Recent key developments in the area of Spanish financial regulation

Prepared by the Regulation and Research Department of the Spanish Confederation of Savings Banks (CECA)

CNMV Circular amending the Circular 5/2013 and Circular 4/2013 (Circular 1/2020, published in the *Official State Journal* on October 12th, 2020)

This new Circular amends the content of the annual corporate governance and annual director remuneration reports regulated in CNMV Circulars 5/2013 and 4/2013, aligning them with the amendments made as part of the partial revision of the Code of Corporate Governance applicable to listed companies in Spain.

The most noteworthy changes made to Circular 4/2013 on annual director remuneration reports are as follows:

- The report template for listed companies has been updated for that appended to the new Circular (Schedule I of Appendix I). The new template must be filled out following the instructions provided therein.
- The term "significant event" has been eliminated, in keeping with the changes made to the Securities Market Act by Royal Decree-Law 19/2018 in relation to market abuse. It is replaced with the expression, "other relevant information".
- Two new headings have been added so that companies explain the criteria used to verify whether the conditions on which variable remuneration is contingent have been met.

The most noteworthy changes made to Circular 5/2013 on annual corporate governance reports are as follows:

- The report template for listed companies and the statistical appendix have been replaced by the new templates provided in schedules I and V of appendix II of the new Circular.
- The term "significant event" has been eliminated, in keeping with the changes made to the Securities Market Act by Royal Decree-Law 19/2018 in relation to market abuse, replacing it with the expression, "other relevant information".
- The boundary of the reporting requirement for business relationships and conflicts of interest has been expanded to contemplate not only situations in which the listed company and its parent are publicly traded but rather all instances in which the listed company is under the control of another entity, listed or otherwise.
- The new wording formally sets down the fact that in authorising the annual financial statements, boards must strive to ensure that, to the best of their knowledge, the corresponding accounting principles and criteria have been correctly applied.
- Reports must provide information on gender diversity. The company must explain whether the measures taken by their appointments committees to foster gender diversity in the board of directors include that of encouraging the company to have a significant number of female executives. They must also disclose information about the number of women in senior management.
- The new Circular clarifies the rules recommended in the Code of Corporate Governance. Companies must implement

measures that ensure directors report on and resign in circumstances that could harm the company's credibility and reputation. Such situations must specifically include those that affect or involve directors, regardless of whether they are related with their actions at the company itself.

- It is suggested that the board assess any situation involving a director that could undermine the company's credibility and reputation in order to determine the appropriate course of action without delay.

The new Circular will apply to the annual corporate governance and director remuneration reports which the bound entities are required to present for the year ending on December 31st, 2020, and thereafter. A series of rules have been introduced for the 2020 annual corporate governance reports such that the companies state whether they comply with the recommendations that have been updated or, in the case of non-compliance, provide an explanation.