

I. Circular

Circular 8/2015, of 22 December, of the Comisión Nacional del Mercado de Valores [Spanish Securities Market Commission], adopting model forms for the notification of major holdings, held by directors and senior executives and their close links, issuer transactions involving own shares, and other model forms.

TEXT

In accordance with articles 39, 43 and 47(4) of Royal Decree 1362/2007 of 19 October 2007 implementing *Ley 24/1988, de 28 de julio, del Mercado de Valores* [Securities Market Act], on transparency requirements in relation to information about issuers whose securities are admitted to trading on an organised exchange or other regulated market in the European Union, and article 9 of Royal Decree 1333/2005 of 11 November 2005 implementing the Securities Market Act with regard to market abuse, the Spanish Securities Market Commission has a power to adopt model forms for notification and to implement the necessary technical specifications to apply Titles II and III of Royal Decree 1362/2007 and Chapter III of Royal Decree 1333/2005, and to introduce procedures to prevent duplicate reporting from one and the same person in the event of concurrence of the reporting duty set out in article 9 of Royal Decree 1333/2005 with the reporting duty under article 31 of Royal Decree 1362/2007.

The purpose of this Circular is to adapt the model forms for reporting voting rights so far provided by Circular 2/2007 of 19 December 2007 of the Spanish Securities Market Commission adopting model forms for notification of major holdings, held by directors and executives and their close links, issuer transactions involving own shares, and other model forms, to the new reporting duties under Royal Decree 1362/2007, referred to above, in the wording given by Royal Decree 878/2015 of 2 October 2015 on clearing, settlement and registration of tradable securities in the form of book entries, on the legal regime of central securities depositories and counterparty entities, and on transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market, which, among other matters, incorporates to our national law Directive 2013/50/EU of the European Parliament and of the Council of 22 October 2013 amending Directive 2004/109/EC of the European Parliament and of the Council on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market, Directive 2003/71/EEC of the European Parliament and of the Council on the prospectus to be published when securities are offered to the public or admitted to trading, and Commission Directive 2007/14/EEC laying down detailed rules for the implementation of certain provisions of Directive 2004/109/EC.

The new model form for the notification to be given by major shareholders of listed companies has been adapted having regard to the new major shareholder notification template published by ESMA (ESMA/2015/1597) on 22 October 2015 mainly for the purpose of achieving a higher degree of convergence and harmonisation as to the information that shareholders must supply and of helping investors, irrespective of the European Union country in which they invest, to discharge their reporting duties. The model form has regard to the nature of the various instruments in respect of which notifications must be given and to the duty of reporting aggregate voting right positions associated with or attributed to

shares or other financial instruments in accordance with article 28 *bis* of Royal Decree 1362/2007.

The new model form of notification for directors who hold shares or share-related financial instruments (Model Form II) is also based on the ESMA model form, but has had to be adapted to incorporate the specific reporting duties relating to such persons that arise from market abuse laws and regulations.

The reporting duties relating to directors and their close links have been clarified. As from the entry into force of this Circular directors must notify, using Model Form II, all transactions concluded, as they have been doing so far; while transactions concluded by a director's close links whose voting rights cannot be attributed to the director must be notified by the close link itself through the new Model Form III.

Moreover, given that the reporting duties binding the executives of an issuer and their close links are those set out in article 9 of Royal Decree 1333/2005, such notifications must be given by each of those close links, rather than it being the executive him/herself including in his/her notification the transactions concluded by his/her close links. In any event, both the executive and his/her close links must report the transactions concluded using Model Form III.

As an integral part of each of the model forms, so as to make it easier to fill out each one correctly, the Circular includes a range of instructions that explain in detail how to proceed with each of the sections of the model form in a way consistent with the principles of Royal Decree 1362/2007 and Royal Decree 1303/2005.

Model Form I attached to this Circular, which replaces and consolidates in a single document Annexes I and II of Circular 2/2007, sets out the duty to submit information on voting rights that apply to major shareholders who are not directors, and who must report their final position in voting rights associated with shares and with financial instruments that confer the right to acquire shares already in issue that attribute voting rights, to the extent that the final decision on the exercise of the financial instrument depends solely and exclusively on the holder of that instrument, or instruments having a similar economic effect, with a statement also of the date on which any of the established notification thresholds was reached or crossed.

The model form includes specific sections for reporting the conclusion of agreements for concerted exercise of voting rights, stating the identities the parties privy to such agreements and the percentage of voting rights individually held by each one of them.

Model Form I provides a specific section for indicating whether the person under the obligation is resident in a tax haven, and reflects the special requirement, that already existed under the previous rules, of the notification threshold being set at 1% and its successive multiples.

The special nature of the office held by a director or senior officer at an issuer and a list of all of them with their respective close links justifies the introduction of specific reporting requirements to fulfil the obligations under article 9 of Royal Decree 1333/2005 and Royal Decree 1362/2007. Hence the need to introduce specific model forms for these persons under reporting duties. Specifically, Model Form II, which replaces and consolidates in a single document the former Annexes III and IV of Circular 2/2007, and Model Form III, which replaces Annex V of that Circular.

In Model Form II, applicable to directors, there must be identified the final position – in direct and indirect terms – of voting rights attributed to shares and other financial instruments. Hence, there must be included all transactions concluded by the director, directly or through others (who sometimes will qualify as close links), provided that the voting rights correspond to the director him/herself by reason of his/her having the discretion to exercise those rights.

However, this information is not required in Model Form III applicable to executives and their close links or to directors' other close links (those links whose voting rights relating to shares and financial instruments are not attributable to the director). In that model form,

close links must identify the executive(s) or director(s) with whom they have a link within the meaning of article 9 of Royal Decree 1333/2005.

Account has been taken of the special situation in which an individual or legal person is a close link of more than one executive or director. In that event, the close link must identify all such executive and directors and characterise the type of link with each of them.

Model Forms I and II provide a specific section for setting out delegations of voting rights. The notification time limit in this event starts to run on the trading day following that of the holding of the general meeting.

The last three model forms provided by the Circular set out reporting duties on own shares, on applications for exemption from notification for market makers, and on remuneration systems, which remain the same as those attached to the previous Circular 2/2007, except in terms of model form numbering so as to preserve consecutive numbering. Despite remaining unchanged, they are incorporated to this new Circular so as to avoid normative dispersion.

Having regard to advances in information technology and the need to process information properly and swiftly, this Circular introduces the possibility that model forms be submitted electronically. This will be mandatory for reporting transactions involving own shares. However, the option remains for notifications to be submitted otherwise.

Finally, rule 4 of this Circular sets the time limits that are to be observed for the submission of the appropriate notification to the Spanish Securities Market Commission.

By virtue of the authority received, the board of the Spanish Securities Market Commission, in the light of the report produced by its consultative committee, at its meeting of XX XXXXXXXXX 2015, has adopted the following Circular:

Rule One. Model forms.

1. Notifications to be given in compliance with Titles II and III of Royal Decree 1362/2007, implementing the Securities Market Act, on transparency requirements in relation to information about issuers whose securities are admitted to trading on an organised exchange or other regulated market in the European Union, and with article 9 of Royal Decree 1333/2005 of 11 November 2005 implementing the Securities Market Act with regard to market abuse, must be given by filling out the relevant model form among those included in this Circular:

a) Model Form I will apply to major shareholders and other persons who are not directors at the issuer. In this model form, the person subject to the reporting duty must aggregate all voting rights in his/her possession associated with poor attributed to shares or other financial instruments conferring that confer the right to acquire shares already in issue that attribute voting rights or have a similar economic effect.

b) Model Form II will apply to issuers' directors, and in that model form they will report all transactions concluded in respect of shares or other financial instruments related to those shares, whether directly or indirectly, including those concluded by close links, as defined in article 9 of Royal Decree 1333/2005, where the discretion to exercise voting rights rests with the director, and the final resulting position in terms of voting rights attributed to shares or other financial instruments linked to such shares. This circumstance will be at least considered when the director's close link is his/her spouse under a joint marital property regime, his/her issue under his/her parental authority, controlled companies and third parties. In these events it will be unnecessary for those close links individually to submit a notification in so far as the director him/herself reports the situation and acknowledges the voting rights as his/her own.

In addition, there must be reported in the aggregate the proportion of voting rights, whether direct or indirect, attributed to shares or other financial instruments linked to such shares which the director holds at the time of his/her appointment or dismissal as a director.

c) Model Form III applies to executives of issuers and their close links, and to such other close links of the directors of the issuer whose position in voting rights are not attributable to the director him/herself because he/she does not have the discretion to determine how those voting rights are to be given effect, and in that model form those persons must report transactions concluded in respect of shares and financial instruments linked to shares.

d) Model Form IV applies to issuers who must notify transactions carried out in own shares.

e) Model Form V applies to market makers who wish to rely on the exemption from the duty to notify major holdings.

f) Model Form VI must be completed to report on the remuneration systems of directors and executives approved by an issuer. Such persons must submit the model form to the Spanish Securities Market Commission directly or through the issuer.

2. The corresponding notification obligations will be deemed only to be complied with when the notification is made in accordance with the model forms introduced by this Circular with the completion of all sections except for those which are not mandatory.

3. The information contained in the said forms which is applicable to the circumstances in question must in any event be completed. The Supplementary Information Sheet which is attached to each notification form must be sent to the Spanish Securities Market Commission together with the corresponding form, even though this information will not be made public.

Rule Two. Manner of submitting notifications

1. For the entry of the notifications forming the subject matter of this Circular in the public register referred to in article 238 (f) of the restated Securities Market Act introduced by Royal Legislative Decree 4/2015, the model forms for notification of transactions involving own shares must be submitted electronically. The rest of notifications may be submitted electronically or in hardcopy.

Notifications must be submitted using the applicable notification form and duly signed. If submitted electronically, the signature must be electronic in accordance with the requirements which the CNMV lays down in its Electronic Register.

2. When notifications are submitted on behalf of the person under an obligation to report, the Spanish Securities Market Commission may require that the representative or declarant provide evidence of authority to do so. In the case of legal entities representation will be presumed sufficient when the person submitting the notification is the sole or joint and several director, member of Board of Directors. Secretary to Board of Directors or Chief Executive or similar officer.

3. The duty to notify will be deemed to have been discharged when the person under the duty receives electronically from the CNMV a "certificate of acknowledgement of receipt of an entry in the Electronic Register of the CNMV" for that notification.

Rule Three. Persons under an obligation to report without legal personality

If the person acquiring, transferring or holding shares or financial instruments with attached voting rights lacks legal personality, the management company or person with representation or management of the assets thereof shall be under an obligation to send the notification on their behalf.

Rule Four. Periods

1. In accordance with article 35 of Royal Decree 1362/2007, of 19 October, major shareholders must make the corresponding notification within a maximum period of four trading days from the date on which the person under the reporting duty becomes aware, or ought to have become aware, of the facts giving rise to the reporting duty. For purchase and

sale transactions in the market the period will begin to run by no later than two trading days following that of the transaction. For other transactions the period will run from the trading day following the date on which it takes effect.

Notwithstanding the provisions of the previous paragraph, in accordance with article 9(4) of Royal Decree 1333/2005, of 11 November, and article 35(9) of Royal Decree 1362/2007, of 19 October, directors and executives and their close links must notify within the five trading days following that on which the transaction takes place.

2. If the trading day on which the notification period ends is a non-business day for administrative purposes, the notification period will be deemed to be extended until the next following business day.

Rule Five. Exclusion from trading

The Spanish Securities Market Commission shall ex officio remove all notifications from its public records of major holdings in respect of companies whose shares are excluded from trading in an organised exchange and other regulated markets of the European Union.

Sole repealing provision.

Draft Circular 2/2007, of 19 December, of the Spanish Securities Market Commission, adopting model forms for the notification of major holdings, held by directors and senior executives and their close links, issuer transactions involving own shares, and other model forms.

Sole final provision.

This Circular will come into force on the day following its publication in the *Boletín Oficial del Estado* [Spanish central government gazette]. Persons subject to duties under this Circular must use the new model forms adopted under this Circular for any such specifications as they must submit as some 31 March 2016.

Done at Madrid, this 22nd day of December, 2015. The Chair of the Spanish Securities Market Commission, María Elvira Rodríguez Herrer.

[Model Form I.](#) Notification of major holdings for persons under an obligation who do not have the status of director of the issuer

[Model Form II.](#) Notification by directors

[Model Form III.](#) Notification by executives (other than directors) and their close links and other directors' links

[Model Form IV.](#) Notification of transactions with own shares

[Model Form V.](#) Application for exemption from notifying major holdings, applicable to market makers

[Model Form VI.](#) Notification of the remuneration systems granted by an issuer whose shares are admitted to trading on a regulated market in the European Union to its directors or executives