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Information for issuers of securities and
investors in listed companies as a result of
the spread of COVID-19

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Contents

Information for issuers of securities and investors in listed companies as a result of the spread of COVID-19	3
CNMV guidelines on the general shareholders' meetings of listed companies.....	4
ESMA guidelines for financial market participants.....	5
Obligation to notify net short positions of 0.1% or above.....	5
Temporary bans on transactions that create or increase net short positions.....	6
Contact lawyers.....	7

Information for issuers of securities and investors in listed companies as a result of the spread of COVID-19

Due the spread of COVID-19 in Europe and its effects on the free movement of people, on the financial markets and on the business and prospects of issuers of securities, the Spanish Securities Market Commission (the “**CNMV**”) and the European Securities and Markets Authority (“**ESMA**”) have issued the following statements:

- The CNMV has published some guidelines on the **general shareholders’ meetings of listed companies** scheduled to take place in the coming months and, in general, recommends that shareholders attend and vote at these meetings remotely.
 - <http://cnmv.es/portal/verDoc.axd?t={3802886d-7418-4765-9f9c-50877abccdd4}>
- As a consequence of the major impact of the COVID-19 pandemic on European Union financial markets, ESMA has published some **guidelines for issuers of securities and participants in financial markets** to remind them of their obligation in relation to risk management and transparency.
 - <http://cnmv.es/portal/verDoc.axd?t={89980dff-8d3b-47de-a543-d5a6f2334b72}>
- Likewise, ESMA has published a statement informing of its decision to immediately reduce the threshold that triggers the obligation to **inform** investors of their net short position in relation to listed companies to a percentage **0.1% or above** of the issued share capital of the relevant issuer.
 - <http://cnmv.es/portal/verDoc.axd?t={49dff907-c2b4-41c8-92f2-2b4b4675082f}>
- Finally, the CNMV has banned **transactions on securities and financial instruments that entail the creation or increase of a net short position on Spanish shares listed on Spanish equity markets for one month.**
 - <http://cnmv.es/portal/verDoc.axd?t={5baf609e-ed4e-4dad-a697-80c55548e181}>

CNMV GUIDELINES ON THE GENERAL SHAREHOLDERS' MEETINGS OF LISTED COMPANIES

As a consequence of the spread of COVID-19, on 10 March 2020 (i.e. before Royal Decree 462/2020 was passed), the CNMV published some guidelines on the general shareholders' meetings of listed companies set to take place in the coming months. The guidelines, which are outlined below, **recommend that shareholders attend and vote at these meetings remotely**.

Notwithstanding the above, the **corporate obligations** established in the restated text of the Spanish Companies Law approved by Royal Legislative Decree 1/2010 (*Real Decreto Legislativo 1/2010, de 2 de julio, por el que se aprueba el texto refundido de la Ley de Sociedades de Capital*), **are in full force**, and thus to date have not been affected by Royal Decree 463/2020 of 14 March which declares the state of alarm for the management of the health crisis situation caused by COVID-19 (*Real Decreto 463/2020, de 14 de marzo, por el que se declara el estado de alarma para la gestión de la situación de crisis sanitaria ocasionada por el COVID-19*) ("**Royal Decree 463/2020**"). Consequently, unless otherwise established by a legally binding regulation, **listed companies must continue to hold their ordinary general shareholders' meetings** within the legally established term of six months from the end of the previous financial year.

As to shareholders' participation at the meetings, the CNMV recommends that **listed companies encourage shareholders to attend and vote remotely**. In line with the above, they are also advised to encourage shareholders not to attend in person, either by limiting attendance by non-shareholders (such as employees or suppliers) or by removing incentives (the delivery of gifts, etc.). The CNMV also recommends that cocktail, receptions or similar events organised for the general meeting (which are now prohibited by Royal Decree 463/2020) be cancelled.

Likewise, provided that the shareholders' rights to information, assistance and voting and the principle of equal treatment of shareholders is guaranteed, the CNMV understands boards of directors of listed companies should be given ample scope to implement measures and solutions that prioritise public health and aim to diminish the spread of COVID-19. In any event, and without prejudice to the reasonableness of the CNMV's approach, unless there is a change in legislation, that flexibility is limited by corporate regulations and companies' internal rules.

Listed companies that have already called their ordinary general shareholders' meetings are actively encouraging remote voting and attendance and are implementing measures to ensure a suitable separation between attendees and avoid overcrowding. Different measures can be implemented as we will see in the coming days and weeks, such as the meeting being streamed live or shareholders attending

it remotely, etc. Another, more drastic, option is to suspend or delay general shareholders' meetings called, which some companies have already done.

ESMA GUIDELINES FOR FINANCIAL MARKET PARTICIPANTS

Following recent developments in financial markets as a result of the situation generated by COVID-19 and its expected impact on economic conditions and on the business and prospects of issuers of securities, ESMA has published the following four guidelines aimed at participants in financial markets.

Firstly, ESMA informs market participants that they should all be **ready to apply their contingency plans**, including deployment of **business continuity measures**, to ensure operational continuity in line with regulatory obligations.

In relation to the dissemination of information to the market, ESMA reminds issuers of securities of the applicable obligations regarding the disclosure of inside information established in Regulation (EU) No. 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse, encouraging issuers of securities to **disclose as soon as possible any relevant significant information concerning the impact of COVID-19 on their fundamentals, prospects or financial situation**.

In line with the above, ESMA reminds issuers of securities **that they should provide transparency and report** on the current and **potential impact of COVID-19 on business activities in their 2019 year-end financial report or in their interim financial reporting disclosures**, as appropriate. In both cases, to the extent possible, the information must be based on both a qualitative and quantitative assessment of their business activities, financial situation and economic performance.

Although market prices of listed securities seem to have already reflected the potential effects of the current situation on the financial situation of the issuers, issuers should assess whether the data on the most recent evolution of their business and their internal estimates of the impact that COVID-19 could have on their outlook may constitute inside information, since it could limit the potential actions of issuers regarding their own securities until the information is disclosed.

Finally, ESMA states that **asset managers** must continue to apply the **requirements on risk management**, and react accordingly.

OBLIGATION TO NOTIFY NET SHORT POSITIONS OF 0.1% OR ABOVE

ESMA has decided to temporarily require invertors with **net short positions in relation to the issued share capital of a company which shares are listed on a regulated market of the European Union**

to notify the relevant national authority when the position reaches 0.1% or above of the issued share capital following the entry into force of the decision.

The measure applies directly, and therefore, entails the obligation of holders of the relevant net short positions to notify at the close of the session of Monday, 16 March 2020. These temporary obligations apply to all natural or legal persons, regardless of their country of residence. However, the measures apply neither to shares listed on a regulated market when the main trading venue is located in a third country nor to market creations or stabilisation activities.

TEMPORARY BANS ON TRANSACTIONS THAT CREATE OR INCREASE NET SHORT POSITIONS

The CNMV has **banned transactions on securities and financial instruments that create or increase a net short position on Spanish shares listed on Spanish equity markets** (including the Continuous Market (*Mercado Continuo*) and the Alternative Stock Market (*Mercado Alternativo Bursátil*)). For the time being, the ban will be in effect **from 17 March** to 17 April 2020 (both inclusive).

This ban applies to any transaction on shares or related to indexes, including cash transactions, derivatives traded on equity markets or OTC derivatives, that creates a net short position or increases a pre-existing one, even if this occurs during the same operating day.

By contrast, the prohibition **does not apply to** the following: (i) market-making activities, and (ii) the creation or increase of net short positions (a) when the investor who purchases a convertible bond has a neutral position (between the position in the variable income component of the convertible bond and the short position that is taken to cover that element), (b) when it is covered by an equivalent purchase in terms of the proportion of subscription rights, or (c) through derivative financial instruments on indexes or baskets of financial instruments that are not made up of a majority of shares to which the ban applies.

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