

**Spain: Financial Sector Assessment Program—Detailed Assessment
of Implementation of the IOSCO Objectives and
Principles of Securities Regulation**

This Detailed Assessment of Implementation of the IOSCO Objectives and Principles of Securities Regulation for Spain was prepared by a staff team of the International Monetary Fund as background documentation for the Financial Sector Assessment Program with the member country. It is based on the information available at the time it was completed in May 2006. The views expressed in this document are those of the staff team and do not necessarily reflect the views of the government of Spain or the Executive Board of the IMF.

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FINANCIAL SECTOR ASSESSMENT PROGRAM
SPAIN

**DETAILED ASSESSMENT OF
IMPLEMENTATION OF THE IOSCO
OBJECTIVES AND PRINCIPLES OF SECURITIES
REGULATION**

MAY 2006

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GLOSSARY

AIAF	Financial Assets Intermediaries Association
AV(s)	Securities agency(ies)
BE	Bank of Spain
BME	Bolsas de Mercados Españoles
CA(s)	Autonomous Community(ies)
CADE	Central de Anotaciones de Deuda del Estado
CESR	Committee of European Securities Regulators
CI(s)	Credit institution(s)
CII(s)	Collective investment institution(s)
CIS	Collective investment scheme
CNMV	National Securities Market Commission
DGSFP	Directorate General of Insurance and Pension Funds
EEC	European Economic Community
ESI(s)	Investment service firm(s)
EU	European Union
FOGAIN	Investment Guarantee Fund
Iberclear	National central securities depository
ICAC	Institute of Accounting and Auditing
ISCs	Investment service companies
LAC	Audit Act
LIIC	Law of Collective Investment Institutions
LMV	<i>Ley del Mercado de Valores</i>
LRJAP-PAC	Law establishing the responsibilities and procedures for public administration
LSA(s)	Law regulating corporation(s)
ME	Ministry of Economy and Finance
MEFF	Market for Financial Futures and Options
MFAO	Market for Futures on Olive Oil
MIFID	Markets in Financial Instruments Directive
MMU	Market Monitoring Unit
MTS	Market for treasury securities
OPA	Takeover bid
PAEs	CNMV's procedures for granting authorization to ESIs and CISs
PGC	General accounting plan
RRI	<i>Reglamento de Régimen Interior</i>
SEPBLAC	Executive Service for the Prevention of Money Laundering
SENAF	Electronic platform for trading Spanish government bonds, treasury notes, and repo
SGIIC	Asset management company
SIBE	Spanish securities exchange interconnection system
SICAV	Open-ended investment company
SON	Organized trading system
SRO	Self-regulatory organization
SV(s)	Securities firm(s)
UVM	Market Surveillance Unit

I. IOSCO OBJECTIVES AND PRINCIPLES OF SECURITIES REGULATION¹

A. General

1. Spain has modernized the legal structure for financial services through several amendments to the main founding Law 24/1988 of July 28 on the Securities Market known as the *Ley del Mercado de Valores* or LMV. These are Law 37/1998 of November 16, 1998 on LMV Reform, Law 44/2002 of November 22, 2002 on Measures of Reform of the Financial System (*Ley 44/2002 de Medidas de Reforma del Sistema Financiero*), Law 26/2003 of July 17, 2003 modifying the LMV, Legislative Royal Decree 1564/1989 of December 22 on corporations (*Texto Refundido de la Ley de Sociedades Anónimas*), and Law 5/2005 of March 11, 2005 introducing changes for conforming with the EU directive. As amended by these laws, the LMV simplifies and consolidates the laws affecting financial markets and institutions and related products and professionals.
2. The Spanish regulatory framework can be described as a “one peak” model, where prudential and conduct of business rules of investment firms and asset managers are both overseen by the CNMV (National Securities Market Commission). The regulatory model articulated under the LMV and other relevant legal texts is clearly set out and simple, notwithstanding the legal specificities of the Spanish constitutional and legal framework.
3. The CNMV is the main regulator of all firms and individuals related to the securities market, notwithstanding the exclusive prudential oversight of the Bank of Spain (BE) over credit institutions (CIs) involved in securities dealing and the role of the Ministry of Economy in licensing. Although legal provisions require the Bank of Spain to inform the CNMV about CIs’ activity in securities dealing, in practice this only occurs through computerized data flows. The BE only consults with the CNMV when the CI intends to dedicate a significant part of its business to the provision of investment services.
4. While generally reflecting the features of sound financial market regulation, the Spanish regulatory framework could be further strengthened by integrating additional oversight and sanctioning capabilities and by reinforcing both the institutional and operational independence of the securities regulator.

¹ The author of this assessment is Mohamed Ben Salem (*Autorité des Marchés Financiers*, France), acting in his personal capacity as an expert under contract to the IMF and not as an employee of the *Autorité des Marchés Financiers* or as a representative of IOSCO. The assessment is intended generally to test the legal and regulatory framework and the effective application of this framework for securities regulation with regard to the standards set by IOSCO. It should be noted however that such assessments “(...) cannot be expected to provide assurance against a political or economic failure or the possibility that a sound regulatory framework can be circumvented.”

5. The president, vice president, and non-executive members of CNMV's Board are appointed for four-year terms, renewable once. To increase independence, appointments should be for a longer term than the present four years, and should be non-renewable. In addition, although no evidence was found of inappropriate political interference in the CNMV's decision-making process, it is recommended that the appointment of at least some non-executive members of the Board be made, drawing from varied constituencies, for example, academia or the private sector.

6. With regard to operational independence, it is noted that important regulatory powers in adopting new regulations in key operational areas of the securities field as well as the power to grant and withdraw licenses and to impose sanctions for very serious infractions of the securities regulation (*infracciones muy graves*) remain within the remit of the Ministry of Economy and Finance (ME). Although the current framework does not result in gaps in oversight or regulation, compliance with international standards would be greatly enhanced by vesting the CNMV with the power to design and adopt secondary legislation which would then be promulgated by the executive authorities; to grant and withdraw licenses of regulated entities; and to impose sanctions on administrative grounds for any infractions of the securities' laws and regulations.

7. This assessment focuses on the CNMV but takes into account the activities of other institutions insofar as they oversee investment service providers, markets, and clearing and settlement systems, and thus affect implementation of the *IOSCO Objectives and Principles of Securities Regulation* (Principles). The assessment also attempts to assess the efficiency of the arrangements by which such institutions interact and cooperate in the performance of their regulatory, supervisory, and enforcement functions. The discussion below and under Principles 1 and 2 describes the institutional components of the regulatory structure.

B. Information and Methodology Used for Assessment

8. Several tools were used in conducting this assessment: the Principles themselves, the *Methodology for Assessing Implementation of the IOSCO Objectives and Principles of Securities Regulation* (Assessment Methodology), the IMF Guidance Notes and Templates, and various IOSCO reports referenced in the Assessment Methodology and the Principles.

9. The assessment is based on meetings and discussions with the ME staff; senior CNMV staff responsible for each of the functional areas addressed by the Principles; staff of the Bank of Spain (with respect to their roles in the securities framework); BME Spanish Exchanges S.A (*Bolsas y Mercados Espanoles, Sociedad Holding de Mercados y Sistemas Financieros SA—Madrid*) (cash and derivatives markets); selected asset management and investment firms; and related professional associations. Selected material reviewed for the assessment included the above institutions' annual reports; laws, regulations, and published guidelines; statistics on operations; published information on issuers; official registries of licensed institutions; published information on regulatory actions; CNMV responses to the IOSCO questionnaires; and other material submitted by the CNMV during the course of the on-site portion of the assessment. The assessment also reflects the views of the mission team

expressed at mission meetings in which participants briefed each other on findings in their particular areas of emphasis.

10. The assessor wishes to express his warmest thanks to the staff of the CNMV and other institutions contacted in the course of this assessment for their support, resourcefulness, and flexibility, and appreciates in particular the high quality responses to the Assessment Methodology adopted by IOSCO.

C. Institutional and Macroprudential Setting, Market Structure

11. ***Bolsas y Mercados Españoles (BME) is the holding company that operates the securities markets.*** The BME's competencies encompass the markets for variable- and fixed-income securities, and derivatives, as well as the clearing and settlement systems. The BME group consists of the four stock exchanges (Madrid, Barcelona, Bilbao, and Valencia), *MF Mercados Financieros*, *Iberclear*, and *BME Consulting* (see figure below).

12. **By end-2004, BME had consolidated its position as an international financial center.** With a market capitalization of €672 billion at end-2004 (equivalent to 80 percent of Spain's GDP), BME became Europe's fourth largest stock market. In total share value traded, BME ranked seventh in the world (see table below). The Spanish stock market has yielded a return of 241 percent over the last ten years, the highest in the world.² ***Latibex is the BME-owned stock exchange for Latin American shares traded in euros.*** With total market value close to €150 billion, Latibex is the third largest stock exchange in Latin American shares, after Brazil and Mexico.

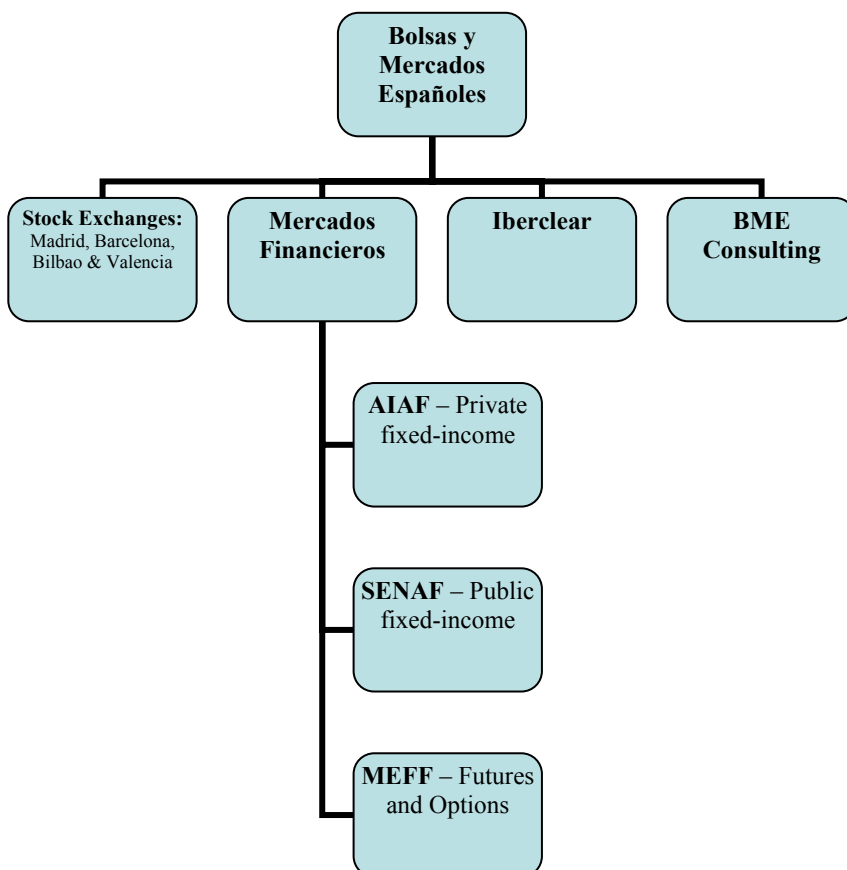
Top 7 Exchanges by Total Value of Share Trading, 2004
(In billions of US dollars)

Exchange	Total Value
1. NYSE	11,618
2. Nasdaq Stock Market	8,767
3. London Stock Exchange	5,169
4. Tokyo Stock Exchange	3,218
5. Euronext	2,472
6. Deutsche Boerse	1,541
7. BME Spanish Exchanges	1,203

Source: World Federation of Exchanges.

² Source: BME press release, September 13, 2005 (BME web site). Data are from Morgan Stanley Capital International.

Overview of BME Holdings



Source: BME.

D. Description of Regulatory Structure and Practices

13. **CNMV's Board and Executive Committee:** The CNMV is an autonomous public authority governed by a seven-member board (*Consejo*)³ chaired by a full-time president. A permanent Executive Committee (*Comité Ejecutivo*), comprising the president, vice president and the three full-time members of the Board, prepare the board agenda and exercise delegated powers.

³ The CNMV Board comprises seven members. Its president and vice president are appointed by the government, in consultation with the ME and experts in the securities field. Three other members are appointed by the ME, and two ex-officio members include the general director of the treasury and the deputy governor of the Bank of Spain. All of them are subject to conflict of interests' provisions and, with the exception of the two ex-officio members, are full-time members who may not engage in other professional activities.

14. **Consultative committee.** Besides the CNMV's board and executive committee, Article 22 of the LMV provides for the setting up of a consultative committee chaired by the vice-president of the CNMV as a nonvoting member. The organization of the committee (under Royal Decree 504/2003) provides for the appointment of 17 members who represent secondary markets, issuers, investors and the three relevant Autonomous Communities. In accordance with Article 23 of the LMV, the committee must be consulted on the drafts of CNMV circulars, on the imposition of sanctions for very serious infractions (i.e., not on light and serious infractions), on licensing, delicensing mergers, and takeovers of investment firms, and on the authorization and revocation of authorization of branches of investment companies of non-EU member states.

15. **Scope of competence.** The CNMV prudentially supervises investment service providers (*Empresas de Servicio de Inversion*, ESIs), regulates public offerings and takeover bids, oversees the financial information related to securities and supervises the marketing and distribution of financial instruments. The CNMV also has responsibility for custodians of securities and of assets of collective investment schemes, for clearing and settlement systems and related custodians, without prejudice to the functions of the Bank of Spain and its specific role with respect to payment systems.

16. **Sanctioning powers.** The CNMV has somewhat restricted sanctioning powers, that have to be exercised after the nonbinding advice of its Consultative Committee as provided for under Article 23 of the LMV. The CNMV can only sanction *light* or *serious* breaches of relevant laws and regulations (*infracciones leves o graves*). With regard to *very serious* infractions (*infracciones muy graves*), the CNMV prepares a report on the case and proposes a sanction for the ME to impose. Potentially criminal acts must be referred to the public prosecutor (*Consejo Fiscal del Estado*). The CNMV board must inform the Bank of Spain of any sanction that it intends to apply to a credit institution (Article 97 of the LMV).

17. **Licensing.** Licensing (and withdrawal of licenses) of investment service providers is the responsibility of the ME, upon the recommendation of the CNMV (Article 66 of the LMV). The ME also has the same licensing and delicensing powers over (a) insurance companies, upon the recommendation of the DGSFP, and (b) credit institutions, on the recommendation of the Bank of Spain.

18. **Coordination with the Bank of Spain.** Coordination of day-to-day operations between the Bank of Spain and the CNMV is organized through inter-staff contacts, information sharing, sharing of data bases and regular monthly meetings. The CNMV maintains a registry of credit institutions involved in providing investment services that is publicly available on its website. Information on credit institutions is updated daily by the Bank of Spain. The registry also includes the tariffs and the typical contractual documents as filed with the CNMV.

19. **Cross-membership arrangements.** Cross-membership of the supervisory authorities also fosters cooperation and aims at reinforcing information-sharing mechanisms among financial regulators. Thus, the vice president of the CNMV is an ex-officio member of the board of the Bank of Spain, and reciprocally, the deputy governor of the Bank of Spain is a

member of the CNMV Board. However, cross-membership on boards does not apply to the insurance supervisor. Regular meetings of the heads of the three financial sector supervisors could facilitate institutional links and add certainty to information-sharing mechanisms.

20. **Market operators and clearing and settlement systems** are monitored through protocols that are subject to review by the competent authority, and those protocols (and any powers or actions with respect to their infraction) are regarded as founded in contract law and not in public law. Power to impose penalties or fines, and to suspend or prohibit the participation of any participants in the markets is the responsibility of the CNMV and ME. Without prejudice to the disciplinary powers of the CNMV and ME, persons included within the scope of the BME regulations are also held liable for any infractions under the applicable employment or professional regime.

21. There are also protocols among the national regulators and markets within the BME, SA Holding group, and the related clearing and settlement institutions that apply to how those institutions are operated and supervised.

22. The law applicable to securities is largely contained in the main LMV as subsequently amended and further completed by a Royal Decree transposing both the Market Abuse and the Prospectus directives in order to bring the Spanish framework fully in line with the European directives.

23. Applicable law is also found in certain related legislation, such as company law, bankruptcy law, commercial law, property law, penal law, and administrative codes.

24. As a member of the European Community, Spain also recognizes credit institutions and investment firms, including market operations, that enter Spain from other European Economic Area jurisdictions in which they are authorized, either by exercising a right of establishment or a right to provide cross-border services.

E. General Preconditions for Effective Securities Regulation

25. Overall, Spain appears to meet the preconditions for an effective regulatory framework for capital markets and the provision of financial services. Such preconditions assume the existence of a legal framework that supports the integrity of contract and property rights, a legal structure that recognizes the instruments traded in the market and the rules that facilitate their trading, a commercial and insolvency regime that facilitates the taking of collateral, the use of clearing services, and the enforcement of guarantees, sound company law that protects direct investors, laws that support the ability to identify and protect client assets, reliable and consistent accounting standards, and the confidence of the marketplace that the rules will be consistently and equitably enforced and can be applied notwithstanding the bankruptcy of particular market participants. These assumptions are further premised on the assumption that the judicial, administrative, and regulatory authorities will reliably honor and equitably apply the rule of law. Certainty as to the application of the law and confidence in its equity are fundamental to the reliable functioning of markets and market confidence.

26. As regards market openness, market regulators in Spain have historically been open to cross-border arrangements within the European Union, including the Lamfalussy process. This process aims at better harmonizing national approaches to the regulation of financial services within the single European market, specifically by broadening use of the mechanisms for regulatory development and consultation with the Committee of European Securities Regulators (CESR).

27. Also, the design of the regulatory framework should be kept under review to determine if further efficiencies and streamlining are possible and whether essential cooperation continues to occur.

F. Principle-by-Principle Assessment

Table 1. Detailed Assessment of Observance of the IOSCO Objectives and Principles of Securities Regulation

Principles Relating to the Regulator	
Principle 1.	The responsibilities of the regulator should be clear and objectively stated.
Description	<p>The responsibilities, powers and authority of the <i>Comisión Nacional del Mercado de Valores (CNMV)</i> are defined under Chapter II of the Securities Market Law 24/1988 (<i>Ley del Mercado de Valores, LMV</i>) as modified by Law 37/1998 of November 16, 1998 and Law 44/2002 of November 22, 2002 on the reform of the financial system (<i>Medidas de reforma del sistema financiero</i>) and by Law 26/2003 of July 17, 2003 modifying the LMV and the law on limited companies (<i>sociedades anónimas</i>) to reinforce the transparency of listed companies. The LMV provides for the creation, functions, organization and operation of the CNMV under its Articles 13 to 24.</p> <p>The CNMV is a special administrative public entity (<i>ente de derecho público</i>) vested with a legal personality of its own and full legal capacity under both public and private law (Art. 14).</p> <p>The CNMV exercises supervision, inspection and to a considerable, but not complete, extent also licensing and sanctioning of both legal and natural persons related to the securities markets. The CNMV also oversees the transparency of the securities markets, the correct formation of prices and the protection of the investors, and has a consultative role <i>vis-à-vis</i> the government, the Ministry of Economy and Finance and <i>vis-à-vis</i> the equivalent institutions within the Spanish Autonomous Communities (<i>Comunidades Autónomas</i>) on all subjects related to the financial markets either at their request or on its own initiative (LMV, Article 13).</p> <p>For the adequate exercise of its competencies, the CNMV is vested with the power to issue rules (<i>Circulares</i>) whenever expressly allowed to do so for the implementation of the Royal decrees approved by the government (<i>Real Decretos</i>) and of executive orders issued by the Ministry of Economy and Finance (<i>Ordenes del Ministerio de Economía y Hacienda</i>) (LMV, Art. 15 § 1).</p> <p>Once adopted, CNMV rules become effective after their publication in the official bulletin of the state (<i>Boletín Oficial del Estado</i>) and in accordance with the rules of <i>vacatio legis</i> found under the civil code (LMV, Art. 15).</p> <p>The CNMV is also vested with the power to require the dissemination of as much information as it deems necessary to ensure an orderly functioning of the market and, more importantly, the CNMV is granted the power to define and apply sanctions on regulated persons or entities related to the securities market. CNMV's powers in this regard apply to minor and serious infractions (<i>infracciones leves y graves</i>). In the case of very serious infractions (<i>infracciones muy graves</i>) the CNMV prepares a report proposing an appropriate sanction and sends it to the ME, which usually</p>

<p>follows the proposal without significant changes.</p> <p>The CNMV is subject to the regime of responsibility and procedures of the public administration established by Law 30/1992 of November 26 [<i>Regimen Jurídico de las Administraciones Públicas y del Procedimiento Administrativo Común (LRJAP-PAC)—Title X</i>].</p> <p>With regard to the exercise of its powers, the CNMV acts within the framework of the law and subject to the limitations provided for under the general rule of law and under the criteria for interpretation set up under the Civil Code.</p> <p>The process of the decision-making of the CNMV is sufficiently transparent to avoid abuse.</p> <p>In any case, any interested person may appeal the decisions of the CNMV before the ME. Also, the exercise of its functions is subject to the regime of patrimonial responsibility set up under the LRJAP-PAC.</p> <p>Spanish law ensures that the distribution of the responsibilities in the financial system between the Bank of Spain (<i>Banco de España</i>), the Directorate General of Insurance (<i>Dirección General de Seguros</i>), the CNMV and the Institute of Accounting and Audit of Accounts (<i>Instituto de Contabilidad y Auditoría de Cuentas, ICAC</i>) does not leave gaps or inequities in overall financial regulation.</p> <p>Supervision of the enforcement of financial market regulations and of the securities law is assigned to the CNMV.</p> <p>Law 44/2002 allows the CNMV and other public supervisory boards to sign memoranda of understanding with each other to anticipate and resolve possible conflicts regarding their respective competencies and to design means of cooperation.</p> <p>Compliance with the capital requirements for entities engaged in securities dealing is supervised by each sectoral supervisor. Conduct of business rules of credit institutions related to the securities market is subject to the supervision of CNMV.</p> <p>Definition of the respective areas of competence of each authority is provided under the law and further precision is found under two main memoranda of understanding whose full texts have been made public (<i>Convenio de colaboración con el Banco de España en el ámbito de sus respectivas funciones, 9 de junio 2004, and Convenio de cooperación con la Dirección General de Seguros en el ámbito de sus respectivas funciones del 9 de septiembre 2004</i>).</p> <p>These memoranda essentially provide for principles of cooperative regulatory action whenever needed, such as the supervision of credit institutions (jointly by the Bank of Spain, as contemplated under Law 13/1994 of June 1, 1994 on the Autonomy of the Bank of Spain and by the CNMV whenever credit institutions are involved in securities markets, as contemplated under the LMV.</p> <p>Both the laws and memoranda aim at regulating the potential conflict between the two authorities regarding their competencies and especially address the conduct of business rules of credit institutions and the respective competence of each authority in the supervision of financial conglomerates. In accordance with the European legislation on financial conglomerates, the additional prudential supervision of them will be exercised by the regulator that maintains the registry of the “head” of the conglomerate (<i>entidad matriz</i>).</p> <p>Cooperation between the CNMV and the other financial sector supervisory authorities generally takes place without any significant limitations.</p> <p>While professional secrecy rules generally apply, the law contemplates exceptions to these general rules with a view to facilitating collaboration with other administrative or judicial authorities or other competent authorities, responsible for the fight against money laundering, other foreign supervisory authorities or the Ministry of Economy with a view to facilitating the exercising of its sanctioning powers (LMV Article 97).</p>
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Assessment	Fully Implemented
Comments	<p>Division of responsibilities. The responsibilities of the regulator are clearly stated in the law and clarified in bilateral memoranda of understanding. However, some overlapping of responsibilities needs to be worked out in practice. In particular, both the CNMV and the Bank of Spain have responsibilities for proposing to the ME the licensing of credit institutions that intend to provide investment services, and the Bank of Spain and DGSFP with regard to the supervision of pension funds.</p> <p>In addition, while cross-membership arrangements are in place between the CNMV and the Bank of Spain, no arrangements are in place for continuous exchange of information. To improve coordination further, it is recommended to have meetings among the heads of supervisory agencies.</p> <p>Clarity of roles. The CNMV has clear competence for the supervision of the conduct of business rules of <i>investment firms</i> and credit institutions engaged in securities dealings. However, licensing of credit institutions engaged in securities dealing is the sole responsibility of the ME.</p> <p>While credit institutions are generally big companies or groups that are subject to more demanding prudential criteria than investment firms, it is important that the securities market activities of banking groups be supervised by the CNMV from inception (i.e., including in the licensing phase). Cooperation between the Bank of Spain and the CNMV in the discharge of their respective functions could be further enhanced by including CNMV approval of the program of activity of credit institutions that intend to provide investment services in the stage of application for licensing.</p> <p>In making this recommendation, the assessor is fully aware that the IOSCO principles take no position on the desirable division of responsibilities among regulators in a particular legal framework, and that they only insist that this division be clearly set out, preferably in law, and that cooperation should be organized and reliable. Moreover, the recommendation is not intended to criticize the way the Bank of Spain is discharging its duties in making proposals to the ME on licensing credit institutions that intend to carry out activities in the securities markets.</p>
Principle 2	The regulator should be operationally independent and accountable in the exercise of its functions and powers.
Description	<p>Independence. The CNMV is a special status public entity (<i>ente de derecho público</i>), vested with its own legal personality and full public and private capacity which, on a day to day basis, operates with independence from political interference or from commercial or sectoral interest.</p> <p>The government and the ME exercise their own competencies as defined by the LMV with respect to the specific competencies and “<i>autonomy</i>” of the CNMV (Art. 13 and Art. 4 § 6).</p> <p>Designation of the members and composition of the CNMV Board (Art. 17). The CNMV Board is composed of seven members:</p> <ul style="list-style-type: none"> • The president and vice president are appointed by the government upon the proposal of the Minister of Economy, among persons of recognized competence in the securities field; • The Director General of the Treasury and Financial Policy (<i>Director General del Tesoro y Política Financiera</i>) and the deputy governor of the Bank of Spain are ex-officio members (<i>consejeros natos</i>) of the board; • Three members of the board, appointed by the Minister of Economy, among persons of recognized competence in the securities market area; • In addition, the law establishes that a member of the Commission staff is designated by the board in order to act as a Secretary without vote. <p>The president, vice president, and the three board members are appointed for 4-year terms renewable once. Conditions for their removal are clearly stated in law and include: expiration of the term of office, voluntary resignation of a member accepted by the government, separation decided by the</p>

<p>government in case of serious breach of obligations, permanent incapacity, incompatibility with other newly acquired function, or conviction for <i>intentional crime (delito doloso)</i>.</p> <p>Independence and impartiality of all CNMV personnel including the members of the Board are regulated by Law 12/1995 on the Incompatibilities of the Members of the Government of the Nation and of the High-Level Responsibilities of the General Administration of the State (<i>Ley 12/1995 de 11 de Mayo, de Incompatibilidades de los miembros del Gobierno de la Nación y de los Altos cargos de la Administración General del Estado</i>), the Internal Regulations (<i>Reglamento de régimen interno, RRI</i>) and the General Code of Conduct of the CNMV (<i>Código general de conducta para los miembros de la CNMV</i>).</p> <p>These rules are contained in public documents posted on the CNMV website. These are further complemented by executive order APU/516/2005, approving the Code of Good Governance of the Members of the Government and of the High-Level Responsibilities of the General Administration of the State providing general guidelines for complying with basic principles of ethics and good conduct (<i>Orden APU/516/2005 de 3 de marzo, por la que se dispone la publicación del acuerdo del Consejo de Ministros de 18 de febrero de 2005, por el que se aprueba el código de buen gobierno de los miembros del Gobierno y de los altos cargos de la administración general del Estado</i>).</p> <p>Chief among those provisions are:</p> <ul style="list-style-type: none">• norms relating to the incompatibility of functions for CNMV staff;• restrictions relating to the use of information;• restrictions on transactions in the securities markets. <p>Role of the autonomous communities. Regarding the sharing of responsibilities for securities market supervision between the CNMV and the <i>Comunidades Autónomas</i> in the constitutional framework, a 1997 ruling of the Spanish constitutional court resolved several appeals to the constitutionality of the various laws having to do with securities markets. Decision 1333/1997 delimited the powers of the autonomous communities and the CNMV.</p> <p>Financing. The CNMV is self-financed through taxes levied on the supervised organizations that are calculated to guarantee sufficient financing of CNMV operations. In accordance with LMV (Art. 24) the resources of the CNMV are derived from the return on its assets, and from taxes collected from regulated service providers. If this is insufficient, the Ministry of Finance would transfer resources in accordance with the annual budgetary law of the State (such transfers have not been needed for years and the CNMV has been self-financed).</p> <p>Profits may be utilized to cover losses from previous years, to create reserves or may be returned to the State budget.</p> <p>Legal Protection. CNMV personnel in the exercise of their functions enjoy legal protection, insofar as their actions are consistent with the law and the internal rules of the CNMV. Moreover, in accordance with the <i>Reglamento de Régimen Interior</i>, the CNMV guarantees free legal assistance to its personnel and will provide the funds required for guarantees that could be demanded in connection with any legal procedure (<i>RRI, Art. 55§ 2: Responsabilidad y apoyo jurídico-institucional otorgado por la CNMV</i>).</p> <p>Responsibility. The CNMV represented by its president will appear at least once a year, and whenever otherwise required, before the parliament (<i>Congreso de los Diputados</i>) to provide information on its activities and on the situation of the financial markets.</p> <p>Further responsibilities of the CNMV for legal protection of its staff are provided in the LMV and under Law 30/1992 on the Legal Regime of the Public Administrations and on the Common Administrative Procedure and in Law 6/1997, on the Organization and Operation of the General Administration of the State.</p> <p>Economic and financial oversight of the CNMV is carried out by means of periodic audits, led by</p>

	<p>the General Intervention of the Administration of the State (<i>Intervención General de la Administración del Estado</i>) without prejudice to the functions of the Accounting Tribunal (<i>Tribunal de Cuentas</i>)</p> <p>Decision making. The general rule of law provides that the resolutions of the CNMV shall be determined on the basis of the facts and grounded in the law.</p> <p>Guarantees and law. The norm contains numerous guarantees of protection.</p> <p>Any person employed by the CNMV has the following rights:</p> <ul style="list-style-type: none"> • to be notified that a procedure has been opened affecting him/her; • to obtain copies of the documents substantiating the procedure; • to identify the authorities and the personnel under whose responsibility the procedure is being developed; • to obtain a sealed copy of the documents that have been presented; • to provide documents in any phase of the procedure prior to the opening of a hearing. These documents must be considered by the CNMV when writing up the proposed resolution of the case; and • to access the archives and registries of the CNMV. <p>Appeal. Depending on the nature of the decisions of the CNMV, different forms of appeal could be introduced.</p> <ul style="list-style-type: none"> • A sanction imposed by the CNMV Board in case of a “light” or “severe” infraction (Arts. 100 and 101 of LMV) must be appealed before the Minister of Economy and Finance (<i>Recurso de alzada ante el Ministro: first degree of appeal</i>) and could further be subject to an appeal before the <i>Audiencia Nacional (recurso contencioso administrativo)</i>. • A sanction addressing very severe infractions are directly decided upon by the Minister of Economy and Finance after a proposal made by the CNMV (LMV, Art. 99) and are subject to a first appeal (voluntary, not mandatory) for reconsideration before the minister (<i>Recurso de reposición ante el Ministro</i>). If the minister reconfirms the sanction, any appeal shall be made before the <i>Audiencia Nacional</i>.
Assessment	Broadly implemented
Comments	<p>Although the division of responsibilities for regulation is clearly set out, the institutional and operational frameworks under Spanish law do not seem to fully support the degree of independence called for in the IOSCO principles.</p> <p>Institutional independence. Appointments to CNMV’s board should be for a longer term than the present four years, and should be non-renewable. Also, although no evidence was found of inappropriate political interference in the CNMV’s decision-making process, independence could be enhanced by providing that the appointment of at least some non-executive members of the Board be made, drawing from varied constituencies, for example, academia or the private sector..</p> <p>Operational independence. Some important operational areas remain outside the competence of the CNMV.</p> <ul style="list-style-type: none"> • Power to adopt secondary legislation. Following Article 15 of the LMV, the CNMV is only vested with limited secondary legislation powers to develop the norms supporting the Royal Decrees and Ministerial Orders whenever those provisions expressly enable it to do so. This does not appear to be fully consistent with the requirement set under IOSCO principles for adequate resources and capacity of the regulator to appropriately discharge its functions. In particular, it might result in lengthy processes and delays in defining and implementing new

	<p>regulatory measures.</p> <ul style="list-style-type: none"> • Licensing of credit institutions involved in securities dealing. The Bank of Spain retains full responsibility for proposing to the ME the licensing of credit institutions without prior consultation with the CNMV. Although the Bank of Spain is legally required to inform the CNMV of the application for a license of a credit institution that intends to provide investment services, this communication only happens in practice when a significant provision of investment services by the credit institutions is expected. It is recommended that the Bank of Spain routinely consult with the CNMV during the licensing phase for a credit institution that intends to engage in securities market activity. • Independent sanctioning powers. <ol style="list-style-type: none"> a) One area of concern is that the most important sanctions are decided by the ME, upon the proposal of sanctions made by the CNMV. This could impinge on the capacity of the CNMV to act as an independent regulator vested with full enforcement powers. b) A second area reviewed relates to the referring of sanctions to the consultative committee of the CNMV. While it is understood that this committee was set up to institutionalize a consultation process with the private sector, conflicts of interest may arise. The composition of the committee, which mainly comprises private sector representatives (5 representatives of secondary markets, one representative of Iberclear, 4 representatives of issuers, 3 representatives of the Autonomous Communities, 2 representatives of asset managers, 1 representative insurance companies, and 1 representative of minority shareholders) might result in biased recommendations, especially in the case of sanctions. It is nevertheless understood that the committee functions on a consensual basis, and that its role is limited to consultation.
Principle 3.	The regulator should have adequate powers, proper resources and the capacity to perform its functions and exercise its powers.
Description	<p>Powers of the CNMV. The CNMV is vested with supervision, inspection, and sanction powers on the regulated markets authorized in Spain and on all natural and legal persons.</p> <p>The CNMV can issue the regulations needed for the development and execution of the norms contained in Royal Decrees or Ministerial Orders, whenever these dispositions expressly empower it to do so.</p> <p>Financial resources of the CNMV. The taxes that the CNMV receives are calculated so as to cover the cost for the provision of the services in agreement with the Law of Taxes and Prices (Law 8/1989).</p> <p>In addition, the LMV establishes how taxes are to be used as well as rules on the use of any CNMV profits:</p> <ul style="list-style-type: none"> • Creation of sufficient reserves to ensure the availability of resources in accordance with anticipated operational expenses as well as the necessary reserves for financing the investments that the CNMV must carry out to fulfill its objectives. <p>According to Art. 24 of the LMV, the council of the CNMV can submit, together with its annual accounts for government approval, details of the distribution of any profits it may have made.</p> <p>The report should also explain the excess resources that must be returned by the CNMV.</p> <p>Human resources. The human resources of the CNMV are contracted under public law and through a general selective exam (<i>concurso</i>) in accordance with the principles of equality, merit and capacity. The exam is organized on an as-needed basis under the general law of public recruitment and includes an interview. This may have caused delays in some cases in hiring qualified personnel, as the public announcement procedures and limitations sometimes entail longer delays than in</p>

	<p>private recruitment.</p> <p>The exams, complemented by an interview, although complying with the fairness requirement for entry-level positions, may be inadequate for hiring professionals (e.g., actuaries, statisticians, lawyers, securities, or clearing and settlement specialists).</p> <p>Some flexibility applies to the recruitment procedures for managing directors of the CNMV, who are not subject to the public exams procedure.</p>
Assessment	Fully Implemented
Comments	<ul style="list-style-type: none"> • Limitation of powers. As commented under Principle 2, while adequately discharging its duties, the CNMV's powers suffer from shortcomings in the authorization of investment firms and credit institutions involved in securities dealings, in the adoption of secondary legislation, and in the limitation of its sanctioning powers to <i>infracciones leves y graves</i>, thus excluding from the remit of the commission the very serious infractions of the securities law (<i>Infracciones muy graves</i>). • Adequacy of resources. CNMV's own resources are adequate for the appropriate discharge of its functions. In 2004, the CNMV obtained €47.7 million in revenues and incurred €28.4 million in expenses; with a surplus amounting to €19.3 million. • Recruitment of staff. More flexibility is needed to hire specialized professionals in high demand by the private sector. The role of the interview in the recruitment process should be enhanced, and CNMV's competitiveness should be kept under review.
Principle 4. The regulator should adopt clear and consistent regulatory processes.	
Description	<p>Clarity and consistency of the regulatory processes of the CNMV are generally provided for under the legal organizational framework and the general rule of law. The main provisions regarding clarity and consistency of regulatory actions are found under the LMV and under Law 30/1992, on the Legal Regime of the Public Administrations and of Common Administrative Procedure 6/1997.</p> <p>Elaboration of norms. In the elaboration of norms, in imposing sanctions and on other issues, the CNMV seeks the advice of its consultative committee. In accordance with Art. 23 of the LMV, the consultative committee reports on matters brought before it by the board. Its report is mandatory with regard to CNMV circulars, to the imposition of penalties for very serious infractions (<i>Infracciones muy graves</i>), to the granting and withdrawal of licenses of Investment services providers or authorization of their corporate transactions.</p> <p>Under Article 23 of the LMV, the consultative committee comprises representatives of secondary markets, issuers, asset managers, investment services providers, investors and the autonomous communities with a securities market (i.e., Barcelona, Bilbao, Valencia). The committee meets at least once a month.</p> <p>Decisions. The general rule of law provides for the obligation to justify administrative decisions (<i>Spain is a signatory to the European convention on human rights, and the general law on administration LRJAP-PAC provides for fairness in proceedings</i>). In addition, for the CNMV's rules to be legally binding, the CNMV has to publish them in an official publication.</p> <p>The CNMV publishes its decisions and interpretations of its regulatory proceedings or its criteria for interpretation in its Annual Report, made public and submitted to the parliament. In addition, some criteria of interpretation are posted on the web site of the CNMV. Any changes in the criteria of interpretation are made public, together with the judgments of the ordinary courts, minister of finance and higher administrative court (<i>Audiencia Nacional</i>) when notified of an appeal against a CNMV decision.</p> <p>Publicity of the legislation and the regulation-making process. Any norm, law, or regulation</p>

(including CNMV circulars) must be published in the official paper (*Boletín Oficial del Estado*) and are subject to the civil code provisions on *vacatio legis* before they can become fully binding (LMV, Art. 15). The norms affecting the securities markets are also accessible through the webpage of the CNMV, which periodically prepares books on topics related to CNMV supervisory and regulatory activity (e.g., financial information, market abuse regulation).

With regard to the process of elaboration of CNMV norms, draft regulations must be submitted to the consultative committee.

With respect to transparency of the administrative proceedings, the LRJAP-PAC provides for the participation of the affected persons in the administrative procedures and stipulates, as a general rule, that the interested parties will be able, at any time of the proceeding to be heard and produce their allegations, and provide any documents pertinent to the decision.

The norm also provides for the intervention of affected persons and of the general public in the proceedings and public hearings (Art. 84 and 86 of LRJAP-PAC).

Impartiality of CNMV proceedings and decisions. In its relations with parties subject to oversight, the CNMV is bound by the LRJAP-PAC. This legislation ensures that the requirements of the Constitution are fulfilled with regard to the public administration's dealings with Spanish citizens, with specific reference to guaranteeing the principle that all decisions must be in accordance with the law and the hierarchy of norms. Rules and regulations must have been published. In addition, the retroactive application of provisions that impose penalties which would infringe on individual rights is prohibited. Legal safeguards, accountability, and the prohibition against arbitrary decisions being carried out by public authorities are in place.

According to Art. 42 of LRJAP-PAC, the government is obliged to issue decisions concerning any requests that may be submitted to it by interested parties. In addition, Art. 54 stipulates that decisions that limit subjective rights or legitimate interests must be accompanied by a brief reference to the facts and legal grounds on which they are based. Administrative actions must be expressed in writing unless they are of such a nature that another more suitable form of expression is required or permitted.

In cases where administrative bodies carry out their duties and responsibilities by means of oral communication, a written record of their actions must, when necessary, be prepared and signed by the head of the next lower unit in the administrative hierarchy or by the official receiving the oral instruction, indicating the authority that made such oral communication. In the case of decisions, the responsible official is required to approve a report that lists any oral communications made and summarizes their content.

Also, the fact that the provisions of the LRJAP-PAC apply only to situations where there are no other specific provisions in place means that the possibility of "administrative silence" exists with respect to CNMV procedures.

The parties concerned may file the corresponding administrative appeals (Title VII, Chapter II, of the LRJAP-PAC), without prejudice to the possibility to file a claim against the CNMV's equity pursuant to the LRJAP-PAC. In addition, the Courts of Appeal for administrative proceedings may hear any complaints with respect to the activities of government departments and agencies subject to administrative law, with respect to general provisions that have a lower level of authority than legislation (such as orders, regulations, and directives), and with respect to legislative decrees when they overstep the bounds of delegated authority.

Insofar as CNMV decisions concerning the granting, approval, or withdrawal of licenses are concerned, the administrative decision must cite the grounds on which it is based and must be communicated within three months after the application is received, or at the time all the required documentation has been assembled, and in any case not more than six months after the application is received. If no decision is made concerning an application within this time limit, the application may be assumed to have been denied, in which case formal certification of the denial of the application

	<p>may be requested pursuant to the LRJAP-PAC (Art. 44). Licenses may be denied only on certain specified grounds. In cases where an administrative proceeding is conducted, the parties concerned may take part in accordance with the general rules discussed above.</p> <p>An exception to the rule of negative silence in the financial regulation refers to the licensing of CIs and their management companies. In those cases, the silence is positive.</p>
Assessment	Fully implemented
Comments	<p>With regard to administrative silence constituting implicit rejection of the demand presented, procedural fairness of the administrative law applying to the decisions taken by the CNMV have been questioned. Although traditionally preserving the administration from liability for not taking action (as common in many other legal systems), the Spanish administrative framework has been modernized to include stronger protection of individual rights. In the case where an implicit decision of refusal is taken by the CNMV through administrative silence, the main effect would be to open up the possibility for an appeal, thus preserving individual rights. It should be noted that in recent years, no such implicit refusal decisions have been made and only one such decision can be recalled in the history of the commission. Therefore no indication of this situation being a problem could be substantiated.</p>
Principle 5.	The staff of the regulator should observe the highest professional standards including appropriate standards of confidentiality.
Description	<p>The personnel of the CNMV is subject to a wide set of norms that aim to avoid or adequately treat conflict-of-interest situations, restrict transactions in securities, regulate the appropriate use of the data obtained in the exercise of activities and provide professional secrecy rules.</p> <p>Conflicts of interest. The personnel of the CNMV is subject to Law 53/1984 on incompatibilities applying to the Personnel of Public Administrations and to CNMV internal rules (<i>Reglamento de Régimen Interior- RRI</i>), establishing in addition, that the personnel of the CNMV will carry out their duties full time, and will not hold any other public or private employment.</p> <p>In addition, the RRI establishes a special regulation relating to incompatible activities of CNMV personnel (Art. 51). More precisely it determines that personnel who have taken decisions on issues related to companies, institutions, or individuals acting in the securities market will not be able, during the two years following such intervention, to accept employment with those companies.</p> <p>Securities transactions. The RRI of the CNMV determines the limitations which apply to personnel with respect to the acquisition, sale or availability of securities. The buying and/or selling of securities must be communicated to the Secretary General of the CNMV within the next eleven months from the corresponding transaction. The securities on which the restrictions apply are listed under section 1 of Art. 53a). Abrogation of this rule may be requested from the Secretary General of the CNMV.</p> <p>Use of information obtained in the course of a staff member's duties. CNMV staff is subject to the general limitations laid down in the LMV concerning the proper use of privileged information (Article 81). In addition, the CNMV's Code of Conduct establishes limitations on the use of such information (under rules 11 and 12). Improper use of confidential information by a CNMV staff member may constitute a crime under the Art. 442 of the Penal Code for senior officials or civil servants. According to this provision, any senior official or civil servant who makes use of privileged information of which they become aware by reason of their position with the aim of obtaining an economic benefit for themselves, or for a third party, will be subject to a fine of between 100 percent and 300 percent of the amount of the benefit sought, obtained, or provided, and may be barred from holding any government position or public employment for a period of two to four years. If the benefit sought is actually obtained, the penalties applied shall be in the upper half of each of these figures.</p>

Confidentiality of information. The duty to maintain confidentiality is laid down in the LMV, which provides that any confidential data and information that the CNMV or other competent authorities receive in the course of performing their duties or carrying out oversight or inspection functions pursuant to the LMV or other laws are subject to professional secrecy and may not be disclosed to any person or authority (LMV, Art. 90). This restriction is lifted from the moment that the parties concerned make public the facts in question.

In addition, any person who carries out, or has in the past carried out, an activity for the CNMV and has gained knowledge of confidential data or information is bound to maintain the confidentiality thereof. Failure to comply with this obligation is punishable by criminal and other penalties established by law. Such persons may not make statements or give testimony with respect to restricted data or documents, or publish, communicate them, even after they have ceased to work for the CNMV, without the express permission of the competent body of the CNMV. If such permission is not given, the person in question must continue to maintain the required confidentiality and is exempt from any liability. This duty to maintain confidentiality is also reflected in the CNMV's internal regulations (Article 52).

Impartiality in the performance of duties. In the performance of their duties, CNMV staff are required to comply with internal operating procedures in accordance with the CNMV's Internal Regulations under Art. 38 to 41 of the RRI. If they act in accordance with these procedures, they are afforded the protection set forth under Art. 55 of the RRI.

These provisions require that, if any staff member working for the CNMV believes that an order they have been given is at variance with the governing laws or regulations, they are required, before putting such order into effect, to report the situation to the superior from whom they received it. If the superior confirms the order or instruction in writing, the staff member is required to carry out the order, but is not liable for disciplinary action.

The CNMV guarantees to defend its senior officials and staff and to provide them with legal advice, free of charge, in connection with any liability that may arise by reason of their actions in the performance of their duties, and to provide the funds necessary to post any bonds or guarantees that may be required in connection with legal proceedings. The CNMV may deny this assistance when it acts as plaintiff in the same case.

Supervision of compliance with the code of conduct

Enforcement of the code of conduct. According to Art. 32.6 of the CNMV's internal regulations, the secretary general of the CNMV is responsible for enforcing the Code of Conduct and the Internal Regulations. In addition, there is an internal control unit within the CNMV which reports directly to the executive committee, with responsibility for the following:

- fulfillment, speed of processing, and appropriateness of procedures established for the supervision and inspection of businesses, institutions, and other entities participating in secondary securities markets;
- fulfillment, speed of processing, and appropriateness of procedures established for the supervision and inspection of securities exchange governing boards, market members, securities clearing and settlement services, and the Sociedad de Bolsas, the umbrella organization for Spain's stock exchanges;
- In general, monitoring the CNMV's internal procedures and ensuring that they are properly applied, and submitting to the executive committee any proposals, suggestions, and observations in this regard that it may think fit.

Sanctions. The CNMV's technical and supervisory personnel are subject to criminal penalties for any crimes they commit as civil servants in the performance of their duties within the CNMV, and are subject to disciplinary sanctions under the labor law for failure to abide by the terms and conditions of their employment contract, including failure to comply with the CNMV's Internal

	Regulations and Code of Conduct. Such disciplinary sanctions may include dismissal for any of the reasons set forth in the Employees' Statute, which governs staff members' employment with the CNMV (LMV Art. 31.4).
Assessment	Fully implemented
Comments	Observance of the highest professional standards including standards of confidentiality by the CNMV's staff is provided by several complementary layers of legislation and regulations and complies with best international practice.
Principles of Self-Regulation	
Principle 6.	The regulatory regime should make appropriate use of Self-Regulatory Organizations (SROs) that exercise some direct oversight responsibility for their respective areas of competence, and to the extent appropriate to the size and complexity of the markets.
Description	<p>The official secondary markets of Spain (stock exchanges, registered government securities market, futures and options market, and any other market authorized under the LMV), hereafter "market operators," together with Iberclear and other trading systems (Article 31.4. LMV) cannot be considered to function as SROs. These bodies, which are subject to CNMV supervision, have functions in their respective areas of activity, such as establishing terms of access, operating procedures, and supervisory procedures to assure their proper functioning.</p> <p>Incorporated management companies have been set up to run markets and trading systems. The governing boards of these management companies are in charge of the organization, supervision, and supply of information for the market or trading systems, and also for approve their operating rules.</p> <p>Conditions for membership. The governing boards may establish requirements for becoming a member of their respective markets which allow for participation of investment firms, asset management companies and credit institutions established in Spain or in another member state of the European Union.</p> <p>The applicant member must provide the CNMV with evidence of its capacity and indicate its commitment to abide by the rules governing the market's organization and functioning, including rules relating to the clearing and settlement of transactions carried out in the market. Its application is then submitted to the board of the market which must expressly approve the application of the entity and publish its decision. Members of official secondary markets must inform their respective boards of the transactions in which they participate.</p> <p>Establishment of contracting rules. The board of market operators is required to monitor and to enforce fair and transparent price formation processes, ensure the strict observance of the rules applicable to the exchange, and, in general, ensure that the market operates in an orderly manner. To this end, the market operators and Iberclear oversee the activities and behavior of their participants. In the course of performing these functions, they may take measures such as suspending trading in a security or investigating specific information concerning transactions.</p> <p>Market operators are obliged to comply with decisions taken by the board of a market in the exercise of their management functions. If such decisions relate to the framework for contracts or market operations, or to the establishment of requirements or criteria pursuant to the law or to the regulation, they must be published and communicated to the CNMV.</p> <p>The CNMV may suspend the application of such decisions or render them void when they are not in accordance with the securities law or regulation or if they are prejudicial to a fair and transparent price formation process or to investor protection. The board must also refer to the CNMV any proposal to de-list a particular financial instrument.</p> <p>The CNMV oversees the management boards of supervised market operation and clearing and settlement systems to ensure that they are properly applying existing legislation and the CNMV's</p>

	<p>decisions, and may require from them any amendment it deems necessary.</p> <p>Sanctions. The market operation and clearing and settlement systems do not have the power to establish disciplinary procedures, or to impose penalties or levy fines, or to suspend or to prohibit the participation of any individual in securities markets. The law assigns these powers to the CNMV, or to the Minister of Economy and Finance.</p>
Assessment	Not applicable
Comments	The Spanish exchanges and clearing and settlement systems control their operations through the adoption of rules that are subject to CNMV's review. Those rules (and any powers or actions with respect to their infraction) are regarded as founded in contract and not in public law which accounts for a <i>Not applicable</i> benchmarking under principles 6 and 7.
Principle 7.	SROs should be subject to the oversight of the regulator and should observe standards of fairness and confidentiality when exercising powers and delegated responsibilities.
Description	<p>Conditions for the authorization of market undertakings and Iberclear. The authorization process for market undertakings establishes demanding criteria. It examines the suitability of the project, the technical and human resources, the procedures for the monitoring of risks and other pertinent issues. The capacity of the applicant market operator is also checked, together with the suitability of its management to supervise market activities.</p> <p>Decision making. In the exercise of their functions of direction and administration, the decisions adopted by market operators and Iberclear must always be taken with respect to the applicable legislation. When such decisions involve any change to the established contractual rules or the operation of the market or the definition of requirements or criteria in fulfillment of a legal or prescribed provision, they must be published and communicated to the CNMV and, if applicable, to the corresponding Autonomous Community, within 24 hours after the decision is made.</p> <p>The CNMV may suspend the application of such decisions or nullify them if it believes that they are not in accordance with the securities law or regulation or that they are prejudicial to a fair and transparent price formation process or to the investors' protection.</p> <p>Duty to cooperate. The market operator must immediately inform the CNMV and if applicable, the corresponding Autonomous Community, of any instance involving infringements of mandatory rules or deviation from the main principles that regulate the securities markets.</p> <p>In addition, they must render to the CNMV, and if applicable, to the corresponding Autonomous Community, every assistance that could be requested from them in the exercise of their functions of supervision, inspection and sanction.</p> <p>Market operators can also propose to the CNMV the suspension of the negotiation of a financial instrument which does not comply with requirements on the provision of information or when other circumstances render this suspension advisable.</p> <p>The CNMV is able to obtain whatever information it deems necessary on the subject contemplated under the law from the natural or legal persons connected with the securities market, including market operators and Iberclear. With the purpose of obtaining these data or to confirm their veracity, the CNMV is able to undertake any inspection it considers necessary.</p> <p>Any natural or legal person connected with the securities market is required to make available to the CNMV any books, registries and documents, regardless of the form in which they are held, including computer software programs and magnetic, optical, and other storage media.</p> <p>Sanctioning competencies. Neither the market operators nor Iberclear have sanctioning powers of their own. They can only inform the CNMV of relevant facts with a view to the latter taking action and imposing sanctions.</p>

Management board. While the law provides for proportional representation of the shareholders on the management board of the market operations, the composition of the management board of Iberclear includes some peculiarities. For historical reasons, the Iberclear board includes four representatives of the Bank of Spain, one nonvoting representative of the CNMV, and does not observe the proportionality requirement.

Equality of treatment among members. A further condition for the authorization of a governing body or Iberclear is that there can be no discrimination or unequal treatment between members. In any case, access to membership in a governing body is regulated by law and is subject to equality of treatment principles.

Although the law provides the market operators and Iberclear with a certain scope of supervision over their members, all participants in the markets, together with the market operation itself, will be subject to the supervision, inspection and sanctions contemplated by the LMV, which prevents any member from having an advantage over another.

Rule-making capacity. Market operation and clearing and settlement systems do not have a capacity of their own to impose rules and regulations and need to have their rules approved by the CNMV before they become enforceable (Art 31. a) § 3). They may only defer to the CNMV for it to intervene to ensure compliance with rules and regulations. The boards of market operators are therefore only authorized to establish rules governing their day-to-day management functions.

Supervision. The following are subject to supervision, inspection, and sanctioning by the CNMV (LMV, Art. 84).

- Governing boards of secondary markets, to the exclusion of the Bank of Spain;
- The Securities Registration, Clearing, and Settlement Systems Management Corporation (i.e., Iberclear), the central counterparty agencies, the investment firms, and the companies that are the owners of all the shares of the bodies indicated in the previous subparagraph, as well as other market clearing and settlement systems created pursuant to the LMV;
- The Spanish Investment Services Providers, whether they have their offices within the national territory or not,
- The Investment services providers which are not part of the European economic area and which operate in Spain,
- The “pure” financial advisors (who do not receive funds from clients) and the tied agents of an investment services provider.
- Anyone else not covered above who is a member of any secondary market, or of an entity that clears and settles transactions.

Accordingly, the CNMV can conduct on-site inspections of the above entities, revoke their rules, and verify they are fulfilling, ex post, the requirements for their authorization.

The CNMV can obtain from the management of the market operator (and Iberclear) any information it deems necessary for their supervision. The CNMV can also act directly on the negotiation, the securities admitted to negotiation and the activity of the members of the markets.

Standards of conduct, and privileged information. Persons active in securities markets are subject to the standards of conduct laid down in the LMV (Title VII) which sets out the required standards of behavior in the securities market. These provisions also apply to the governing boards, which are required to abide by the general obligation to refrain from making any illegitimate use of privileged information to which they may have access (Art. 81).

Conflicts of interest. The LMV (*Title VII: Norms of Conduct*) and its subsequent implementing regulations, establish rules to prevent conflicts of interest that may arise in the securities market.

	These rules are binding on those participating in the markets and on the markets' governing boards.
Assessment	Not applicable
Comments	The Spanish exchanges, and clearing and settlement systems control their operations through the adoption of rules that are subject to review by the CNMV and those rules (and any powers or actions with respect to their infringement) are regarded as founded in contract and not in public law. This accounts for a not applicable rating under principles 6 and 7.
Principles for the Enforcement of Securities Regulation	
Principle 8.	The regulator should have comprehensive inspection, investigation and surveillance powers.
Description	<p>The LMV grants to the CNMV wide inspection powers as well as broad decision-making capacity with regard to how its actions are to be carried out. It also vests the CNMV with the power to obtain from any legal or natural person related to the markets any information it deems necessary to the appropriate discharge of its duty. To this end the CNMV can inspect any professional premises and speak to any person it considers appropriate.</p> <p>Arts. 84 and 85 of The LMV also provides the CNMV with the powers to obtain from any regulated entity any books, registries or documents; regardless of their material support, including computer software and archives stored magnetically, optically or in any other way.</p> <p>The legislation does not specifically mention the possibility for the CNMV to initiate inspections without prior notice, but does not on the other hand state the contrary, and the CNMV in practice inspects on an unannounced basis. With regard to the powers of the CNMV to access private premises, those have to be exercised through the approval of a judge.</p> <p>The CNMV has on many occasions inspected the premises of entities subject to its oversight without prior notice: this practice has not resulted in action of any kind being initiated against the CNMV by the inspected parties, and thus has never been invoked as a ground for invalidating a sanctioning proceeding initiated by the CNMV.</p> <p>The CNMV does not need to be granted any judicial authorization or to suspect a particular wrongdoing to initiate an inspection, and inspections are generally carried out on a routine basis.</p> <p>Supervision of the markets. Market operations (including both authorized exchanges and regulated trading systems) are supervised by the CNMV. The latter has access in real time to the screens of the continuous stock markets and tracks market activity, which is analyzed by seven analysts for equities, seven analysts for fixed income markets and derivatives, and three deputy directors. Multiple data tests are run to generate seven different sets of information—activity, concentration, relevant transactions, tendencies of the market, increases in price or volume, volatility and detection of possible irregularities or abnormal fluctuations in transactions.</p> <p>Recordkeeping requirements</p> <p><i>With regard to regulated markets.</i> Legislation further amplified by the secondary rules developed by the CNMV, the Bank of Spain, and the market operators regulate the information that the cash and derivatives markets must publish with regard to the transactions undertaken in the markets (see also description under Principles 25 to 29). Market operators have to maintain a registry of transactions including special register for special transactions. (Art. 43 of the LMV; Circular 3/1999 of September 22, 1999, issued by the CNMV concerning the transparency of securities market operations; the Ministerial Order of December 5, 1991, concerning special stock-exchange operations; and Circular 3/1991 of December 18, 1991.)</p> <p>Records must be maintained for a minimum of six years, corresponding to the general term contemplated by the Spanish commercial law for the maintenance of merchant documents.</p> <p><i>With regard to investment services providers.</i> Specific rules on the record-keeping of transactions</p>

	<p>have been developed by the CNMV (Circular 3/1993 of December 29, 1993, concerning records of transactions and files containing supporting documents). This circular details the content of the different files that the intermediaries must maintain. Three types of electronic files (computer records) are contemplated under this circular (on orders placed, orders executed, and detailed breakdowns). These records must be available to the CNMV at all times (Art. 9.3 of Royal Decree 629/1993 of May 23, 1993 concerning rules for securities market activities and required records, and Rule 7 of Circular 3/1993). They must be maintained for a period of six years (Rules 2.8 and 4.5 of Circular 3/1993.) and their format must enable follow-up to the whole chain of orders.</p> <p>Iberclear. Iberclear keeps the accounting records for securities represented by book entry (i.e., securities that are registered centrally) that are admitted to trading on securities exchanges or on the public debt market as well as securities admitted to trading on other secondary markets if so requested by their respective governing boards. These books must also be maintained for six years.</p> <p>In addition, the legislation establishes that the entities subject to the LMV must require the identification of their clients at the moment of establishing a business relationship (Art. 14 of CNMV Circular 1/1996 of March 27, 1996 concerning rules for securities market operations, transparency, and client identification). Copies of the identification documents presented by clients must be maintained for six years. (Rules 7 and 11 of the Ministerial Order of October 25, 1995, concerning the implementation of Royal Decree 629/1993, and Rule 15 of Circular 1/1996.)</p> <p>Money laundering. All natural and legal persons regulated by the CNMV are subject to the norm on the prevention of money laundering and, consequently must have taken necessary steps to minimize money laundering vulnerabilities.</p> <p>Investment service providers must include in their program of activities a description of means and measures that they will adopt as soon as authorized in order to prevent and to detect money laundering.</p> <p>The existence of such measures and their effective operation are verified on the occasion of routine supervisory visits that are made to entities supervised by the CNMV.</p> <p>To enhance efficiency of such oversight, a memorandum of understanding with the Executive Service for the Prevention of Money Laundering (<i>Servicio Ejecutivo Para la Prevención del Blanqueo de Capitales, SEPBLAC</i>) is in place.</p> <p>Delegation of powers with respect to oversight, inspection, and sanctions. The law vests the CNMV with the powers of oversight, inspection, and sanctions.</p> <p>It is worth noting that functions with respect to inspection and sanctions are granted to the CNMV alone and that any other disciplinary power of the market operator or Iberclear over their members is regarded as founded in contract and not public law (which accounts for Principles 6 and 7 not being applicable).</p>
Assessment	Broadly Implemented.
Comments	<p>The CNMV is vested with very comprehensive surveillance, inspection, investigation powers and capabilities over regulated entities and any other person connected with the securities markets. The exercise of those powers is framed by detailed internal procedures approved by the Executive Committee in 2004 upon the proposal of the president on the basis of a prior report by the Legal Counsel Directorate. Such procedures include</p> <ul style="list-style-type: none"> - Procedures for the supervision and inspection of companies, institutions, persons and entities operating in the securities market. - Procedures for issuing subpoenas and requests for data and reports from companies, institutions and entities operating in the securities market <p>With regard to the effective application of those powers, an annual inspection plan is drafted by the</p>

	<p>CNMV services and approved by its Executive Committee and updated quarterly. This plan includes a mapping of anticipated risks regarding the different entities under the CNMV's supervision and is communicated to the Bank of Spain in order to avoid duplication of regulatory efforts on the same entities. The map includes the company profile (legal status, whether the entity belongs to a wider financial group or is an independent company), the business profile (type of activities undertaken and level of the risk of the investments undertaken), the patrimonial profile (compliance with prudential requirements) and data provided by the off site supervision activities of the CNMV.</p> <p>Prioritization of the level of risk (High, Medium, Low) gives grounds for the adoption of supervision strategies (off-site monitoring, on-site complete check up, or on/off site follow-up actions).</p> <p>It appears however that the clear ability of the CNMV to inspect regulated entities on an unannounced basis is not <i>explicitly</i> mentioned in the law. Although inspections are being carried out without prior notice in practice, it is recommended to establish explicitly in law that inspections may be carried out without prior notice.</p>
<p>Principle 9. The regulator should have comprehensive enforcement powers.</p>	
<p>Description</p>	<p>Responsibility for oversight and inspection of the securities markets and for imposing sanctions for offenses lies with the CNMV, and with regard to very serious infractions, with the ME.</p> <p>Powers to ensure compliance with the securities market legislation:</p> <ul style="list-style-type: none"> • The CNMV has the power to require that information be included in its public records and modified if it does not comply with all applicable legal requirements (prospectuses, audit reports, periodic public information, notifications of significant shareholdings, etc.). <ul style="list-style-type: none"> • With respect to public offers, the CNMV may refuse to register the documentation if it determines that the issuing declarations might threaten the interests of investors or create the potential for unfair treatment among them. In addition, the CNMV may require warnings on prospectuses and other clarifications to facilitate their analysis and ensure that they can be properly understood. • The CNMV has the power to suspend trading or delisting of securities in the circumstances established under the law (Arts. 33 and 34 of the LMV) • The CNMV is authorized to take precautionary measures with respect to the entities subject to its oversight (securities markets, investment services firms, collective investment schemes and their management companies, etc.) when it deems appropriate. These measures include taking action to liquidate the companies in question, or any of their activities. <ul style="list-style-type: none"> • The CNMV may also impose fines to ensure that an individual or legal entity stops using unrightfully regulated designations or refrains from engaging in certain activities (e.g., in the case of individuals or legal entities offering investment services without prior authorization). The CNMV may also issue public warnings concerning such behavior. • The CNMV may suspend, partly or totally any authorization granted to an investment services firm for non compliance with applicable rules (Art. 76 of the LMV). • The LMV (Art. 85.6.) authorizes the CNMV to require that any individual or legal entity subject to the oversight makes public any information it deems appropriate regarding its activities in connection with the securities market or that may impact on such market, and establishes that the CNMV may publish such information by itself if individuals or legal entities should fail to do so. <p>Power to collect information and take statements. The LMV gives the CNMV broad powers to collect any data, information, documents, or records that it may consider necessary, from any individual or legal entity that may be holding them, in order to clarify any matter relating to securities markets.</p> <p>With regard to taking statements, the CNMV is allowed to require an alleged offender to make a statement provided adequate grounds are given.</p>

	<p>Power to impose administrative sanctions. Art. 97 of the LMV provides for the division of sanctioning responsibilities between the CNMV and the Ministry of Economy. While the power to impose sanctions for serious or minor infractions rests with the CNMV, very serious offenses are sanctioned by the Minister of Economy upon the proposal of the CNMV. This proposal includes the opinion expressed by the consultative committee.</p> <p>The revocation of authorization is imposed by the Council of Ministers.</p> <p>Power to prosecute crimes. When in the course of its activities the CNMV detects the commission of an act that may constitute a crime; it has the obligation to transmit the case to the Public Prosecutor, and to provide him with any assistance that may be requested. (Art. 262 of the Criminal Prosecutions Act and Art. 408 of the Penal Code)</p> <p>The LMV (Art. 96) establishes that when there is a concurrence between an administrative proceeding and a criminal proceeding in respect of the same actions or in respect of other actions that cannot reasonably be separated from those punishable under the LMV, the administrative proceeding would be suspended pending a final decision by the criminal courts. If the administrative proceeding is resumed after the end of the criminal proceeding, the decision will have to be consistent with any assessment of the facts made in the criminal court ruling.</p> <p>Cooperation with other agencies. Article 88 of the LMV establishes that in a situation where the responsibilities of the CNMV and the Bank of Spain could overlap, the two agencies must coordinate their actions according to the principle that responsibility for the soundness of a financial institution rests with the agency with which the financial institution is registered, and responsibility for overseeing the operations of securities markets rests with the CNMV. Accordingly, it is established that the CNMV and the Bank of Spain must conclude agreements specifying their respective responsibilities (which has been complied with by the signing of the 2004 MOU).</p> <p>In addition, the LMV (Art. 90) establishes that any confidential data or information that the CNMV or other competent agencies receive in the course of carrying out their functions is subject to professional secrecy requirements.</p> <p>Nevertheless, this duty to maintain professional secrecy does not apply to information that the CNMV is required to furnish to other agencies in order to ensure the proper functioning of financial markets or clearing and settlement systems, to prevent money laundering, to enable them to carry out their functions, or to ensure the prudential supervision or imposition of penalties on persons or legal entities subject to the LMV when responsibility for imposing a penalty rests with the Minister of Economy or the Autonomous Communities in cases where they have relevant jurisdiction (Art. 90 § 6).</p> <p>The agencies in question include the Autonomous Communities having jurisdiction over securities exchanges, the Bank of Spain, the Directorate General of Insurance, the stock exchanges governing boards, the guarantee funds, inspectors and trustees of investment services firms, the SEPBLAC, and the tax agency (in exceptional cases, and with the prior authorization of the Minister of the Economy). The CNMV may obtain from those agencies any information it needs in order to carry out its functions, on a reciprocal basis.</p>
Assessment	Fully implemented
Comments	<p>Principle 9 considers that “the regulator or other competent government authority should be provided with comprehensive investigatory and enforcement powers.” The CNMV enforcement powers encompass a wide range of actions, while the power to impose administrative sanctions on very serious infractions remains with the ME.</p> <p>The expert asked whether suspension of administrative proceedings could result in long delays, and suggested simultaneous proceedings under the frameworks for administrative and criminal sanctions. Whenever the CNMV identifies facts that could lead to criminal sanctions, it has the obligation to send the case to the public prosecutor and to freeze its administrative proceeding until a final ruling</p>

	<p>has been made before the criminal courts. The discussion concluded that very few cases under Spanish law could give rise to both criminal and administrative sanctions, and that whenever such cases have arisen, the CNMV has taken all necessary precautionary measures in the interest of investor protection. Also, preserving the actual legal organization provides for consistency between the ruling made by the criminal courts and the administrative authorities.</p>
<p>Principle 10. The regulatory system should ensure an effective and credible use of inspection, investigation, surveillance and enforcement powers and implementation of an effective compliance program.</p>	
<p>Description</p>	<p>Mechanisms for detecting breaches of the law</p> <p>Entities. The CNMV carries out both off-site and on-site inspections:</p> <ul style="list-style-type: none"> • Off-site inspection consists of analyzing periodic reports (both those made available to the general public and those subject to a restricted circulation, such as internal control reports, that the entities subject to CNMV oversight are required to provide. • On-site supervision of entities is launched after analysis of the periodic reports provided by the entities, using programs designed to detect breaches with respect to capital ratios or requirements, or abnormal situations that may indicate an entity could face difficulty. <p>With respect to on-site supervision, each year the CNMV approves a plan based mainly on the information available on each of the entities subject to its supervision (financial risk, complaints received and so forth) since the previous visit was conducted. This plan is based on an analysis of potential risks in the sector. Also, unannounced inspection visits are made when appropriate (market circumstances, investor complaints, or significant events affecting the entity).</p> <p>Among other things, the work program for each visit includes verification of the entity's financial and net worth position, verification of mandatory investment and liquidity ratios, and verification that the rules of conduct defined in the entity's internal regulations have been complied with.</p> <p>Markets. The CNMV has developed a system for real-time monitoring of trading on regulated markets, which detects abnormal situations in quotations or in traded volumes of listed instruments.</p> <p>Such monitoring systems, which trigger warnings, enable the CNMV to detect situations of possible market abuse. In these cases, the information is passed on to the Market Monitoring Unit (which forms part of the Directorate General of Legal Services).</p> <p>Complaints service. The CNMV has a complaints service responsible for handling complaints from investors about services rendered by entities subject to CNMV oversight, or any other events that may take place in connection with their participation in securities markets. This service performs an initial analysis of each complaint received and of the steps to be taken. When applicable, such complaints are forwarded to the operational directorates so that it can make a decision on whether or not further measures should be taken.</p> <p>In any case, the complaints service is responsible for replying to the complainant and providing any information that may contribute to address the complaint.</p> <p>In addition, the Investors Directorate of the CNMV, which is responsible for disseminating to investors necessary information related to the securities markets, investment services firms, collective investment funds, and risk capital entities, organizes courses, seminars, workshops, and conferences to contribute to investor education.</p> <p>Management and use of information received by the CNMV in the course of its activities. For all on- and off-site inspections carried out by the CNMV, a factual report is prepared and proposals to initiate a sanctioning process is sent to the directorate of litigation.</p> <p>On the basis of this first report, the legal directorate determines whether the facts presented can be considered breaches of the law. Both reports are then submitted to the Executive Committee, and, if applicable, to the board, so that they can determine whether or not a sanctioning process should be</p>

	<p>initiated.</p> <p>Enforcement mechanisms</p> <p><i>Entities.</i> Under governing legal provisions, all entities that are required to register with the CNMV, must present their business plan and provide evidence that they possess the necessary resources to undertake their activities. The operating regulations or business plan and any amendments thereto must be communicated in advance to the CNMV. Such entities must also demonstrate that they have set up adequate internal rules of conduct together with information technology resources and internal control procedures.</p> <p>The effective operation of such arrangements is verified both by off-site supervision and on-site inspection visits.</p> <p><i>Personnel.</i> Under Spanish law, companies have subsidiary liability for damage caused by their employees in the course of performing their duties. Thus, if an entity that is subject to the CNMV's prudential supervision does not properly monitor activities performed by its employees who may constitute a breach of securities market legislation, the entity may be subject to sanctions for deficiencies in its internal control system (a serious offense or very serious offense).</p> <p><i>Markets.</i> Audits of all transactions on securities markets are carried out through the market supervision operated by stock exchanges, through analysis of the records maintained by ISP, CIS, and through the CNMV's real-time monitoring systems.</p>
Assessment	Fully implemented
Comments	<p>The powers, technical resources and staff expertise of the enforcement of the CNMV are adequate and effective. Detailed evidence of the ability of the CNMV to provide appropriate discharge of its supervisory and enforcement functions were provided to the expert and most of this material is also made available to the public through a documented annual report of the CNMV on enforcement activities.</p> <p>In 2004, the directorate for secondary markets analyzed 62,000 supervisory signals of possible abnormal market situations, 43 percent of which related to the equity market, 34 percent to settlement transactions, and the remaining 23 percent related to fixed income and derivatives trading. When a more detailed analysis is required or immediate action is necessary, the Directorate of Secondary Markets drafts a report to the Market Monitoring Unit or to the Directorate of Supervision to complete preliminary findings by taking complementary action. In 2004, 210 such reports were drafted, and 47 sent to the divisions in charge of taking further action.</p> <p>Supervisory actions on equities included some 74 cases of temporary suspension of trading affecting 57 issuers, in most of the cases with a view to ensuring the appropriate disclosure of significant information.</p> <p>The Directorate of Secondary Markets also designed in 2004 new information technology applications to monitor trading and substantially upgraded its available data bases. It also undertook work to develop new supervisory signals for the analysis of the content of the order book and has set up other signals to track price manipulation in line with the Market Abuse Directive. Main supervisory themes included arbitrage operations and transactions on security lending.</p> <p>Supervisory efforts also entailed monitoring of the fixed income market and of the derivatives markets.</p> <p>The Market Monitoring Unit (MMU) is in charge of investigating market abuse, especially price manipulation and insider trading. Its investigations aim at deterring abuse and facilitating the prosecution of improper conduct.</p> <p>In 2004, the MMU initiated 446 investigations (158 individuals and 288 legal entities). A large number of subpoenas were sent, interviews, visits and requests for assistance from foreign</p>

	<p>institutions were made. Investigations led to the initiation of four disciplinary proceedings, two of which related to possible insider trading, one for obstructing the CNMV's inspections powers and the fourth related to the disclosure of several significant stakes of a director of a listed company.</p> <p>Nine warnings were issued to investment firms, listed companies, significant shareholders, investment services firms and Iberclear members, restating the applicable regulation and requiring them to make the necessary correction to their conduct.</p> <p>With regard to the supervision of investment services firms, the CNMV oversees solvency, compliance with a code of conduct and the appropriateness of internal control procedures, resources and systems, both through off-site monitoring and on-site supervision.</p> <p>In 2004, the CNMV's supervisory actions resulted in 1,290 subpoenas: 871 for additional information, 225 for late filings with the CNMV, and 194 for corrective measures or recommendations. Nearly three-quarters of subpoenas were issued as a result of off-site supervision.</p> <p>With regard to compliance with conduct of business rules, the main focus of the CNMV consisted in checking the maintenance of records on transactions and order tickets, the relations of the firms with its clients through contracts and the quality of information provided to the client with a strong emphasis on the prevention of conflicts of interest..</p> <p>The CNMV also took the initiative in 2004 to remind investment firms and credit institutions of the fundamental criteria for strong internal control procedures.</p>
<p>Principles for Cooperation in Regulation</p>	
<p>Principle 11.</p>	<p>The regulator should have authority to share both public and non-public information with domestic and foreign counterparts.</p>
<p>Description</p>	<p>Exchange of information with other domestic institutions : The CNMV is the sole regulatory agency in Spain with responsibility for the securities markets (notwithstanding the very specific responsibilities of the ME and Council of Ministers, respectively, in licensing and withdrawal of licenses, and other specific responsibilities of the Bank of Spain with regard to the program of activity of credit institutions. Moreover, the Autonomous Communities have jurisdiction on the financial instruments exclusively listed on their regional market).</p> <p>The CNMV is vested with the power to share with other entities or agencies responsible for securities market management, or with banking, anti-money laundering, and insurance regulators, any information that such other entities, agencies, or regulators may need in order to carry out their functions. (See also the description under Principles 1 and 9.)</p> <p>The authorization to share this information is laid down in the LMV and does not require any prior authorization by any other authority, with the exception of information that has to be communicated to the Tax Agency pursuant to the General Tax Act (Art. 111 and 112 of the General taxing law); In the latter case, the authorization of the Minister of Economy and Finance is required. When the requested information originates from a foreign securities regulator, the decision of the Minister will have to take into account the confidentiality requirements set up in the corresponding memorandum of understanding (in practice, no information has ever been communicated to the Tax Agency under these provisions).</p> <p>Exchange of information with foreign regulators</p> <p>General capacity to exchange information: The LMV also establishes that the CNMV, in carrying out its oversight and inspection functions, is expected to cooperate with the competent authorities in foreign countries, and may enter into memoranda of understanding with them. Art. 90 of the LMV establishes the general capacity to enter into cooperative arrangements with foreign authorities and describes the usual conditions applicable under specified conditions. The law provides for this general capacity and no further approval is required from any other government authority or court in</p>

	<p>order to engage in such exchange of information with foreign regulators.</p> <p>The conclusion of an MOU is not necessary for such transmission of information to take place.</p> <p>Cooperation may take place concerning oversight of credit institutions, insurance firms, other financial institutions, financial markets, guarantee funds or investor compensation schemes, provided that the purpose of the exchange of information is to assist the foreign counterpart in carrying out oversight functions.</p> <p>If no cooperation agreement exists with the requesting authority, the cooperation and information exchange will take place on a bilateral basis in accordance with the applicable requirements set forth in LMV Art. 90.6 § j). This states that the requesting authority must have reciprocity and professional secrecy rules comparable to those required under Spanish law.</p> <p>Legal limitations to the communication of information: Spanish law establishes that, in any of the following circumstances, the CNMV may refuse to provide information that has been requested (Art. 90 § 2 al. 4).</p> <ul style="list-style-type: none"> • If communicating the information could be prejudicial to sovereignty, security, or public order; • If court proceedings have been initiated before Spanish authorities against the same persons on the basis of the same facts; • If a final ruling has been made on the basis of the same facts and with respect to the same persons. <p>In these cases, a response is sent to the requesting authority, providing the fullest possible information on the court proceedings or final ruling concerned.</p> <p>Absence of double incrimination requirement: For the CNMV to be able to share information with a foreign regulator, there is no requirement that the actions being investigated by the foreign authority also constitute an offense under Spanish law.</p> <p>Communication of information on a voluntary basis:</p> <p>The CNMV may also send information to a foreign regulator without prior request.</p> <p>Art. 90.2 al.1 of the LMV provides that, when the CNMV is aware that acts suggesting market abuse are being or have been carried out within the territory of another member state of the European Union, the CNMV is to notify the competent authority in that member state, providing detailed information, so that it can take the appropriate steps. In practice, information is provided to foreign regulators without prior request whenever the CNMV encounters facts that may constitute a breach of securities market legislation in the country in question.</p> <p>In practice, the CNMV has extensive experience in exchanging information with securities market regulators in other countries. It has furnished information to the following: (a) regulators in member countries of the European Union; (b) regulators with which it has signed a memorandum of understanding for the exchange of information in cases where this has been requested (see Principle 12 for further information); and (c) regulators in countries or jurisdictions with which it has not signed a memorandum of understanding, but which it has determined meet the requirements laid down in Spanish legislation for exchanging information (e.g., New Zealand, Peru, Jersey, and Switzerland). Similarly, the CNMV makes extensive use of agreements signed with other regulators and requests information from them when necessary. It has also requested cooperation from regulators in countries or jurisdictions with which it has signed cooperation agreements as the need has arisen (e.g., Switzerland, the Bahamas, the British Virgin Islands, and Andorra).</p>
Assessment	Fully implemented
Comments	The CNMV is vested with state-of-the-art powers in matters of international cooperation and is a

	<p>signatory of the IOSCO MMOU. With regard to cooperation with domestic authorities, cross membership arrangements are in place to serve as a permanent mechanism for information sharing and cooperation and these are complemented by detailed Bilateral Memoranda of understanding with the Bank of Spain and the Insurance supervisor.</p> <p>The CNMV has long-standing experience in information sharing with foreign regulators. Statistical information provided by the CNMV on exchange of information demonstrates a strong ability and willingness to cooperate. The exceptions as to denial of assistance to a foreign regulator (prejudicing sovereignty, security or public order, national interest or when court proceedings have been initiated or when final rulings have been made) are common practice in most, if not all, IOSCO jurisdictions.</p> <p>Safeguards concerning the transmission of information to other national authorities are in place (with regard to the taxing authorities and to the Civil judge) and are consistent with IOSCO requirements.</p>
Principle 12.	Regulators should establish information sharing mechanisms that set out when and how they will share both public and non-public information with their domestic and foreign counterparts.
Description	<p>As discussed above under Principle 11, the CNMV may share with the Bank of Spain, with anti-money laundering authorities, and with the Directorate General of Insurance information that will assist those agencies in carrying out their functions.</p> <p>With specific reference to the Bank of Spain, the LMV (Articles 88 and 19.8) establishes that a general duty of cooperation exists between the Bank of Spain and the CNMV, and urges that the two agencies sign agreements setting out their respective responsibilities. In practice, cooperation and information-exchange agreements have been signed with the three agencies mentioned.</p> <p>Similarly, the CNMV has signed bilateral agreements (Memoranda of Understanding) with key countries' regulatory agencies and is a signatory to the CESR and IOSCO Multilateral Memoranda of Understanding. All these agreements are concerned in particular with the exchange of information with a view to helping to detect and deter irregular cross-border practices and facilitate routine oversight.</p> <p>Bilateral MOUs. The CNMV has signed bilateral information-exchange agreements with the following regulators: the Securities and Exchange Commission of the United States, the Commodity Futures Trading Commission of the United States; the Autorité des Marchés Financiers of France, the <i>Commission Bancaire et Financière</i> of Belgium, the <i>Comissão do Mercado de Valores Mobiliários</i> of Portugal, the <i>Commissione Nazionale per le Società e la Borsa</i> of Italy; the <i>Comissão de Valores Mobiliários</i> of Brazil, the Securities and Futures Commission of Hong Kong, BaFin of Germany, the Securities and Futures Commission of Chinese Taipei, the <i>Commission des Valeurs Mobilières du Québec</i>, the Australian Securities and Investments Commission, the London International Financial Futures Exchange (LIFFE), and the Czech Securities Commission. It has also signed consultation and technical assistance agreements with most countries in Latin America.</p> <p>Confidentiality regime. One of the most important requirements for exchanging information with foreign regulators, as mentioned under Principle 11, relates to the confidentiality regime of the information provided to a foreign regulator. The requesting authority regime must be similar to the confidentiality regime that applies in Spain.</p> <p>When no memorandum of understanding has been signed, the requesting authority is asked for information on its authority to exercise reciprocity and on the confidentiality regime to which any information it might receive from the CNMV will be subject in order to determine whether this would be compatible with the requirements of Spanish law.</p>
Assessment	Fully implemented
Comments	The CNMV has clear rules for information sharing with its domestic and foreign counterparts.

<p>Principle 13.</p>	<p>The regulatory system should allow for assistance to be provided to foreign regulators who need to make inquiries in the discharge of their functions and exercise of their powers.</p>
<p>Description</p>	<p>As noted under Principles 11 and 12, Spanish law permits information to be exchanged between the CNMV and foreign institutions to facilitate their oversight functions. Several types of information to which the CNMV can have access, and which therefore may be exchanged with foreign regulators, are detailed hereafter.</p> <p>Market information. Legal and regulatory provisions spell out in detail (Circular 3/1999 of September 22, 1999, issued by the CNMV, concerning transparency of securities market operations) the information that the various securities markets are required to make public concerning transactions carried out and orders placed on those markets (on specific information disclosure requirements in each market, see also discussion under Principle 27). The CNMV is authorized to gather any information it considers necessary in order to carry out its securities markets oversight functions. (Art. 85). Likewise, the CNMV can conduct the necessary inspections to confirm the accuracy of that information.</p> <p>The CNMV is thus able to reconstruct all transactions relating to securities and derivatives products in real time, while information on the recording of all funds and assets deposited to or withdrawn from a credit institution, or an investment firm or agency, in connection with those transactions can be obtained by the CNMV. Both types of information may be transmitted to foreign regulators.</p> <p>Information on transactions and orders. Intermediaries are required to keep different sorts of records related to securities transactions and orders. (See also discussion under Principle 8 and Circular 3/1993, of December 29, 1993, concerning records of transactions and files containing supporting documents.) The rules establish three kinds of records (one for orders placed, one for orders executed, and one for breakdowns), and require appropriate cross-references so that every transaction recorded can be tracked. These records are available to the CNMV at all times. (Article 9.3 of Royal Decree 629/1993 of May 23, 1993, concerning rules for securities market activities and required records, and Rule 7 of Circular 3/1993.)</p> <p>Client identification. Article 14 of Circular 1/1996 of March 27, 1996, issued by the CNMV, concerning rules for securities market operations, transparency, and client identification requires entities subject to the LMV to determine the identity of their clients at the beginning of a business relationship by obtaining appropriate identification documents. That information must also be made available to the CNMV.</p> <p>Beneficiaries of transactions and ownership of shares. Spain's governing legal provisions establish that, if clients are not acting on their own behalf, or if there are indications that they are not acting on their own behalf, entities operating in securities markets must obtain the necessary information to determine the identity of the persons on whose behalf they are acting and verify the power of the attorney or the authorization under which they are acting.</p> <p>With respect to the ownership of shares in joint-stock companies, whether or not such companies are subject to CNMV oversight, a distinction is made between companies whose securities are listed for trading (listed companies) and non listed companies.</p> <ul style="list-style-type: none"> • Listed companies. Purchases or sales of shares in listed companies which result in exceeding the 5 percent or multiples thereof threshold, or falling below 5 percent or multiples thereof, must be reported within seven days following the execution of the transaction to the company in question, to the governing boards of the stock exchanges on which the company's shares are listed, and to the CNMV. The applicable percentage levels are 1 percent or multiples thereof in certain specific cases (for example, if the buyer is resident in an “offshore centre”). In addition, members of a board of directors are required to report any purchase or sale of shares that they make in a company of which he or she is a director. The requirement for reporting the information falls on the direct buyer or seller and any individual or legal entity that controls one or more entities which, as a group, have their shareholdings increased or

	<p>decreased to the percentage levels indicated.</p> <p>In addition, all shares in listed companies, as well as all shares in any non-listed companies that elect this option, must be represented by book entries (i.e., have their shares centrally registered). Accordingly, a record of the persons that are the beneficial owners of the shares is kept by the agency responsible for securities registration (Iberclear in the case of listed companies) and associated bodies.</p> <ul style="list-style-type: none"> • Non-listed companies. The record of a company's incorporation, which must be entered in the Mercantile Register, provides information only about its founding shareholders but does not contain any information about subsequent transfers of shares. It is easier to obtain information on share ownership in the case of a company that issues registered shares, as these are required to keep an up-to-date record of their shareholders and of all share transfers. This requirement does not apply to a company that issues bearer shares, although the CNMV may use its powers of investigation and inspection to obtain this information in the case of an offense <p>Other relevant information. In general terms, the CNMV may make available to foreign regulators any information it has concerning</p> <ul style="list-style-type: none"> • market manipulation practices, • registration, issuing, offer, or sale of securities and derivatives, and information obligations relating to issuers, • market intermediaries that require an authorization or license in order to operate, collective investment schemes and • Markets and securities clearing and settlement agencies. <p>Power to provide information without independent interest. The CNMV is not subject to any impediment or limitation for exchanging information, regardless of whether it has any independent interest in the subject matter.</p> <p>Information on cases and proceedings. Where actions to be undertaken are under the CNMV's competence and are handled by the CNMV itself, there are no legal restrictions to prevent the CNMV from providing a foreign regulator with information on the status of a particular file (the authorization process, investigations underway, sanctions imposed, etc.). If a proceeding is under the responsibility of other authorities (Courts, or other oversight bodies), the CNMV may use its best efforts to obtain the information on a voluntary basis or facilitate contact between the authority seeking the information and the authority handling the proceeding. In such cases, Spanish law does not give the CNMV the authority to act on behalf of another regulator except when legal requirements are fulfilled to designate the CNMV as an official representative (in practice, this has never happened).</p> <p>Requests for documents, and taking of statements. Requesting documents would not pose any problem insofar as the CNMV has the power to gather whatever information it may consider necessary, from any individual or legal entity, to shed light on any matter relating to securities markets. With regard to the taking of statements, the CNMV has the power to require anyone presumed to have committed a breach of the law or regulation to make a statement to the CNMV concerning any transaction or event relating to the securities market. This information may be made available to foreign regulators.</p> <p>Information on financial conglomerates. There are no legal restrictions on providing foreign regulators with information on financial conglomerates subject to CNMV oversight.</p>
Assessment	Fully Implemented
Comments	The CNMV is vested with the powers to obtain and share all the type of information necessary that

	might be requested by a foreign regulator in the discharge of its supervisory functions. The CNMV is able to protect the confidentiality of such information.
Principles for Issuers	
Principle 14.	There should be full, accurate and timely disclosure of financial results and other information that is material to investors' decisions.
Description	<p>Spain's legal and regulatory provisions contain a broad set of requirements concerning the information to be provided by issuers of securities at various times (e.g., when securities are issued) or when certain conditions are fulfilled (e.g., when an issuer's securities are listed for trading on a regulated market). They also establish that the information made public must be available to investors within a suitable period of time so that the information could be useful to them (timeliness of information).</p> <p>Issues and public offerings of securities. The governing legal provisions (Arts. 25 to 30 of the LMV) provide that three types of documents must be prepared by entities making public offerings of securities: an information prospectus, a brochure summarizing the information in that prospectus, and other documents providing background on the securities issue, the characteristics of the securities being issued and the rights and obligations of securities holders.</p> <p>Information in connection with public offerings of securities must be made public in accordance with Arts. 11 and 25 of Royal Decree 1310/2005).</p> <p>Advertisement in relation to public offers must follow the general requirements set forth under the General Advertising Act (<i>Ley General de Publicidad</i>), and other specific requirements as to clarity, accuracy, timeliness and non-misleading character of such information.</p> <p>The general advertising act applies to all types of advertising related to public offers. More specifically, the rules applying to public offering of securities (Art.28 of Royal Decree 1310/2005) transpose the prospectus directive 2003/71/EC which establishes under its Article 15 that :</p> <ul style="list-style-type: none"> • the advertisement should mention that a prospectus has been or will be published and where such prospectus will be made available to investors. • the advertisement will also need to be clearly identifiable as such, and the information that it contains should not be inexact or misleading and should be coherent with the information contains in the prospectus. <p>Annual accounts: Issuers of securities are required to have their financial statements audited when they make a public offering or when their securities are listed on a stock exchange (Arts. 26 and 27 of the LMV and Art. 12 of Royal Decree 1310/2005.) In addition, while their securities remain in circulation or while they continue to be listed on a regulated market, issuers must submit their annual accounts for audit and provide the corresponding documentation to the CNMV within the time limits established so that the CNMV can enter the information in the public register.</p> <p>Other periodic information. Issuers listed on an official secondary market are also required to publish interim income statements every three months and to publish supplementary financial statements every six months (Art. 35 of the LMV).</p> <p>Significant information. Article 82 of the LMV provides that issuers of securities are required to disclose any relevant information immediately to the market, by means of a communication to the CNMV. Relevant information is understood as information that might reasonably be used by an investor as a basis for buying or selling securities or financial instruments, and which therefore might have a sensible impact on the quotation of such financial instruments. The information must be accurate, clear, and complete, and must be communicated to the CNMV as soon as the facts are known and before the information is otherwise released. Issuers are also required to make this information public on their websites. The legislation also permits the CNMV to order issuers and</p>

	<p>any other entities associated with securities markets to release immediately to the general public, information that might affect trading in such securities and enable the CNMV to release such information directly.</p> <p>Derivatives market. Information on the terms and conditions of contracts, trading mechanisms, and the guarantee regime is collected pursuant to the Market Regulations, which is a public set of rules with which clients of the derivatives markets are required to familiarize themselves before signing a contract.</p> <ul style="list-style-type: none">• Contracts. Contracts are standardized, and contracts models are provided as an annex to the Regulations.• Trading. Information on trading comprises the price quotation and contract negotiation system, the order mechanisms, the order tracking and transaction recording system, the method for resolving issues relating to the suspension of contracts, the information disclosure system, and timetables.• Guarantees. Information on guarantees includes information on the system for determining the amounts of specific or general guarantee on deposits that members and their clients are required to establish, and the corresponding procedures. <p>To ensure that the information required is sufficient, accurate, and timely, the CNMV has the power to gather from individuals and legal entities that may be affected by the requirements of the LMV whatever information it deems necessary (Art. 85 of the LMV). Individuals and legal entities are required to make available to the CNMV all books, records, and documents regardless of the form in which they are held, including computer software programs, magnetic, optical, and other storage media.</p> <p>The securities market oversight, inspection, and sanctions regime under Title VIII of the LMV sets out the grounds for breaches of the law relating to the failure to provide the market with information, and the corresponding administrative sanctions that the CNMV can apply. So far as civil liability is concerned, the LMV contains no specific provisions, and the applicable regime remains the one established under the Civil Code.</p> <p>The CNMV has the power to suspend trading in a security on all official secondary markets on which it is listed in certain circumstances (e.g., in the event of failure to provide relevant information) if there is a possibility that normal trading on those markets may be disrupted or if such suspension is deemed advisable to the protection of investors (Art. 33 of the LMV). Such suspension of trading may be decided at the CNMV's own initiative, at the proposal of the issuer, or at the proposal of the governing body of the market in question; the duration of such a suspension cannot exceed a maximum period fixed by regulation.</p> <p>With respect to privileged information—nonpublic information relating directly or indirectly to one or more traded securities or financial instruments—that, if it were made public, could significantly impact quotations for such securities or financial instruments, the law lays down a number of restrictions (Art. 81 of the LMV). Among other things, the law provides that anyone holding such information must refrain from preparing or executing any kind of transaction with respect to the securities to which the information relates, and cannot communicate that information to other parties except in the normal course of their work, and cannot make recommendations to other parties to buy or sell securities based on that information.</p> <p>With respect to public offerings of securities by issuers having their registered office in a third country (non-EU issuers) Art. 31 of Royal Decree 1310/2005 establishes that the issuer may register the prospectus drawn up in accordance with the legislation of a third country, provided that:</p> <p>the prospectus has been drawn up in accordance with international</p> <ul style="list-style-type: none">• standards set by international securities commission organizations, including the IOSCO
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	<p>disclosure standards; and</p> <ul style="list-style-type: none"> • the information requirements, including information of a financial nature, are equivalent to the requirements under this directive.
Assessment	Fully Implemented.
Comments	<p>Spain has in place a very comprehensive regulation that covers completeness, accuracy, and timeliness of financial results disclosure.</p> <p>Article 26 of the LMV prescribes the information necessary for admission to the trading of securities (legal status of the issuer and of the financial instrument issued, audited financial statements, and a prospectus) and does not require any previous administrative authorization. When those requirements are not fulfilled, the CNMV can refuse admission to trading.</p>
Principle 15. Holders of securities in a company should be treated in a fair and equitable manner.	
Description	<p>In general terms, Spain’s regulatory framework aims to ensure equality of treatment for all shareholders. Main provisions include the following:</p> <ul style="list-style-type: none"> • Voting. Shareholders, at a general meeting, are responsible for appointing directors, amending the company's bylaws, and deciding upon other relevant corporate changes (e.g., mergers, spin-offs, restructurings, capital increases or decreases). • Notice of meeting. Notice of a general meeting of shareholders must be published at least 15 days prior to the date of the meeting in the <i>Official Gazette of the Mercantile Register (Boletín Oficial del Registro Mercantil)</i> and in one of the largest-circulation newspapers in the autonomous community concerned (Article 97 of the LSA) • Voting, attendance, and voting by proxy. Votes on motions with respect to agenda items may be delegated to a proxy, or may be sent by the shareholder by post, electronic mail, or any other means of long-distance communication, provided that it permits the identity of the shareholder sending the vote to be properly verified. The right to attend the meeting may be delegated subject to the limitations laid down in the bylaw (Articles 105 and 106 of the LSA.). • Registration of ownership, and transfer of securities. Securities represented by book entries are established as such when entered in the corresponding accounting register. The transfer of such securities takes place as an accounting transfer. The person whose name appears in the entries in the accounting records is presumed to be the legitimate owner, and accordingly may ask the issuer to pay in their favor any amounts to which they may be entitled by reason of the security represented by book entries. Persons who present the certificates issued in due course by the entities responsible for the accounting records are considered to have the legitimate right to transfer securities represented by book entries and to exercise any rights deriving from them (Arts. 8, 9, 11, and 12 of the LMV). • Distribution of dividends and other amounts. A shareholder has the right to share in a company’s profits (in proportion to the amount of capital invested) and in the shareholders’ equity when the company is dissolved (Art. 215 of the LSA). • Takeover Bid (OPA). In Spain, OPAs are regulated on the basis of the principle of equality of treatment for all shareholders, in that an OPA must be addressed to all holders of shares or other instruments that confer the right to vote.⁴ The regulations require that the consideration offered in an OPA must ensure equality of treatment for all holders of securities that are in the same circumstances. Spanish legislation also provides that, if a significant stake is acquired in a quoted

⁴ Royal Decree 1197/1991.

	<p>company, or if an effort is made to exert influence on a company's governance by appointing directors, then an OPA must be made (the various possible situations are described in detail in the regulations).</p> <ul style="list-style-type: none">• Responsibility, liability, and accountability of directors and executive boards. The directors are accountable to the company and to its shareholders, and are liable to the company's creditors for any damage they may cause as a result of actions that are contrary to the law or the company's bylaws, or carried out without the requisite diligence. All members of the executive body that carried out an act or made a decision which caused damages are jointly responsible. Any liability proceedings against directors must be launched by the company, subject to a decision by a general meeting of shareholders (Art. 134 of the LSA.).• Bankruptcy or insolvency of the company. A joint-stock company can be dissolved, inter alia, by a decision of a general meeting of shareholders when the company has incurred losses that leave its net worth at a level equal to less than one half of its capitalization, barring a sufficient increase or decrease in its capitalization. When the company has been dissolved, the liquidation period begins; this concludes with the preparation of the balance sheet upon liquidation, after which the company's assets are distributed to shareholders. This distribution is carried out in accordance with rules laid down in the bylaws or established by a general meeting of shareholders, although certain specific requirements laid down in the LSA must be observed.⁵• Information regime in the decision-making process for general meetings of shareholders. Shareholders may ask for information about agenda items before a meeting is held or while it is under way. Directors are required to provide the information requested except in those cases where, in the chairman's judgment, disclosing the information requested could be prejudicial to the company's interests. A request to provide information cannot be turned down if it is supported by shareholders representing at least one quarter of the company's capital. In the specific case of OPAs, the regulations establish that an explanatory prospectus and other documents (Art. 112 of the LSA) must be provided together with the request for the offer.• Regime applicable to shareholders in OPAs. The governing legal provisions (Royal Decree 1197/1991) establish that shareholders must have a sufficient period of time to consider the proposal (the period for tendering their shares ranges between one and two months), they must have adequate information to enable them to analyze the proposal, they must be able to share in any profits that may result from the offer, and there must be equitable and fair treatment among shareholders (with particular reference to minority shareholders). If the number of shares tendered exceeds the number of shares being sought under the offer, minority shareholders receive somewhat preferential treatment due to the prorating system in place. For certain types of OPAs, the price offered requires CNMV authorization. Also, certain restrictions are placed on the actions of the executive boards of the companies involved.• Significant shareholdings. The governing legal provisions fix the threshold above which shareholdings in quoted companies are considered significant and must be reported as 5 percent of the company's capital. Transactions that result in a shareholding which rises above or falls below the 5 percent threshold must also be reported, together with the final position after the transaction has been executed.⁶ Other obligations in regard to information make reference to the prospectus, which
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⁵ Articles 260.1, 276, and 277 of the LSA.

⁶ Article 53 of the LMV, and Royal Decree 377/1991 concerning the reporting of significant shareholdings in quoted companies.

⁷ Article 5 of Royal Decree 377/1991.

⁸ Rule 5 of Circular 1/2004 of March 17, 2004, issued by the CNMV.

	<p>must identify the persons who directly or indirectly exercise, or are able to exercise, control over the issuer (Ministerial Order of July 12, 1993) and the accounts forming part of the annual report, which must identify any companies holding more than 10 percent of the capital. (Art. 86.2 of the LSA)</p> <ul style="list-style-type: none"> <p>Holding of securities carrying voting rights by a company's directors and officers. A company's directors must inform the company, the CNMV, and the governing boards of the markets on which the company's shares are listed of any shares or share options that they hold upon becoming a director, as well as any purchases or sales of traded shares or share options.⁷ A company's officers are not required to report such information, although a recently adopted Royal Decree (1333/2005, of November 11) requires that company officers report their purchases or sales of the company's shares, but not necessarily their overall holdings. There are also obligations in regard to information that makes reference to (a) prospectuses, and the requirement that they provide information on voting shares held by individuals who ensure management positions in the company, and (b) the annual report on corporate governance that quoted companies are required to prepare, which must provide information on shares held by members of the board of directors.</p> <p>Lastly, with reference to cross-border matters, Spain's governing legal provisions⁸ establish that issuers established outside Spain whose securities are listed for trading on a regulated Spanish market must provide their shareholders and the CNMV with information on their corporate governance regime. The CNMV's practice is to require that this information be included in the information prospectuses produced for the listing of the securities or for public offerings of the securities for sale.</p>
Assessment	Fully implemented
Comments	Spain has a fairly complete system for the protection of minority shareholders and is compliant with the European legislation laid down in the prospectus and market abuse directives, as recently transposed into the Spanish framework.
<p>Principle 16. Accounting and auditing standards should be of a high and internationally acceptable quality.</p>	
Description	<p>As discussed under Principle 14, entities are required to publish their audited financial statements in their public offering prospectuses when they issue securities, as well as in their listing prospectuses when a security is admitted to trading on a regulated market. In addition, while issues remain in circulation or while securities continue to be listed, entities are required to submit their annual accounts for audit and provide the corresponding documentation to the CNMV within the time limits established so that the CNMV can enter the information in its public register.</p> <p>Applicable accounting standards. Spain's governing legal provisions (Arts. 172 and 175 to 192 of the LSA, and Royal Decree 1643/1990 of December 20, 1990, setting forth the accounting principles with which Spanish companies are required to comply (PGC)) establish that annual financial statements consist of the balance sheet, the statement of profit and loss, notes, and the annual report. They also require that these annual financial statements and interim financial statements be prepared and presented on the basis of a comprehensive set of accounting standards. Specifically, the standards that apply are those set forth in the General Accounting Plan (PGC) and the rules established under Royal Decree 1815/1991 of December 20, 1991, concerning the preparation of consolidated financial statements. In addition, companies listed on a regulated market are required, as of January 1, 2005, to publish their consolidated financial statements in accordance with the international accounting standards referred to in Regulation 1606/2002 of the European Parliament and the European Council.</p> <p>These standards are of high quality and are widely accepted at the international level: the PGC and the above-mentioned decree implement the EU's Fourth Council Directive 78/660/EEC concerning the annual accounts of certain types of companies and the Seventh Council Directive 83/349/EEC concerning consolidated accounts. Moreover, the international accounting principles referred to in Regulation 1606/2002 of the European Parliament and the European Council are common to the</p>

	<p>European Union, and are considered to have international acceptance and recognition.</p> <p>Characteristics of information in financial statements. Spain's governing legal provisions establish that annual accounts must be presented clearly and must give a faithful picture of the company's net worth, its financial position, and its results. (Article 172.2 of the LSA). The annual accounts must also be readily understandable and must be comparable: i.e., the information must be presented in consistent and uniform fashion from one time period to another and from one company to another.</p> <p>Applicable auditing standards. The legislation also establishes the requirement that financial statements must be audited by external auditors (Articles 203 and 208 of the LSA). The Audit Act (Ley de Auditoria de Cuentas, LAC, 9/1988) of July 12, 1998 lays down principles for the audit of companies and the content of audit reports. These standards apply to the auditing of financial statements published by all companies that have securities listed for trading or that make public offerings of securities for sale. The auditing standards are of high quality and are widely accepted at the international level to the extent that the LAC implements the EU's Eighth Council Directive 84/253/EEC.</p> <p>External Auditors. The regulation states that auditors must be, and must be seen to be, independent in carrying out their duties. Consequently, they are required to recuse themselves if their objectivity might be impaired. Auditors' services may be contracted for an initial fixed period of not less than three years and not more than nine years.⁹ In the case of companies whose securities are listed, the governing legal provisions require that the auditors be rotated according to specific criteria. These companies are also required to set up an Audit Committee responsible for making proposals regarding the appointment of external auditors and serving as a channel of communication between the external auditors and the company.¹⁰</p> <p>The Institute of Accounting and Auditing (ICAC). The ICAC is the body responsible for establishing and interpreting accounting and auditing standards. It is a transparent self-governing professional body depending on the ME. The ICAC is governed by Law 6/1997 of April 14, 1997 on the general organization of the administration and by the LAC). It is overseen by a president, a council on accounting, and a committee on auditing.</p> <p>Accounting standards. The ICAC is responsible for the establishment and interpretation of accounting standards. The Council on Accounting is the organ that assesses the appropriateness and suitability of any proposed new provision or interpretation of an existing provision. ICAC is advised by the Consultative Committee on Accounting, which is made up of recognized experts in the field. Accounting standards are developed according to a process in which a draft text is prepared by a working group, drawn from among participants in the market. The draft is then passed to the Consultative Committee and, depending on the scope of application of the proposed provision, it is published for comment. As far as its interpretation functions are concerned, the ICAC responds to enquiries from participants in the market, and publishes its responses if they are of general interest.</p> <p>Auditing standards. The regulations provide that technical auditing standards are prepared, amended, and revised—in accordance with the general principles and common practices accepted within the countries of the European Union—by bodies established under public law representing the auditing profession. Auditing standards are subject to advance public consultation for a period of six months, and become valid upon their publication by the ICAC.</p>
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⁹ Article 8 of the LAC. In the case of entities under public supervision, listed companies or entities which revenues exceeds €30,000,000, the rotation of the auditor and his whole team will be mandatory after the seven years.

¹⁰ Additional Provision 18 of the LMV.

	<p>Enforcement of accounting and auditing standards</p> <p>Accounting standards. The CNMV determines whether the audit report is in compliance with the applicable requirements. If it is, the CNMV enters the audit report in the corresponding official register; and if it is not, the CNMV requests that the audit report be brought into conformity with those requirements (Article 27.2 of the LMV). In practice, the CNMV checks the financial statements of companies with listed securities to determine whether they have been prepared in accordance with the applicable accounting principles. In the past, the CNMV has taken various measures to remedy situations of noncompliance, including requiring the company to publish notes explaining the problems identified and the impact that correcting them would have on the financial statements. If the auditor declines to issue an opinion or issues a negative opinion, the CNMV suspends the quotation of the shares of the company in question.</p> <p>Among the legislative changes currently in preparation, one of the most important is the transposition into Spanish law of the Transparency directive which provides that each member state of the European Union must designate a competent authority to verify that the information referred to in the directive has been prepared in accordance with the applicable legislation, and to take the necessary measures in the event of noncompliance.</p> <p>Auditing standards. The ICAC is responsible for monitoring the auditing of accounts and for imposing any disciplinary measures necessary on auditors and audit firms (Art. 22 of the LAC). On an exceptional basis, if the CNMV detects an instance of possible noncompliance with auditing standards, it may report this to the ICAC so that it can conduct the appropriate technical follow-up (Article 12 of Royal Decree 291 relating to issues and public offerings of securities.)</p> <p>The accounting statements and audit reports on financial statements of issuing firms not based in Spain are required to comply with the governing legal provisions of the country in which the issuer is domiciled.¹¹ If that country is not a member country of the European Union, the CNMV may require that the report point out the differences between the criteria used to prepare it and the criteria generally accepted in Spain, and to indicate the impact of such differences on the financial statements in question.</p>
Assessment	Fully implemented
Comments	The CNMV should be more involved in the interpretation and enforcement of accounting standards in the case of listed companies.
Principles for Collective Investment Schemes	
Principle 17.	The regulatory system should set standards for the eligibility and the regulation of those who wish to market or operate a collective investment scheme.
Description	<p>The basic legal provisions that apply to the eligibility and regulation of those who wish to market a CIS, are set forth in the Act relating collective investment schemes (Law 35/2003 of November 4, 2003, Ley de Instituciones de Inversión Colectiva, LIIC) and the recently adopted Royal Decree 1309/2005 of November 4, approving the administrative regulations issued to implement Law 35/2003.</p> <p>The governing legal provisions, state that CIS marketing activities must be performed by authorized financial intermediaries (Art. 2 of LIIC) and asset management companies (Sociedades Gestoras de Instituciones de Inversion Colectiva, SGIICs) must be authorized by the CNMV to market CISs.</p> <p>There are two kinds of authorized financial intermediaries—investment services firms (ESIs) and</p>

¹¹ Article 26.3 of Royal Decree 291/1992 concerning issues and public offerings of securities.

	<p>credit institutions (banks, credit cooperatives, and cajas de ahorro)—each of which has its own legal regime including procedures for administrative authorization and registration.</p> <p>The law also establishes that the administration, representation, and management of CISs can only be undertaken by authorized asset management companies (Art. 40.6 of LIIC).</p> <p>With regard to the cross-border marketing of shares or units, the governing legal provisions (LIIC chapter II) establish the requirement for communications between the jurisdictions involved, or alternatively the need to provide reports or certificates from the authorities of the home member state. In addition, the authorization of a CIS management company that is a subsidiary, or that belongs to the same group as, or that is under the control of the same persons as another authorized entity in another member state of the European Union must be the subject of prior consultation with the corresponding competent authority. Finally, the governing legal provisions require custodians to have their registered office in Spain or to establish a branch office in the national territory (Art. 41.1 of the CIS Act.)</p> <p>Initial requirements. The establishment of a CIS management company requires the prior authorization of the Ministry of Economy (Art. 41 of the CIS Act), which is granted upon the proposal by the CNMV. Once a CIS management company has been established, it must be registered in the Mercantile Register and in the corresponding register of the CNMV in order to start carrying out its business. To obtain authorization to establish a CIS management company, specific documents (by-laws, annual report, and internal regulations with respect to code of conduct) must be submitted to the CNMV for review, and certain requirements including the following must be met:</p> <ul style="list-style-type: none">• Asset management companies must, at the time of authorization, have to comply with a minimum capital requirement as a proportion of the value of the assets they administer. They must also report the identities of all direct or indirect shareholders, including natural and legal persons that have a significant participation in the company, and the amounts of such participation. Individuals holding management positions such as directors or officers of the company must meet integrity standards.• They must comply with proper organizational requirements from an administrative and accounting point of view, and must have adequate human and technical resources.• They must have adequate internal control mechanisms and procedures in place. <p>Ongoing compliance. Management companies must advise the CNMV of any changes that take place with respect to the criteria for authorization that may be relevant for oversight by the CNMV. In particular, all amendments of the corporate bylaws must be declared and registered with the CNMV (Art. 44 of the CIS Act).</p> <p>Oversight of the activities of CIS management companies is performed through the CNMV off-site and/or on-site :</p> <p>Off-site inspection. For all registered entities, and on the basis of the confidential economic and financial information reported to the CNMV, regular monthly analyses are conducted focusing on CISs’ prudential ratios, investment assets, and levels of return. Specific analyses are also conducted focusing on either one, several, or all registered entities.</p> <p>On-site inspection. The CNMV establishes an annual inspection program. The factors taken into account in deciding which entities to inspect include:</p> <ul style="list-style-type: none">• the date of the last visit;• whether an entity has undergone relevant changes in regard to organization or control;• whether an entity is in a “border-line” situation in regard to its net worth or profit-and-loss position; and whether there is reasonable doubt with regard to an entity's future solvency;
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	<ul style="list-style-type: none"> • whether off-site inspection has identified relevant items concerning an entity. <p>If, in the course of performing its oversight functions, the CNMV finds that a CIS or a CIS management company is in an exceptionally serious situation that imperils its economic situation, or that could affect the stability of the financial system as a whole or have an impact on the general interest, or if it should find that the real position of an entity cannot be determined from its accounts, it may decide that an investigation of a CIS management company be done and its directors or officers could be temporarily replaced. In such a situation, the CNMV is required to report to the ME (LIIC Chapter III).</p> <p>Responsibility of directors and officers. Any director or company officer who breaches the requirements laid down in the governing legal provisions bears administrative responsibility, without prejudice to any criminal liability that may also apply.</p> <p>In addition, engaging in any of the regulated activities restricted to CISs or asset management companies without prior authorization is considered a very serious offense.</p> <p>Conflicts of interest. To prevent conflicts of interest, asset management companies, custodians, investment firms that are engaged in asset management activities, and individual directors or employees of these entities are subject to the general regime of rules of conduct established in the LMV. CISs are also subject to two specific types of rules of conduct (Title VI of LIIC):</p> <ul style="list-style-type: none"> • A management company is required to establish an internal control procedure with respect to related party transactions and to report on its implementation as part of the information documents it prepares. • In addition, in cases where the custodian of a CIS belongs to the same group as the CIS management company or investment firm, the management company or investment firm, must have in place a specific internal procedure to prevent conflicts of interest. <p>Other rules aimed at preventing conflicts of interest relate to the way in which investments are made (carrying out transactions under conditions more favorable to the CIS, carrying out client orders strictly or in the best interest of their clients, not inducing a client to make a trade only for the purpose generating revenue, and so forth).</p> <p>Delegation. Finally, the law establishes the possibility for management companies to delegate to other entities all or part of the management of the assets of CISs under administration (Article 40.5 of the CIS Act).</p> <p>Such a delegation of management must be formalized by means of a delegation agreement and be disclosed in the CIS prospectus. The delegator retains responsibility, liability, and accountability for the management company.</p>
Assessment	Fully Implemented
Comments	<p>Licensing. Under Art. 41 of the CIS Act, the establishment of a CIS management company requires the prior authorization of the ME, which is granted upon a proposal by the CNMV. Once a CIS management company has been established, it must be entered into the Mercantile Register and the corresponding register of the CNMV before it can start to do business.</p> <p>Supervision. During 2004, supervision of collective investment schemes focused on six main areas of interest related to: (a) prudential regulation (b) information supplied to investors (c) prevention of conflict of interests, (d) management companies internal resources, (e) procedures and controls, and (f) depositaries.</p> <p>The CNMV has been performing its supervisory actions over CISs without a complete legislative framework, since the regulation that implements the new CIS Law was only recently implemented. The transition regime contemplated that until the new IIC Regulation was published, the regulations drafted under the previous IIC Law would remain in force, provided that they did not contradict the</p>

	<p>new law. As a result, each regulated aspect has been analyzed and the new Law compared with previous lower-level regulations to ensure smooth implementation of the new regulation.</p> <p>In 2004, the CNMV issued 1,695 subpoenas: 800 requesting additional information for supervisory purposes, 346 for late filings by management companies, and 549 to provide corrective measures or make recommendations.</p> <p>Prudential supervision focussed on investment and liquidity coefficients, suitability of assets and compliance with the limits set up on operating in derivatives, and oversight of compliance with solvency requirements.</p> <p>With regard to information supplied to investors, the CNMV issued special recommendations to management companies to reinforce information provided on investment plans and management reports to enhance transparency of management decisions.</p> <p>Conflict-of-interests issues (Chinese walls, related parties transactions, fees charged to the fund, etc.) were also kept under close scrutiny, since most of the assets of investors are administered by management companies forming part of financial groups.</p> <p>With regard to the supervision of IIC depositaries, CNMV oversight focussed on custody conditions (adequate resources of depositaries to perform their duties, adequate organization of the depositary and ability to notify incidents to the CNMV in a timely manner).</p> <p>The oversight of the CIS sector thus seems sufficiently proactive to check compliance with applicable regulation. It is nevertheless worth noting that legal certainty was only recently added to the work undertaken through the adoption of a Royal Decree on November 4, 2005. The Spanish authorities might also want to consider enhancing efficiency by delegating direct power to the CNMV to grant licenses for those who wish to market or operate a CIS (see also principles relating to the regulator).</p>
<p>Principle 18.</p>	<p>The regulatory system should provide for rules governing the legal form and structure of collective investment schemes and the segregation and protection of client assets.</p>
<p>Description</p>	<p>Legal forms and categories of CIS. CISs may choose to operate as an investment fund or as an investment company.</p> <ul style="list-style-type: none"> • An investment fund is a group of separated assets which do not have a legal personality, and which is managed and represented by an asset management company, assisted by a depositary (LIIC Art. 3). • An investment company has adopted the form of a stock corporation company (LIIC Art. 9) <p>CISs can fall into two categories that are financial and nonfinancial CISs:</p> <ul style="list-style-type: none"> • Financial CISs may take the form of either an investment fund or an open-ended investment company) and invest in financial assets and instruments. • Nonfinancial CISs include real estate CISs and other nonfinancial CISs. <ul style="list-style-type: none"> ○ Real estate CIS comprise real estate investment funds (<i>FII: Fondos de inversion inmobiliaria</i>) and real estate investment companies (<i>SII: Sociedades de inversion inmobiliaria</i>). ○ The establishment of a nonfinancial CIS other than real estate CIS is subject to special conditions yet to be approved by the Minister of Economy, or, upon the Minister's express delegation, by the CNMV (LIIC Art. 39). <p>Establishment of a CIS. A request of authorization for the establishment of a CIS must include the draft rules of management of the CIS (in the case of an investment fund) or the internal by-laws (in the case of an open-ended investment company). In addition, legal provisions lay down requirements</p>

	<p>as to the minimum information, frequency, and form of disclosure of the full and simplified prospectuses and annual, semi-annual, and quarterly reports. Obligations relating to disclosure of information, advertising, and accounting are discussed under Principle 19.</p> <p>The CNMV authorizes CISs.</p> <p>Funds are subject to continuous oversight to ensure that all requirements are fulfilled. Amendments to the by-laws or regulations of a CIS require prior authorization from the CNMV, although there are certain exceptions such as the change of address of the fund within the national territory or transfers from reserves to increase the capital. In the case of companies, these changes do not require prior authorization from the CNMV, but the CNMV does have to be notified of them (Art. 12 of the CIS Act). Once authorization has been given, the CIS management company must immediately notify all unit holders.</p> <p>If any change takes place in the management regulations or the prospectus that affects the investment policy or the profit distribution policy, the unit holders must be informed before such a change comes into effect. This requirement to inform unit holders also applies to changes involving either the replacement of the management company or the custodian by an entity belonging to a different group, the delegation of portfolio management to another entity, a change in control in the management company, a merger, restructuring, or winding up of the fund, the establishment or increasing of commissions, or any other eventuality mentioned in the regulations.</p> <p>In all such cases, if there is a redemption fee, or if there are charges or discounts associated with redemption, unit holders have the right to withdraw without such fees being charged.</p> <p>Custodian–depository. Under the governing legal provisions for CISs, the custody of securities, cash, and assets in general which are the CIS's investments is to be entrusted to a custodian (LIIC Art. 57). Each CIS has only one custodian, and no entity may be simultaneously the manager and the custodian for the same CIS.</p> <p>No entity may be the depository for CISs managed by a company belonging to the same business group, unless the CIS or, if applicable, the management company, has a specific procedure in place, laid down in its internal regulations with respect to conduct, to ensure that conflicts of interests are properly addressed (LIIC Art. 68). In such cases, for a CIS to be authorized, the CIS management company must have provided the CNMV with particulars of the procedure for preventing conflicts of interest when the custodian belonging to the same business group was designated.</p> <p>Record keeping. The governing legal provisions state that management companies are responsible for establishing and maintaining records and documents concerning shares or units (Art. 40.11 of the CIS Act). However, it is the custodian's responsibility to execute transactions for the buying and selling of securities, and to collect any interest or dividends of securities, where applicable, for the account of the CIS (Art. 60 of the CIS Act).</p> <p>In the course of the on-site inspection of a management company, samples of the financial transactions of the CISs being managed are analyzed to determine whether they comply with the required procedures for registration and proper settlement. Samples of subscription and redemption operations are also analyzed to determine whether they comply with the required operating procedures and whether the necessary supporting documents are maintained.</p> <p>With regard to CISs' accounts, the legislation establishes that CISs must be audited (LIIC Art. 21) and the CNMV maintains a record of CIS prospectuses, periodic reports, annual reports, and audit reports, which are available to the public.</p> <p>Dissolution and liquidation of a CIS. This process is governed by the CIS Act (LIIC art 24). In the case of a CIS which is set up as a company, its dissolution and liquidation must be carried out according to the general legal provisions governing joint-stock companies, without prejudice to the specific provisions governing CIS.</p>
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Assessment	Fully implemented
Comments	The CNMV has in place strong programs together with impressive information technology and appropriate human resources to oversee a well-designed legal system governing CISs.
Principle 19.	Regulation should require disclosure, as set forth under the principles for issuers, which is necessary to evaluate the suitability of a collective investment scheme for a particular investor and the value of the investor's interest in the scheme.
Description	<p>Initial disclosure requirements. A CIS may not commence business activity until it has been registered in the CNMV's administrative register and its information prospectus has been registered (Article 10.6 of the CIS Act) .The CNMV determines whether the information prospectus meets the applicable requirements. If it does, the CNMV enters the prospectus in the corresponding official register; and if it does not, the CNMV requests that the prospectus be brought into conformity with those requirements. The full and simplified prospectuses must be kept up to date: such updates are verified and registered by the CNMV.</p> <p>Ongoing disclosure requirements. In addition, Spanish law requires CISs to prepare annual, semi-annual, and quarterly reports (LIIC Art. 17). The CNMV is responsible for checking that CISs submit these periodic reports within the required time frames, and determining whether the content of the reports meets the minimum standards required by law. Any relevant facts concerning CISs must be disclosed (LICC Art. 19).</p> <p>The management company is required to publish several information documents (full prospectus, simplified prospectus, annual report, semi-annual report, and quarterly report) for each of the investment funds it administers to ensure that all circumstances which may have an influence on the net value of the CIS and future prospects are made public as well as to ensure compliance with the applicable legal provisions. The CNMV has a record of CISs' prospectuses, periodic reports, annual reports, and audit reports, all of which are available to the public on the CNMV web site. An extract of the information contained in the two last quarterly reports and half yearly reports of CISs is also available. In addition, with regard to funds, the complete prospectus is available on line. Also, Article 18.2 of the LIIC requires the asset management companies to allow the consultation of all those documents through their web site. The CNMV has supervised compliance with this provision by checking that almost every asset management company has a web site where all the requested documents are available.</p> <p>Before potential investors can subscribe to units or shares, they must be given, free of charge, copies of the simplified prospectus and the most recent half-yearly report; they must also be given the full prospectus and the most recent annual and quarterly reports published upon request (LIIC Art. 18.1). The periodic reports are to be sent at regular intervals, free of charge, to unit holders and shareholders unless they have expressly asked not to receive them. The periodic reports may be transmitted electronically if a unit holder or shareholder so requests. The periodic reports must also be made available to the public at the locations indicated in the full and simplified prospectuses.</p> <p>The full prospectus must contain the bylaws or regulations of the CIS¹² and must conform to the model outlines laid down in the governing legal provisions.¹³ Items of information that must be included in fund and company prospectuses, and which the CNMV is responsible for verifying include:</p> <ul style="list-style-type: none"> • The date on which the prospectus was prepared.

¹² Article 17 of the CIS Act.

¹³ Circular 1/2001.

	<ul style="list-style-type: none">• The date on which the CIS was established, and the date on which the prospectus was entered in the CNMV's register.• The rights of unit holders or shareholders. This information is taken from the bylaws of the open-ended investment company (SICAV) or from the regulations of the fund, these being documents that form part of the full prospectus.• Information concerning the management firms and the persons assuming responsibility for the content of the prospectus.• Rules for determining the net asset value of the CIS (Circular 7/1990 concerning accounting rules and restricted financial statements for CISs).• Subscription and redemption procedures, as well as procedures with respect to the settlement value applicable to these operations. SICAV prospectuses indicate the stock exchanges on which the company is quoted and include information on situations in which the SICAV will buy or sell its own shares.• There is no legal obligation to include the conclusions of audit reports in the full prospectus (LIIC Art. 17). Nevertheless, the conclusions of audit reports must be included in the annual report.• The name of the custodian and the business group to which it belongs, and the same information with respect to any sub-custodians.• The CIS's investment policy and risks inherent to its investments.• The name of the management company to which the management of the CIS has been delegated, and the business group of which it forms part (if applicable). In the case of SICAVs, the names of the members of the company's board of directors must also be provided.• Commissions and fees to which the CIS is subject. <p>CIS advertising. The governing legal provisions state that any advertising which includes an invitation to buy units or shares in a CIS must indicate that the full and simplified prospectuses exist and where and how the public can obtain them or have access to them.¹⁴ A code of conduct has been drawn up by INVERCO (the Association of Collective Investment Schemes and Pension Funds), which sets forth guidelines for CIS advertising. The CNMV is responsible for verifying that advertising complies with those guidelines. In any case, the advertising of CISs is subject to the General Advertising Act.¹⁵</p> <p>Compliance with information disclosure obligations. In the course of the on-site inspection of a management company, enquiries are made to the unit holders of the CIS under management to determine whether the management company is fulfilling its disclosure obligations towards them. The same procedure is followed if complaints alleging that it has not fulfilled its disclosure obligations are filed against a management company.</p> <p>Accounting standards. The accounting rules and valuation criteria applicable to CISs are expressly set forth in Circular 7/1990. Any establishment of, or amendment to, the accounting rules and valuation criteria applicable to CISs requires prior review by the Institute of Accounting and</p>
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¹⁴ Article 18.3 of the CIS Act.

¹⁵ General Advertising Act (Law 34/1988 of November 11, 1988).

¹⁶ The most recent revision was in 1998, with the publication of Circular 3/1998 issued by the CNMV on September 22, 1998, concerning CIS operations and derivatives.

	Auditing (ICAC) (Ministerial Order of December 20, 1990). The accounting rules and valuation criteria applicable to CISs have been updated on several occasions. ¹⁶
Assessment	Fully Implemented.
Comments	The CNMV has in place comprehensive disclosure requirements on CISs risk factors and investment policies and has developed an investor education program and an office dedicated to investors so as to raise awareness about collective investment products.
Principle 20.	Regulation should ensure that there is a proper and disclosed basis for asset valuation and the pricing and the redemption of units in a collective investment scheme.
Description	<p>Accounting rules. The legal provisions governing the evaluation criteria applicable to CISs are contained in Circular 7/1990 concerning accounting rules and restricted financial statements for CISs and in Circular 8/1990, on the determination of the settlement value of securities investment funds (FIMs), and operating ratios and investment limits for CISs. As mentioned under Principle 19, any establishment of, or amendment to, the accounting rules and valuation criteria applicable to CISs requires prior review by the Institute of Accounting and Auditing (ICAC).</p> <p>Given that a unit is each of the allocated parts into which an investment fund's net worth is divided, the settlement value of a unit is obtained by dividing the value of a portion of the fund's net assets that corresponds to that class by the number of units of that class in circulation.¹⁷ The theoretical value of a share in an open-ended investment company (SICAV) is obtained by dividing the company's net assets by the number of shares in circulation on that day.</p> <p>Frequency of calculation of the settlement value</p> <ul style="list-style-type: none"> • With respect to investment funds, the governing legal provisions establish that the settlement value is to be calculated and made public by whatever disclosure mechanism is indicated in the regulations, with such frequency as may be stipulated, depending on each particular fund's investment policy, the nature of its unit holders, and its liquidity. An investment fund is required to value its net worth as often as unit holders are permitted to enter and withdraw. Article 42 of the former LIIC provides that the NAV could be calculated every day and Article 48 of new RIIC introduces the possibility under certain conditions for it to be calculated every 15 days. Funds of funds are an exception to this general rule, because they can calculate their settlement value on the dates stipulated in their regulations (at least twice a month). • An investment fund management company is required to provide the board of the market operation based in the city where its head office is located or, if applicable, any securities market governing body, with the specific information necessary so that data on the settlement value of its units, its net worth, and its number of unit holders can be published in the corresponding listing of traded securities. Furthermore, according to Royal Decree 1309/2005, of November 4, this information can also be published on the web site of the management company. • Shares in SICAVs are traded on the stock exchange.¹⁸ The listing of shares in SICAVs is governed by applicable CIS Regulations.¹⁹ When a SICAV is listed for trading on a stock

¹⁷ Article 7 of the CIS Act.

¹⁸ Nevertheless, it should be recalled that the new Act relating to collective investment schemes (Law 35/2003 of November 4, 2003) (CIS Act) eliminated the requirement existing up to that time that CISs that were incorporated as companies had to be quoted on a Spanish securities exchange.

¹⁹ Article 13.

	<p>exchange, it must provide each day its theoretical value to the stock exchange's governing body so that it can be published in the corresponding list of traded securities. Consequently, SICAVs are required to calculate their theoretical NAV every day.</p> <p>Valuation criteria when market prices are not available. Valuation criteria for investments by CISs in non-quoted securities are covered in a CNMV circular.²⁰ Circular 7/1990 also requires an alternative valuation mechanism to be in place for a fixed-income security whose quotation does not reflect the market situation. Other provisions²¹ require that valuation systems be in place for OTC derivatives or derivatives for which the market is not sufficiently liquid.</p> <p>Finally, CIS Regulations²² permit those securities whose quotation has been suspended and which do not represent more than 5 percent of the fund's net worth to be valued as of the time of their last known change. If they represent more than 5 percent of the fund's net worth, they cannot be valued, so subscriptions and redemptions are carried out at a settlement value which reflects only the part of the portfolio subject to valuation, independent of the requirement to settle any differences that may arise when the valuation is reinstated.</p> <p>Subscription and redemption procedure. According to the legal provisions governing CISs, units of investment funds are to be issued or redeemed by the management company at the request of any unit holder.²³ The price of a unit, for purposes of any subscriptions or redemptions requested, is, at the option of the management company, either the settlement value for the same day, or the settlement value for the following day. In the case of funds of funds, for which the frequency for accepting subscriptions and redemptions is not daily, the settlement value that applies to subscriptions and redemptions is the first value calculated after the operation has been requested.²⁴ Management companies may charge unit holders subscription and redemption fees (and may also establish discounts), which are to be set as a percentage of the unit's settlement value.²⁵</p> <p>With regard to shares in SICAVs traded on the stock exchange, the market mechanism sets their price. However, the legal provisions governing CISs state that a SICAV must buy or sell its own shares as counterparty to orders on the market, whenever the buying or selling price for its shares is respectively lower or higher than its theoretical value.²⁶</p> <p>Valuation errors</p> <p>Valuations are the responsibility of the management company,²⁷ although the custodian is required to oversee the criteria, formulas, and procedures used by the management company to calculate the unit's settlement value.²⁸ In addition, the CNMV carries out a systematic analysis of investment funds' daily rates of return in order to detect any returns that are atypical. In most instances, such atypical daily rates of return are the result of errors in calculating the settlement value. Where there</p>
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²⁰ Circular 4/1997 issued by the CNMV on November 26, 1997.

²¹ Ministerial Order of June 10, 1997.

²² Article 42.9.

²³ Article 7 of the CIS Act.

²⁴ Article 52 *bis* of the CIS Regulations.

²⁵ Article 8 of the CIS Act.

²⁶ Article 33 of the CIS Regulations.

²⁷ Article 40 of the CIS Act.

²⁸ Article 60 of the CIS Act.

²⁹ Article 7 of the CIS Act.

	<p>are especially serious or repeated errors, an analysis is conducted of the adequacy and validity of existing valuation mechanisms and internal control systems, and the management company is urged to set up control mechanisms for calculating the settlement value before subscription and redemption operations are executed.</p> <p>In such cases, if errors are detected which involve the application of an incorrect settlement value in subscription and redemption operations, the governing legal provisions do not specify thresholds above which mechanisms are triggered whereby the management company pays compensation to unit holders; instead, these thresholds are defined by the management company itself. In practice, the management companies routinely provide compensation and make the relevant disclosure except when the impact of the errors is negligible.</p> <p>In addition to the systematic analysis of rates of return, the CNMV also carries out an analysis of the alternative valuation procedures for fixed-income assets when the quotation for such assets is not representative of market pricing trends. The adequacy and validity of valuation systems for any of the management company's assets are also analyzed.</p> <p>The CNMV has the capacity to suspend the subscription or redemption of units temporarily (to allow the required disclosures of information to be made) when it is not possible to determine the units' price or if any other situation of <i>force majeure</i> should arise.²⁹ This is also done if the valuation errors detected by the CNMV are not corrected immediately. Although the CNMV indicates that it has never suspended the subscription or redemption of units temporarily at its own initiative, it has imposed such a suspension at the request of a management company which was facing problems that prevented it from calculating the correct settlement value.</p>
Assessment	Fully implemented
Comments	The CNMV has excellent rules in place for asset valuation and its effective monitoring. Conditions governing redemption of units are also in place. Prevention of late trading and market timing has been kept under scrutiny.
Principles for Market Intermediaries	
Principle 21.	Regulation should provide for minimum entry standards for market intermediaries.
Description	<p>Authorization and registration regime: The law provides that financial services relating to investments can only be provided by investment service providers (<i>Empresas de Servicios de Inversion</i>, ESIs). According to the legal provisions governing the securities market,³⁰ the principal activity of ESIs is to provide investment services. However, depending on the specific legal regime that applies to them, they may engage in additional activities or be members of official secondary markets at their request.</p> <p>In accordance with EU directives, Art. 63 of the LMV identifies the following investment services:</p> <ul style="list-style-type: none"> • reception and transmission of orders; • execution of orders on behalf of third parties; • trading for their own account; • performing individualized, discretionary management of investment portfolios pursuant to terms of reference set out by investors; • acting as a broker, either directly or indirectly for the issuer, in the placing of issues and public sale offerings; and

³⁰ Article 62 of the LMV.

	<ul style="list-style-type: none">• insuring the subscription of issues and public sale offerings. <p>The main additional activities that ESIs may provide include the following: the custody and administration of securities and instruments; renting safe-deposit boxes; granting credits or loans to investors; advising businesses; providing services relating to insurance operations; and giving investment advice.</p> <p>Article 64 of the LMV provides for three categories of ESIs: securities firms (SVs), securities agencies (AVs), and portfolio management companies (SGCs). SVs, which may operate both on behalf of third parties and for their own account, perform all the investment services and additional activities enumerated above. AVs may only operate on behalf of third parties. SGCs may only engage in the individualized, discretionary management of investment portfolios pursuant to terms of reference set out by investors.</p> <p>All ESIs are subject to a specific authorization and registration regime.</p> <p>Responsibility for authorizing ESIs rests with the minister of the ME, acting upon the proposal of the CNMV³¹ according to the procedure described below. An ESI authorized in another member state of the EU may operate in Spain either by opening a branch office or pursuant to the freedom to provide services. If an entity from outside the EU wishes to provide investment services, it is required to have CNMV authorization.³² Credit institutions, which fall within the sphere of competence of the Bank of Spain, may routinely engage in any of the activities listed above, even though they are not investment services firms, provided that they are permitted to do so by the legal regime under which they operate, their bylaws, and their specific authorization.³³</p> <p>Tied agents are individuals or legal entities to whom or to which an ESI has given powers of representation for the purpose of promoting and marketing the investment services forming part of its business activity.</p> <p>The conditions for entry to this area of business activity are set forth in Chapter II of the LMV and are covered by the corresponding administrative regulations.³⁴ The application for authorization must indicate the class of ESI for which authorization is being sought, together with the specific investment services and additional activities that the ESI will provide.</p> <p>The CNMV has operating procedures for granting authorization to ESIs and CISs, known as PAEs</p>
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³¹ Article 66 of the LMV.

³² Article 71 of the LMV.

³³ Article 65 of the LMV.

³⁴ Royal Decree 867/2001 of July 20, 2001, concerning the legal regime for investment services firms (RESI).

³⁵ Article 15 of the RESI.

³⁶ Article 67, paragraphs (g) and (h), of the LMV.

³⁷ Article 67 of the LMV and Art. 9 of the RESI.

³⁸ Article 17 of the RESI.

³⁹ Article 73 of the LMV.

⁴⁰ Article 68 of the LMV.

⁴¹ Article 72 of the LMV.

⁴² Article 69 of the LMV.

⁴³ Article 85 of the LMV.

(Procedimiento de autorización de las empresas). Once the corresponding application has been submitted to the CNMV, it is reviewed by the Authorization and Registration Directorate to determine whether the requirements set forth in the governing legal provisions have been met. If the documentation submitted is found to be incomplete or insufficient, or if it does not comply with the applicable requirements, the promoters are asked to correct the deficiencies. Once an ESI has been authorized, incorporated, and entered in the Mercantile Register, it is entered in the CNMV's Register of Securities Firms, Securities Agencies, and Portfolio Management Companies. The CNMV also makes public the record of those significant shareholders in ESIs.

Among the key requirements that an ESI must fulfill in order to be granted the required authorization are the following:

Minimum capitalization³⁵

- Securities firms: €2 million.
- Securities agencies, when they are seeking authorization to become members of secondary markets, or to join securities clearing and settlement systems, or to include the custody of securities as part of their business activities and to maintain creditor accounts that are documentary and transitory in nature: €500,000. Other securities agencies: €300,000.
- Portfolio management companies: €100,000.
- The capitalization of ESIs that are legal entities may not be less than €25,000.

Other requirements

- Integrity and professionalism on the part of members of the board of directors, as well as officers and other senior management personnel.³⁶
- Sound organization from an administrative and accounting standpoint and adequate human and technical resources vis-à-vis the ESI's planned business activities.³⁷
- Existence of internal rules of conduct, as well as adequate information-systems monitoring and security mechanisms and internal control procedures, including rules governing personal transactions by the directors, officers, staff, and representatives of the ESI.

The legislation provides that the minister of economy, acting upon the proposal of the CNMV, will deny authorization to establish an ESI if the requirements laid down in the governing legal provisions are not fulfilled and, in particular, if the partners who are to have a significant holding are considered unfit.³⁸ The laws and regulations also contain provisions for revoking the authorization granted to an ESI in certain circumstances.³⁹

Once authorization has been granted, subsequent amendments to an ESI's corporate bylaws are subject to the same procedure as the authorization of a new entity; and any changes to the investment services or additional activities for which the authorization was initially granted require prior authorization according to the same procedure as the authorization of a new entity.⁴⁰ Likewise, any restructuring of any branch of activity requires the prior authorization of the Minister of Economy, acting upon the proposal of the CNMV.⁴¹ Lastly, any individual or legal entity that wishes to acquire a significant holding in an ESI, whether directly or indirectly, must inform the CNMV in advance.⁴²

Oversight regime. The oversight, inspection, and sanctions regime for ESIs is the responsibility of the CNMV, which may require from an ESI whatever information it considers necessary.⁴³ ESIs are required to make available to the CNMV all books, records, and documents regardless of the form in which they are held.

Routine inspections are carried out regularly to determine whether the governing legal provisions are being complied with, comprising both off-site inspection, involving the restricted information reported periodically or other information in the CNMV's possession, and on-site inspection

	consisting of visits to the premises of registered ESIs. Off-site inspection includes the periodic analysis of both restricted and public accounting and statistical information, as well as other periodic analyses and other unscheduled inquiries. On-site inspections verify the existence of assets, analyze internal control procedures, and assess compliance with securities market rules.
Assessment	Fully implemented
Comments	Minimum entry standards for market intermediaries (both with regard to prudential supervision and to conduct of supervision) are in place under the Spanish framework and are monitored by the BE and the CNMV. As stated under the principles relating to the regulator and to enforcement and cooperation, close attention should be paid to the development of coordinated or joint supervision activities between the BE and the CNMV.
Principle 22.	There should be initial and ongoing capital and other prudential requirements for market intermediaries that reflect the risks that the intermediaries undertake.
Description	<p>The ESI authorization process includes certain requirements regarding minimum capitalization (see Principle 21 above). The legislation also establishes additional initial and ongoing requirements. Both securities firms and securities agencies must comply with the solvency ratio, which is defined as the legal requirement to maintain a certain minimum level of capital determined with respect to their overhead costs and to the risks they undertake.</p> <p>Specifically, the legal provisions state that the capital of securities firms and securities agencies may not at any time fall below whichever is the highest figure represented by one of the following four definitions:⁴⁴</p> <ul style="list-style-type: none"> • Two-thirds of the minimum capital. • The aggregate risk undertaken (the sum of risks deriving from the portfolio of traded securities, credit risk, and exchange risk). • Basic requirements depending on the level of activity (25 percent of overhead costs). The aim of this calculation is to determine the financial needs of an ESI in order to remain operational for a period of three months with no income, so that, if necessary, an orderly liquidation can be carried out. • 0.5 percent of the portfolios being managed. <p>With respect to portfolio management companies, their capital may not at any time fall below 0.5 percent of the portfolios managed.⁴⁵</p> <p>As mentioned earlier, it is required that the solvency ratio (as well as the liquidity ratio) be met at all times.⁴⁶ Although entities are required to file financial statements with the CNMV every month showing the relevant capital and solvency-ratio information, an entity may be called upon at any time to demonstrate that these requirements are being met. The CNMV regularly reviews levels of capital of ESIs and their affiliated corporate groups and takes measures if material deficiencies are identified that indicate non-fulfillment or situations indicating that the entity may have short-term problems in maintaining the required levels.</p> <p>For ESIs, as well as for other entities subject to these requirements, the individual and consolidated</p>

⁴⁴ Article 43 of Royal Decree 1343/1992 and Article 15 of the RESI.

⁴⁵ Article 15 of the RESI.

⁴⁶ Circular 6/1990, concerning solvency and liquidity ratios for securities firms and securities agencies.

	<p>management reports and accounts for each financial year must be audited and then approved by a general meeting of shareholders within four months after the end of the financial year.⁴⁷ Among the official records that the CNMV maintains for public inspection is a record of the audit reports that accompany ESIs' annual accounts.</p> <p>If the capital level of an investment firm or a securities agency or a corporate group for which consolidated financial information is prepared falls below the minimum required, the regulated entity must inform the CNMV and provide it with a program in which it lays out its plans for bringing itself back into compliance. That program must address the following points, as a minimum:</p> <ul style="list-style-type: none"> • The reasons why the capital level fell below the minimum required. • The plan for returning to compliance, which must include both a limitation of activities that entail a high level of risk and steps to increase the level of capital. • A timetable for returning to compliance. <p>The CNMV must approve the program within a specified period of time, and may add other measures beyond those proposed to ensure that the entity in question is brought back into compliance with the required levels. The following are three areas where the CNMV has exercised its authority in this regard:</p> <ul style="list-style-type: none"> • Solvency ratio. The CNMV has demanded that effective measures be taken to ensure lasting compliance with the governing legal provisions. On a number of occasions, this has meant drawing up action plans calling for additional capital to be paid in by shareholders or for equity loans to be arranged. • Investment in fixed assets. In some cases, in response to CNMV compliance activities, real estate has been sold, leasing arrangements have been made with respect to certain assets, or a corporate group for which consolidated financial information is prepared has been restructured, to ensure compliance with the required limits. • Major risks. Some entities have been required to reduce their positions in certain securities because they exceeded established limits, or have been required to obtain adequate guarantees from debtors to reduce the level of risk undertaken.
Assessment	Fully Implemented
Comments	
Principle 23.	Market intermediaries should be required to comply with standards for internal organization and operational conduct that aim to protect the interests of clients, ensure proper management of risk, and under which management of the intermediary accepts primary responsibility for these matters.
Description	<p>With the primary objective of protecting the clients of financial intermediaries, Spain's governing legal provisions impose a number of requirements on such intermediaries, some of which are described in the preceding Principles since they are essential in order for an ESI to obtain an authorization to carry on business (LMV, Art. 67). The general guiding principle is that the intermediary (a) must be properly organized from an administrative and accounting point of view, and have adequate human and technical resources, and (b) must have internal rules of conduct, as well as adequate information systems, monitoring and security mechanisms and internal control procedures.</p> <p>More specifically, legal provisions set out detailed obligations for intermediaries with respect to</p>

⁴⁷ Article 86 of the LMV.

	<p>their rules of conduct and internal controls. The on-site inspections carried out by the CNMV to verify compliance form an essential part of its overall oversight activities. The principal obligations with which intermediaries must comply can be generally described as follows:</p> <p>Rules of conduct. With respect to rules of conduct, the legislation assigns the board of directors of each entity the task of monitoring and enforcing the rules of conduct, and makes the board of directors responsible for compliance with them, without prejudice to any liability or accountability that may extend to individuals who breach the rules of conduct. In practice, entities typically appoint an ethics officer, reporting to the board of directors, to be responsible for performing these functions in an entity or in several entities of the same group. Each entity's internal regulations must establish a responsible person for enforcing rules of conduct and procedures to be followed in that regard. Some of the key rules of conduct with which intermediaries must comply are set forth below:</p> <p>Client services. Financial entities are legally required to deal with and resolve any complaints or enquiries made by their clients concerning their interests or legally recognized rights.⁴⁸ For these purposes, credit institutions, ESIs, and insurance institutions must have a customer services department or unit. In particular, an ESI is required to advise the CNMV of the identity of the person, who heads its client services department or unit, and to provide that person's postal and e-mail addresses. This information is publicly accessible on the CNMV's website.</p> <p>Securities custody regime. ESIs are required to take adequate measures to protect their clients' property rights and ensure that no improper use is made of securities entrusted to them for deposit or custody, or of any funds received that are of a documentary and transitory nature.⁴⁹ Any deposit or posting of guarantees must be established in individual accounts opened in each client's name, regardless of the relationship that exists between the client and the entity, although the governing legal provisions do in certain circumstances permit aggregate accounts of securities or financial instruments ("omnibus accounts") to be established where the entity is operating in foreign markets where the usual practice is to use global accounts of securities or financial instruments for the clients of a single entity.</p> <p>Client identification. In general terms, the LMV establishes that ESIs, credit institutions, and persons active in securities markets must ensure that they have all necessary information concerning their clients and must keep them properly informed at all times.⁵⁰ Entities are required to ask their clients for information on their identity, their financial circumstances, their investment experience,</p>
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⁴⁸ Financial Systems Reform Measures Act (Law 44/2002 of November 22, 2002).

⁴⁹ Circular 1/1998, Rule 12.

⁵⁰ Article 79 of the LMV.

⁵¹ General Code of Conduct for Securities Markets (Annex to Royal Decree 629/1993 of May 23, 1993 concerning rules for securities market activities and required records).

⁵² Ministerial Order of October 25, 1995.

⁵³ Order of October 7, 1999, implementing the General Code of Conduct and rules for the management of investment portfolios.

⁵⁴ Article 79 of the LMV.

⁵⁵ Circular 1/1998 of June 10, 1998, concerning internal systems for the control, monitoring, and ongoing evaluation of risk.

⁵⁶ Circular 1/1998 of June 10, 1998, concerning internal systems for the control, monitoring, and ongoing evaluation of risk.

⁵⁷ Article 83 of the LMV.

	<p>and investment objectives.⁵¹ Entities must maintain the identification documents presented by a client for six years.⁵² The General Code of Conduct for Securities Markets and other legal provisions issued subsequently provide fuller information on these information requirements.</p> <p>Information to be furnished to clients. The Code of Conduct requires entities to offer clients all the information they have available if it may be relevant to the making of investment decisions. The entity must devote the proper time and attention to the client in order to find the products and services that best fit the client's profile. The information must be clear, accurate, precise, sufficient, and up to date. There are information-disclosure obligations for the settlements carried out by entities with respect to transactions or related securities market services: entities are required to provide information on the transaction amount, the interest rate, and the fees charged, the taxes withheld, and so forth. If the contractual relationship between the client and the intermediary is for a period of more than one year or for an indeterminate period, the intermediary must provide the client every three months with detailed information on the status of his or her portfolio.</p> <p>Contractual documentation. The legislation⁵³ establishes that it is mandatory for a client to be provided with relevant contractual documentation in certain cases: (a) for transactions where a standard model contract exists; (b) for special transactions not listed in any schedule of rates; (c) for transactions that include an agreement to buy back financial instruments not traded on organized secondary markets; or (d) when the client so requests. The legislation also specifies when a standard model contract needs to be used (as in the case of portfolio management operations, securities deposit or administration operations, and so on).</p> <p>Impartial treatment of clients. Spain's governing legal provisions establish that entities involved in securities markets must act with diligence and transparency in the interests of their clients, behave in a way that is orderly and prudent, and look after their clients' interests as if they were their own. In this connection, measures exist to prevent conflicts of interest between an intermediary and its clients, and to prevent conflicts of interest between clients of the same entity (equality of treatment among clients).⁵⁴</p> <p>With respect to internal control requirements, the governing legal provisions establish that ESIs must have an internal audit unit made up of one or more individuals who are not involved in contracting, risk management, client relations, administration, settlement, or collection and payment functions. At the end of each financial year, the internal audit unit is required to submit to the board of directors—or, if applicable, to the audit committee—for approval, a report on the actual level of compliance with internal control requirements and associated procedures, together with the year's major occurrences and the solutions implemented in response to them. This report, for restricted circulation, is to be forwarded to the CNMV together with the audited annual accounts.⁵⁵ An ESI Distance Supervision Unit at the CNMV is in charge of reviewing such reports and analyzing internal control procedures and results.</p> <p>The CNMV's main activities in this area in the course of its on-site visits are concerned with verifying the following:</p> <ul style="list-style-type: none">• That an internal audit unit is in place. As indicated above, this unit is responsible for overseeing compliance with regulatory requirements and continually reviewing internal procedures and control systems.• That there are proper safeguards and controls with respect to balances for the entity's own accounts and for the accounts of its clients, to ensure that they cannot be put to use or made available without authorization.⁵⁶• That proper records are being maintained (accounting records, records of transactions, files of supporting documents for orders, and so on).• That there is proper segregation of duties and functions, to prevent information flows that might give rise to conflicts of interest.⁵⁷
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	<ul style="list-style-type: none"> That there are internal rules of conduct in place that include provisions regarding the procedures to be followed if conflicts of interest should arise between clients, or between the company and its clients; and that there are rules in place about the confidentiality of market information and client information obtained in the course of the company's business.
Assessment	Fully Implemented
Comments	
Principle 24.	There should be a procedure for dealing with the failure of a market intermediary in order to minimize damage and loss to investors and to contain systemic risk.
Description	<p>Spain's governing legal provisions dealing with the possibility of the failure of a market intermediary are aimed at minimizing the potential for contagion to spread to other intermediaries and for clients to incur damage or losses. There are three ways in which these situations can be prevented or dealt with, depending on the stage in the process: (a) preventive mechanisms; (b) investigation, suspension or revocation of an entity's authorization; and (c) the Investment Guarantee Fund.</p> <p>Preventive mechanisms</p> <p>The CNMV has various tools for identifying, and taking steps to prevent, potential failures or other situations that create risks for the market and for investors. Off-site inspection activities include the following:</p> <p>Phase I. Receipt of information. Every month, a check is made to see that entities are forwarding the required financial and statistical information by the applicable deadline. In the case of corporate groups for which consolidated financial information is prepared, this check is performed every three months.</p> <p>Phase II. Quality check. A check is made to see that entities' calculations are correct to determine the liquidity ratio and risk concentration factor pursuant to prudential standards and to determine capital soundness pursuant to the general legal provisions governing joint-stock companies.</p> <p>Phase III. Check of the liquidity ratio. A check is made to see if entities are maintaining a volume of liquid assets sufficient to cover current liabilities falling due within a period of less than one year.</p> <p>Phase IV. Check of risk concentration. A check is made to see if entities are complying with the limit on the assumption of risk vis-à-vis a single individual, legal entity, or business group.</p> <p>Phase V. Check of capital soundness. A check is made to see if entities are maintaining a level of capital sufficient to cover capital requirements pursuant to the legal provisions applicable to all joint-stock companies.</p> <p>Phase VI. Issuing of instructions. If in the course of the above phases any instance of noncompliance with the governing legal provisions is detected, an entity is instructed to provide information on the reasons for such noncompliance and the steps it will take to bring itself back into compliance.</p> <p>Investigation, suspension, or revocation of an entity's authorization</p> <p><i>Investigation.</i> The CNMV may decide to open an investigation of an entity and as the case may be, decide that its directors or officers are to be temporarily replaced. In such a situation, the CNMV is required to give an account of the situation to the minister of economy. Such measures continue until the situation has been resolved.⁵⁸ A decision to investigate an entity, or to replace its directors or officers temporarily, may only be made in the following circumstances:</p> <ul style="list-style-type: none"> If the entity is in an exceptionally serious situation that jeopardizes its equity or its stability,

⁵⁸ Article 107 of the LMV.

	<p>liquidity, or solvency.</p> <ul style="list-style-type: none">• If there are well-founded indications that the situation is exceptionally serious and the entity's true position cannot be determined from its accounts.• At the request of the entity itself, in which case the entity must provide proper justification. <p>Suspension of an ESI's authorization. The CNMV may suspend an authorization granted to an ESI with respect to all or any part of the activities it covers. A partial suspension would affect only certain activities or the scope within which they may be carried on. The CNMV may decide on a suspension only where this is necessary to assure the ESI's solvency or to protect investors.⁵⁹</p> <p>Revocation of an ESI's authorization. The CNMV revokes an ESI's authorization directly in a case where the ESI expressly gives up the authorization and withdraws from the General Investment Guarantee Fund. In all other cases, such a decision is made by the minister of economy upon the proposal of the CNMV.⁶⁰ Any decision to revoke an authorization takes immediate effect after notification to the ESI. Revocation of the authorization may lead to the mandatory dissolution of the ESI. Whether this happens or not, the CNMV can institute precautionary measures to protect investors and assure the proper functioning of the markets.</p> <p>When the CNMV learns that an ESI based in another member country of the EU and operating in Spain has had its authorization revoked, the CNMV immediately takes the necessary steps to prevent the ESI from undertaking new activities and to safeguard investors' interests. In cooperation with the oversight authority in the ESI's home country, the CNMV may institute precautionary measures, in a timely manner, to ensure proper liquidation. Similarly, if an ESI based in a country that is not a member of the EU has its authorization revoked by the oversight authority in that country, the authorization of the branch office operating in Spain is revoked.⁶¹</p> <p>Lastly, the CNMV has the power to ask an ESI to declare bankruptcy if the accounting statements filed by the ESI, or the inspections carried out by the CNMV, show the ESI to be insolvent.⁶²</p> <p>Investment Guarantee Fund (FOGAIN: Fondo de Garantia de Inversiones)⁶³</p> <p>FOGAIN is a separate capital fund which is not vested with legal personality. It is represented and administered by its own management company, and its assets are derived from contributions from member entities (comprising all ESIs, except those that manage organized trading systems). Its main purpose is to cover investors when they cannot obtain from a member of FOGAIN restitution of any funds or securities or financial instruments. Branch offices of foreign ESIs authorized to operate in Spain must provide evidence that they belong to a similar fund in their home country, although they have the option of joining FOGAIN to supplement the coverage provided by the guarantee system in their home country. Spain's governing legal provisions state that the Deposit Guarantee Fund (to which all credit institutions belong) covers investors with respect to investment services provided by credit institutions.</p> <p>In order for FOGAIN coverage to apply, the funds and securities or instruments must be linked to</p>
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⁵⁹ Article 76 of the LMV.

⁶⁰ Article 74 of the LMV.

⁶¹ Article 74 of the LMV.

⁶² Article 76 *bis* of the LMV.

⁶³ The principal regulations governing the FOGAIN are contained in Title VI of the LMV and in Royal Decree 948/2001 of August 3, 2001, concerning investor compensation systems.

⁶⁴ Article 12 of Royal Decree 1343/1992.

	<p>the provision of investment services: in other words, FOGAIN coverage applies to funds and securities that clients have entrusted to ESIs in connection with their provision of investment services, but does not extend to any loss of value that the investment may incur or to any credit risk. FOGAIN coverage is triggered when an ESI is declared to be in noncompliance (either by the courts or by administrative means). Funds or securities from investors who are deemed professionally qualified, including all financial institutions, are excluded from FOGAIN coverage. The amount guaranteed and hence the maximum amount of compensation, in accordance with the EU's governing legal provisions, is fixed at €20,000.</p> <p>Cooperation with other agencies. Lastly, it must be noted that a system of cooperation among oversight agencies⁶⁴ is in place to deal with a situation in which several such agencies are responsible for overseeing different entities of a single business group, whether at the national level or across national borders within the EU. Outside this framework, cooperation between oversight agencies is in accordance with EU legal provisions and agreements concluded for this purpose.</p>												
Assessment	Fully Implemented.												
Comments	<p>With respect to market intermediaries, the CNMV has in place procedures and programs to review appropriate internal controls and tackle conflict of interest issues. The CNMV may want to reinforce guidance provided to market intermediaries on specific internal operations requirements as some shortcomings have started to be addressed through a general restatement of governing principles for internal organization in 2004.</p> <p>The guarantee provided by FOGAIN has been set up to have a retroactive effect back to July 1, 1993. Since that date, five companies have been declared noncompliant with prudential requirements.</p> <table border="1" data-bbox="703 995 1219 1283"> <thead> <tr> <th>Year</th> <th>Entity</th> </tr> </thead> <tbody> <tr> <td>1994</td> <td>Broker Balear AV</td> </tr> <tr> <td>1994</td> <td>Bolsa 8 AVB</td> </tr> <tr> <td>1995</td> <td>XM Patrimonios AV</td> </tr> <tr> <td>1998</td> <td>AVA Asesores de Valores AV</td> </tr> <tr> <td>2001</td> <td>Gescartera Dinero AV</td> </tr> </tbody> </table> <p>Because FOGAIN has only been fully in operation since 2002, indemnification of investors following these situations has been handled in association with the fondos de garantía de depósitos and FOGAIN (proportionally to their net assets on December 31, 2001). Thus, FOGAIN has had to face only a small part of the payments for indemnification.</p> <p>The net assets of FOGAIN on December 31, 2004 amounted to €14.8 million and were anticipated to amount to €18.8 million at the end of 2005. On the hypothesis of an annual increase in assets of €4.8 million (average increase anticipated on the actual basis of calculation retained for the period 2003-05), FOGAIN could deal now with bankruptcies comparable to Balear AV, Bolsa AVB y XM Patrimonios AV, and would be able to face a major case such as GESCARTERA AV by the end of 2006 and a case such as AVA AV by the end of 2009.</p> <p>On the other hand, member entities have provided FOGAIN with data concerning the maximum indemnification that the fund would have to deliver if they were to go bankrupt. With the anticipated assets at end-2005, the fund could cover the vast majority of the losses incurred. The probability of such a case is not high, and in case of a major crisis FOGAIN could ask for additional contributions from member entities and have recourse to external financing.</p>	Year	Entity	1994	Broker Balear AV	1994	Bolsa 8 AVB	1995	XM Patrimonios AV	1998	AVA Asesores de Valores AV	2001	Gescartera Dinero AV
Year	Entity												
1994	Broker Balear AV												
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Principles for the Secondary Market	
Principle 25.	The establishment of trading systems including securities exchanges should be subject to regulatory authorization and oversight.
Description	<p>Spain's governing legal provisions distinguish between official secondary markets and organized trading systems (<i>Sistemas organizados de negociación, SONs</i>).</p> <p>Official secondary markets are those which operate on a regular basis, pursuant to the Securities Market Act (LMV) and its implementing regulations, particularly with respect to conditions of access, listing of securities for trading, operating procedures, information disclosure, and advertising.⁶⁵ The law considers the following to be official secondary markets: securities exchanges, the market for public debt represented by book entries, markets for options and futures, and other government markets that meet the above-mentioned conditions and are authorized within the framework of the LMV and its implementing regulations, together with markets authorized by the Autonomous Communities in cases where they have relevant jurisdiction. The main characteristics of these markets are as follows:</p> <ul style="list-style-type: none"> • They are organized markets and must have a governing body in place that is responsible for establishing and enforcing rules for market access, for quotations and contracts, and for information disclosure. Each market's governing body is incorporated as a company, and is responsible for setting up the contract system, organizing market services, exercising ownership of the resources necessary for the market to function, and, in general, directing and organizing the activities carried out in the market. • They are closed markets, to which only authorized members have access. • Members' minimum obligations towards their clients are regulated. Likewise, the government may prohibit or limit any operations that may threaten the transparency and orderly functioning of the market, or the interests of investors. • In order for a private security to be listed for trading, a request must be made by the issuer and approved by the governing body, subject in each case to prior verification by the CNMV that the requisite conditions have been fulfilled. • Issuers of listed securities are required to be audited every year and to publish specific financial and accounting statements every three months. This requirement does not apply to the government, the Autonomous Communities, international organizations of which Spain is a member, or entities established by the government under public law. <p>Organized trading systems (SONs) are multilateral trading systems that match multiple parties' interests in buying and selling financial instruments within one single system. Operating under certain nondiscretionary trading rules, they produce a contract for a financial instrument. SONs are different from regulated markets in that they do not possess the so-called public functions of regulated markets such as listing financial instruments for quotation, and suspending or excluding them. The SONs recognized in Spanish legislation⁶⁶ are more self-regulating than the official markets. Spain's markets have two fixed-income electronic trading platforms that operate as SONs (SENAF and MTS Spain). Also in this category is Latibex, a market denominated in euros for Latin American securities.</p> <p>Under Spanish law, there is a general rule regarding the authorization of securities markets to the effect that the establishment of any market or organized trading system for securities or other</p>

⁶⁵ Article 31.1 of the LMV.

⁶⁶ Article 31.4 of the LMV.

	<p>financial instruments that does not have the status of an official market must be authorized by the government, subject to a prior report of the CNMV, or must be authorized by the corresponding Autonomous Community in cases where the Autonomous Communities have jurisdiction. (LMV Art. 31.4).</p> <p>In order to have the status of an official secondary securities market, as noted above, a market must operate on a regular basis pursuant to the LMV and its implementing regulations, particularly with respect to conditions of access, listing of securities for trading, operating procedures, information disclosure, and advertising.</p> <ul style="list-style-type: none">• The activities for which authorization is granted are set forth in each market's bylaws, operating regulations, circulars, and operating instructions. These texts are checked by the CNMV to ensure that they conform to the provisions laid down in the LMV (as to transparency, proper price formation, and protection of investors). The CNMV may establish minimum requirements for the regulation of a market, impose additional requirements in relation to investor protection and the recording of operations, approve criteria for the products that may be traded, and so on.• In order for a derivatives market to be approved, reports must be obtained from the governing boards of the markets on which the underlying asset is traded. In its report, each governing body should indicate any negative impact that the establishment of a derivatives market could have on the market for the underlying asset. In addition, if the underlying asset is a commodity, account must also be taken of reports obtained from public bodies having responsibility in regard to the trading of that commodity. Because of the special nature of the derivatives market, the authorization of such a market must take place simultaneously with the authorization of its clearing and settlement infrastructure. In fact, the law has been requiring that a derivatives market have a legal governing body, incorporated as a company, with responsibility for setting up the contract-making process, recording the transactions carried out, and organizing clearing and settlement services. <p>Supervision of the governing body. Under Spanish law, every market operation or organized trading system for securities or other financial instruments must have a governing body set up in the form of an incorporated company, having basic functions with regard to the organization, supervision, and supply of information, and responsibility for approving operating regulations for the market or trading system.⁶⁷ The governing boards of secondary markets, regardless of whether or not they have official status, are subject to the oversight, inspection, and sanctions regime established in the LMV, which the CNMV is responsible for implementing.</p> <ul style="list-style-type: none">• The CNMV oversees the governing boards to ensure that they are properly applying existing legislation, their market's regulations, and any decisions with respect to the contract-making process or the functioning of the market. The CNMV may require that decisions be amended if they are at variance with securities market legislation, or are prejudicial to the transparency and proper functioning of the price formation process, or are at odds with the protection of investors. <p>Membership in the market. Members are the only entities permitted to carry out operations directly in a Spanish securities market. Article 37 of the LMV establishes the minimum requirements for membership in a market, and each market has the power to establish additional requirements. The following entities may be members of official secondary securities markets: securities firms and securities agencies, Spanish credit institutions, investment services firms and credit institutions authorized in another EU member country, investment services firms and credit institutions authorized in another country that is not a member of the EU (subject to certain</p>
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⁶⁷ Article 31.4 of the LMV.

	<p>conditions), and other entities authorized to operate locally by the corresponding Autonomous Community in cases where the Autonomous Communities have jurisdiction. For each official secondary market of which an entity wishes to become a member, the corresponding governing body must expressly approve and record the entity's admission to membership.</p> <p>Rules of conduct. The central role played by market members makes it necessary to establish certain binding rules of conduct to protect investors from possible abuses. Spain's rules of conduct are set forth under the LMV, in the General Code of Conduct, and under the markets' own internal rules of conduct for members.</p>
<i>Assessment</i>	Fully Implemented
<i>Comments</i>	The MIFID directive to be implemented in April 2007 will change the authorization procedure of the Multilateral Trading Facility (MTF) and allow investment firms to run them. In this context, continued observance of Principle 25 should be kept under review.
Principle 26.	There should be ongoing regulatory supervision of exchanges and trading systems, which should aim to ensure that the integrity of trading is maintained through fair and equitable rules that strike an appropriate balance between the demands of different market participants.
<i>Description</i>	<p>The task of overseeing contract-making activity in markets and, in particular, maintaining the integrity of the process, is performed at the basic level by the market's governing body and at a higher level by the CNMV.</p> <p>Under the law⁶⁸ (and without prejudice to the oversight, inspection, and sanctioning powers of the CNMV), the governing boards of the market operations are given responsibility for supervising markets, protecting the rights of investors, ensuring the transparency and proper functioning of price formation processes, maintaining the security of the markets and the evaluation of risks undertaken on those markets, enforcing strict observance with rules applicable to the contract-making process and the other activities of the market, and, in general, ensuring that the markets function smoothly.</p> <p>In turn, each governing board is required to set up a specific oversight and surveillance unit in which at least one person supervises each trading session. The board is required and to report immediately to the CNMV any events or activities that may involve any breach of the binding rules or any deviation from the core principles of securities market regulation. In addition, the boards are required to give the CNMV any assistance it may request in connection with its functions.</p> <p>The CNMV has the obligation to supervise the governing boards, the members of secondary markets, and the activities conducted on securities markets. These oversight functions are carried out by the Directorate General of Markets and Investors, which has a number of warning systems and daily reporting mechanisms in place to assist it in this task. These warning systems primarily detect significant variations in the prices and volumes of products traded, and in the concentration of trading in a product with respect to a particular member.</p> <p>For its oversight activities, the CNMV receives information relating to the volume of trades and the operation of settlement processes. Circular 4/1999 of the CNMV specifies the information required and the frequency with which it must be reported. Thus, the governing boards must forward information every day to the CNMV concerning transactions carried out on the market both during and outside the session, as well as the volume, price, and time of execution for each transaction.</p> <p>Circular 3/1999 of the CNMV also provides for the markets to publish specific daily information concerning their operations. In addition, the CNMV receives information on the guarantee deposits</p>

⁶⁸ Article 12 of Royal Decree 726/1989 concerning governing boards.

	<p>required from participants, through the governing boards, in the case of the derivatives market, and information on the settlement system, in the case of fixed- and variable-income securities markets.⁶⁹</p> <p>If, in the daily review of market activities (which in most cases is carried out in real time), the CNMV detects some irregular practice that falls within the governing body's sphere of active or passive responsibility, the CNMV may request an explanatory report for its assessment. If the explanations are not satisfactory, actions such as imposing fines, replacing the directors, or revoking the authorization may be taken. Such measures are decided by the Minister of Economy, subject to a prior report from the CNMV.</p> <p>The CNMV also has a complaints service to which participants may bring any complaints they may have concerning the operation of the markets. The information gathered from these complaints, insofar as it relates to the governing boards' activities, becomes one of the factors used in assessing each governing board's compliance with the rules and regulations.</p> <p>Lastly, it must be noted that in order for each market's operating rules to be approved, and in order for any amendments to those rules to be approved, such rules or amendments must first be reviewed by the CNMV. The CNMV has the power to suspend the application of any rule issued by a governing body if it believes that that rule breaches any aspect of securities market legislation.⁷⁰</p> <p>The regulator also has the power to withdraw the authorization of a market or trading system. The legislation establishes that failure to comply with the conditions required for the authorization of a market constitutes grounds for that authorization to be revoked.</p>
Assessment	Fully implemented
Comments	
Principle 27. Regulation should promote transparency of trading.	
Description	<p>Market transparency is one of the fundamental principles of the LMV, and all regulated markets and other trading systems are bound to observe transparency requirements. Similarly, transparency is one of the key aspects of EU financial regulation, and occupies a central role in the Markets in Financial Instruments Directive (MIFID).</p> <p>Article 43 of the LMV provides that, with a view to ensuring market transparency, the CNMV, the BE, and the governing boards are required, within certain regulatory limits, to determine what information is to be made public concerning market operations. Each day that a trading session is held, the governing boards are required to publish a listing of traded securities that contains all the items of information determined by the CNMV.⁷¹ Accordingly, the CNMV has issued a circular⁷² setting out the information that the governing boards are required to include in those daily listings, and indicating that, where necessary, the governing boards must develop appropriate technical systems to be able to make that information public within specified time limits. Some of the Spanish markets' principal information disclosure requirements are summarized below:</p> <p>Securities exchanges. Securities exchanges are required to provide information for the various systems and segments of the contract-making process. The following are the main points with respect to regular operations:</p>

⁶⁹ Circular 3/1990 (for the equities market) and the Ministerial Order concerning the approval of regulations (for other markets).

⁷⁰ Article 15 of Royal Decree 726/1989.

⁷¹ Article 14.4 of Royal Decree 726/1989.

⁷² Circular 3/1999.

	<ul style="list-style-type: none">• Spanish Securities Exchange Interconnection System (SIBE). Information requirements apply with respect to orders made and transactions executed, in real time for each security. So far as orders made are concerned, among other things, all bids made for the best five buying and selling positions are made public. There are also information requirements in regard to orders on the block transactions market (<i>mercado de bloques</i>). So far as executed transactions are concerned, all transactions executed at the session are made public, indicating the price, the transaction, the buyer and seller, and the time of the transaction.• Pit trading (fixed- and variable-income securities). At the close of pit trading, the high, the low, the opening, and the closing price are made public. The trading volume is made public prior to the opening of the next day's pit trading session.• Electronic fixed-income securities market. The day's trading volume and the price of the last transaction are made public in real time for each issue. <p>There are other information requirements relating to special stock-exchange operations and non-routine operations provided for in the law. In addition, the SIBE's own operating rules establish that any special measure taken by the Sociedad de Bolsas to assure the smooth functioning of the market—such as broadening the static range (<i>rango estático</i>, or maximum variation permitted with respect to the static price at any given time), initiating a volatility auction (<i>subasta de volatilidad</i>), or interrupting or suspending trading—is to be announced in advance on the SIBE screens to which operators have access.</p> <p>Information on trading during the stock-exchange session is published in the Official Listings of Traded Securities prepared by Spain's four stock-exchange governing boards. In addition, market users are provided with real-time information in accordance with the legal provisions discussed above, and certain items of information (the latest cross price, the buyer and seller in the most recent transaction, the opening price, the volume traded, and the five best buying and selling bids) are also provided in real time to operators and commercial market data services, which relay this information to the public.</p> <p>There are two main exceptions to this usual practice of information being provided in real time: transactions on the block market and certain special transactions as specified in the law (which are published on the following day). This exceptional status is subject to certain conditions being fulfilled.</p> <p>Financial Assets Intermediaries Association (AIAF). On this bilateral market, where participants routinely carry out transactions by telephone, information is published at the same time it is received: i.e., at the moment when it is communicated to the market. AIAF is required to publish in real time the most recent contracted volume for each issue traded, together with the price and yield, except in the case of short-term assets (promissory notes) for which only the most recent contracted volume and yield are published. So far as the regulation of the market itself is concerned, the AIAF regulations⁷³ establish that the information is to be published every half hour through commercial market data services and in real time on the AIAF website. In addition, a bulletin is published every day after the close of the session, containing a summary of the day's contracts, and a weekly summary is published every Friday.</p> <p>With respect to conditions for access to information on the part of participants,⁷⁴ the governing legal provisions state that the information made available pursuant to law must be published as quickly as possible, and that all investors must be treated equally in this regard, so that this can contribute to</p>
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⁷³ Chapter VIII.

⁷⁴ For the relevant background, see Circular 3/1999 from the CNMV.

⁷⁵ Title VI.

	<p>proper price formation and ensure that investment decisions are taken on a sound basis, thereby enabling investors to know for themselves whether their intermediaries are executing their orders at the best possible prices.</p> <p>The Spanish Stock Exchanges and Markets Group (BME Group) has a system in place covering public data access, and offers a standard information contract for the provision of SIBE data, which spells out all the relevant procedures and specifics as to the data content offered on an equal basis to all subscribers. There are various tiers of data content available, depending on the type of contract and the subscription rate. In addition, the SIBE publishes information with a 20-minute delay free of charge on its website.</p> <p>The MEFF, the AIAF, the MTS, and the SENAF offer information contracts similar to those mentioned above for the SIBE. As well, the MEFF makes information available on transactions executed in the market either in real time or with a delay of not more than 15 minutes (depending on the type of product). The AIAF makes trading information public on its website with a maximum delay of two hours.</p> <p>Spanish Financial Futures Market (MEFF). Transparency obligations for the options and futures markets center on the disclosure of certain information concerning orders made, transactions executed, and open positions, in real time and for each contract in all cases. The market itself has established a series of requirements concerning the disclosure of information to market participants. According to the MEFF regulations, information on orders received and accepted and the resulting trading prices must be made public by appropriate technical means, according to the principle that the fullest possible information must be made available in real time and must be equally accessible to all members.</p> <p>Thus, market information must be made public as follows: (a) in real time, by means of terminals connected to each market's central computer and through commercial market data services; and (b) on a regular schedule, in the Daily Market Bulletin, the press, and other communications media.</p> <p>Market for Treasury Securities (MTS) and Electronic Financial Assets Trading System (SENAF). The transparency rules for the MTS and SENAF markets are set out in their respective regulations.⁷⁵</p> <ul style="list-style-type: none"> • MTS. Contract-making is a blind process, and existing bids ranked by order of price are published on the market screen to which all members have access. Once an order has been executed, the market ceases to be blind and the counterparty with which the transaction is to be settled becomes known. Members may view the total amount traded during the session at any time. • SENAF is a completely blind market, in which the counterparty is not known either in the contract-making process or in the settlement process. Here too, bids ranked by order of price are published on market screens, including an indication of the type of member. As well, the total traded can be seen in real time whenever the screen is refreshed.
<i>Assessment</i>	Fully implemented
<i>Comments</i>	The implementation of the MIFID directive regarding transparency requirements on the securities markets will require a high level of monitoring.
Principle 28.	Regulation should be designed to detect and deter manipulation and other unfair trading practices.
<i>Description</i>	Spain has extensive regulatory provisions concerning market manipulation. To begin with, the Penal Code ⁷⁶ expressly prohibits price manipulation and other unfair practices in connection with the trading of items (particularly securities), and cites certain cases that may constitute a criminal

⁷⁶ Articles 284 and 285.

	<p>offense (such as the spreading of false news for the purpose of manipulating price formation). Breach of these provisions may be punishable by incarceration.</p> <p>In addition, Title VII of the LMV regulates the rules of conduct applicable to investment services firms, credit institutions, and individuals and entities involved in the securities market, whether they receive or execute orders or provide advice regarding investments in securities.</p> <p>Among the most important obligations are the obligations to:</p> <ul style="list-style-type: none">• act with diligence and transparency in the interests of their clients and in the defense of the integrity of the market;• organize themselves in such a way as to minimize the risk of conflict of interest;• behave in a way that is orderly and prudent;• have adequate resources available in order to carry on their activities, and to have appropriate internal controls in place;• ensure that they have all necessary information about their clients, and keep their clients properly informed;• ensure equality of treatment among their clients;• refrain from taking positions on their own account in securities or financial instruments for which a specific analysis is under way, from the time the conclusions of that analysis become known until such time as the report is made public; and• inform clients of any possible conflict of interest with respect to the advice they give or the investment services they provide.⁷⁷ <p>Article 80 of the LMV expressly states that an entity may not, for its own benefit or for the benefit of outside parties, act in such a way as to cause an artificial shaping of quotations, or buy any securities for its own account if it has clients that have asked to buy the same securities on the same or better terms, or attempt to sell securities it owns before selling those of its clients if such clients have ordered the sale of the same class of security on the same or better terms. In addition, restrictions are placed on the activities of anyone possessing privileged information⁷⁸ (see Principle 14).</p> <p>Additional legal provisions⁷⁹ are in place to implement these rules of conduct. They establish two cornerstones for business activities associated with securities markets: entities must act impartially,</p>
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⁷⁷ Article 79 of the LMV.

⁷⁸ Article 81.2 of the LMV.

⁷⁹ Annex to Royal Decree 629/1993.

⁸⁰ Commission Directive 2003/124/EC on inside information and market manipulation, Commission Directive 2003/125/EC on investment analysis activities, Commission Directive 2004/72/EC on accepted market practices, and Commission Regulation 2273/2003 on buy-back programs and stabilization of financial instruments.

⁸¹ The CNMV's responsibilities in regard to sanctions are set forth in Title III of the LMV and Title VI of the CIS Act.

⁸² The sanctions regime, in which the sanction depends on the seriousness of the offense, is covered in detail in Title VIII of the LMV.

	<p>and they cannot put their own interests before those of their clients. In addition, each market's own regulations are based generally on the principles set forth in the LMV, and each market's governing body is responsible for ensuring compliance and reporting to the CNMV any fraudulent practices of which it may become aware.</p> <p>Lastly, it must be noted that unified laws and regulations covering market abuse are being put in place at the EU level, with the adoption of Directive 2003/6/EC of the European Parliament and European Council on insider dealing and market manipulation (market abuse), and the implementing regulations issued pursuant to it consisting of three Commission Directives and one Commission Regulation.⁸⁰</p> <p>Oversight mechanisms</p> <p>Although, at a basic level, the individual markets themselves keep a particular watch on trading to see that it proceeds in an orderly fashion and that the regulations and other applicable rules are being adhered to, and have the power to suspend trading briefly or to shut it down, it is the CNMV that has the responsibility to monitor and examine trading with a view to detecting practices that are contrary to good market practice (beyond technical or practical errors that contravene market operating rules). The CNMV gathers and analyzes more detailed information on trading and market intermediaries in real time in the case of electronic markets, and after the close of the session in the case of other markets.</p> <p>The CNMV receives trading information directly from the markets and through the various commercial market data services most commonly used by market participants (Reuters and Bloomberg). The CNMV has designed a system of parameter-based signals for each security, which, using the information received from the markets, aims at identifying and explaining any abnormal behavior in the volume or price of securities (large-volume traders, concentration of trades, large price swings, and so on).</p> <p>In addition, as part of its routine oversight activity, the CNMV keeps in close touch with the oversight units of the various markets' governing boards so that, when necessary, it can ask them for specific information. It also carries on appropriate oversight of market participants, and analyzes both the operations they carry out on the markets and the information they are required to report periodically to the CNMV. The CNMV has the power to ask entities for specific information, and to make periodic inspection visits to verify that they are in compliance with the applicable requirements.</p> <p>The obligation to disclose specific information to the market (transparency) is organized as another mechanism for preventing unfair practices. Thus, requirements in regard to the provision of real-time market trading information are designed with a view to assuring proper price formation and preventing abuses. As mentioned earlier, the electronic stock exchange offers the possibility of halting trading, and similarly the CNMV has the power to suspend trading in any security prior to the announcement of significant news in order to ensure that all investors have the same opportunities. In practice, securities issuers are required to make public, as quickly as possible, any news that might have a significant impact on the quotation of their securities.</p> <p>In exercising its oversight function, the CNMV works in close collaboration with other Spanish regulatory and oversight agencies (the Bank of Spain, the Directorate General of Insurance and Pension Funds, the Executive Administration of the Commission for the Prevention of Money Laundering and Monetary Offenses, and the authorities of the Autonomous Communities having responsibilities in the area of financial oversight). Such collaboration may take place within the framework of specific cooperation agreements or ad hoc working groups established for this purpose. The CNMV also works with judicial authorities where necessary.</p> <p>Lastly, mention must be made of the CNMV's cooperation with foreign oversight boards under various memoranda of understanding. In addition, at the European level, the CNMV is a member of the CESR-POL, the operational group of the Committee of European Securities Regulators (CESR)</p>
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	<p>responsible for overseeing trading activity and the exchange of information.</p> <p>Procedural mechanisms</p> <p>If, in the course of carrying out its oversight functions, the CNMV's Directorate General of Markets and Investors detects signs of possible market abuse, it turns the matter over to the Market Surveillance Unit (UVM), a division of the CNMV which is responsible for investigating conduct contrary to the rules and regulations of securities markets, and particularly practices that constitute market abuse. A proposal is then made to the Executive Committee. The UVM, once it has taken statements from the parties involved and made the necessary inquiries, determines the possible administrative sanctions that may be applicable on the basis of the facts. The work of the UVM may result in warnings being given or in proceedings being initiated with a view to the imposition of sanctions.⁸¹ In the latter case, the proceedings are handled by the CNMV's Directorate of Legal Affairs and Directorate of the Disputes Service and Sanctions Regime.</p> <p>If sanction proceedings are initiated, the matter is forwarded to the Minister of Economy in the case of very serious infractions, or to the CNMV's Board in the case of serious or moderate infractions, so that the results of the proceedings can be confirmed.⁸² Lastly, if during the course of the sanction proceedings the investigators find evidence that acts have been committed which may constitute criminal offenses, this is reported to the Public prosecutor for appropriate action.</p>
Assessment	Fully Implemented
Comments	See also discussions under Principles relating to enforcement and cooperation.
Principle 29.	Regulation should aim to ensure the proper management of large exposures, default risk and market disruption.
Description	<p>This principle is met by assuring the functioning of the stock-exchange settlement risk management system run by Iberclear, the derivatives markets clearinghouses (the MEFF, which runs one market for variable-income derivatives and another for fixed-income derivatives, and the Olive Oil Futures Market (MFAO)), and the central counterparty for fixed-income transactions run by the MEFF. Local settlement risk management systems subject to oversight by their respective Autonomous Communities are not discussed, since the governing legal provisions applicable to the Autonomous Communities are based on the same principles as the national provisions. Neither is there any discussion of the fixed-income settlement platform managed by Iberclear, since it is assumed that risk management is handled bilaterally between participants in the system (for more detailed information, see Principle 30).</p> <p>So far as laws and regulations are concerned, the provisions which form the basis for the oversight powers of both the CNMV and the risk management system operators are taken mainly from the LMV, which sets out in clear terms the guiding principles for those systems. Specific considerations are covered in regulations established at a lower level. In any case, the authorization given for each of these systems includes a requirement that internal regulations be developed. Once these internal regulations are approved, they serve to bring order and discipline to the securities market; and all participants in the system, including the system operator, are bound to comply with them. Lastly, the system operator may establish rules covering any technical matters not covered in the aforesaid legal provisions and internal regulations, subject to their approval by the CNMV.</p> <p>Evaluation, monitoring, and control of large exposures</p> <p>In all cases, quantitative and qualitative trigger levels have been established for the purpose of monitoring large exposures. The risk management system operator has initial responsibility for setting quantitative trigger levels, subject to the CNMV indicating approval or non-opposition. Alternatively, the CNMV may take the initiative in setting these levels. The CNMV is also authorized to intervene if there are circumstances of risk that cannot be assessed a priori in quantitative terms, but which have the potential to jeopardize the systems' proper functioning.</p> <p>In the case of the variable income settlement platform run by Iberclear, quantitative trigger levels are</p>

	<p>set on the basis of the collective bonds posted by the entities belonging to the system, as a joint and several guarantee (together with the guarantee posted by the rest of the participants) for operations to be settled. Since this platform serves to complete the settlement of all stock- exchange operations without the settlement platform assuming risk itself, each member entity is required to post a bond to guarantee the fulfillment of its obligations. The amounts of the bonds are recalculated monthly, taking different variables into account. Every day, each entity's bond is compared against its open unsettled position, and if the open unsettled position exceeds the amount of the bond posted by the member, Iberclear requests additional bonds until the entity's full exposure is covered.⁸³</p> <p>The CNMV, because of its oversight functions with respect to the settlement system, must be kept informed of the bonds posted by each entity, as well as any changes made in the amounts of the bonds each day. As well, the information available on each entity's settlement accounts and open unsettled position is analyzed, for the purpose of estimating potential one-off risks when settlement takes place.</p> <p>Iberclear may take corrective measures with respect to any breach of the rules and regulations governing its relations with entities that are members of the system, with priority placed on preventing any recurrence of delays in the delivery of securities or funds or of noncompliance in settlements giving rise to repurchase operations. Where applicable, the CNMV must be advised in advance if such measures are taken.⁸⁴</p> <p>The clearinghouses of the derivatives markets and the central counterparty run by the MEFF also have a system of limits and parameters used to monitor participants' level of risk. Depending on each entity's exposure, a guarantee must be posted and maintained to cover the position. Positions are monitored and exposure is calculated in real time. Guarantees are posted at least on a daily basis. Various limitations are in place to prevent situations of excessive risk, taking into account the participant's equity or solvency, as well as its relative size.⁸⁵</p> <p>The system operator is required to advise the CNMV if it foresees a possibility that the size of certain positions may have a significant impact on contract-making or settlement. For its part, the CNMV has at its disposal the risk control system provided by each operator, which permits daily checks to be made of the distribution of participants having large exposures, and the level of risk represented by each position.</p> <p>In regard to information on the beneficial ownership of the risk position, it must be pointed out that, in cases where this is considered necessary, both the system operator (Iberclear or the MEFF) and the CNMV have access to that information and to the information contained in the special records that each participant maintains with respect to the guarantees posted by its clients or the coverage of its exposure by other means. In addition, the CNMV may gather whatever information it may think necessary concerning the individuals or legal entities subject to its oversight. Should a participant fail to provide the information requested by the operator or by the CNMV, this may be deemed an offense, and may be grounds for the participant to lose its status as such.</p> <p>As in its other areas of competence, the CNMV is allowed to cooperate in this regard with other national authorities and foreign authorities vested with similar responsibilities.⁸⁶</p>
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⁸³ See Art. s 63 and 64 of Royal Decree 116/1992 and Title III, Chapter IV, of the Iberclear-SCLV Regulations.

⁸⁴ Title IV of the Iberclear-SCLV Regulations.

⁸⁵ Chapter IV of Royal Decree 1814/1991, Chapter VI of the MEFF Variable Income Regulations, Chapter VI of the MEFF Fixed Income Regulations, Chapter VIII of the MFAO Regulations, and Chapter V of the MEFFCLEAR Regulations.

⁸⁶ Articles 17, 87, 88, and 90 of the LMV.

	<p>Procedures for managing non-compliance</p> <p>The way in which breaches of the requirements are to be handled is covered in the regulations for each system, or, if applicable, in legal provisions established at a higher level. These procedures cover the following points, among others: (a) the circumstances in which steps should be taken, and how those circumstances are identified; (b) the treatment of private positions, funds, and assets, and those of clients; (c) the specific conditions in which settlement is carried out, where applicable; and (d) mechanisms for intervening in the event of a breach of requirements by a member vis-à-vis the market or vis-à-vis clients, and how the member's obligations are to be settled.</p> <p>Procedures with respect to insolvency and the management of posted guarantees</p> <p>If an insolvency proceeding is initiated against a participant, the governing legal provisions establish that the system operator and, if applicable, the system's other participants, have an absolute right of separation with respect to guarantees posted by the participant or by an outside party in the name of the participant. Likewise, any guarantees posted by a client are also protected in the event of failure on the part of the member or custodian whose services the client has engaged, in which case the guarantees are transferred to another entity engaged by the client.⁸⁷</p>
Assessment	Fully implemented
Comments	
Principle 30.	Systems for clearing and settlement of securities transactions should be subject to regulatory oversight, and designed to ensure that they are fair, effective and efficient and that they reduce systemic risk.
Description	Cross reference to CPSS-IOSCO template.
Assessment	Not rated : Principle 30 has been assessed by a specialist according to the recommendations for securities settlement systems and central counterparties, adopted jointly by the Committee on Payment and the Settlement Systems of the BIS and IOSCO.
Comments	

Table 2. Summary Implementation of the IOSCO Objectives and Principles of Securities Regulation

Assessment Grade	Principles Grouped by Assessment Grade--	
	Count	List
Fully Implemented	25	1, 3, 4, 5, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29
Broadly Implemented	2	2, 8
Partly Implemented	0	
Not Implemented	0	
Not applicable	2	6, 7
Not rated	1	30 (see CPSS-IOSCO report)

⁸⁷ Articles 44 *bis*, 44 *ter*, and 59 of the LMV.

Recommended actions and authorities' response to the assessment

Recommended actions

28. The assessment has shown a high degree of observance of the Principles. Recommended actions to strengthen the system even further are summarized below.

Table 3. Recommended Plan of Actions to Improve Implementation of the IOSCO Objectives and Principles of Securities Regulation

Reference principle	Recommended action
Principles Relating to the Regulator (P 1–5);	<p><i>Principle 1, clarity of responsibilities of the regulator.</i> While credit institutions are generally large companies or groups that are subject to more demanding prudential criteria than investment firms, it is important that the securities market activities of banking groups be supervised by the CNMV from inception (i.e., including in the licensing phase). Cooperation between the Bank of Spain and the CNMV in the discharge of their respective functions could be further enhanced by including CNMV's assessment of the program of activity of credit institutions that intend to provide investment services.</p> <p>In making this recommendation, the assessor is fully aware that the IOSCO principles take no position on the desirable division of responsibilities among regulators in a particular legal framework, and that they only insist that this division be clearly set out, preferably in law, and that cooperation should be organized and reliable.</p> <p><i>Principle 2, independence and accountability of the regulator.</i> To enhance independence, appointments to CNMV's board should be for a longer term than the present four years, and should be non-renewable. Also, although no evidence was found of inappropriate political interference in the CNMV's decision-making process, it is recommended that the appointment of at least some non-executive members of the Board be made, drawing from varied constituencies, for example, academia or the private sector.</p> <p>With regard to <i>operational independence</i>, important regulatory powers such as adopting new regulations in key operational areas of the securities field as well as the power to grant and withdraw licenses and to sanction very serious infractions of securities regulations (<i>delitos muy graves</i>) remain the responsibility of the Ministry of Economy and Finance. Although the current framework does not result in gaps in oversight or regulation, compliance with international standards would be enhanced by vesting the CNMV with the power to design and adopt secondary legislation, which would then be promulgated by the executive authorities, the capacity to grant and withdraw licenses to regulated entities and products; and with the power to impose sanctions on administrative grounds for any infractions of the securities law and regulations.</p> <p><i>Principle 3, adequate powers and resources of the regulator.</i> As commented under <i>Principle 2</i>, the CNMV's powers suffer from shortcomings in the</p>

	<p>areas of authorization of investment firms and credit institutions involved in securities dealings; in the adoption of secondary legislation, and in the limitation of sanctioning powers to <i>infracciones leves y graves</i> thus excluding from the Commission's responsibility very serious infractions of the securities law (<i>infracciones muy graves</i>). As far as recruitment of staff is concerned, more flexibility is needed to hire specialized professionals in high demand by the private sector.</p> <p><i>Principle 4, clear and consistent regulatory processes.</i> Procedural fairness of the administrative law applying to the decisions taken by the CNMV has been questioned because administrative silence constitutes implicit rejection of the complaint presented. Although traditionally preserving the administration from liability for not taking action (as common in many other legal systems), the Spanish administrative framework has been modernized to include stronger protection of individual rights. In the case where an implicit decision of rejection is taken by the CNMV through administrative silence, the main effect would be to open up the possibility for an appeal, thus preserving individual rights. It should be noted that in recent years, no such implicit rejection decisions have been made and only one such decision can be recalled in the history of the commission. Therefore no indication of this situation being a problem could be substantiated.</p>
Principles of Self-Regulation (P 6–7)	<p>With regard to self-regulatory organizations, it is the view of the expert that the Spanish regulatory system does not make use of SROs. Issues related to oversight of the exchanges and of the clearing and settlement systems are addressed under the detailed assessments of <i>Principles 25 to 29</i> related to secondary market and under <i>Principle 30</i> related to clearing and settlement systems.</p>
Principles for the Enforcement of Securities Regulation (P 8–10)	<p>With respect to <i>Principle 8</i>, the right of the CNMV to inspect regulated entities on an unannounced basis is not <i>explicitly</i> mentioned in the law. Although inspections are being carried out without prior notice, it is recommended to establish explicitly in law that the CNMV may carry out inspections without prior notice.</p> <p><i>Principle 9, enforcement powers of the regulator.</i> The expert asked whether suspension of administrative proceedings could result in long delays, and suggested simultaneous proceedings under the frameworks for administrative and criminal sanctions. Whenever the CNMV identifies facts that could lead to criminal sanctions, it has the obligation to send the case to the public prosecutor and to suspend its administrative proceeding until a final ruling has been made before the criminal courts. The discussion concluded that very few cases under Spanish law could give rise to both criminal and administrative sanctions, and that whenever such cases have arisen, the CNMV has taken all necessary precautionary measures in the interest of investor protection. Also, preserving the actual legal organization provides for consistency between the ruling made by the criminal courts and the administrative authorities. The expert recommends that the CNMV continue to ensure that prosecution on criminal grounds of major market abuses remains timely.</p>
Principles for Issuers (P 14–16)	<p>Spain has in place very comprehensive regulations that cover completeness, accuracy, and timeliness of financial results disclosure, a fairly complete system for the protection of minority shareholders and is compliant with the European legislation laid down in the prospectus and market abuse directives, as recently transposed in the Spanish law.</p>

	As far as accounting standards are concerned (<i>Principle 16</i>), it appears that the CNMV should be more involved in the interpretation and enforcement of accounting standards in the case of listed companies.
Principles for Collective Investment Schemes (P17–20)	<i>Principle 17, oversight of collective investment scheme.</i> The oversight of the CIS sector seems sufficiently proactive to check compliance with applicable regulation. It is nevertheless worth noting that legal certainty was only recently added through the adoption of a Royal Decree on November 4, 2005. The Spanish authorities might also want to consider enhancing efficiency by delegating direct power to the CNMV to grant licenses for those who wish to operate a CIS (see also principles relating to the regulator).
Principles for Market Intermediaries (P 21–24)	With regard to <i>Principle 21</i> , minimum entry standards for market intermediaries are in place and are monitored both by the Bank of Spain and the CNMV. As stated under the principles relating to the regulator and to enforcement and cooperation, close attention should be paid in the development of coordinated or joint supervision activities between the Bank of Spain and the CNMV.

Authorities' response to the assessment

29. The Spanish authorities broadly agree with the assessment. We welcome the fact that the Spanish regulatory system has a very high degree of compliance with IOSCO objectives and principles. However, the following comments should be made.

30. Regarding principle 1 (the responsibility of the regulator should be clear and objectively stated) measures will be taken in the near future in order to enhance the role of the CNMV when credit institutions intend to provide investment services.

31. Regarding principle 2 (the regulator should be operationally independent and accountable in the exercise of its functions and powers), the Spanish authorities are aware of the importance of the process of designation of the members of the Board. However current legislation does not impede the candidates to be drawn from the private sector or the academia. The Law on Securities Markets (Ley del Mercado de Valores) only requires them to be experts in the field of the securities markets. Therefore we do not share the recommended plan of action in this regard. On the contrary, measures will be taken in order to lengthen the current period of four years for the appointment of the Members of the Board and to make them non-renewable.

32. With respect to the possibility of adopting secondary legislation, the CNMV in fact decides on the technical aspects of the financial regulation. However, there are political decisions that can only be taken by the Parliament and the Government. In addition, there are advantages coming from the fact that the Ministry proposes financial regulation as it is the only institution that has an overview of the three financial sectors: banking, insurance and investment services, whose regulations are closely interlocked. The Ministry is also the institution responsible for negotiating the EU normative for financial services through its presence in Council discussions of Level 1 Directives and Regulations, and its presence in the level 2 Committees (European Banking Committee, European Securities Committee and the European Insurance and Occupational Pensions Committee). Finally, it is justified that

the ME is in charge of issuing financial regulation because it can balance the need for an efficient supervision of credit institutions and the economic needs of the market, so as to avoid overregulation.

33. With regard to the sanctioning powers, one cannot forget that according to the Spanish legal system, the sanctioning power relies on the government, the only one with democratic legitimacy to carry out that function. Therefore any delegation of this duty to non governmental bodies, as the CNMV, has to be carried out very carefully. As a result the decision upon the most serious infringements stays in the realm of the Ministry of Finance. However that does not mean that the role of the CNMV in those cases is negligible since the sanction is proposed by the CNMV.

34. The very same argument applies to principle 3 (adequate powers and resources of the regulator) when the IMF recommends the CNMV to grant license to investment firms. The power to grant licenses is of public nature and therefore has to be carried out by public administration in conformity with legal provisions and public interest. In addition, it is the CNMV the one that proposes the Ministry the license of a certain entity. Therefore, the present state of affairs does not pose any risk to the independence of the CNMV in the exercise of its duties nor to the adequate functioning of the system.

35. We disagree with the assessment that Principle 8 (the regulator should have comprehensive inspection, investigation and surveillance powers) is only “broadly implemented”, rather than “fully implemented”. The issue at stake is whether the CNMV is authorized to inspect regulated entities on an unannounced basis, even if this power is not explicitly mentioned in our Law. Article 85 of Spanish Securities Markets Law gives the CNMV sweeping inspection powers and does not impose any restriction on the minimum period of time the CNMV should give notice to the regulated entities. Consequently, the CNMV is authorized to carry out inspections without prior notice, as indeed, it has done over the years on several occasions. Thus, the response to the first Key Question under Principle 8 should be “yes” and Principle 8 should be declared “fully implemented”.