Financial regulation: 2007 Q1

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Introduction

New financial legislation was relatively abundant in 2007 Q1, in comparison with the same period of last year.

First, the basic rules of operation of *Sociedad Española de Sistemas de Pago, Sociedad Anónima* (SEPA), the operator of the National Electronic Clearing System (SNCE), have been published.

In relation to public debt, two laws were published. The first updates and systematises the provisions governing market dealing in book-entry public debt, and the second establishes the terms of issuance of State debt for 2007 and for January 2008.

With regard to financial institutions, and especially the securities market, new legislation was very profuse in this period. Amendments were made to the regulation of the capital of financial institutions, to the legal regime for investment companies, to certain aspects of the regulation of the mortgage market and to the legislation on market abuse. Also, a royal decree was passed that implements the provisions for the companies that manage secondary securities markets and companies that administer securities registration, clearing and settlement systems, and another that amends the legal regime for the regulatory companies of official secondary markets, for *Sociedad de Bolsas* and for *Sociedad de Gestión de los Sistemas de Registro, Compensación y Liquidación de Valores, S.A.* (whose trade name is IBERCLEAR). Amendments were also seen in the area of collective investment institutions (CIIs), and securitisation special purpose entities (SPEs).

At the Community level, a directive was published regulating the information transparency requirements for issuers of securities admitted to trading on a regulated market.

Finally, new personal income tax regulations were enacted, implementing the latest law to reform this tax. Also, the regulations for pension schemes and funds were adapted to the amendments introduced by these regulations.

Implementation of the legislation on securities payment and settlement systems

Law 2/2004 of 27 December 2004[1] on the State budget for 2005 amended Law 41/1999 of 12 November 1999[2] on payment and securities settlement systems. Specifically, it regulated SEPA, which replaced *Servicio de Pagos Interbancarios, Sociedad Anónima,* making it responsible for managing the SNCE. Further, it established that the supervision of SEPA would be carried out by the Banco de España, which would be responsible for authorising its articles of association and amendments thereto, as well as the basic rules of operation of the systems and services that it manages. Also, the sanctioning regime established in Law 26/1988 of 28 July 1988 on Discipline and Intervention of Credit Institutions would apply to this company, subject to the specific exceptions determined by law.

In this context, *CBE 1/2007 of 26 January 2007* (BOE of 6 February 2007) on the information that must be produced by SEPA and the approval of its regulations has been published.

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1. See "Financial regulation: 2004 Q4", *Economic Bulletin,* January 2005, Banco de España, pp. 133-135. **2.** See "Financial regulation: fourth quarter of 1999", *Boletín Económico,* January 2000, Banco de España, pp. 103-104.

Thus, SEPA shall submit to authorisation by the Banco de España, prior to their adoption, both the amendment of its articles of association and the basic rules of operation of the systems and services that it manages. Also, it shall notify thereto how it regulates supplementary and ancillary services and operating instructions for the systems and services it manages. Likewise, it shall send to the Banco de España the annual accounts and management report, as well as the report of the external auditors, within a month of their approval.

The Banco de España may require SEPA to provide relevant information on the systems and services it manages, as well as regular statistical information for monitoring their operation and, where applicable, shall set, by means of *technical applications* that shall be notified to SEPA, the limits on the amount of fund transfer orders that can be processed by the systems that it manages. This shall be done taking into account the risks involved in the processing and settlement of the payments, establishing, where applicable, the appropriate channels therefor.

Modification of the legislation on the book-entry public debt market

Royal Decree 505/1987 of 3 April 1987, provided for the establishment of book-entry arrangements for State debt and, as part thereof, the organisation of a book-entry system managed by the Banco de España. Subsequently, Law 24/1988 of 28 July 1988[3] on the Securities Market, as amended by Law 44/2002 of 22 November 2002[4] on Reform of the Financial System, conferred the responsibility for keeping accounting records, and the clearing and settlement of the securities admitted to dealing on the public debt market upon IBERCLEAR[5].

Now that this company has effectively assumed the functions conferred upon it (in particular, the management of the system for the recording and settlement of securities admitted to dealing on the public debt market), the legislation in force has been amended by *CBE 2/2007 of 26 January 2007* (BOE of 14 February 2007), so as to integrate and systematise those aspects relating to trading and dealing on the debt market.

The Circular updates and systematises the rules governing trading on the public debt market, repealing eleven circulars completely and another one partially. Thus, it regulates the reporting obligations of account holders and registered dealers, which shall keep information available for the Banco de España on their financial situation and the resources required by their professional status. Likewise, it defines and clarifies market transactions, all of which were included in the previous legislation.

First, a distinction is drawn between outright spot and outright forward transactions, the former being those executed within five days, and the latter those executed after more than five days. Second, it details the various forms of repo-type transactions: repurchase agreements (repos) and sell and buy-back agreements[6]. The former are in turn divided into *fixed-maturity repos*[7] and *open repos*[8].

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3. See "Regulación financiera: tercer trimestre de 1988", *Boletín Económico,* October 1988, Banco de España, pp. 61-62. **4.** See "Financial regulation: 2002 Q4", *Economic Bulletin,* January 2003, Banco de España, pp. 101-113. **5.** IBERCLEAR was created from the merger of the Securities Clearing and Settlement System (SCLV) and the Public Debt Book-Entry System (CADE) to enhance the competitiveness of the Spanish financial system. Other systems already existing in Spain may be incorporated into this company, such as the one for financial derivatives or those managed by the Barcelona, Bilbao and Valencia stock exchanges, and it can manage interconnections and alliances with those of other countries. **6.** Sell and buy-back agreements involve a sale and a purchase, agreed simultaneously, of securities with identical characteristics and the same face value, but with different execution dates. The sale and purchase may both be spot with different settlement dates, or both forward, or the sale may be spot and the purchase forward. **7.** Fixed-maturity repos are those in which the holder of the securities sells them until the maturity date, agreeing simultaneously to repurchase securities with identical characteristics and with the same face value on a specific date, between that of sale and the earliest maturity date, even if the latter is partial or voluntary. **8.** Open repos are those in which, at the time the agreement is entered into, the price and transfer date of the initial sale is stipulated and the period during which the purchaser/seller has the option to require repurchase on the terms that must be established in the same agreement is fixed.

The Circular prohibits repos between account holders, only permitting outright (spot or forward) transactions and sell and buy-back agreements, since, in practice, there was scant trading volume in the former. However, account holders may enter into all the transactions mentioned with third parties, subject to the following conditions.

In forward transactions in book-entry public debt (outright forward transactions or sell and buy-back transactions), the nominal amount of the transaction shall be no less than €100,000 (previously €60,000). These operations may be protected by agreements entered into by the market member and third party that participate in the trading. However, transactions may be for a lower amount, provided that they are executed in the form of the standard agreements contained in the Ministerial Order of 25 October 1995, which partially implements Royal Decree 629/1993 of 3 May 1993 on securities market rules and regulations and compulsory records. The Circular then sets out the transactions that registered dealers may carry out on the joint orders of the contracting parties, as well as the law on strip and reconstitution transactions in relation to public-debt securities.

With regard to transparency and publicity in transactions with third parties, when the dealer is contracting in its own name, all the terms of the operation shall be specified and determined at the time the agreement is entered into, and it shall be obliged to quote publicly, in terms of the annual percentage rate, the securities in which it is prepared to deal, including any commissions that may have been set for each type of transaction. When the dealer is acting as an agent, the terms of the transaction shall be stipulated with the principal in terms of a reference price or interest rate, which may refer to the value date of the transaction, and the commission agreed. In this respect, since the entry into force of the Circular, that is to say 1 March 2007, dealers shall deliver to the principal a copy of the document in which the terms of the order to invest in public debt are specified. In addition, cash settlement shall coincide with the value date of the securities transfer.

State debt: terms of issuance for 2007 and January 2008

Law 42/2006 of 28 December 2006 on the State Budget for 2007[9] authorised the Minister of Economy and Finance to increase State debt during 2007, with the limitation that the outstanding balance thereof as at 31 December 2007 should not exceed the related balance as at 1 January 2007 by more than €10,675 million.

As usual at this time of year, *Order EHA/19/2007 of 11 January 2007* (BOE of 16 January 2007), providing for the creation of State debt during 2007 and January 2008, and two *Resolutions of 17 January 2007* (BOE of 23 January and 26 January 2007) of the Directorate General of the Treasury and Financial Policy, providing for specific issues of Treasury bills and of medium- and long-term government bonds and announcing the schedule of tenders for 2007 and January 2008, have been published.

Broadly, the issuance conditions of previous years have been maintained. Thus, the Ministry of Economy may provide for the creation of debt through issues of securities or credit operations, in euro or in other currencies. The arrangements of previous years have been retained, in particular the following issuance procedures: tenders (competitive and non-competitive bids), and any technique whatsoever that does not involve inequality of opportunity for the potential purchasers of these securities. Public debt will continue to be in the form of Treasury bills and medium- and long-term debt, in all cases exclusively in book-entry form.

TREASURY BILLS

The issuance criteria and procedures prevailing in previous years are basically maintained, as is the obligation to prepare an annual schedule of tenders. The changes that should be noted are,

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9. See "Financial regulation: 2006 Q4", *Economic Bulletin,* January 2007, Banco de España, p. 116.

first, the suspension of tenders of 18-month bills, while those for 12-month bills are maintained, and, second, the recommencement from August of the issuance of six-month bills (suspended in 2006), which will take place monthly, the maturity dates being in the uneven months of the first half of 2008, the aim being to strengthen the liquidity of the benchmark bills with maturity in those months. However, for reasons of demand or issuance policy, the Treasury may hold additional tenders to those announced, at which shorter-dated bills could be offered.

The tenders shall take place on the third Wednesday of each month and the original maturities indicated may differ by the number of days necessary to facilitate the grouping of maturities, which are also monthly, coinciding with the issuance dates to facilitate reinvestment by holders. In this way, the grouping together of Treasury bill issues is maintained, so as to guarantee the liquidity of this instrument and to consolidate its market.

As regards the manner of submitting bids at tenders, it has been considered appropriate that they should continue to be expressed in terms of the interest rate, in the same way as bills are quoted on the secondary markets, so that this makes submission easier. Competitive bids will thus indicate the interest rate bid for and successful bids shall be allotted, in each case, at a price equivalent to the interest rate bid for or at the weighted average, whichever is appropriate given the outcome of the tender.

The tenders shall continue as at present, and both competitive and non-competitive bids may be formulated. The minimum nominal amount of competitive bids will continue to be €1,000 and higher bids shall be multiples of this amount. As for non-competitive bids, their minimum nominal amount is also still €1,000 and higher bids shall be whole multiples of this amount, the overall nominal amount of non-competitive bids submitted by the same bidder in one tender not exceeding €1 million. However, this limit will continue to be €100 million for certain institutions, namely the Wage Guarantee Fund, the Deposit Guarantee Fund for Banking Establishments, the Deposit Guarantee Fund for Savings Banks, the Deposit Guarantee Fund for Credit Co-operatives the Social Security Reserve Fund, the Investment Guarantee Fund and any public entity or State-owned company stipulated by the Treasury.

Finally, as in previous years, tenders will be followed by a second round reserved for those financial institutions that have acquired market-makers status in respect of Treasury bills. This will unfold in accordance with the rules regulating market-makers.

MEDIUM AND LONG-TERM GOVERNMENT BONDS

The issuance criteria and procedures established for medium- and long-term government bonds are essentially those prevailing in 2006, and, as in the case of bills, the obligation is maintained to prepare the annual schedule of tenders, indicating the dates of the tenders and specifying the term of the bonds that will be auctioned quarterly, depending on market conditions and on issuance developments during the year. However, if market conditions or financing requirements make it advisable, the Treasury may, in the monthly resolution providing for issues of bonds for the following month, decide not to issue at any of the terms which, for information purposes, have been set in the aforementioned quarterly schedule.

The maturities for both types of bond will be unchanged, i.e. 3 and 5 years for medium-term bonds, and 10 and 30 years for long-term bonds, although without ruling out the option of resuming the 15-year issue, whose benchmark would alternate with the 30-year bond to square the reduction in the total volume that has to be issued with the increase in the liquidity of the benchmarks being issued. It will also still to be possible to offer issues that are extensions of other previous issues, in order to make up the necessary volume to ensure their liquidity on the secondary markets.

Tender arrangements remain as at present. Competitive and non-competitive bids may be submitted, with the same characteristics as in the previous section. As in the case of bills, there will be a second round reserved for those financial institutions that have acquired market-maker status in respect of medium and long-term government bonds.

Amendments to the regulation of the capital of financial institutions, to the legal arrangements for investment companies, to the mortgage market and in relation to market abuse

Royal Decree 364/2007 of 16 March 2007 (BOE of 17 March 2007), which amends four royal decrees relating to financial matters, has been published.

First, and in relation to Royal Decree 1343/1992 of 6 November 1992[10] implementing Law 13/1992 of 1 June 1992 on capital and supervision on a consolidated basis of financial institutions, Royal Decree 364/2007 once more formally includes in credit institutions' capital, that part of the profit for the year that is planned to be applied to reserves, until the final application of the reserves takes place, on the same conditions as established originally[11].

Also, the solvency regime for portfolio management companies is amended, in order to bring it into line with that for other investment services firms (securities-dealer companies and securities agencies). For portfolio management companies to be able to adapt to these new requirements, these amendments take effect two months later than the rest of the Royal Decree, which came into force on 18 March.

Second, in relation to Royal Decree 867/2001 of 20 July 2001[12] on the legal arrangements for investment services firms, the capital needs of investment services firms that carry out, in accordance with their programmes of operations, discretionary portfolio management services are clarified and specified.

Third, in relation to Royal Decree 685/1982 of 17 March 1982 implementing certain aspects of Law 2/1981 of 25 March 1981 on the mortgage market, and specifically the issue conditions for variable-rate mortgage covered bonds, the upper limit to the change in the interest rate that depended on the foreseeable return on the hedging loans that they have established is abolished, as this limit lost its rationale when the credits hedging this type of bond changed from fixed-rate to variable-rate.

Finally, Royal Decree 1333/2005 of 11 November 2005[13] implementing Law 24/1988 of 28 July 1988 on the securities market, in relation to market abuse, has been published, in order to broaden the scope of persons related to directors and senior managers of an issuer who are obliged to notify the transactions they carry out in the securities of such issuer. The aim is to incorporate a more accurate reflection of the Community market abuse regime into Spanish law.

Companies that manage secondary securities markets and companies that administer securities registration, clearing and settlement systems

Law 12/2006 of 16 May 2006 amending the consolidated text of the memorandum and articles of association of the *Consorcio de Compensación de Seguros* (insurance compensation consortium), approved by Legislative Royal Decree 7/2004 of 29 October 2004, and Law 24/1988 of 28 July 1988 on the securities market, among other aspects, transposed to Spanish law certain provisions of Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003[14] on insider dealing and market manipulation, and of Commission Directive

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10. See "Regulación financiera: cuarto trimestre de 1992", *Boletín Económico,* January 1993, Banco de España, pp. 65-71. **11.** Note that the disappearance of this element of capital was attributable to a mere transcription error in the last legal amendment of the article in question. **12.** See "Financial regulation: 2001 Q3", *Economic Bulletin,* October 2001, Banco de España, pp. 98-101. **13.** See "Financial regulation: 2005 Q4", *Economic Bulletin,* January 2006, Banco de España, pp. 116-119. **14.** See "Financial regulation: 2003 Q2", *Economic Bulletin* July 2003, Banco de España, pp. 85-87.

2004/72/EC of 29 April 2004[15], which partially implemented Directive 2003/6/EC. Law 12/2006 amended certain articles of Law 24/1988 on the securities market to make more flexible and clarify the legal arrangements for entities with an interest in the capital of companies that manage secondary securities markets and those that administer securities registration, clearing and settlement systems.

Recently, *Royal Decree 361/2007 of 16 March 2007* (BOE of 17 March 2007) implementing Law 24/1988 of 28 July 1988 on the securities market, as regards the holding of the capital of companies that manage secondary securities markets and companies that administer securities registration, clearing and settlement systems has been published.

The main changes can be divided into two groups. Notable in the first group is the establishment of special rules for those persons who hold a significant or controlling interest in companies that administer secondary markets and securities, registration, clearing and settlement systems. In accordance with Law 24/1988, the government must authorise the acquisition or disposal of a controlling interest in such companies, this Royal Decree being the one that specifies what information shall be provided in the course of authorisation. Among other aspects, information shall be provided on any other holdings the purchaser may have in similar companies, its activities in the financial markets and its strategy for the market in question. In addition, a report is required from the entity or entities that currently hold the controlling interest. The aim of these provisions is to ensure that the government has sufficient information on which to base its decision regarding the suitability of the person or entity seeking to acquire the controlling interest.

Holdings in the capital of companies of this type shall be subject to the rules on significant holdings for investment services companies in Law 24/1988, with the special features determined by this Royal Decree. Thus, the minister of economy and finance may object to the acquisition of a significant holding when the degree or type of influence of the purchaser compromises the smooth operation of the markets, to avoid distortions in the markets or on the grounds that Spanish entities are not given an equivalent treatment in the home country of the purchaser or of whoever directly or indirectly controls the latter.

The CNMV shall be deemed not to object to the acquisition of a significant holding of 1% or more (but less than 5%) of the capital of the company, if it fails to pronounce within ten business days[16] from that on which it was informed of the acquisition or from the time at which the additional information that the CNMV may have requested has been completed. Also, the latter body is empowered to request such information as it may consider necessary on the shareholders of these companies, and of the companies that have a controlling interest in all or any of the foregoing.

In the second group of changes, the Royal Decree lays down certain rules for entities holding controlling interests in these companies. Thus, such entities shall respect certain conditions for the introduction of limitations on the rights arising from the holding in its capital. Also, when applicable to them, they shall comply with the rules contained in Law 24/1988 on takeover bids and the notification of significant holdings in quoted companies, without prejudice to the obligations contained in this Decree.

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15. See "Financial regulation: 2004 Q2", *Economic Bulletin,* July 2004, Banco de España, pp. 114-115. **16.** The deadline established in Law 24/1988 for the CNMV to object to the acquisition of a significant holding (i.e. the direct or indirect acquisition of at least 5% of the capital or voting rights of a company) is two months.

Amendment to the legal arrangements for the regulatory companies of official secondary markets, the Sociedad de Bolsas and IBERCLEAR

In order to eliminate obsolete references and update certain aspects of the legal arrangements for stock exchange regulatory companies, *Sociedad de Bolsas* and IBERCLEAR, *Royal Decree 363/2007 of 16 March 2007* (BOE of 17 March 2007) has been published. This Decree amends Royal Decree 726/1989 of 23 June 1989[17] on regulatory companies and members of stock exchanges, *Sociedad de Bolsas* and collective bonds, Royal Decree 1814/1991 of 20 December 1991[18] that regulates the official futures and options markets and Royal Decree 116/1992 of 14 February 1992[19] on representation of securities by means of book entries and clearing and settlement of stock market transactions.

First, the grounds for objecting to the appointment of the members of the board of directors of a stock exchange regulatory company, Sociedad de Bolsas or the regulatory companies of futures and options markets are clarified, namely failure to meet the requirements for professional integrity and knowledge and experience that apply to members of the board of directors of an investment services company in Law 24/1988 of 28 July 1988 on the securities market.

Second, the financial arrangements for stock exchange regulatory companies, the Sociedad de Bolsas, the regulatory companies of futures and options markets and IBERCLEAR are made more flexible, as they will not have to submit their annual budget to the approval of the CNMV or, where applicable, the relevant regional autonomous government, nor may the regulatory body require modifications thereto. However, the CNMV or, where applicable, the relevant regional autonomous government still has the power to approve the rates of these entities and may establish exceptions to or limits on the maximum prices charged for their services when they may affect the financial solvency of the regulatory companies, have consequences that are disruptive to the development of the securities market or contrary to the principles by which it is governed or introduce unwarranted discrimination between stock market members.

As regards Royal Decree 116/1992 of 14 February 1992 on representation of securities by means of book entries and clearing and settlement of stock market transactions, modifications are made to the mechanisms for ensuring security delivery and, specifically, to the arrangements for IBERCLEAR's related securities loans, to avoid the effect of a temporary increase in securities that may arise in certain cases of settlement of securities sale and purchase transactions.

At the same time, IBERCLEAR shall establish procedures to prevent delay in the delivery of those securities whose features, number and type of transactions, incidents arising and other relevant circumstances make this advisable. These procedures may include special deadlines and requirements for the processing and settlement of transactions in these securities, different registration of the securities whose delivery has been agreed and, if necessary, the systems for resolving any discrepancies that may arise in the settlement of transactions, including substitute consideration for obligations that have not been fulfilled and the compensation to be paid to the damaged entities out of the cash of the transactions in question and the penalties that may be imposed on defaulting entities. Also, it may establish different systems to ensure the delivery of the securities that appear in the accounts of entities participating in the Central Register and of those others noted in the accounts with details of third parties.

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17. See "Regulación financiera: segundo trimestre de 1989", *Boletín Económico,* July-August 1989, Banco de España, pp. 120-122. **18.** See "Regulación financiera: cuarto trimestre de 1991", *Boletín Económico,* January 1992, Banco de España, pp. 63-64. **19.** See "Regulación financiera: primer trimestre de 1992", *Boletín Económico,* April 1992, Banco de España, pp. 68-69.

Finally, the financial and legal arrangements for entities belonging to IBERCLEAR, and the requirements for joining the system, which shall be determined by the minister of economy and finance or, with the latter's express authority, by the CNMV are updated.

Modification of the regulations for collective investment institutions (CIIs)

Royal Decree 1309/2005 of 4 November 2005[20] approved the regulations implementing Law 35/2003 of 4 November 2003[21] on CIIs, whose basic aims are to make the framework for CIIs' activities more flexible, to increase investor protection and to improve the arrangements for administrative intervention.

Royal Decree 362/2007 of 16 March 2007 (BOE of 17 March 2007) amending Royal Decree 1309/2005 of 4 November 2005 in relation to hedge funds and funds of hedge funds has recently been published.

The basic aim of this reform is to make the arrangements for these CIIs more flexible, especially as regards redemptions, in order to promote their growth and market presence. These CIIs are thus permitted to place a limit on the amount they have to redeem on a particular date. When redemption applications exceed this limit shares shall be redeemed on a pro rata basis. These institutions may also establish minimum lock-up periods for shareholders, and a more flexible notice system for subscriptions and redemptions, of whatever amount, than the general one. These circumstances should be included, where applicable, in the institution's prospectus.

These institutions also need not make redemptions on all the dates on which the net asset value is calculated, although this flexibility is offset by a requirement for more information in the prospectus.

Hedge funds are not allowed to market themselves to investors who are not deemed qualified (such as retail investors), although such investors are not prohibited from acquiring hedge fund shares.

With regard to funds of hedge funds, use of the options to establish minimum lock-ups periods, to have a more flexible notice system and not to make redemptions on all the dates on which the net asset value is calculated are conditional upon this being required by the CIIs in which they invest and, moreover, the marketing policy of these institutions must be taken into account.

Securitisation special purpose entities: promotion agreements (FTPymes)

In its additional provisions, Royal Decree Law 3/1993 of 26 February 1993 on urgent budgetary, tax, financial and employment measures and Law 3/1994 of 14 April 1994[22], which adapted Spanish law to the Second Banking Co-ordination Directive, regulated *fondos de titulización hipotecaria* [mortgage securitisation special purpose entities (SPEs)] and the appropriate adaptations for securitising other loans and creditors' rights, including those arising from leasing transactions, and those relating to the activities of small and medium-sized businesses, which would be carried out through so-called *fondos de titulización de activos* (asset securitisation SPEs). Royal Decree 926/1998 of 14 May 1998[23] regulated asset securitisation SPEs and their management companies, establishing the reference framework for asset securitisation in Spain. For its part, the Ministerial Order of 28 May 1999 established the status and

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20. See "Financial regulation: 2005 Q4", *Economic Bulletin,* January 2006, Banco de España, pp. 112-116. **21.** See "Financial regulation: 2003 Q4", *Economic Bulletin,* January 2004, Banco de España, pp. 84-87. **22.** See "Regulación financiera: segundo trimestre de 1994", *Boletín Económico,* July-August 1994, Banco de España, pp. 92 a 96. **23.** See "Financial regulation: second quarter of 1998", *Economic Bulletin,* July 1998, Banco de España, pp. 86-88.

content of the promotion agreements that the ministry of economy and finance could enter into (through the Treasury) with the management companies of asset securitisation SPEs, in order to promote the creation of asset securitisation SPEs which, under the trade name "FT-Pymes", may have the benefit of a State guarantee for the fixed-income securities they issue in order to promote business financing.

The experience gained in this area over several years warrants making certain changes to the administrative procedure for granting guarantees and adding some new requirements within the scope of the establishment of asset securitisation SPEs. All this has been carried out by means of *Order Pre/3/2007 of 10 January 2007* (BOE of 12 January 2007), on asset securitisation SPE promotion agreements to encourage business financing.

Specifically, the period for submitting agreement applications has been changed (from 15 days to one month) and the director general of small and medium-sized business policy is authorised to modify it when market issuance conditions make it advisable to do so. Also, it is now possible for the CNMV to include in its proposal to grant a guarantee a commission payable to the State, the amount of which would be set in accordance with the nominal value of the fixed-income securities guaranteed and their credit rating, and which would have to be paid by the management company of the asset securitisation SPE. Finally, certain technical improvements have been made to the procedure.

Transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market

Directive 2004/109/EC of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market, established the general principles for the harmonisation of transparency requirements in respect of the holding of voting rights or financial instruments that result in an entitlement to acquire existing shares with voting rights.

Recently, *Commission Directive 2007/14/EC of 8 March 2007* (OJEU), has lain down detailed rules for the implementation of certain provisions of Directive 2004/109/EC.

The aim of the Directive is to ensure that, through the disclosure of accurate, comprehensive and timely information about securities issuers, investor confidence is built up and sustained. By the same token, issuers are required to be informed of movements affecting major holdings in companies and, in turn, to keep the public informed. The rules for the implementation of the rules governing transparency requirements should be designed to ensure a high level of investor protection, to enhance market efficiency, and to be applied in a uniform manner.

The minimum content of the condensed set of half-yearly financial statements, where that set is not prepared in accordance with international accounting standards, should avoid giving a misleading view of the assets, liabilities, financial position and profit or loss of the issuer. The content of half-yearly reports should ensure appropriate transparency for investors through a regular flow of information about the performance of the issuer, and that information should be presented in such a way that it is easy to compare it with the information provided in the annual report of the preceding year. Specifically, the following comparative information shall be included: balance sheet as at the end of the first six months of the current financial year, comparative balance sheet as at the end of the immediate preceding financial year and profit and loss account for the first six months of the current financial year with comparative information for the comparable period of the preceding financial year[24].

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24. The latter, from two years after the date of entry into force of this Directive (29 March 2007).

With regard to major related parties' transactions, issuers shall disclose, as a minimum, the following: related parties' transactions that have taken place in the first six months of the current financial year and that have materially affected the financial position or the performance of the enterprise during that period, and any changes in the related parties' transactions described in the last annual report that could have a material effect on the financial position or performance of the enterprise in the first six months of the current financial year.

In relation to control mechanisms by competent authorities as regards market makers, the Directive specifies how such an authority may verify whether the conditions for the exemption granted to market makers in relation to the notification of information on major holdings are met. In addition, market making activities shall be conducted in full transparency, so that market makers should be capable upon request from the relevant competent authority of identifying the activities conducted in relation to the issuer in question, and in particular the shares or financial instruments held for market making activities purposes.

Other parts of the Directive address the requirements for disclosure of information by issuers to the media, so that it reaches investors uniformly and transparently, and to ensure that those situated in a Member State other than that of the issuer have equal access to such information. All this is without prejudice to the right of the Member State to request issuers to publish all or part of the regulated information through the media, on their own or other websites accessible to investors.

New personal income tax regulations and amendment of the regulations for pension schemes and funds

Law 35/2006 of 28 November 2006[25] on the personal income tax and partially amending the corporate income tax, non-residents' income tax and wealth tax laws, undertook reform of the personal income tax, basically seeking to reduce the tax burden on earned income, to restore equality to the tax treatment of personal and family circumstances, to establish a neutral tax treatment for the various forms of financial saving and to restructure the tax incentives for social insurance for situations of aging and, for the first time, situations of dependency.

Royal Decree 439/2007 of 30 March 2007 (BOE of 31 March 2007), which approves the personal income tax regulations approved by Law 35/2006 and amends the Regulations for pension schemes and funds approved by Royal Decree 304/2004 of 20 February 2004[26], has recently been enacted. The personal income tax regulations reflect the structure and provisions of Law 35/2006, while repealing the personal income tax regulations approved by Royal Decree 1775/2004 of 30 July 2004. The main changes introduced, especially those in the financial area, are set out below.

As regards investment income, the regulations are adapted as a consequence of the non-applicability of the reduction for income arising over a period of more than two years or obtained over time in a notably irregular manner to income that forms part of the tax base for savings.

With respect to capital gains and losses, for the purposes of application of the exemption for the transfer of a habitual dwelling by persons aged over 75 or persons in a situation of severe or great dependency, and of the exemption for reinvestment in a habitual dwelling, the latter may include any dwelling that is the habitual dwelling at the time of sale or that has been such a dwelling at any time during the two years prior to the transfer date. In this way, the taxpayer will have a period after ceasing to actually live at the dwelling in which to sell it, without forfeiting the relevant exemption.

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25. See "Financial regulation: 2006 Q4", *Economic Bulletin,* January 2007, Banco de España, pp. 111-114. **26.** See "Financial regulation: 2004 Q1", *Economic Bulletin,* April 2004, Banco de España, pp. 97-98.

New formal reporting obligations have been incorporated for insurance undertakings that sell dependency insurance, insured social insurance schemes or individual systematic saving schemes, and the reporting obligation has been developed for taxpayers who have protected funds. Also important is the new additional provision permitting the holders of individual systematic saving schemes to transfer their mathematical provision to another systematic saving scheme of which they are the holder.

Among the transitional provisions, inter alia, the arrangements for the reinvestment of extraordinary profits are retained, operating in the same way as currently, and the provisions of the current regulations for *sociedades transparentes* (transparent companies) are extended to *sociedades patrimoniales* (asset-holding companies).

Finally, the relevant modifications are made to the regulations for pension schemes and funds, approved by Royal Decree 304/2004 of 20 February 2004, to adapt them to the modifications introduced by Law 35/2006 in the consolidated text of the law on regulation of pension schemes and funds, approved by Legislative Royal Decree 1/2002 of 29 November 2002[27]. A transitional period is established for adaptation of the specifications of pension schemes to the changes introduced in the regulations applicable to them, which shall be twelve months from the entry into force of this Decree.

The Royal Decree entered into force on 1 April 2007, except for the modifications introduced in the personal income tax regulations and in the regulations for pension schemes and funds relating to the transferability of the mathematical provision to other social insurance schemes or pension schemes, which will enter into force on 1 January 2008.

27. See "Financial regulation: 2002 Q4", *Economic Bulletin,* January 2003, Banco de España, pp. 113-114.