

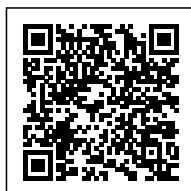
# THE WAY IS CLEAR FOR NEW SPANISH INVESTMENT FIRMS - EAFIS

*Posted on 25/02/2009*



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**On 21 December 2007, Law 47/2007 amending the Spanish Securities Market Law (LMV) implementing the Directive on Markets in Financial Instruments 2004/39/EC (MiFID) came into force.**

This introduced important reforms to the investment services regime, including recharacterising investment advice as a regulated investment service and creating and recognising empresas de

asesoramiento financiero (EAFIs) as a new type of investment firm devoted to the provision of investment advice – the regulation of which is mainly contained in Royal Decree 27/2008 and was finally completed by the Spanish Securities Market Commission (CNMV) in January 2009. During the period from 21 December 2007 to 15 January 2009 there were no rules on the authorisation process for an EAFI and thus it has not been possible, at least in theory, to have an EAFI approved by the CNMV to date.

## **Scope of activities**

The implementation of MiFID has therefore meant the creation of a new, fourth, type of investment services firm (EAFIs) under Spanish legislation. EAFIs are only allowed to render investment advice. The other types of investment services firms permitted are:

Hasta la aplicación de la regulación MiFID en España, la prestación de asesoramiento en materia de inversión no era una actividad reservada, comenta Beltrán Gómez de Zayas, de Allen & Overy en Madrid. Además, se ha creado un nuevo (el cuarto) tipo de empresa de servicios de inversión conforme a la legislación española: las empresas de inversión que presten únicamente un servicio de asesoramiento sobre inversiones en instrumentos financieros (empresas de asesoramiento financiero, EAFI).

(i) Investment Companies (Sociedades de Valores – SVs)

(ii) Investment Agencies (Agencias de Valores – AVs); and

(iii) Portfolio Management Companies (Sociedades Gestoras de Carteras – SGCs).

Another new aspect introduced by the reform is that both legal and natural persons are allowed to apply for approval as EAFIs (only legal persons can operate as SVs, AVs and SGCs).

## **Financial and organisational prerequisites of EAFIs**

For a legal person to obtain and maintain CNMV authorisation, the EAFI must be incorporated as a Spanish joint stock company (sociedad anónima) or as a Spanish limited liability company (sociedad de responsabilidad limitada) and the share capital must be fully subscribed and paid-up.

The share capital must amount to at least €50,000; or the company must enter into a civil liability insurance policy covering the European Union, or a bank guarantee (aval) or similar, to cover any professional negligence in the exercise of its activities (minimum €1m for damages and €1.5m for all claims); or have a combination of share capital and civil liability insurance.

The corporate purpose must be limited to providing investment advice (and permitted ancillary services), the registered office and centre of main interests must be in Spain, and the majority of members of the management body and top officers must have adequate knowledge and experience in their relevant functions and professional standing (the relevant shareholders must also comply with a number of suitability requirements).

If the EAFI is a natural person, it shall have legal capacity to conduct business, be resident in Spain and have adequate knowledge and experience as well as professional honesty. It must also adopt the same insurance or bank guarantee or similar.

## **Approval**

Unlike other investment firms which must be approved by the Minister of Economy and Treasury, EAFIs are authorised by and registered with the CNMV. Applications must be made through the

applicable standard forms and with all the relevant documentation required by the CNMV.

The application must comprise, among other things, the following:

- i. information on the company by-laws and corporate structure;
- ii. information on financial structure;
- iii. a list of directors including information on experience and professional honesty, and a list of shareholders including information about the suitability requirements;
- iv. the programme of activities referring to investment advice and indicating the scope of the ancillary services and the list of financial instruments over which the services are to be rendered;
- and v. a description of the organisational structure.

Investment services firms, which are authorised in other EU Member States to render investment advice, may initiate their activities in Spain through the passporting process, without the prior authorisation of the CNMV. By 18 February 2009 all entities or individuals currently rendering investment advice on a nonregulated basis should have applied to be approved as EAFIs. Given the financial and organisational prerequisites and MiFID obligations to be complied with, we understand there may be a considerable reduction in the number of entities or individuals rendering investment advice which will almost certainly enhance the service and the protection of investors.

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