59) Valencian Government Decree 18/2002, dated 8 February.

(60) Ratification of the previous representative and alternative representative notified by a writ by the Department of Economy and Finance of the Catalan Government dated 8 February 2002.

(61) Ratification of the previous representative and alternative representative notified by a writ by the Department of Finance and Public Administration of the Basque Government.

Investors: Luis Munárriz Moreno
José Palomeras Pagés

Stock Exchange Members:
Juan Luis Muñoz Pardo
José María Ramírez Núñez de Prado
Jaime Aguilar Fernández-Hontoria
José Antonio de Bonilla y Moreno

Consumers and Users Council:
Manuel Pardos Vicente

Valencian Government:
Javier Gomar Parra

Catalan Government:
Jaume Pera i Lloveras

Basque Government:
Miguel Bengoechea Romero

ANNEX 3

STRUCTURE OF THE CNMV

<i>Directorate-General of Markets and Investors:</i>	Angel Benito Benito
Primary Markets:	Carlos Lázaro Recacha
Secondary Markets:	Antonio Mas Sirvent
Investor Affairs:	Elena Brito Alonso
<i>Directorate-General of Securities Market Entities:</i>	Sol Hernández Olmo
Authorization and Registration:	Antonio Moreno Espejo
Supervision:	María José Gómez Yubero
<i>Directorate-General of Legal and Inspection Department and Secretary to the Board:</i>	José María Garrido García
Deputy Secretary to the Board:	Javier Rodríguez Pellitero
<i>Directorates:</i>	
Director attached to the President:	Rafael Sánchez de la Peña
International Relations:	Juan Carlos Recoder Casso
Research and External Relations:	María Nieves García Santos
Information Systems:	Javier Nozal Millán
General Secretary:	Salvador Meca Gómez

