



## STATEMENT ADDRESSED TO ISSUERS OF LISTED SECURITIES REGARDING THE NEW EUROPEAN MARKET ABUSE REGULATORY FRAMEWORK

22 January 2019

The new European market abuse regulatory framework - which has been in application since 2016 and consists of a number of provisions including EU Regulation 596/2014 on Market Abuse (MAR) - has led to significant changes in the obligations of listed companies and other issuers of securities admitted to trading on regulated markets, multilateral trading facilities and organised trading facilities, in particular with regard to their duties in relation to inside information.

Through the recent Royal Decree-Law 19/2018 of 23 November on payment services and other urgent financial measures, the consolidated text of the Securities Market Act (approved by Royal Legislative Decree 4/2015 of 23 October, SMA) has been completely adapted to this European regulatory framework<sup>1</sup>. With it:

- The Spanish legislator has opted for certain solutions among those permitted by the European regulatory framework in certain specific cases.
- Several amendments have been introduced in the sanctioning regime on market abuse (inside information and market manipulation).
- And some specialties applicable to listed companies in this area which were not compatible with this European regulatory framework or which were simply not consistent with the objective of MAR of achieving full harmonisation throughout the European Union have been expressly repealed.

CNMV considers it appropriate to recall some of the most relevant changes that have taken place in this field with this adaptation from the perspective of listed companies and other issuers, as well as to underline some aspects that these should bear in mind in particular:

1. One notable change has been the **removal of the rule contained in the previous Article 228.3 of the SMA, applicable to decisions, agreements and contracts, regarding the moment when issuers had to make the relevant information public** (inside information according to the terminology of MAR). Under this rule, the information had to be made public immediately after the adoption of

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<sup>1</sup> As part of this complete adaptation, Royal Decree 1464/2018 of 21 December also expressly repealed Royal Decree 1333/2005 of 11 November implementing the Securities Market Act on market abuse.

the decision or after the execution of the relevant agreement or contract, without prejudice to the duty to inform beforehand in the event of leakage.

The elimination of this rule is consistent with the MAR regime, which establishes the obligation to make public "as soon as possible" all inside information (including that related to processes or phases of preparation or negotiation, or, to use the MAR expression, with "processes that are carried out in different stages") and is to be understood without prejudice to the possibility that the issuer delays publication under its own responsibility if the three MAR requirements (Art. 17.4) are met:

- That immediate disclosure may harm the legitimate interests of the issuer
- The delay of disclosure is not likely to mislead the public
- And the issuer is able to ensure the confidentiality of the information.

2. The requirement that the issuer be in a position to ensure **confidentiality must be assessed particularly strictly** by issuers.

As provided in Article 17.7 of MAR and recalled by ESMA (question 5.1 on Market Abuse ESMA70-145-111, updated in March 2018), issuers who are delaying, as stated above, the disclosure of inside information, are obliged to publish it as soon as possible if there are news or rumours sufficiently accurate to indicate that confidentiality is no longer ensured.

Fulfilment of this duty means that issuers that are delaying the disclosure of inside information must follow the trading of their securities on the market and the news and rumours that affect them.

Note, in any case, that the rule only allows the delay to be maintained as long as confidentiality can be ensured. Therefore, if, due to the large number and diverse group of people who become aware of the information, or because of rumours that have been detected but which have not yet reached the media, or for any other reason, it is unlikely that the information would remain confidential, the issuer should also publish it immediately.

Finally, it should be remembered that issuers of securities are not obliged, unless expressly required to do so by CNMV, to deny false or unfounded rumours.

3. Following the regulatory reform, CNMV maintains intact its **powers to request the publication of information and suspend trading** on reasoned grounds, particularly in cases of serious information asymmetries or insufficiencies, and will continue to exercise them when it deems it necessary to preserve the integrity of the market.

Notwithstanding the foregoing, CNMV considers it **important not only that Spanish issuers implement measures to safeguard inside information** (Articles

10, 17 and 18 of MAR), but also that, especially when they are legitimately delaying its publication, **they closely monitor the news and rumours that affect them** so that they have the capacity to react immediately in the event of breaches of confidentiality. Likewise, it is very important that the advisers to issuers of securities in corporate transactions (financial institutions or other kind of advisers) apply as strictly as possible the procedures and measures that they must have in place in order to safeguard inside information.

CNMV believes that adequate safeguards by listed issuers and advisers of inside information and their diligent monitoring of news and rumours arising in the event of a delay, with the consequent publication in the event of a leak, should normally lead CNMV to issue fewer requests in practice in this area and to use the resource of the suspension of trading due to breach of confidentiality only in exceptional circumstances, in line with what is the most common pattern in the other relevant European markets.

In any case, issuers must bear in mind, when facing this type of situations, that the sanctioning regime in force with regard to market abuse which, following the reform, is particularly strict, also applies to breaches related to failures in the custody of inside information and to delays in its publication that do not comply with the conditions established by law.

4. Article 17.4 of MAR establishes the duty of issuers who have delayed the publication of inside information to communicate it to the relevant competent authority (in our case, CNMV) immediately after the publication of the information, giving Member States the option to request or not that this communication include a written explanation of how the conditions to be able to delay publication have been met.

The option chosen has been not to demand such an explanation (that is, that when inside information is published it must only be notified that it was delayed), without prejudice to the possibility that CNMV may request to be provided with such an explanation.

5. It should also be noted that the duty to disclose inside information through CNMV has been maintained in the consolidated text of the SMA.

Likewise, it is expected that CNMV will continue to disseminate other information of a financial or corporate nature that any legal or regulatory provision makes it mandatory to publish, as well as such information as the issuers consider necessary, due to its special interest, to disclose to investors.

Inside information is actively disclosed through CNMV's systems and is published on its website, it being compulsory for such information to be presented separately from other relevant information (when communicating inside information, issuers must refer to its nature as such).

This does not apply in the case of securities traded on multilateral trading facilities (MTFs), such as the Spanish Alternative Stock Market (MAB), or on

organised trading facilities (OTFs), which must have the technical means to ensure the dissemination of inside information communicated to them. It should be borne in mind here that market abuse regulations are also generally applicable in the case of securities admitted to trading in these types of trading venues.

CNMV plans to make available an option in the CIFRADO application to allow the issuer to indicate that inside information submitted for publication was delayed.

6. Finally, the **removal of the issuers' duty to have an Internal Code of Conduct** should be highlighted among the relevant amendments deriving from the regulatory harmonisation arising from MAR.

However, although it is no longer mandatory to have an internal code or regulation on issues related to market abuse and securities markets, CNMV continues **to consider it good practice for issuers to maintain internal rules and adopt measures and procedures aimed at promoting better compliance, also by their staff and directors, with legal obligations and prohibitions in matters of market abuse**, either using or not the tool of an internal code or regulation for this purpose.

Having such rules and procedures, and implementing them effectively in a general way, reduces the risk of breaches.

Possible internal rules, measures and procedures on market abuse may include the following:

- Procedures on insider lists
- Measures for the custody and safeguarding of insider information
- Procedures for reacting to the breach of confidentiality of any inside information which publication has been delayed
- Control measures (disclosure duty, need for authorisation, closed periods, etc.) for transactions relating to the entity's own securities carried out by its board members, directors and certain employees
- Organisational rules and measures relating to treasury share transactions
- Training and awareness-raising on such obligations and prohibitions
- Contact points identified in the organisation for queries and communications regarding market abuse.

Finally, it is announced that the document on criteria for the management of news and rumours disseminated about listed securities published in 2009, which must be

considered as outdated since it is based on the previous regulatory framework, has been removed from the CNMV website.