

CRITERIA TO EVALUATE RELEVANT INFORMATION

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On 1st of June 2009, the Spanish Ministry of Economy and Finance issued the Order EHA 1421/2009 (the “**Order**”) which clarifies procedures to publish relevant information from issuers of securities. The practicalities of the Order were developed by the Spanish Securities and Exchange Commission (“**CNMV**”) by means of the Circular 4/2009, of November 4, published in the Spanish Official Gazette on November 12, 2009 (the “**Circular**”). The Circular entered into force on December 3, 2009, twenty days after its publication, except for some specific rules which will enter into force three months after its publication. The CNMV has also published an explanatory guide on communicating relevant information, aimed at issuers of securities.

Relevant information is defined in section 82 of the Spanish Securities Market Act (Act 24/1988, of July 28), as “*any information of which knowledge could reasonably affect an investor’s decision to purchase or sell securities or financial instruments, therefore clearly influencing the listing of these securities in a secondary market.*” Issuers of securities must immediately inform the market and diffuse the relevant information, while also simultaneously informing the CNMV to have the information officially registered on its website. The relevant information must be correct, clear and complete; when required by its nature, it must be quantified in a way that does not lead to misunderstandings.

At first sight, the abovementioned definition was clear; nevertheless, issuers often wondered whether negotiations, decisions already made, events that had already happened or agreements already entered into (or intended to happen or be entered into) qualified as relevant information, or whether, assuming they did so qualify, when, how and with which extension must the information be published.

List of criteria

The Order includes a *numerus apertus* list of *criteria* to help issuers evaluate whether decisions, facts or other circumstances qualify as relevant information. The relative magnitude of the fact in the company activity, the listing conditions of the securities issued, similar information previously

considered “*relevant*,” whether other companies in the sector previously considered this information relevant or the effects similar information previously had on the listing price, are *inter alia* some of the criteria included in the Order.

Issuers must take reasonable care to ensure that relevant information published is not misleading or false, and does not omit important facts. Under the Order, they must follow certain rules: the information must be correct, clear and complete, and expressed objectively without omissions or judgments that could distort it; and it must be quantified, if possible, and include the background details, references or comparisons necessary to be understood. Issuers must also disclose conditions precedent or approvals or ratifications by corporate bodies, individuals or entities that conditioned the resolutions, transactions or agreements.

Pursuant to the Order, relevant information including estimations of accountable, financing or operative magnitudes must be prepared in accordance with the accounting rules and principles followed in the annual accounts, and they must be suitable for comparison with previous and further information. The relevant information must also disclose the timeline and the basis of the information. Significant changes to already disclosed estimations are considered relevant information, and issuers must also disclose these.

The Circular reminds issuers that they must deliver the relevant information to the CNMV, categorized according to a CNMV list, in a form summarizing its most important details.

Infringements and penalties

Issuers breach their duty to disclose relevant information when, without informing the CNMV, they release this information through meetings with investors or shareholders, presentations to investment analysts, and to journalists.

Originally, if the CNMV did not consider information as relevant information, its communication was registered in a secondary category named “Other Communications,” and published on the CNMV’s website accordingly. However, the Circular eliminates this distinction between relevant information and “Other Communications.”

Examples of relevant information

The Circular lists approximately thirty events that qualify as relevant information, being most of them reasonably obvious, which and can be categorized into four groups:

- (i) **financial instruments** (e.g., increase or decrease of share capital; public offerings or takeover bids; payment of dividends or change in dividends strategy; securities repurchase programs; block trades, stabilization, and liquidity agreements; issuance, modification and expiry of finance instruments; granting, renewal or redemption of loans; admission to listing, suspension or exclusion of securities; and credit ratings);
- (ii) **business and company financial situations** (e.g., changes to the investment policy or strategic business/product lines; bankruptcy procedure for the company or its debtors or suppliers; judicial rulings, relevant claims and disputes; company financial results; atypical results; change to asset valuations and liabilities; relevant issues on the auditors' reports; change of the company's auditor; and disclosure of estimations and their deviations);
- (iii) **corporate transactions** (e.g., strategic resolutions, corporate restructurings, wind-up and liquidation, and transactions involving significant stakes in other companies); and
- (iv) **corporate governance and official affairs** (e.g., changes to boards of directors, supervisory committees or top executives; shareholders agreements or agreements that imply a change of control; and other corporate governance issues).

The Circular lists examples of events that qualify as relevant information. The CNMV highlighted that this list is "*non-exhaustive and merely indicative.*" Failure to include an event does not mean it cannot qualify as relevant information, and including a hypothetical event does not mean it must always be understood as relevant information. Companies must analyze each event, fact or piece of information within its context, and according to the rules and criteria in the Order and the Circular. The Circular clarifies that relevant information is not only information that could clearly influence the pricing of the securities, but also information that must be disclosed by law or regulation.

Authorized speaker

Issuers must appoint at least one authorized speaker to represent them before the CNMV. This representative must be able to accurately and promptly

answer the questions, and respond to the CNMV's verification or information requests that are related to the relevant information.

The main purpose of this new provision is to settle a direct and immediate communication channel between the issuer and the CNMV. In addition, the authorized speaker should facilitate to make relevant information immediately available for the market with a clear, concrete and true content.

The designation of a speaker or companies' representative in front of the CNMV was already included in the Circular Letter 14/1998 of the CNMV. However, further requirements are now requested by the Circular. In particular, the representative must be: (i) empowered to answer, on behalf of the issuer, the CNMV's requests during the trading session; (ii) able to contact the issuer's directors and managers, if necessary; and (iii) available at any time from one hour before the trading session opens until two hours after it closes. In any case, representatives' personal data must be permanently updated (being essential the communication of representatives cell phone number).

According to the transitory provision of the Circular, issuers must inform the CNMV of their representatives' identities within ten calendar days of the Circular entering into force. The time period to notify the identity of the authorized speaker went from December 3 up to December 13, 2009, both inclusive. Issuers the securities of which will be listed to trading for the first time must inform the CNMV about the identity of their authorized speaker at least three business days prior to the to the first trading day.

The designation of issuers' representatives in front of the CNMV can only be carried out by means of the CNMV on-line register ("*CIFRADO*") by submitting the relevant form. Issuers can appoint a maximum of three representatives, being mandatory at least one and being not possible to inform of the discharge of one representative if there is not at least another representative appointed in front of the CNMV.

The corporate documentation proving the appointment of the authorized speaker (such as powers of attorney or Board of Directors' resolutions) must not be submitted with the CNMV, being internal responsibility of each issuer of securities.

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