FINANCIAL REGULATION: 2009 Q1

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Introduction

A wide range of new financial legislation was published in 2009 Q1.

Within the sphere of the European System of Central Banks (ESCB) and the European Central Bank (ECB), several provisions have been implemented. In the field of monetary policy, the Banco de España has adopted the latest changes in instruments and procedures used in the Eurosystem, along with the eligibility criteria for collateral provided by counterparties to obtain liquidity from the Eurosystem. For its part, the ECB has extended its monetary, financial institutions and markets statistics to include assets and liabilities of special purpose vehicles, and in particular statistics relating to their securitisation operations. It has also made changes to the monetary financial institutions' (MFI) sector balance sheets and to the legal financial reporting and accounting regime in the ESCB.

In the European arena, the Community directive on deposit guarantee schemes was also amended, to raise the minimum deposit coverage in the European Union.

In Spain, the Spanish government was authorised to guarantee, during 2009, the liabilities deriving from the funding the Banco de España may extend to Caja de Ahorros de Castilla-La Mancha.

Several provisions were enacted in connection with securities markets. Firstly, the terms of government debt issues for 2009 and for January 2010 have been announced; secondly, the solvency rules for investment firms have been implemented in order to adapt them to the European Union regime; thirdly, new categories have been established for collective investment institutions based on their investment policy, partially replacing the categories in place to date. Finally, new accounting regulations have been established for secondary securities market operators (except for the Banco de España), venture capital entities and securitisation special-purpose vehicles, in order to update them and adapt them to the new general chart of accounts.

Further, specific aspects of the legal regime for financial advice firms have been implemented, and a new system of statistical and accounting documentation has been established for pension fund management companies.

Finally, a series of urgent tax, financial and insolvency measures has been published.

European Central Bank and Banco de España: amendment of the regulations on monetary policy instruments and procedures of the Eurosystem

Guideline ECB/2008/13 of 23 October 2008 (OJEU of 5 February 2009) and Guideline ECB/2009/1 of 20 January 2009 (OJEU of 5 February 2009) amended Guideline ECB/2000/7 of 31 August 2000 on monetary policy instruments and procedures of the Eurosystem. Further, the Banco de España Executive Commission Resolution of 22 January 2009 (BOE of 3 March 2009) amended that of 11 December 1998 approving the general clauses applicable to monetary policy operations in order to adopt Guideline ECB/2009/1.

The aim of the first guideline is to adapt the definition and implementation of monetary policy to recent market developments. In particular, it includes the changes in the risk control system

and in the rules on the eligibility of collateral for Eurosystem credit operations, and the acceptance of non-euro-denominated collateral in specific cases.[1] Further, it includes the treatment of entities subject to the freezing of funds and/or other measures imposed by the European Community or by a Member State, and it addresses the harmonisation with new provisions on the application of minimum reserves.[2]

The second guideline specifies certain changes in the definition and implementation of monetary policy, in view of recent developments on the markets for asset-backed securities. In particular, the credit quality requirements for asset-backed securities are specified[3], and the use of certain types of asset-backed securities as collateral in Eurosystem lending operations is excluded, so as to ensure these operations are suitably protected.

The Eurosystem limits the use of uncovered bank bonds issued by an issuer or any entity with which the issuer has close links. Such uncovered bank bonds may only be used as collateral by a counterparty to the extent that the value assigned to such collateral by the Eurosystem after the application of haircuts does not exceed 10% of the total value of the collateral submitted by that counterparty. This limitation does not apply to uncovered bank bonds that are guaranteed by a public sector entity, or if the value after haircuts does not exceed €50 million.[4]

Guideline ECB/2008/13 came into force on 1 November 2008, Guideline ECB/2009/1 on 29 January 2009, and the Resolution of 22 January 2009 on 1 March 2009.

Banco de España: temporary amendment of the rules on collateral eligibility in monetary policy operations

Guideline ECB/2000/7 of 31 August 2000 on monetary policy instruments and procedures of the Eurosystem laid down, inter alia, the criteria for determining the eligibility of collateral held by a counterpart entity in order to obtain liquidity from the Eurosystem. In light of the international financial tensions, and in order to temporarily reinforce liquidity provision to counterpart entities in the Eurosystem's monetary policy operations, Guideline ECB/2018/80 of 21 November 2008[5] temporarily extended the criteria determining the eligibility of collateral provided to the Eurosystem by these entities to obtain liquidity.

To this end, the Executive Commission of the Banco de España has published the Resolution of 26 November 2008 (BOE of three January) on temporary changes in collateral eligibility criteria for Banco de España monetary policy operations, which adopts Guideline ECB/2008/18.

Accordingly, in the period from 1 December 2008 to 31 December 2009, the following shall also be eligible as collateral in Eurosystem monetary policy operations:

a) Marketable debt instruments denominated in US dollars, pounds sterling or Japanese yen, provided that they are issued and held/settled in the euro area and the issuer is established in the European Economic Area.

b) Syndicated loans, if they comply with the specific conditions laid down in Decision ECB/2008/15 of 14 November 2008 on the implementation of Regulation

1. See Guideline ECB/2018/18 of 21 November 2008 in "Financial regulation: 2008 Q4", *Economic Bulletin*, January 2009. **2.** See ECB Regulation 1745/2003 (ECB/2003/9) of 12 September 2003 on the application of minimum reserves. **3.** For asset-backed securities issued as from 1 March 2009, the Eurosystem's requirement for high credit standards is defined in terms of an "AAA" credit assessment at issuance with a minimum credit quality threshold over the life of the security set at the "single A" credit assessment level. **4.** Uncovered bank bonds submitted to the Eurosystem as collateral until 20 January 2009 are not subject to this limitation until 1 March 2010. **5.** See "Financial regulation: 2008 Q4", *Economic Bulletin*, January 2009, Banco de España, pp.138-139.

ECB/2008/11 of 23 October 2008 on temporary changes to the rules relating to eligibility of collateral. Currently, these loans are no longer eligible.

c) Debt instruments issued by credit institutions, which are traded on certain non-regulated markets as specified by the ECB.

d) Subordinated assets protected by acceptable collateral provided that a financially sound guarantor provides an unconditional and irrevocable guarantee, payable on first demand, on these assets.

e) Fixed-term remunerated deposits of counterparties in the National Central Bank (NCB) of the Member State in which the counterparty is established.

As in Guideline ECB/2008/18, a new BBB-equivalent credit assessment threshold granted by a specialised agency is established. It shall be applicable both to marketable and non-marketable assets, with the exception of asset-backed securities for which a credit assessment equal to or higher than A shall continue to be required.

The resolution is applicable from 1 December 2008 to 31 December 2009.

European Central Bank: statistics on assets and liabilities of financial vehicle corporations engaged in securitisation transactions

Regulation (EC) No 24/2009 of the European Central Bank (ECB/2008/30) of 19 December 2008 (OJEU of 20 January 2009) concerning statistics on the assets and liabilities of financial vehicle corporations[6] engaged in securitisation transactions,[7] and Guideline ECB/2008/31 of 19 December 2008 (OJEU of 26 February 2009) amending Guideline ECB/2007/9 of 1 August 2007 on monetary, financial institutions and markets statistics (recast) were published in order to make legal provision for statistics on the assets and liabilities of financial vehicle corporations.

The purpose of these legal provisions is to provide the ECB with statistics on the financial activities of FVCs in the participating Member States. Given the close links between the securitisation activities of FVCs and monetary financial institutions (MFIs), consistent, complementary and integrated reporting of MFIs and FVCs is required. The reporting approach of FVCs and MFIs aims at minimising the reporting burden for reporting agents and avoiding overlaps in the reporting of statistical information by FVCs and MFIs.

FVCs shall inform the relevant NCB of their existence within one week from the date on which they have taken up business and shall provide the relevant NCB with data on end-of-quarter outstanding amounts, financial transactions and write-offs/write-downs of their assets and liabilities on a quarterly basis. NCBs may exempt certain FVCs from their reporting obligations provided that their contribution to the quarterly aggregated assets/liabilities accounts for less than 5% of the total of FVCs' assets in each participating Member State or the relevant information can be obtained from other statistical data sources. FVCs may also be to exempted from reporting obligations that would cause unreasonably high costs compared to their statistical benefit.

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6. For the purposes of this Regulation, a financial vehicle corporation (FVC) is a company whose main activity is to engage in securitisation transactions. It is insulated from the risk of bankruptcy or any other default of the originator/transferor of the assets (normally, the issuer). FVCs issue securities, securitisation fund units, other debt instruments and/or financial derivatives, or they have assets underlying the issue of securities that are offered for sale to the public. MFIs and investment funds are excluded from the definition of FVCs. **7.** Securitisation is a transaction or scheme whereby an asset or pool of assets is transferred to an entity that is separate from the originator or whereby the credit risk of an asset or pool of assets, or part thereof, is transferred to the investors in the securities, securitisation fund units, other debt instruments or financial derivatives issued by an entity that is separate from the originator.

NCBs shall compile and report separate aggregated statistical information on assets and liabilities of FVCs distinguishing the following categories: (i) FVCs engaged in traditional securitisation;[8] (ii) FVCs engaged in synthetic securitisation;[9] and (iii) other FVCs.

NCBs shall collect data on loans purchased by FVCs that originated from and are serviced by euro area MFIs and broken down by maturity, sector and residency of debtors, distinguishing whether the originators of the securitised loans are MFIs resident in the same country as the FVC or whether they are resident in another euro area Member State.

Subsequently NCBs shall report quarterly to the ECB the data on outstanding amounts, financial transactions and write-offs/write-downs of FVCs' assets and liabilities.

NCBs shall apply certain quality standards to the information received on FVCs' assets and liabilities. The information may be drawn from a centralised database or other sources of statistics. If NCBs derive data on assets and liabilities of FVCs from supervisory data sources, the NCBs shall ensure that these sources are sufficiently aligned with the statistical concepts and definitions under the FVC reporting requirements. If data are obtained directly from FVCs, the quality of the data shall be checked by the NCBs on the basis of the information that is available from the annual financial statements. If the cross-checks show that high data quality standards are not met, NCBs shall take the necessary measures, including the possible direct collection of data.

Lastly, NCBs shall compile a list of FVCs for statistical purposes and report updates to this list to the ECB either when there are changes in the FVC sector, i.e. an institution joins the FVC sector or an FVC leaves the FVC sector, or when there is a change in an FVC's attributes.

The Regulation came into force on 9 February 2009 and the first reporting in accordance with the statistical reporting requirements shall begin with quarterly data from December 2009. The Guideline came into force on 18 March 2009.

European Central Bank: balance sheet of the monetary financial institutions sector

Regulation (EC) No 25/2009 of the European Central Bank (ECB/2008/32) of 19 December 2008 (OJEU of 20 January 2009) concerning the balance sheet of the IMF sector[10] repealed Regulation 2423/2001 of 22 November 2001, consolidating in a single text both earlier amendments and new changes for the sake of greater clarity and transparency.

New features include the statistical reporting requirements for loan securitisations and other loan transfers of MFIs, in terms of both flows and stocks. This requirement complements Regulation (EC) No 24/2009 of the European Central Bank of 19 December 2008 concerning statistics on the assets and liabilities of financial vehicle corporations engaged in securitisation transactions (ECB/2008/30), discussed in the previous section.

Exemptions from statistical reporting requirements may still be granted to small MFIs, provided that their combined contribution to the national MFI balance sheet in terms of stocks does not exceed 5 %;provided that their combined contribution to the balance sheet of. The exemp-

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8. Traditional securitisation is that in which the transfer of risk is achieved by the economic transfer of the assets being securitised to the FVC. This is accomplished by the transfer of ownership of the securitised assets from the originator or through sub-participation. **9.** Synthetic securitisation is that in which the transfer of risk is achieved by the use of credit derivatives, guarantees or any similar mechanism. **10.** The ESCB requires, for the fulfilment of its tasks, the production of the consolidated balance sheet of the MFI sector. The principal purpose thereof is to provide the ECB with a comprehensive statistical picture of monetary developments in the participating Member States, which are viewed as one economic territory.

tions available to money market funds (MMFs)[11] and electronic money institutions are updated, and certain conditions have to be met. Also, certain exemptions are established in regard to the statistical reporting of loans transferred by means of a securitisation.

Lastly, the special procedures applicable to merger, division and reorganisation of MFIs remain unchanged in order to preserve compliance with the statistical reporting requirements stipulated by law.

The Regulation came into force on 9 February 2009 and shall be applicable from 1 July 2010. First reporting according to this Regulation shall begin with data for June 2010, except for specific exceptions.

European Central Bank: accounting and financial reporting in the ESCB

Guideline ECB/2008/21 of 11 December 2008 (OJEU of 5 February 2008) amended Guideline ECB/2006/16 of 10 November 2006[12] on the legal framework for accounting and financial reporting in the ESCB, in order to reclassify certain securities transactions to conform to recent EU legislation and to market developments.

Accordingly, certain securities are reclassified to other balance sheet items depending on the origin of the issuer, the currency denomination and on whether the securities are held-to-maturity.[13] Moreover, all financial instruments that are part of an earmarked portfolio[14] should be included under the item ‘Other financial assets’.

Specific rules are included on the accounting of forward interest rate swaps, foreign exchange futures and equity futures. They specify that forward interest rate swaps are to be accounted for in the same manner as ‘plain vanilla’ interest rate swaps, and that foreign exchange futures and equity futures are to be accounted for in the same manner as interest rate futures.

Lastly, the rules on equity instruments are updated in order to reflect the possibility to deal with marketable equities as part of the management of the ECB’s foreign reserves.

The Guideline came into force on 31 December 2008.

Amendment of the EU directive on deposit guarantee systems

Directive 2009/14/EC of the European Parliament and of the Council of 11 March 2009 (OJEU 13 March 2009) amended Directive 94/19/EC of the European Parliament and Council of 30 May 1994[15] on deposit-guarantee schemes as regards the coverage level and the payout delay. The minimum coverage of the aggregate deposits of each depositor is raised from €20,000 to €50,000,[16] in order to maintain depositor confidence and improve financial market stability. The Directive envisages that, by 31 December 2010, harmonised coverage will reach €100,000, unless the Commission, in an assessment which must be issued by 31 December

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11. MMFs are defined as those collective investment undertakings (CIUs) the shares/units of which are, in terms of liquidity, close substitutes for deposits and which primarily invest in money market instruments and/or in MMF shares/units and/or in other transferable debt instruments with a residual maturity of up to and including one year, and/or in bank deposits, and/or which pursue a rate of return that approaches the interest rates of money market instruments. **12.** See “Financial Regulation: 2006 Q4”, *Economic Bulletin*, January 2007, Banco de España, pp. 109-110. **13.** Held-to-maturity securities are securities with fixed or determinable payments and a fixed maturity, which the NCB intends to hold until maturity. **14.** The earmarked portfolio is a special investment held on the assets side of the balance sheet, consisting of securities, equity instruments, fixed-term deposits and current accounts, participating interests and/or investments in subsidiaries. It matches an identifiable item on the liabilities side of the balance sheet, irrespective of any legal or other constraints.’ **15.** See “Regulación financiera: segundo trimestre de 1994”, Boletín Económico, July-August 1994, Banco de España, pp. 97 and 98. **16.** Under Spanish law, Royal Decree 1642/2008 of 10 October increased the guaranteed amounts for depositors which had been set in Royal Decree 2606/1996 of 20 December 1996, raising them from €20,000 to €100,000 per depositor, whether an individual or a legal entity, and whatever the number and class of deposits of cash or of securities and financial instruments held by the depositor with the same institution.

2009, concludes that such an increase and such harmonisation are inappropriate and not financially viable for all Member States.

Also, the payout period delay is reduced. Thus, in cases where the payout is triggered by a determination of the competent authorities, the decision period of 21 days currently provided for is reduced to five working days. The competent authorities must, however, first be satisfied that a credit institution has failed to repay deposits which are due and payable. Similarly, the Directive shortens from three months (in certain cases extendable to nine months) to 20 working days the period for deposit guarantee schemes to make the guaranteed amounts available to depositors once the related legal decision or the aforementioned determination has been adopted. However, by 16 March 2011 at the latest, the Commission shall submit to the European Parliament and to the Council a report on the effectiveness and delays of the payout procedures assessing whether it would be practical to further reduce the delay of 20 working days to 10 working days.

Member States shall bring into force the Directive by 30 June 2009 at the latest, except for the laws, regulations and administrative provisions relating to the aforementioned reductions in delays, for which the transposition deadline is 31 December 2010.

Ministry of Economy and Finance: granting of guarantees

Royal Decree-Law 4/2009 of 29 March 2009 (BOE of 29 March 2009) authorises the central government to guarantee in 2009, for up to €9 billion, the obligations derived from the funding that may be granted by the Banco de España to Caja de Ahorros de Castilla-La Mancha.

In the event of guarantee enforcement, the Savings Bank Deposit Guarantee Fund shall pay to the Treasury the amount that results from multiplying the amount payable by the Treasury to the Banco de España by the ratio of the deposits guaranteed by the Fund to the claims on the institution.

In addition, the Resolution of 28 March 2009 of the Banco de España (BOE of 29 March 2009) made public the Resolution of the Executive Commission in relation to the Caja de Ahorros de Castilla-La Mancha, whereby the Board of Directors of the institution is provisionally replaced until such time as the Banco de España considers that the situation leading to replacement has been remedied.

State debt: terms of issuance for 2009 and January 2010

Law 2/2008 of 23 December 2008[17] on the State Budget for 2009 authorised the government to increase State debt in 2009, with the limitation that the outstanding balance thereof at 2008 year-end should not exceed the related balance as at 1 January 2009 by more than €50,247 million.

As usual at this time of year, Order EHA/3877/2008 of 29 December 2008 (BOE of 7 January 2009), providing for the creation of State debt during 2009 and January 2010, and two Resolutions of 21 January 2009 of the Directorate-General of the Treasury and Financial Policy (BOE of 29 and 31 January 2009), providing for specific issues of Treasury bills and of medium- and long-term government bonds and announcing the schedule of tenders for 2009 and for January 2010, have been published.

Broadly, the issuance instruments and techniques of previous years have been maintained. As in prior years, the Ministry of Economy may provide for the creation of debt through issues of securities or credit operations, in euro or in other currencies.

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17. See "Financial regulation: 2008 Q4", *Economic Bulletin*, January 2009, Banco de España, pp.138-139.

The most notable new developments were, first, that provision was made to exclude, for the purpose of calculating weighted average price and interest rate, any competitive bids for Treasury bills and medium- and long-term government bonds not considered to be representative of the market situation. Second, the maximum nominal value of the non-competitive bids which may be submitted by the various qualified investors[18] or any public-sector entity or government-owned company determined by the Treasury is raised from €100 million to €300 million. By contrast, neither the minimum competitive or non-competitive bid of €1,000 nor the upper limit of €1 million generally applicable for the sum of non-competitive bids by a single bidder have changed. Nor has there been any change in the requirement that all bids must be multiples of €1,000.

The arrangements for State debt issuance of previous years have been retained, namely through tenders (competitive[19] and non-competitive[20] bids), and any technique whatsoever which is considered suitable for the type of transaction in question. In particular, a portion or the full amount of an issue could be transferred at an agreed price to one or several financial institutions which can underwrite its placement. Similarly, outright sales or the sale under repos of newly issued securities or expanded existing issues that the Treasury might have in its securities account may be performed.

As in previous years, public debt will be in the form of Treasury bills and medium- and long-term debt, in all cases exclusively in book-entry form.

TREASURY BILLS

The changes from the previous year include most notably, first, the increase in the range of maturities and in the number of issues of Treasury bills to meet investor demand for shorter-term financial instruments. Thus, from February 2009 three-, six- and twelve-month Treasury bills will be auctioned regularly every month. Second, the date of allotment of tenders is brought forward from Wednesday to Tuesday, thereby increasing by one day the periods allowed for payment and for conducting the second round of tenders.

Tenders will, save exceptions, take place on the second Tuesday of each month for three- and six-month Treasury bills and on the following Tuesday for twelve-month bills. As regards other features, the procedure and allotment of tenders will be the same as in 2008, including the submission of bids in terms of the interest rate quoted on secondary markets, so as to make bidding easier for subscribers.

In competitive bids, the desired interest rate is indicated, and those that are accepted are allotted, in each case, at the price equivalent to the requested interest rate or to the weighted average, as applicable depending on the result of the tender.

Finally, as usual tenders will be followed by a second round reserved for those financial institutions that have acquired market-maker status in respect of Treasury bills. The second round will be conducted in accordance with the regulations governing market makers.

MEDIUM- AND LONG-TERM GOVERNMENT BONDS

The main new development is the provision for issues in which either principal or interest (or both) can be tied to an index, thereby adding to the types of debt. The issuance criteria and procedures are basically the same as those in force in 2008 and, as in the case of Treasury

18. The Wage Guarantee Fund, the Commercial Bank Deposit Guarantee Fund, the Savings Bank Deposit Guarantee Fund, the Credit Cooperative Deposit Guarantee Fund, the Social Security Reserve Fund and the Investment Guarantee Fund are not, therefore, subject to the general limit. **19.** Defined as those indicating the price, expressed as a percentage of the nominal value, that the bidder is willing to pay for the debt, or the percentage interest rate desired by the bidder. **20.** Those indicating neither price nor interest rate.

bills, the Resolution includes an annual schedule of tenders setting the tender dates and the bond maturities on the basis of the market conditions and of the response to issues during the year. The initial maturity of the two types of debt will be three and five years for medium-term bonds, and ten, fifteen and thirty years for long-term bonds, fifteen-year bond issuance being resumed this year. Also, it will still be possible to offer issues that are extensions of other previous issues, in order to ensure their liquidity on the secondary markets and to meet investor demand.

Tenders will, save exceptions, take place on the first Thursday for medium-term bonds and on the third Thursday for long-term bonds. The procedure and allotment of tenders will be the same as in 2008.

Amendment of regulations governing the solvency of investment firms and of their consolidable groups

CCNMV 12/2008 of 30 December 2008 (BOE of 4 February 2008) (hereafter "the Circular") on the solvency of investment firms (IFs)[21] and their consolidable groups, which adapts the solvency regime of these institutions to that in place in the European Union[22]. Also, the previous regulatory framework, set forth in CCNMV 6/1992 of 30 December 1992[23] on capital requirements of securities dealers and brokers and their consolidated groups is repealed.

Table 1 compares, in summary form, the main features of the Circular with their treatment in CCNMV 6/1992.

The Circular opts for similar rules regulating the solvency of credit institutions[24] and IFs, save certain exceptions attributable to the specific characteristics of these institutions, so as to avert regulatory arbitrage and make it easier for the various types of institutions to form part of the consolidable groups subject to supervision.

SCOPE OF APPLICATION AND GENERAL CAPITAL REQUIREMENTS

The Circular applies to IFs and their consolidable groups, although not to financial advice firms which, in regard to own funds, are subject to Royal Decree 217/2008 of 15 February 2008[25] on the legal regime of IFs and of other investment services entities.

The Circular defines the concept of own funds and of individual and consolidated capital requirements, the limits on their calculation, the deductions from them and the various categories of own funds. Specifically, original own funds (tier 1 capital) basically consist of share capital, reserves and income for the current financial year; additional own funds (tier 2 capital) consist basically of revaluation reserves, provisions covering the institution's overall risks, subordinated debt (of original maturity of not less than five years) and subordinated debt of undefined maturity; and tier 3 capital consists basically of short-term subordinated debt (of original maturity of not less than two years).

In regard to general capital requirements, IFs shall hold at all times own funds equal to or greater than the larger of the following four items: 1) the sum of capital requirements for trading

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21. Investment firms comprise securities dealers and brokers, portfolio management companies and financial advice firms. They are regulated by Securities Market Law 24/1988 of 28 July 1988 amended by Law 47/2007 of 19 December 2007 and by Royal Decree 217/2008 of 15 February 2008 on the legal regime of IFs and of other investment services entities, partially amending the implementing regulations of CIIs Law 35/2003 of 4 November 2003 enacted by Royal Decree 1309/2005 of 4 November 2005. **22.** This Circular completes the transposition of Community directives 2006/49/EC of the European Parliament and of the Council of the EU of 14 June 2006 on the capital adequacy of investment firms and credit institutions (recast) and 2006/48/EC of the European Parliament and of the Council of 14 June 2006 on the taking up and pursuit of the business of credit institutions (recast), establishing a common framework, with limited exceptions, for investment firms and credit institutions. **23.** See «Regulación financiera: cuarto trimestre de 1992», Boletín Económico, January 1993, Banco de España, pp. 65-71. **24.** See CBE 3/2008 of 22 May 2008 of the Banco de España, to credit institutions, on the determination and control of minimum own funds. **25.** See "Financial regulation: 2008 Q1", *Economic Bulletin*, April 2008, Banco de España, pp.163-167.

SOLVENCY OF INVESTMENT FIRMS AND THEIR CONSOLIDABLE GROUPS

TABLE 1

CNMV Circular 6/1992 of 30 December 1992	CNMV Circular 12/2008 of 30 December 2008
Scope of application	
Securities dealers and brokers and their consolidable groups.	Investment firms (IFs) and their consolidable groups and subgroups. IFs are understood to include only securities brokers and dealers and portfolio management companies. They do not include financial advice firms.
Capital components	
Tier 1 capital	Tier 1 capital
Primarily capital, reserves and profit for the year.	No significant changes.
Tier 2 capital	Tier 2 capital
Primarily regularisation reserves, provisions for general risks, subordinated debt (with a minimum original term to maturity of five years) and subordinated debt with undefined maturity.	No significant changes.
Tier 3 capital	Tier 3 capital
Short-term subordinated debt (with a minimum original term to maturity of two years).	No significant changes.
General minimum capital requirements	
Own funds may not, at any time, be lower than the highest of the following: a) two thirds of the minimum share capital; b) the sum of the amounts resulting from application of the rules on covering trading portfolio, credit, exchange rate and gold position risks and, where appropriate, additional charges for risk concentration; and c) the amount resulting from application of the rules on covering capital requirements due to level of activity.	Own funds will at all times be equal to or exceed the largest of the following four items: 1) the sum of capital requirements to cover trading portfolio, credit, exchange rate, commodities and operational risks, and 8% of all the credit risk-weighted positions, with the exception of certain activities; 2) one quarter of annual overheads; 3) two thirds of the minimum capital required to form the type of invesment firm in question; and 4) 5‰ of the volume of the portfolios managed. Exceptions are established for certain IFs on the basis of size and activity.
Solvency requirements	
Risks linked to the securities trading portfolio. For fixed-income securities, the capital requirements to cover general and specific risks will be calculated separately for each currency. In the case of equities, the net position in each type of stock will be calculated, and net long positions, on the one hand, and net short positions, on the other, in shares and investments and their derivatives will be added together, separately for each currency. Capital requirements are established for other risks linked to the securities portfolio.	Risks linked to the trading portfolio: the capital requirements will be the sum of the own funds necessary to cover position risks relating to debt instruments, including convertible instruments, equities and CII positions held, and those necessary to cover credit and counterparty risks linked to the trading portfolio. Trading portfolios below a certain amount are exempt from these requirements.
Credit risk: the minimum capital requirements will be 8% of the asset items, after deduction of possible provisions, weighted according to the nature and characteristics of the risk.	Credit risk: the minimum capital requirements may be calculated using the standardised approach (the capital requirements to cover credit risk are determined by applying the corresponding weightings to the different risk exposures) or, with prior authorisation from the CNMV, the internal ratings-based approach (IRB).
Not envisaged.	Techniques to reduce credit risk are established, by means of personal guarantees, collateral or similar instruments, as well as cover by means of various instruments, such as credit derivatives.
Counterparty credit risk.	No significant changes.
Not envisaged.	Securitisation credit risk
Capital requirements for exchange rate risk will be 8% of the following positions: the net global foreign currency position; the net global gold position; and the net global positions in each of the instrumental currencies.	No significant changes.
Not envisaged.	Commodities position risk: calculation of these positions will be based on positions recorded both on and off the trading portfolio.

SOURCES: BOE and Banco de España.

SOLVENCY OF INVESTMENT FIRMS AND THEIR CONSOLIDABLE GROUPS (cont'd) TABLE 1

CNMV Circular 6/1992 of 30 December 1992	CNMV Circular 12/2008 of 30 December 2008
Solvency requirements (cont'd)	
Not envisaged.	Operational risk: to cover a series of contingencies that may result in losses for the investment firm. These contingencies are classified, and the methods of calculation of own funds to cover this risk are established.
Limits on large exposures: the value of all the exposures of an investment firm and its group to one individual or group shall not exceed 25% of their own funds. In certain cases this limit is reduced to 20%. Moreover, total large exposures shall not exceed 800% of own funds.	No significant changes.
Internal organisation, risk management and internal control	
Not envisaged.	Investment firms must have an organisational structure and internal control system suited to the nature, scale and complexity of the investment services they provide, with procedures that permit identification of the risks that the activities conducted involve or may involve for the IFs. They must also conduct internal capital adequacy assessments.
Disclosures	
Disclosures to the CNMV: various reports on capital requirements and large risk limits, on a monthly basis.	Disclosures to the CNMV: annual internal capital adequacy assessment reports, coinciding with presentation of the year-end solvency reports. Investment firms must also submit a series of accounting returns, as and when indicated in the regulations, on solvency, own funds and risk requirements.
Not envisaged.	Market disclosures: investment firms are obliged to issue an annual "solvency report", covering a wide variety of solvency-related aspects, ranging from their risk management policy and breakdown of own funds, including whether or not there is a shortfall in respect of the minimum capital requirements, to the capital required to cover the different market risks.

SOURCES: BOE and Banco de España.

book, credit, foreign exchange and commodity, and operational risk, and 8% of all credit risk-weighted positions except for trading book activities and non-liquid assets when deducted from own funds, for credit and dilution risk; one-quarter of overhead expenses for the current financial year; 3) two-thirds of the minimum capital required to set up the IF in question, and 4) 5‰ of the amount of the portfolios managed.

However, certain exceptions are set for small IFs and for those centred on certain business areas. Specifically, the CNMV might authorise lower capital requirements for portfolio management companies, securities dealers and brokers and specific IFs[26], as reflected in the provisions.

CAPITAL REQUIREMENTS FOR TRADING PORTFOLIO RISKS

The Circular details the general criteria relating to the trading portfolio, which are similar to the previous regime. The trading portfolio shall comprise all the positions in financial instruments and commodities that the entity maintains with the intention of trading[27] or for the purposes of hedging other items of the trading portfolio.

26. Those, inter alia, acting on their own account or that do not hold customers' cash or securities. **27.** "Trading intent" is deemed to exist when positions are maintained with a view to realising them in the short run or to benefiting from the real or expected short-term differences between the buy and sell prices, or from other changes in prices or interest rates.

The novel aspect here is that entities may, further to authorisation from the CNMV, use their own (in-house) models when calculating their capital requirements vis-à-vis position risk, foreign exchange risk and commodities positions, instead of the methods described in the Circular. Also, a series of requirements are specified in respect of the in-house models, including having a risk management system which is suited to the volume and complexity of the risks assumed, and which is valid and representative.

CAPITAL REQUIREMENTS FOR CREDIT RISK

To calculate credit requirements for credit risk, specialised credit institutions and their groups can use either the standardised approach, or, on prior authorisation from the CNMV, the internal-ratings based (IRB) approach, as provided by CBE 3/2008 of 22 May 2008 on determination and control of minimum own funds,[28] which is the main new development in this field with respect to the previous system.

Under the standardised approach,[29] the Circular specifies the weights applicable to the various risk exposures, except for those deducted from own funds. The risk weights will be applied on the basis of their position category[30] and of their credit quality. As with credit institutions, credit quality may be determined by reference to the credit assessments of external credit assessment institutions (ECAIs)[31] or to the credit assessments of export credit agencies (ECAs).[32] The risk weights of the various positions range from 0% to 150% depending on the level of credit quality.

Provision is made for credit risk mitigation techniques in the form of guarantees, collateral or similar instruments and for hedging by different types of instruments, such as credit derivatives. Their minimum eligibility requirements and the risk mitigation calculation methods are defined.

The capital requirements for counterparty credit risk[33] of derivative instruments, repurchase transactions, securities lending and certain financing transactions are addressed. Various methods for calculating this type of risk are established: mark-to-market method, original exposure method, standardised method (only for OTC derivatives instruments and in long settlement transactions) and internal models on prior approval from the CNMV.

As regards securitisation credit risk, a distinction is made between the risk exposure of the originator (or sponsor) and that of the investor in these instruments, as well as the most usual tranches of securitisations, insofar as they involve greater or lesser risk exposures, giving emphasis to the support to these products.[34] A distinction is also made between traditional and so-called synthetic securitisation, the latter being constructed through the use of recently de-

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28. For the purpose of application of the IRB approach as provided in Banco de España Circular 3/2008 of 22 May 2008 to credit institutions on determination and control of minimum own funds, the references to credit institutions or their groups shall be taken as references to investment firms or their groups, the references to the Banco de España shall be taken as to the CNMV, except those references to assumptions in respect of loss given default (LGDs) or exposure at default (EAD), which shall be those stated expressly in Banco de España Circular 3/2008. **29.** Under the standardised approach, capital requirements for credit risk are determined by applying the weights of the various risk exposures. **30.** A risk weight scale from 0% to 150 % is established. The latter weight is used for positions more than 90 days past-due or positions belonging to high-risk categories (such as, for example, investments in venture capital companies and in unquoted shares). **31.** External credit assessments may only be used to determine the risk weight of a position when the ECAI issuing them is recognised as eligible by the CNMV. For this purpose, ECAIs must provide assurance that their assessment methodology meets the requirements of objectivity, independence, ongoing review and transparency and that the resulting credit ratings meet the requirements of credibility and transparency. **32.** Credit assessments issued by export credit agencies (ECAs) may be used to determine the risk weight of a position vis-à-vis central government or central banks when they come from Compañía Española de Crédito a la Exportación or an agency recognised by the CNMV as meeting certain conditions. **33.** This is the risk that the counterparty to a transaction could default before the final settlement of the transaction's cash flows. **34.** Support to securitisation: any support which the originator or sponsor provides beyond its contractual obligations with a view to reducing potential or actual losses to investors.

veloped credit derivatives. In both cases, the cases in which there is effective transfer of risk are specified. The methods applicable to calculate the risk-weighted positions held in a securitisation shall be the standardised approach and the IRB approach, and credit risk mitigation techniques will be applicable to all the tranches resulting from the securitisation. The methods that can be used under the IRB approach include techniques subject to administrative authorisation from the CNMV.

CAPITAL REQUIREMENTS FOR FOREIGN EXCHANGE RISK

There are no major changes in the treatment of foreign exchange risk with respect to the previous circular. Entities shall calculate their capital requirements by the method described in the Circular, although they may replace it with internal models for all or some foreign exchange positions.

Entities must have appropriate policies and procedures and their board or similar body must set clearly defined limits on the foreign exchange risks assumed. In particular, they must have measurement and reporting systems commensurate with their activity to enable them to manage, control and monitor such risks.

CAPITAL REQUIREMENTS FOR COMMODITIES RISK

To calculate a commodities position, account shall be had of both positions in the trading book and those in the non-trading book. Also, positions in commodities or commodity derivatives, including precious metals but excluding gold,[35] shall be expressed in terms of the standard unit of measurement.

The Circular sets out the capital requirements for this risk and establishes a general calculation method, a maturity system (using a separate maturity ladder for each commodity), a simplified approach[36] and an extended maturity ladder approach, the latter subject to prior authorisation from the CNMV.

Finally the Circular addresses capital requirements for certain specific instruments, such as commodity futures, forward commitments to buy or sell individual commodities, commodity swaps and options, and warrants relating to commodities.

CAPITAL REQUIREMENTS FOR OPERATIONAL RISK

One of the main changes introduced by the Circular is the new capital requirement for operational risk designed to cover certain contingencies to which all entities are subject due to the activity in which they engage, for which a detailed classification of the different types of loss events under this type of risk is established. The Circular provides three methods for calculating capital requirements for operational risk: the basic indicator approach, the standardised approach based on business lines and the advanced approach. It also permits the use of combined approaches under exceptional circumstances and within a timetable agreed with the CNMV.

Also, IFs may take out insurance to cover operational risk events, subject to the conditions set out in the Circular, and make use of other mechanisms to transfer operational risk if they can demonstrate to the satisfaction of the CNMV that a noticeable risk mitigating effect is achieved through those mechanisms.

LIMITS ON LARGE EXPOSURES

The limits on concentration of positions are set similarly to under the previous regime, although the requirements for IFs have become more flexible because certain positions vis-à-vis clear-

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35. Positions in gold or gold derivatives shall be considered as being subject to foreign exchange risk. **36.** The capital requirement shall be calculated as the sum of 15% of the net position, long or short, multiplied by the spot price for the commodity, and 3% of the gross position, long plus short, multiplied by the spot price for the commodity.

ing and settlement systems no longer have to be taken into account. IFs must have suitable administrative and accounting procedures and internal control mechanisms to enable them to identify and record all large exposures, which must be reported to the CNMV quarterly along with the solvency returns.

Large exposures are subject to the following limits: a) IFs and their groups may not incur exposures totalling more than 25% of their own funds vis-à-vis a single person or group, or not more than 20% if the exposures are to persons with whom there is a relationship of control, and b) IFs and their groups may not incur large exposures the cumulative amount of which exceeds 800% of their own funds. Also, certain exceptions are defined to the limits on exposures with a weight of zero.

However, if exceptionally the exposures do exceed these limits, SCIs have to inform the CNMV and present a programme of measures to return to compliance.

NON-COMPLIANCE WITH SOLVENCY RULES

When an IF or its consolidated group does not reach the minimum level of own funds, the CNMV shall be immediately informed and a programme presented to it specifying the plans for returning to compliance with solvency requirements. If there is a shortfall of own funds in excess of 20% of the minimum requirements, the net profit or surplus must be taken in full to reserves. If the shortfall is equal to or less than 20%, the distribution of profits shall be subject to authorisation by the CNMV, which will set the minimum percentage to be taken to reserves, taking into account the plan presented for returning to compliance with solvency requirements. This minimum percentage may not be less than 50% of the net profit or surplus.

INTERNAL ORGANISATION, RISK MANAGEMENT AND INTERNAL CONTROL

Another major new feature of the Circular is that it sets general criteria for the internal organisation, control procedures and internal assessment procedures of IFs and other institutions providing these services. Thus the Circular sets organisational and internal control requirements appropriate for and proportionate to the nature, scale and complexity of the investment services provided. Also required are minimum procedures for enabling institutions to ascertain the risks to which they are or may be subject due to their activity.

Also, institutions should carry out an internal capital adequacy assessment procedure. This process should form part of a set of sound, exhaustive strategies and procedures enabling them to assess and continuously maintain the amounts, types and distribution of their internal capital and their own funds, which they consider to be well justified and suitable for their risk profile and operating environment.

REPORTING OBLIGATIONS

There are also new requirements for IFs' disclosures to the CNMV and the markets. IFs have to submit a yearly *internal capital adequacy assessment report*[37] at the time they submit their year-end solvency returns. Also, they have to send, with the periodicity stipulated in the Circular, certain accounting statements on the solvency, own funds and requirements for the various risk exposures. Regarding market disclosures, a document called the *solvency report* has to be made public by IFs yearly. This report shall include a wide range of solvency disclosures required of entities, including the risk management policy, the own funds breakdown, specifying whether there is a shortfall with respect to the minimum requirements, and the capital required to cover the various market risks, all for the purpose of improving transparency in the sector.

The Circular will come into force on 30 June 2009.

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37. The report shall include a summary of disclosures on strategies and procedures relating to internal organisation and to internal capital adequacy assessment.

Categories of collective investment institutions based on investment policy

Under the mandate emanating from Law 35/2003 of 4 November 2003[38] on CIIs, *CCNMV 1/2009 of 4 February 2003* (BOE of 18 February 2003) established the various CII categories based on investment policy. It reduced the number of existing investment policies and qualified the definitions of the remaining ones to adapt them to the current situation of the sector. Additionally, the Circular contains diverse provisions designed to provide investors with clear, concise information on CIIs' investment policies.

The Circular includes a number of criteria for deciding to which investment policy category each CII belongs and provides that, when a CII can be classified in two investment policy categories, it shall be deemed to belong to that entailing the higher risk. To the information furnished on investment policy shall be added that on the risk profile and, where appropriate, that on the nature of CIIs which invest mainly in other CIIs. If a CII does not have a category in the new classification, the CNMV will, ex officio, assign it to a new investment policy category.

The adaptation of CII prospectuses as a result of the new investment policy categories will take place as and when CII management companies or investment firms apply to update their prospectus for some other reason. This will not apply to funds with a money market investment strategy, which will have three months from the entry into force of the Circular to adapt their prospectuses to the new definition or, where appropriate, to change their investment policy. Nor will it apply to CIIs included in the international equity investment strategy that invest primarily in a specific geographical area or a specific economic sector, which will have nine months to adapt their CII category.

The new investment policies are as follows:

Money market: Absence of exposure to equity securities, foreign exchange risk and subordinated debt. Average maturity of the portfolio of less than six months.

Euro bond: Absence of exposure to equity securities and the CII has not been classified in the above investment policy category. Maximum 10% exposure to foreign exchange risk.

International bond: Absence of exposure to equity securities. The exposure to foreign exchange risk may be higher than 10%.

Euro mixed bond: Lower than 30% exposure to equity securities. The sum of investments in equity securities issued by entities located outside the euro area and the exposure to foreign exchange risk shall not exceed 30%.

International mixed bond: Lower than 30% exposure to equity securities. The sum of investments in equity securities issued by entities located outside the euro area and the exposure to foreign exchange risk may exceed 30%.

Euro mixed equity: Between 30% and 75% equity exposure. The sum of investments in equity securities issued by entities located outside the euro area and the exposure to foreign exchange risk shall not exceed 30%.

International mixed equity: Between 30% and 75% equity exposure. The sum of investments in equity securities issued by entities located outside the euro area and the exposure to foreign exchange risk may exceed 30%.

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38. See "Financial regulation: 2003 Q4", in Economic Bulletin, January 2004, Banco de España, pp. 84-87.

Euro equity: More than 75% equity exposure. At least 60% exposure to equity securities issued by entities located in the euro area. Maximum 30% exposure to foreign exchange risk.

International equity: More than 75% equity exposure and the CII has not been classified as euro equity.

Passive management CII: CIIs which replicate or reproduce an index, including quoted funds, and CIIs with a specific non-guaranteed return target.

Guaranteed fixed return: CIIs backed by the guarantee of a third party and which guarantee the investment plus a fixed return.

Guaranteed variable return: CIIs backed by the guarantee of a third party and which guarantee the recovery of the initial investment plus a possible amount fully or partly linked to the performance of equity instruments, foreign currency or other asset.

Partially guaranteed: CIIs with a specific held-to-maturity return target linked to the performance of equity instruments, foreign currency or other asset, for which there is a guarantee of a third party and which guarantee the recovery of a percentage -- less than 100% -- of the initial investment.

Absolute return: CIIs which are managed with the objective (not guaranteed) of achieving a certain periodic return/exposure.

Global: CIIs whose investment policy does not fit into any of the above investment policy categories.

The Circular came into force on 1 April 2009.

Secondary market governing companies: accounting rules

CNMV Circular 9/2008 of 10 December 2008 (BOE of 5 January 2009) relates to accounting rules, confidential and public returns and annual accounts of official secondary market governing companies (excluding the Banco de España), multilateral trading facilities (MTFs), the system operator, the central counterparties, the Sociedad de Bolsas, the companies controlling all the shares of the secondary market governing companies and multilateral trading facilities, and any other market clearing and settlement systems that may be established under the provisions of Securities Market Act 24/1988 of 28 July 1988,[39] amended by Act 47/2007 of 19 December 2007.[40]

The Circular regulates the specific accounting rules, the formats for the confidential and public financial statements and the public annual accounts of the companies or entities that control or govern securities market infrastructures, whether related to trading or post-trading, with the exception of the public-debt book-entry market, to update and adapt them to the new accounting framework established in the new general chart of accounts approved by Royal Decree 1514/2007 of 16 November 2007,[41] the previous legal framework being repealed.[42]

The Circular establishes as the general accounting criteria those contained in the new general chart of accounts, setting out certain specific criteria for these market governing companies,

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39. See "Regulación financiera: 1988 Q3", Boletín Económico, October 1988, Banco de España, pp. 61-62. **40.** See "Financial regulation: 2007 Q4", Economic Bulletin, January 2008, Banco de España, pp. 182-189. **41.** See "Financial regulation: 2007 Q4", Economic Bulletin, January 2008, Banco de España, pp. 196-199. **42.** CNMV Circulars 1/1990 of 31 January 1990, 3/1990 of 23 May 1990, 2/1992 of 15 July 1992 and 4/1992 of 21 October 1992.

such as: a) the accounting treatment that must be applied for recognition and valuation of cash deposits, guarantees, pledges, collateral or insurance contracts received as surety and to guarantee positions; b) the accounting procedure for recognition and valuation of daily balances pending settlement relating to options transactions and changes in futures margins; c) the recording of transactions involving derivative instruments in which an operator acts as the central counterparty; d) the recording of fee income for certain services rendered.

The Circular includes the formats for the confidential individual and consolidated returns that must be submitted to the CNMV, stipulating the frequency and submission deadlines. It also details the rules on preparation and completion of the confidential returns, including clarifications on how the information must be presented deriving from application of the specific accounting rules.

These confidential returns include certain peculiarities of the operations of these market governing companies and certain requirements for disclosures to be made to the CNMV relating to its supervisory functions, such as an additional financial reporting statement and an activity report on the market or system managed by the companies. The Circular also includes the formats for the interim public financial statements that must be submitted to the CNMV, stipulating the frequency and submission deadlines and certain instructions relating to their preparation and completion.

In the case of the public annual accounts, the Circular includes the balance sheet and income statement formats, with the headings reflecting the financial information deriving from the specific operations of these market companies.

The confidential and public financial statements shall be presented via the CIFRADOC/CNMV system, approved by the CNMV board of directors on 15 September 2006, or by any other similar system that may be introduced in the future, in accordance with the technical requisites established by the CNMV at any time.

The regulations and the new financial statements shall apply, retrospectively, to all financial years commencing as from 1 January 2008.

Venture capital firms: accounting rules and returns

CNMV Circular 11/2008 of 30 December 2008 (BOE of 14 January 2009), on accounting rules, annual accounts and confidential reporting statements of venture capital firms (VCFs),[43] was issued to adapt their accounting system to the new general chart of accounts, the previous legal framework being repealed.[44]

The Circular first addresses the accounting definitions and principles, the general accounting and recognition criteria, and the classification and valuation of financial assets. Among these latter, three asset categories are particularly noteworthy, namely *available-for-sale financial assets, originated loans and receivables, and financial assets held for trading,* with the first such category considered to be the most appropriate assets for financial investment by VCFs.

Available-for-sale assets shall initially be valued at fair value;[45] any subsequent changes that may arise shall be recorded directly in net worth until such time as the financial asset is re-

43. Venture capital firms (VCFs) were regulated in Act 25/2005, of 24 November 2005, on venture capital firms and their management companies. This Act empowered the Minister for Economic Affairs and Finance and, with the latter's express authorisation, the CNMV, following a report by the Accounting and Audit Institute, to establish and modify the accounting rules and formats to be used by VCFs and their management companies for their annual accounts. **44.** CNMV Circular 5/2000 of 19 September 2000. **45.** Fair value is the amount for which an asset could be exchanged, or a liability settled, between knowledgeable, willing parties in an arm's length transaction. Fair value shall be determined without any deduction for transaction costs that may be incurred. Fair value shall not, in any circumstances, be the result of a forced transaction, involuntary liquidation or distress sale.

moved from the balance sheet or becomes impaired, at which point the amount thus recognised shall be included in the income statement.

Originated loans and receivables shall initially be valued at fair value, and subsequently at amortised cost, while financial assets held for trading (basically those included in the VCFs' freely available assets) shall be valued at fair value with any changes recorded in the income statement. Any derivative financial instruments held by the VCFs, with certain exceptions, shall be valued in the same way.

All investments by the VCFs in group, multigroup or associate companies shall initially be valued at cost, equivalent to the fair value of the consideration given, plus any directly attributable transaction costs. Subsequently these investments shall be valued at cost, less the amount of any valuation adjustments due to impairment.

Moreover, given the need to value the VCFs' total assets and to calculate their net asset value, off-balance-sheet accounts must be presented recording latent capital gains net of tax, which shall be determined by comparison between the cost of the investment and fair value.

Another noteworthy aspect of the Circular is that it specifies the methods to be used to determine fair value, particularly for unquoted equity instruments which will be the VCFs' most characteristic investments. The fair value of these instruments shall be calculated on the basis of arm's length transactions between willing parties. In the absence of any such transactions, the fair value of these investments shall be deemed to be the underlying book value, corrected for any tacit capital gains and losses.

The Circular also establishes general recognition and valuation criteria for property, plant and equipment, financial liabilities and equity instruments and for determination of results.

In addition, it includes the formats for the confidential and public returns that the VCFs must submit to the CNMV annually. These firms are also obliged to send, together with their audit report, a special-purpose audit report on the qualifications due to the limitations on scope resulting from the lack of sufficient evidence on the fair value of the investments.

The confidential and public financial statements shall be presented via the CIFRADOC/CNMV system.

The Circular came into force on 15 January 2009 but shall be applied, retrospectively, as from 1 January 2008. Any corrections that must be made shall be included in a reserve, save in the event that, in accordance with the criteria established, they should be included under any other heading. Thus, the first confidential and public financial statements using the formats and prepared in accordance with the criteria contained in the Circular shall be those corresponding to December 2008.

Securitisation funds: accounting rules and statements

CNMV Circular 2/2009 of 25 March 2009 (BOE of 31 March 2009) on accounting rules, annual accounts, public financial statements and confidential statistical returns of securitisation funds aims to make these funds more transparent for the market and achieve better monitoring of asset securitisation structures at the European level. It covers mortgage and asset securitisation funds.

The Circular regulates the information contained in securitisation funds' annual accounts, public financial statements and confidential statistical returns. It sets out the general accounting criteria applicable, in line with those laid down in the new general chart of accounts, along with

a series of specific rules addressing the singular legal and operating structure of these funds.

Confidential returns must be prepared quarterly. The Circular establishes the statistical reporting forms that fund managers must submit to the CNMV, in line with ECB initiatives for enhanced control and supervision of securitisation funds.

The key change in the annual accounts is the inclusion of the new statement of recognised income and expenses which, in light of the legal status of securitisation funds, replaces the traditional statement of changes in equity, to form a complete unit together with the balance sheet, income statement, statement of cash flows and notes to financial statements. The Circular also establishes the public financial reporting forms, the frequency and deadlines for electronic submission to the CNMV and the rules on preparation and completion of these statements, which include tables providing a detailed breakdown of the assets securitised and the liabilities issued by the funds, and information on credit enhancements.

Each securitisation fund will also have to prepare a management report containing a faithful account of its business development and position, together with a description of the main risks and uncertainties it faces and a forecast of cash inflows and outflows up to the maturity of its assets and liabilities, based on an update, as at the date of close of the annual accounts, of the hypotheses assumed in connection with doubtful and impaired assets and early redemption of the securitised assets.

Other noteworthy aspects include auxiliary accounting regulations and internal fund management control, establishing, inter alia, records of inflows and outflows for management control, appropriate risk appraisal (credit, interest rate, market, exchange rate, liquidity and concentration risk) and the criteria to be used to determine the fair value of financial instruments.

The Circular came into force on 31 March 2009 but shall be applicable retrospectively as from 1 January 2008, save in the case of the management report and certain aspects of the annual accounts, which shall be applicable in 2009.

Financial advice firms: development of certain aspects of their legal system

CNMV Circular 10/2008 of 30 December 2008 (BOE of 14 January 2009) on financial advice firms[46] has been enacted. These firms are understood to provide investment advice,[47] on a habitual and professional basis, exclusively on one or more transactions relating to financial instruments, as well as certain auxiliary services.[48] These firms may not be agents of other investment firms or credit institutions, nor may they hire agents to perform their functions.

The requisites and time periods for authorisation, registration and operation of financial advice firms,[49] the minimum financial requirements,[50] their corporate organisation, refusal and revocation of authorisation and their cross-border activity were all regulated in the Securities Market Act 24/1988, of 28 July 1988, and Royal Decree 217/2008, of 15 February 2008. The Circular

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46. For further background details, see Act 47/2007, of 19 December 2007, which amended the Securities Market Act 24/1988, of 28 July 1988, and Royal Decree 217/2008, of 15 February 2008, on the legal system of investment firms and other firms providing investment services. **47.** Not including general, non-individual recommendations made in the framework of the sale of securities or financial instruments. **48.** Namely advice to firms on capital structure, industrial strategy and related matters, along with advice and other services connected with corporate mergers and acquisitions, and preparation of investment reports and financial research or other general recommendations relating to transactions involving financial instruments. **49.** Both the authorisation and registration of these firms correspond to the CNMV. **50.** Financial advice firms that are legal entities must have: a) initial capital of €50,000; or b) professional civil liability insurance for at least €1 million for damages claims and €1.5 million per annum for all claims; or c) a combination of both. Individuals acting as financial advice firms must have the professional civil liability insurance envisaged in point b).

simply develops, inter alia, the organisational requisites applicable and the documentation that must be submitted to the CNMV for authorisation and registration as a financial advice firm, and clarifies a number of provisions applicable for some of the modifications subsequent to registration with the CNMV.

In this respect, financial advice firms must have: technical and human resources with the appropriate knowledge and experience to provide these services and protect their clients; a risk control and audit function, if and as appropriate in light of the nature, scale and complexity of their operations; internal control and communication procedures and bodies to identify and prevent money-laundering operations; and an internal code of conduct and a code of conduct for client protection.

The Circular came into force on 15 January 2009.

Pension fund management companies: statistical and accounting documentation

Order EHA/251/2009 of 6 February 2009 (BOE of 16 February 2009) approves the new system of statistical and accounting documentation for pension fund management companies, repealing the previous regulations[51] to adapt them to the new chart of accounts and to take into account the new regulatory aspects, market developments and demands relating to statistical and accounting data seen in Europe in recent years.

The balance sheet and income statement forms are modified and a new statement of changes in pension funds' equity is created, in line with the provisions of the new chart of accounts.

The data to be included in the statistical and accounting documentation modules to be submitted to the Statistical Office of the European Communities (Eurostat) are amplified, as required by Regulation (EC) No 295/2008 of the European Parliament and of the Council, of 11 March 2008, concerning structural business statistics. A common framework is thus established for the collection, compilation, transmission and evaluation of Community statistics on the structure, activity, competitiveness and performance of the pension fund sector at the national, Community and international level.

In addition, in accordance with the provisions of the Pension Fund and Pension Scheme Regulations,[52] the statistical and accounting data modules are adapted to collect, inter alia, information on sub-schemes in occupational pension schemes, sub-schemes within a single scheme that are assigned to different funds and other complementary social welfare schemes such as employee social insurance schemes and insured provision-for-retirement schemes.

Lastly, the Order includes statistical and accounting data on pension funds of other European Economic Area Member States operating in Spain. In this respect it establishes, on an annual basis, the data relating to occupational pension schemes subject to Spanish social and labour legislation that are assigned to pension schemes of other Member States.[53]

The Order came into force on 17 February 2009 and shall apply to the annual statistical and accounting data corresponding to the 2008 close, save for the quarterly data which shall first

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51. The Order repeals the Order of 12 March 1996 which approved the system of statistics and accounting data for pension fund management companies. **52.** Approved by Royal Decree 304/2004, of 20 February 2004, amended by Royal Decrees 439/2007, of 30 March 2007, and 1684/2007, of 14 December 2007. **53.** In accordance with the regulations on cross-border activity of occupational pension funds contained in the Revised Text of the Pension Fund and Pension Scheme Act approved by Royal Legislative Decree 1/2002, of 29 November 2002, which was introduced by Act 11/2006, of 16 May 2006, which adapted Spanish legislation to the System of Cross-Border Activity regulated in Directive 2003/41/EC of the European Parliament and of the Council, of 3 June 2003, on the activities and supervision of institutions for occupational retirement provision.

be required in 2009 Q3. The first year for completion of the annual data modules corresponding to Spanish occupational pension schemes that are part of pension funds of other Member States shall be 2009.

Urgent tax, financial and insolvency measures in the face of the economic situation

Royal Decree Law 3/2009 of 27 March 2009 (BOE of 31 March) has been enacted, addressing urgent tax, financial and insolvency measures in the face of the unfolding economic situation. The Law came into force on 1 April 2009. It includes, inter alia, the following financial, tax and insolvency aspects.

Both the legal interest rate of money and the default interest rate were reduced for the rest of 2009 from 5.5% to 4% and from 7% to 5%, respectively.

The Spanish Insurance Compensation Consortium has been authorised to engage in credit reinsurance and suretyship, given the difficulties in the international reinsurance market. Accordingly, it may accept as the reinsurer the risks assumed by those private insurance institutions authorised to operate in the credit insurance and suretyship branches that so request it and that subscribe and adhere to the related agreement with the Consortium.

In the event of the realisation of the guarantees granted under Royal Decree Law 7/2008 of 13 October 2008 addressing urgent economic and financial measures relating to the Concerted Action Plan of the Euro Area Countries, it is laid down that the State shall pay compensation to the holders of the securities guaranteed. The amount of such compensation shall be that resulting from applying the EONIA interest rate published by the Banco de España, or the rate that, where appropriate, the Ministry of Economy and Finance should determine, to the payment the realisation of the guarantee involves.

In connection with corporate income tax, the time limit governing the deductibility of specific investments in R+D+i, which was set until 2012, has been eliminated. The time horizon of the tax incentives for these activities has duly been extended.

Lastly, in relation to insolvency, provision is made for the refinancing of companies that may be beset by financial difficulties that do not make a situation of insolvency unavoidable. Moreover, procedural formalities are simplified, processing costs are reduced and the legal position of the workers of the companies facing insolvency proceedings who are affected by collective procedures is improved. This will be applicable for insolvency proceedings which, as of the date of entry into force of this Royal Decree Law, have not been filed.

3.4.2009.