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# Financial regulation: 2001 Q1

## 1. INTRODUCTION

Relatively few financial provisions were issued during the first quarter of 2001, though some are of great significance.

With regard to State debt, three fundamental regulations were enacted. First, as usual every year, the issuance conditions for 2001 and January 2002 have been laid down, observing the net issuance limit of ESP 972.66 billion set in the State Budget Law for 2001. Second, the tender procedure enabling the Banco de España to conduct repo transactions with credit institutions, in whatever form, on account of the Treasury has been implemented with a view to facilitating State cash management. Finally, the General Government, acting through the Treasury, and the Social Security Treasury Department will hold accounts with the Book-Entry System of the Banco de España and will operate on the public debt market in compliance with market rules and with those of the Banco de España Settlement Service in respect of cash settlement.

In the area of securities markets, the regulation of collective investment undertakings (CIUs) has been amended to incorporate and implement the recent changes in the law governing CIUs. In particular, new types of collective investment available in our financial environment are admitted on the market and the setting up and operation of CIUs are made more flexible to enhance competitiveness without reducing security and transparency.

## 2. STATE DEBT: ISSUANCE CONDITIONS DURING 2001 AND JANUARY 2002

Law 13/2000 of 28 December 2000 on the State Budget for 2001 (1) authorises the government so that, on the proposal of the Ministry of Economy, it may increase the outstanding balance of State debt during the year to ESP 972.66 billion. This limit will apply as at the end of 2001 and may be exceeded, upon authorisation from the Ministry of Economy, during the course of the year. The Law also establishes the circumstances that would give rise to its automatic revision. Likewise, Royal Decree-Law 1091/1988 of 23 September 1988, which approved the consolidated text of the General Budget Law, empowers the Ministry of Economy to issue, place and manage State debt, subject to the government's criteria and within the quantitative limits set by the Budget.

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(1) See "Financial regulation: 2000 Q4", in *Economic bulletin*, Banco de España, January 2001, p. 78.

As is customary in the first quarter of the year, *Royal Decree 39/2001* of 19 January 2001 and Ministerial Order of 26 January 2001 have been published in the Official Gazette (BOE of 20 and 27 January 2001, respectively), providing for the creation and issuance conditions of State debt for 2001 and January 2002, with the limit for the latter month set at 15 % of the volume authorised for 2001. In addition, two *Treasury Resolutions of 26 January 2001* (BOE of 29 and 30 January 2001, respectively) provide for particular debt issues and disclose the timetable for the regular tenders of Treasury bills and medium- and long-term government bonds during this period.

Broadly, the same instruments, techniques, practices and other aspects that shaped debt policy for 2000 are retained. The Minister of Economy remains authorised to conduct, among other operations, the following:

- a) To continue to conduct borrowing operations using the vehicles provided, and to change their commercial name or to group more than one vehicle under a single denomination.
- b) To create, within the framework of current fiscal legislation, new forms of State debt, whether marketable or non-marketable, establishing their commercial name, issuance techniques and other features.
- c) To regulate the practices for issuance and determining coupon interest, allowing issues to be grouped or successive tranches of a single issue to be placed, and thereby securing the volumes of homogeneous securities necessary for liquidity in the secondary markets.
- d) For the purposes of debt dealing, to authorise State debt strips (the stripping of the principal and interest of certain issues and their subsequent reconstitution).
- e) Finally, to authorise and, where appropriate, to establish the procedure for the redenomination in euro of outstanding debt not yet re-denominated.

In the case of euro-denominated State debt issues initially offered or placed abroad, the usual clauses and conditions envisaged under the General Budget Law for these operations may be agreed in respect of the returns paid to non-residents.

As to State debt issuance procedures, in addition to the traditional techniques used in previous years, the following are retained:

- Tenders (with competitive and non-competitive bids), which will be conducted in accordance with rules published earlier. They may be for the general public, authorised placers or a restricted group of placers, who acquire special commitments with respect to the placement or trading of the debt.
- Any other technique that does not involve inequality of opportunity for potential purchasers.

As in previous years, the formalisation of public debt will be in the form exclusively of book-entry *Treasury bills and medium- and long-term government bonds*.

## 2.1. Treasury bills

For the year 2001, the issuance of twelve- and eighteen-month Treasury bills is maintained. However, this year it was considered advisable to *suspend* the issuance of six-month Treasury bills, given the reduction in the deficit of the State budget in 2001, as a result of which borrowing requirements through public debt have decreased.

In addition, the frequency of regular tenders is maintained. Twelve- and eighteen-month tenders coincide and are held every two weeks.

Both competitive bids (2) and non-competitive bids (3) may be submitted in twelve- and eighteen-month Treasury bill tenders. In competitive bids, the minimum nominal amount will be EUR 1000 and bids exceeding that amount will be expressed as integer multiples of EUR 1000. In non-competitive bids, the minimum nominal amount will be EUR 1000 and bids exceeding that amount will be expressed as integer multiples of EUR 1000, with a maximum nominal amount of EUR 200,000 per bidder. Notwithstanding, the Wage Insurance Fund and the Deposit Insurance Funds of Credit Institutions are allowed to submit non-competitive bids for a maximum nominal amount of EUR 100 million.

## 2.2. Medium- and long-term government bonds

The issuance of these instruments is maintained this year. However, owing to a decline in borrowing requirements further to a decrease in

(2) In competitive bids, the price bidders are willing to pay is stated as a percentage of the nominal value of the debt.

(3) In non-competitive bids, the price is not stated.

the State deficit for 2001, the frequency of regular tenders of three- and five-year bonds, which were held on a monthly basis, has been reduced to *once every two months* in alternate months. Tenders of long-term bonds will continue to be conducted monthly for the ten-year benchmark instrument and once every two months for fifteen- and thirty-year bonds, the latter being held in alternate months.

In competitive bids, the minimum nominal amount will be EUR 5000 and bids exceeding that amount will be expressed as multiples of EUR 1000. In non-competitive bids, the minimum nominal amount will be EUR 1000 and bids in excess thereof will be expressed as integer multiples of EUR 1000, with a maximum nominal amount of EUR 200,000 per bidder. Notwithstanding, the Wage Insurance Fund and the Deposit Insurance Funds of Credit Institutions are allowed to submit non-competitive bids for a maximum nominal amount of EUR 100 million.

### 3. STATE DEBT: REGULATION OF THE TREASURY LIQUIDITY TENDER PROCEDURE

Royal Decree-Law 1091/1988 of 23 September 1988, which approved the consolidated text of the General Budget Law, authorised the Minister of Economy and Finance to conduct outright or repo transactions, in whatever form, on State debt securities, in order to facilitate State cash management and the development of the public debt market. In turn, the Ministerial Order of 25 January 2000 (4) delegated these powers to the Director General for the Treasury and Financial Policy.

Furthermore, on 28 September 2000, the Treasury and the Banco de España agreed to add an annex to the arrangement for the provision of cash management and State debt services concluded on 27 December 1994, enabling the Banco de España to execute repo transactions, in whatever form, on account of the Treasury. These transactions will be conducted using the *tender procedure*, whereby credit institutions offer a given interest rate on the funds obtained.

Treasury liquidity tenders are intended to reduce the volatility of public sector holdings with the Banco de España, so as not to affect the ECB's estimates of liquidity needs and the ESCB's liquidity supply. In addition, this pro-

cedure allows interest payments on Treasury holdings with the Banco de España to be brought forward.

Recently, the *Directorate General for the Treasury and Financial Policy Resolution of 26 January 2001* (BOE of 6 February 2001) has implemented the aforementioned procedure, whereby overnight repo transactions will be allotted through periodic tenders in which the spread to be applied to the reference rate will be set. Initially, tenders are expected to be conducted monthly.

Eligible counterparties will be required to open a cash account with the Banco de España and a securities account with the Public Debt Book-Entry System, and conform to one of the following categories:

- a) Market-makers or primary dealers on the Spanish public debt market.
- b) Counterparties to the Banco de España in the latter's monetary policy fine-tuning operations.
- b) Others, as approved by the Treasury.

Likewise, institutions wishing to participate in these types of tenders will submit bids to the Banco de España, stating:

- 1) The percentage of the amount offered by the Treasury that they wish to receive. The minimum bid will be 2 % and bids exceeding that percentage will be expressed as multiples of 1 %.
- 2) The spread (expressed in basis points) with respect to the overnight EONIA rate (5) that they are willing to pay for the funds received. Counterparties may submit up to three bids with different spreads.

During the tender period, successful bidders will conduct overnight repo transactions with the Treasury for an amount satisfied depending on the total percentage allotted in the tender (currently held monthly) and the interest rate resulting from applying the spread with respect to the EONIA rate published the day before. They will provide State debt securities recorded in the Book-Entry System as collateral, whose valuation will be that applied by the Banco de España in its overnight intervention operations.

(4) See "Financial regulation: first quarter of 2000", in *Economic bulletin*, Banco de España, April 2000, pp. 83-84.

(5) The EONIA is the euro overnight index average rate, which includes a highly representative sample of overnight transactions traded in the euro area.

Prior to the tender, the Treasury will publish an estimate of the amounts to be offered daily on the market during the tender period. Following the tender, successful bidders will receive, every Monday, updated forecasts of the liquidity supply over the next ten days and, every day at ten o'clock, an estimate of the total amount that will be transferred on that day. Finally, once the amount to be transferred by the Treasury to successful bidders is known, the Banco de España will notify the final amount that each bidder will be required to cover through repo transactions.

The first tender was settled on 8 February 2001. The tender period was 14 February to 6 March. The percentage bid stood at 165 % and the percentage allotted at 100 %, and the marginal interest rate spread and the average spread were -20 basis points and -16.11 basis points, respectively.

#### 4. PUBLIC DEBT BOOK-ENTRY MARKET: NEW MEMBERS

The General Budget Law enabled the Minister of Economy to conduct outright or repo transactions, in whatever form, on State debt securities, in order to facilitate State cash management or the smooth functioning of the public debt market. To discharge these functions, the Spanish State Administration, acting through the Treasury, must open an account with the Public Debt Book-Entry System, in which these securities may be held as required.

Additionally, Law 24/1997 of 15 July 1997 on the consolidation and rationalisation of the social security system envisaged the setting up of a Reserve Fund endowed with social security contribution surpluses arising from the social security budget outturn. Subsequently, it was stipulated that this Reserve Fund would be endowed with ESP 100 billion in public-sector financial assets. So that this amount might be invested in State debt and in order not to restrict the Fund's potential operations on the public debt book-entry market, it was deemed advisable for the Social Security Treasury Department to be accorded member status as regards the Book-Entry System of the Banco de España.

This was implemented by the *Ministerial Order of 19 January 2001* (BOE of 13 February 2001), amending the Ministerial Order of 29 May 1987 (6), implementing, in turn, Royal De-

(6) See "Regulación financiera: segundo trimestre de 1987", in *Boletín económico*, Banco de España, July-August 1987, pp. 46-48.

creo 505/1987 of 3 April 1987, which provided for the creation of a public debt book-entry system. Thus, the General Government, acting through the Treasury, and the Social Security Treasury Department will hold such accounts and will operate on the public debt market in compliance with the rules of the market and with those of the Banco de España Settlement Service in respect of cash settlement.

## 5. AMENDMENTS TO THE REGULATION OF COLLECTIVE INVESTMENT UNDERTAKINGS

### 5.1. Introduction

Collective investment undertakings (CIUs) were basically regulated by Law 46/1984 of 26 December 1984 (7), implemented by Royal Decree 1393/1990 of 2 November 1990 (8). Subsequently, the aforementioned Law was reformed by other regulations, such as Law 20/1998 of 1 July 1998 (9) on the reform of the legal and fiscal regime of collective investment undertakings operating in real estate and on the transfer of certain State Administration credit rights, which accorded a higher degree of flexibility to CIUs' investments. However, the most significant reform was introduced by Law 37/1998 of 16 November 1998 (10) on the reform of the securities market, which reinforced the functions of the National Securities Market Commission (CNMV) to facilitate the setting up of CIUs; the corporate purpose of CIU managers was widened and new types of institutions were added, namely those of the Fund of Funds and Master and Feeder Funds, characterised by having most of their funds in the securities of other CIUs.

Recently, *Royal Decree 91/2001 of 2 February 2001* (hereinafter the RD) (BOE of 17 February 2001) partially amended Royal Decree 1393/1990 to incorporate and implement the changes introduced by the aforementioned laws and, in particular, to open the market to new types of collective investment for which there is increasing demand in our financial envi-

(7) See "Regulación financiera: cuarto trimestre de 1984", in *Boletín económico*, Banco de España, January 1984, pp. 41-43.

(8) See "Regulación financiera: cuarto trimestre de 1990", in *Boletín económico*, Banco de España, January 1991, pp. 30-31.

(9) See "Financial regulation: second quarter of 1998", in *Economic bulletin*, Banco de España, July 1998, pp. 89-90.

(10) See "Financial regulation: fourth quarter of 1998", in *Economic bulletin*, Banco de España, January 1999, pp. 90-98.

ronment. At the same time, it is also intended to add flexibility to the setting up and operation of CIUs to enhance competitiveness without detracting from investor safeguards.

The most significant changes are discussed in the following five sections.

## 5.2. Investment rules and ratios for CIUs

The RD allows for greater freedom in CIUs' investment policy, introducing the possibility of investing up to 25 % of CIUs' assets in *bonds issued by credit institutions*, which are sufficiently secured by assets covering the commitments of the issue and primarily used to meet principal and interest payments in the event of failure of the issuer. This percentage will also be applicable to investment in *non-subordinated securities issued by mortgage securitisation funds* (11), which will be considered as marketable securities in the general investment ratio, whose upper limit is 80 % of CIUs' assets.

The minimum liquidity ratio remains 3 % of assets for mutual funds and is lowered from 5 % to 3 % for SIMCAVs (open-end investment companies).

Table 1 shows the most significant changes introduced by RD 91/2001 in previous regulations.

## 5.3. Licence, registry and withdrawal

The conditions for qualifying for a licence and the grounds for refusal thereof, both for CIUs and their management companies, are clearly specified. CIUs may solely be refused a licence if they do not comply with the requirements set out in Law 46/1984, in its implementing regulation and in other applicable provisions. Notwithstanding, the licence may be refused to management companies when major shareholders are not considered fit and proper to ensure the sound and prudent management of the institution. Fitness and propriety will be assessed, *inter alia*, on the basis of: shareholder integrity; the assets available to shareholders to meet commitments undertaken; the institution's exposure to its promoters' non-financial activities; or exposure to high-risk financial activities which may affect the institution's stability or control.

(11) Mortgage securitisation funds were regulated by Law 19/1992 of 7 July 1992 on the regime of real estate mutual funds and companies and mortgage securitisation funds.

In addition, the grounds for withdrawing the licence both from closed-end and open-end investment companies (SIMs and SIMCAVs) and from their management companies are also specified.

The amount of assets that mutual funds are required to hold and minimum capital requirements for investment companies remain unchanged (12). However, the minimum amount may be temporarily lowered to EUR 300,000 (ESP 50 million) for securities funds (FIMs) and EUR 600,000 (ESP 100 million) for money-market funds (FIAMMs), provided that they reach the minimum amount required within a period not exceeding six months. Non-compliance will be cause for the winding-up of these entities.

## 5.4. Specialised collective investment undertakings

One of the key aspects of the reform introduced by the RD is the provision for the new types of collective investment undertakings envisaged by Law 37/1998. The aim here is to respond to the buoyancy of the sector, which demands increasingly greater specialisation in fund investment. The following new types of undertakings are added.

### 5.4.1. "Index" collective investment undertakings

"Index" CIUs take as a benchmark a given stock or bond index, representative of one or several markets located in OECD member countries or of securities traded on such markets. The market on which the securities included in the index are listed will have to meet similar conditions to those required under Spanish law (13) in order to be considered an official secondary market.

(12) The minimum asset or capital requirements for securities funds and investment companies are: ESP 500 million for FIMs, ESP 1.5 billion for FIAMMs and ESP 400 million for investment companies.

(13) Law 37/1998 of 16 November 1998 on the reform of the securities market defines official secondary securities markets as those which regularly operate in accordance with the provisions of this Law and its implementing provisions, in particular as regards the conditions of access, admission to listing and operating, reporting and publicity procedures. In addition to stock exchanges and the public debt market, futures and options markets, whatever the type of underlying asset, are considered to be official secondary markets too. The possibility is also left open for other nationwide markets (authorised pursuant to this Law and its implementing provisions) and other regional markets (authorised by the Regional (Autonomous) Governments with powers in this field) to be so defined.

## CIUs' investment rules and ratios

Former rules	Changes introduced by Royal Decree 91/2001
<b>Investment ratio</b>	<b>Investment ratio</b>
<p><i>FIMs</i>: at least 80 % of their assets in securities listed on the secondary market (monthly).</p>	
<p><i>FIAMMs</i>: at least 90 % of their assets in fixed-income securities with a maturity of less than 18 months, which are listed on a recognised market or are highly liquid (monthly).</p>	
<b>Liquidity ratio</b>	<b>Liquidity ratio</b>
<p><i>Mutual funds</i>: at least 3 % of cash, deposits or sight accounts with the depository (monthly average).</p>	
<p><i>SIMCAVs</i>: at least 5 % of cash, deposits or sight accounts held with the depository (monthly average).</p>	<p><i>SIMCAVs</i>: at least 3 % of cash, deposits or sight accounts held with the depository (monthly average).</p>
<b>Upper investment limits on assets</b>	<b>Upper investment limits on assets</b>
<p>a) 5 % in securities of other CIUs.</p> <p>b) 5 % in securities of a single entity, with the following exceptions:</p> <p>b1) This limit may be extended to 10 %, provided that total investment in securities in which the 5 % limit is exceeded is not higher than 40 % of assets.</p> <p>b2) 35 % in securities issued or backed by a European Union Member State, regional governments or international financial organisations of which Spain is a member.</p> <p>c) 15 % in securities issued by a single financial group.</p>	<p>b2) 35 % in securities issued or backed by a European Union Member State, regional governments, international financial organisations of which Spain is a member and OECD member countries with a solvency rating not lower than that of Spain.</p> <p>d) 25 % in bonds of a guaranteed amount issued by a credit institution. Or mortgage bonds and non-subordinated securities issued by securitisation funds.</p> <p>Total investment of a CIU in securities as per a), b), c) (as provided for in the former rules) and d) may not exceed 80 % of its assets.</p>
<b>Upper investment limits on assets with respect to outstanding volume</b>	<b>Upper investment limits on assets with respect to outstanding volume</b>
<p>1. A single institution may not invest in securities issued or backed by a single entity in excess of 5 % of the outstanding securities of a single entity.</p> <p>2. The sum of investments by SIMs of a single group and FIMs managed by management companies in which the same circumstances concur may not exceed 15 % of the outstanding securities of a single entity.</p>	
<b>General exception</b>	<b>General exception</b>
<p>CIUs are authorised to invest up to 100 % of their assets in securities issued or backed by a European Union Member State, regional governments or international financial organisations of which Spain is a member, provided that the investment is diversified in at least six different issues and the securities of a single issue do not exceed 30 % of the entity's assets.</p>	<p>1. CIUs are authorised to invest up to 100 % of their assets in securities issued or backed by a European Union Member State, regional governments, international financial organisations of which Spain is a member and OECD member countries with a solvency rating not lower than that of Spain, provided that securities of a single issue do not exceed 10 % of the latter's nominal amount.</p> <p>2. The limits set in b) and c) as provided for in Article 4.2 of the Regulation may be exceeded if the entity pursues an investment policy using as a benchmark a given stock or bond "index" representative of one or several markets located in OECD member countries or of securities traded on such markets and meeting specific requirements ("Index" CIUs).</p>

The index shall meet at least the following requirements: diversified composition, easy reproduction, public disclosure and adequacy as a benchmark for the market or set of securities involved.

Finally, the RD authorises the Minister of Economy and expressly empowers the CNMV to specify the requirements to be met by these undertakings and, in particular, the maximum permitted ratio of securities issued by a single entity and by entities of a single group to the company's assets. Meanwhile, on a temporary basis, the RD sets the following ceilings: 35 % of assets in securities issued by a single entity and 45 % of assets in securities issued by entities of a single group.

#### 5.4.2. *Fund collective investment undertakings*

Fund CIUs are characterised by investing mostly in shares or other equity of several financial CIUs, as provided for in their articles of association or rules and regulations. In addition, they shall include in their name the following expressions, as appropriate: Fund Closed-End Investment Company" (or its Spanish acronym SIMF), "Fund Open-End Investment Company" (SIMCAVF), "Fund Securities Fund" (FIMF).

Investment by these entities shall be subject to the following limits:

- a) More than 50 % of their assets shall be invested in shares or other equity of several financial CIUs.
- b) Assets invested in shares or other equity of a single CIU shall not exceed 45 % of the entity's total assets.
- c) Assets shall not be invested in those CIUs which may in turn invest more than 10 % of their assets in another CIU, unless the latter is a feeder entity whose master fund meets this requirement.
- d) For CIUs of shareholding funds, the maximum ratio of investment to total assets with respect to the outstanding amount is retained, namely: a) a single entity shall not be allowed to invest in securities issued or backed by a single entity in excess of 5 % of the outstanding securities of a single entity; b) the sum of investments by SIMs belonging to a single group and by FIMs managed by management companies, in which these circumstances concur, shall not exceed 15 % of the outstanding securities of a single entity.

With regard to their operation, when CIUs in which the investment is made belong to the

same group as the investing entity or its management company or are managed by entities in which these circumstances concur, accrued commissions applied to the investing entity and its shareholders shall not exceed the upper limits set in the general regulations applicable to securities funds (14).

#### 5.4.3. *Master securities funds*

These funds have one or several national or foreign feeder CIUs as shareholders, as provided for in their rules and regulations. They shall include in their name the expression "Master Securities Funds" (or its Spanish acronym FIMP).

Their legal regime includes, inter alia, the following features:

- a) They shall have one or several national or foreign feeder CIUs as shareholders.
- b) At the time of incorporation and for a two-month period, their assets may be contributed by a promoter other than feeder CIUs. Subsequently, shareholders shall be feeder CIUs.
- c) The right to withdraw shall be exercised by feeder CIUs whose shareholders may, likewise, exercise such right, regardless of the withdrawal decision adopted by the feeder CIU's management company.

#### 5.4.4. *Feeder collective investment undertakings*

Unlike specialised fund CIUs, feeder CIUs are linked to a FIMP, which is the entity that carries out portfolio management. Feeder CIUs may be SIMs, SIMCAVs or FIMs investing in a FIMP, as provided for in their articles of association or rules and regulations. Their name shall include the following expressions, as appropriate: "Feeder Investment Company" (SIMS by its Spanish acronym), "Feeder Open-End Investment Company" (SIMCAVS), "Feeder Securities Fund" (FIMS).

These entities shall be subject to the general regulations applicable to SIMs, SIMCAVs and FIMs, with the following exceptions:

1. At least 80 % of their assets shall be invested in shares of the FIMP designated in the prospectus. In the case of FIMs and SIMCAVs, the remaining 20 % of assets may

(14) See Article 45 of Royal Decree 1393/1990, as amended by Royal Decree-Law 6/2000 of 23 June 2000.

be invested in marketable bonds, whose redemption period shall not exceed eighteen months, and in term deposits, which shall not exceed 10 % of assets.

2. The realisable value applicable to the subscriptions and redemptions of the FIMS shall be the same as those applied to its FIMP.
3. Commissions shall be calculated according to the following rules:
  - a) The sum of management and deposit commissions applied to the FIMP and those applied to the FIMP shall not exceed the ceilings set in the general regulations on securities funds (15) (see table 2).
  - b) The sum of commissions applied by the FIMS to the amount of subscriptions and redemptions and those applied by the FIMP shall not exceed 5 %.

Finally, it should be pointed out that the change of FIMP shall confer the right of withdrawal on FIMS shareholders. This change shall be notified as a material event to the shareholders of the other feeder CIUs.

#### 5.4.5. *Collective investment undertakings specialised in investment in securities not traded on secondary markets*

These specialised undertakings may be SIMs or FIMs, and shall necessarily be newly-created entities. They may therefore not be the result of the transformation of existing ones. They shall include in their name the expression "Specialised in non-traded securities" or their Spanish acronym "SIME" or "FIME". It is worth noting that the purpose of this regulation is to promote Spanish venture capital, helping provide access for small investors to unlisted companies.

Investment by these entities shall be subject to the following rules:

1. These CIUs shall invest at least 50 % of their assets in bonds or shares not traded on secondary markets and issued by entities registered in OECD countries that are not considered as countries or territories statutorily classified as tax havens (16). This investment shall not exceed 80 % in FIMs and 90 % in SIMEs.

(15) See article 45 of Royal Decree 1393/1990, as amended by Royal Decree-Law 6/2000 of 23 June 2000.

(16) This percentage should be reached within three years as from incorporation, unless the CNMV authorises an extension of this period.

2. Generally, compared with FIMs, which are required to maintain a minimum liquidity ratio of 3 % of their assets, FIMEs shall maintain a liquidity ratio of 10 % of their assets.

#### 5.5. **Depositories and management companies of collective investment undertakings**

With regard to depositories and in line with the policy followed in Royal Decree-Law 6/2000 of 23 June 2000 on urgent measures for heightening competition in goods and services markets, in which the ceilings on management companies' management commissions were lowered, Royal Decree 91/2001 lowers the maximum annual commission that may be charged by depositories on assets under custody from 4 per mil to 2 per mil. Notwithstanding, as under the previous regulation, this commission may be increased, upon authorisation from the CNMV, in the case of depositories whose entire business is conducted abroad.

Table 2 shows the changes introduced in the ceilings on commissions for management companies and depositories.

As regards CIU management companies (hereinafter SGIICs), one of the main changes introduced by the Royal Decree is that these companies are authorised to market shares or other equity of CIUs whose assets they are managing. This is so because, besides the functions envisaged in the previous regulation, SGIICs are authorised to manage the subscription and redemption of shares of the mutual funds that they are administering. This business may be carried out directly or through agents or legal representatives.

1. When these activities are performed directly, the opening and closing of branches shall be notified to the CNMV within the period and under the terms stipulated.
2. When these activities are carried out through agents or representatives, they shall meet the following requirements:
  - a) Management companies which grant powers of attorney or enter into agency contracts shall ensure beforehand that all the agents or representatives have the capacity, experience and integrity required to engage in the agreed activity, and that they meet the requirements of fitness and propriety envisaged in the regulation. Notwithstanding, the Ministry of Economy may make the opening of branches and the ap-



TABLE 2

## Changes in upper limits to commissions

Royal Decree 1393/1990 of 2 November 1990    Royal Decree-Law 6/2000 of 23 June 2000    Royal Decree 91/2001 of 2 February 2001

**FIM****Management companies***Management commission*

2.5 % if calculated solely on assets.

20 % if calculated solely on profits.

1.5 % of assets and 10 % of profits if both variables are used.

*Subscription and redemption commission*

5 % of share price.

**Depository**

4 per mil annually of nominal value of assets under custody.

**FIM****Management companies***Management commission*

2.25 % if calculated solely on assets.

18 % if calculated solely on profits.

1.35 % of assets and 9 % of profits if both variables are used.

**FIM****Depository**

2 per mil annually of nominal value of assets under custody.

**FIAMMs****Management companies***Management commission*

1.5 % if calculated solely on assets.

15 % if calculated solely on profits.

1 % of assets and 5 % of profits if both variables are use.

*Subscription and redemption commission*

1 % of share price.

**Depository**

1.5 per mil annually of nominal value of assets under custody.

**FIAMMs****Management companies***Management commission*

1 % if calculated solely on assets.

10 % if calculated solely on profits.

0.67 % of assets and 3.33 % of profits if both variables are use.

pointment of agents or representatives by management companies conditional upon their meeting specific capital adequacy or additional solvency requirements.

b) Agents or representatives shall not be linked in any employment capacity to the entity or to entities of the same group to which the management company has granted powers of attorney to act habitually in its name and on its behalf with customers for the marketing of shares of funds managed by the company.

c) Agents or representatives shall not act through sub-agents or establish legal rela-

tionships linking them personally to customers in matters related to the securities market.

Likewise, in all their relationships with customers, agents or representatives shall unequivocally state that they represent the management company. An agent may solely represent a single management company or several entities of a single group.

In any case, SGIICs shall adopt specific measures to control their agents and, for these purposes, prior to the formalisation of the contract, they shall check the adequacy of the administrative organisation and the means that

agents intend to use in the performance of their functions.

SGIICs' capital adequacy requirements are maintained but certain provisions are laid down with respect to raising such requirements depending on how the assets of CIUs managed by SGIICs are increased. The calculation of SGIICs' own funds is also changed and the CNMV is empowered to define the accounting items which are eligible as own funds.

Finally, the types of financial institutions with which SGIICs may outsource the management of foreign assets held by the CIUs managed by such SGIICs are specified. These financial institutions may be another SGIIC or another CIU management company or an investment services firm, in both cases registered in another OECD member country, provided that: they are subject to prudential supervision; they can prove that they offer guarantees similar to those required of SGIICs; a bilateral co-operation agreement has been entered into between the CNMV and the authority entrusted with equivalent functions to those prevailing in the home country of the entity responsible for supervision

and inspection in this area; or co-operation between supervisory authorities is obligatory under Community law.

## 5.6. Other matters

First, some of the conditions required so that CIUs registered outside the European Union may market their products in Spain are adapted. Specifically, Spanish law is required to regulate the same CIU category to which the foreign entity applying for a licence belongs, and this institution must be subject in its home country to specific provisions safeguarding the interests of shareholders to no less a degree than is the case under Spanish law.

Second, the conditions required of Spanish CIUs wishing to market their products within the European Union are specified.

Lastly, in its transitory provision, the Royal Decree defines, among other aspects, the procedure for the transformation of existing CIUs into any of the specialised CIUs.

17.4.2001.