

**STATEMENT BY THE CNMV FOLLOWING THE CASES OF ALLEGED  
IRREGULAR PRACTICES RELATED TO SOME LISTED COMPANIES OF  
WHICH IT HAS LEARNED IN RECENT MONTHS**

25 November 2019

The cases of alleged irregular practices at some listed companies of which the public has learnt in recent months, some of which have resulted in criminal proceedings, are of concern to the CNMV as supervisor of the Spanish securities market. Although these cases only affect some companies or are attributable to a small number of persons, these types of situations may compromise the image and reputation of our securities market, the integrity and transparency of which is the responsibility of the CNMV. The increasing importance given by investors, including large international investors, to issues related to ethics in their investment decisions, makes this a particularly relevant issue.

In relation to the foregoing, the CNMV, in the performance of its supervisory functions related to transparency and good corporate governance, would like to remind Spanish listed companies and the rest of securities issuers of the following:

- Listed companies and issuers should try to avoid or minimise to the maximum extent possible the likelihood of irregular practices occurring, and ensure that, once they are detected, any such irregular practices are ceased and liability in respect thereof is demanded.

This requires that the relevant governing bodies have adequate policies and controls in place to prevent corruption and other irregular practices, as well as to identify, assess, manage and control risks and potential associated impacts. Likewise, it is essential that they ensure that policies and controls are applied with the utmost rigour.

In this regard, without prejudice to the Board of Directors' responsibility, it is considered important that the Audit Committee is involved to the maximum extent possible, to which current legislation entrusts the responsibility of supervising the effectiveness of internal control and the internal audit (Art. 529 *quaterdecies* of the Spanish Companies' Act).

Also of particular relevance, in general, is the role in this field played by independent directors and other external directors, as counterbalance to executive directors.

- Current legislation provides for a series of transparency requirements the compliance of which must be supervised, in particular, by the Audit Committee, without prejudice to the Board of Directors' responsibility, including most notably, the following:

- the duty to describe in the non-financial statement (NFS) the policies established for these purposes, the outcome of such policies for each financial year, and the main risks related thereto (Art. 49.6 of the Spanish Commercial Code, the wording of which was introduced by Spanish Law 11/2018, of 28 December<sup>1</sup>);
- the duty of companies listed on regulated markets to mention in the annual corporate governance report (ACGR) the main risks, including those deriving from corruption, as well as those, where appropriate, that have materialised during the financial year (paragraphs E.3 and E.5).

In any event, the information contained in the NFS and the ACGR should be sufficient for the market and investors to understand the extent and the importance of the relevant facts and risks.

It is important to clarify that the information should be included in the first reports (NFS and ACGR) prepared upon becoming aware of the irregular practices or of the relevant risks, whether or not they are made public by the media or otherwise. In the event that, for whatever reason, the information is not included in the first NFS or in the first ACGR, it shall be included in the first interim quarterly statement, or in the management report of the first six-monthly information published by the company, without prejudice to the liabilities and penalties that may arise from such delay.

This type of information must also be included in the prospectuses that issuers must publish on the occasion of executing certain types of transactions.

All of these reporting obligations shall be understood without prejudice to the applicable rules on market abuse, in particular the duty to report, via the CNMV, any information considered as inside information which, should it be made public, could affect the price of the securities issued by the company.

The CNMV is at the disposal of listed companies to clarify any issues or doubts that they may have related to the compliance of these reporting obligations.

The CNMV urges governing bodies of listed companies to review their policies and procedures in this regard, as well as their application in practice, to ensure that they are sufficiently demanding and are actually applied.

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<sup>1</sup> Spanish Law 11/2018, of 28 December, amending the Spanish Commercial Code, the restated text of the Spanish Companies' Act approved by Spanish Royal Legislative Decree 1/2010, of 2 July, and Spanish Audit Law 22/2015, of 20 July, on the disclosure of non-financial and diversity information.

Irrespective of the foregoing, the CNMV is analysing the possibility of strengthening the recommendations related to this matter in the context of the partial review of the Good Governance Code of Listed Companies which is currently in progress in accordance with the Activity Plan for 2019.

The amendments, which in any event would be subject to the relevant consultation process with the sector, may affect, in particular, Recommendation 22 (situations that may affect the company's credit and reputation), 42 (functions of the audit committee), 45 (risk management and control policy), 46 (risk management and internal control function) and 53 (supervision by a board committee of the compliance with corporate governance rules, internal codes of conduct and other issues).