

NEW RULES ON ISSUERS TO SIGNIFICANT INFORMATION - ALLEN & OVERY

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On 2 June 2009 a new rule of the Spanish Treasury Department (EHA/1421/2009) entered into force which, within the context of the market abuse regime, regulates the criteria defining, and develops the obligations, procedures and forms of communication relating to, significant information that may affect a security's price in a secondary market from the perspective of the issuer of that security.

The new Rule follows article 82 section 5 of The Securities Market Law (Law 24/1988 of 28 July 1988) entitling the Treasury and authorising the National Securities Market Commission (the CNMV) to develop, specify and establish certain guidelines relating to the disclosure of significant

information by securities issuers. Including "information regarding future acts or decisions that may become significant and that in any way (i) may give rise to, (ii) are a consequence or continuation of, (iii) mean a change in, or (iv) complete, alter or end the significant information that was initially communicated / disclosed."

La actualización del artículo 82 de la Ley española del Mercado de Capitales aclara y amplía la responsabilidad sobre los emisores de capitales, que tienen que poner abiertamente información significativa a disposición de la CNMV y el mercado. Iñigo del Val de Allen & Overy afirma que las enmiendas establecen unos parámetros que ayudan a los emisores en el momento de precisar la que es información significativa, enfatizando que tal información no debería ser ni excesiva ni deficiente.

Main measures

The new Rule states some examples of significant information. It also specifies criteria that may help the issuer to identify significant information so the CNMV does not receive inadequate or excessive information, from a quantitative point of view, or non-pertinent information, from a qualitative point of view. The Rule also establishes the principles and general duties of the issuers.

It also establishes general criteria regarding the content of disclosures of significant information to ensure that, amongst others, the information is made public in an impartial manner; the content establishing any amounts, in the event that approximate information is used the relevant precedents or references are applied; and the conditions for authorisation or ratification to which a decision or agreement may be subject are specified. The CNMV will establish the process, sources and drafts to follow at a later date.

In relation to information regarding forecasts and estimates, the Rule introduces certain conditions such as being able to compare and contrast information with that which has already been or will be published, specifying that the projected targets or estimates that are disclosed depend on the developments expected by the issuer, identifying the timeframe for these projections, and considering as significant information any deviations from the estimates.

An important change is the obligation of the issuer to appoint an authorised spokesperson (interlocutor), with whom the CNMV may consult and from whom the CNMV may request information regarding the disclosure of significant information. This interlocutor must be sufficiently qualified in order to respond officially in the name of the issuer and have access to its directors and managers in order to establish the information required by the CNMV as soon as possible. The process for, and terms and content of, any disclosure by the interlocutor have yet to be fully established by the CNMV.

Lastly, the leaking of significant information to journalists, analysts, investors or shareholders without prior disclosure to the CNMV will be considered as non-compliance under article 82 of the Securities Market Law.

Conclusions

The development of article 82 of the Securities Market Law further clarifies the obligation of security issuers to disclose significant information to the market and CNMV, and make such information publicly known. The new Rule sets out parameters to help issuers determine what is considered significant information but emphasises that such information should be neither excessive nor deficient.

In addition it provides an obligation on issuers to appoint an interlocutor to respond promptly to CNMV requests and queries relating to the disclosure of significant information.

On 17 July 2009, the CNMV published a draft Rule developing the new Rule including among others the following developments: (i) the CNMV provides a non-exhaustive list of events deemed significant information; (ii) it establishes the procedure, means and models to be followed for disclosure to be made to the CNMV; and (iii) it establishes the procedure for, and terms and content of, information disclosures by spokespeople (interlocutores).

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