

Frequently asked questions about the Agreement of the Executive Committee of the CNMV adopted on 27th of May 2010, on the model for a Short Selling Disclosure regime proposed by CESR.

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This document is a guide to answer the most frequently asked questions of the different participants of the stock markets. The principles of this guide follow the Agreement of the Executive Committee adopted on 22nd of September 2008 and on 27th of May 2010. If you need further information about the agreement, you should address your queries to the Departamento de Mercados Secundarios (Secondary Market Department) of the CNMV.

The CNMV may in the future alter some of the criteria provided in this document providing this does not modify the set of general principles laid down in the pan-European disclosure regime proposed by CESR.

SCOPE

1. Which issuers are covered by the model and what is the scope of the model?

The model proposed by CESR includes all shares or “cuotas participativas” that are admitted to trading on an EEA regulated market and/or an EEA MTF. However, the Agreement of the Executive Committee applies only to shares or “cuotas participativas” admitted to trading in the Spanish regulated Market.

2. Does the disclosure model concern issuers of shares admitted to trading on the Spanish MTF Mercado Alternativo Bursátil (MAB)?

No, it does not. Although the model proposed by CESR includes all shares admitted to trading on an EEA MTF, the Agreement of the Executive Committee does not include the application of the disclosure model to shares of listed companies that are admitted to trading to only Spanish MTF, until there is European Legislation on short selling. The scope of the model proposed by CESR does not intend to cover other securities admitted to trading on the Spanish MAB (SICAVS –open ended investment funds-, Venture Capital Business firms and Hedge Funds).

3. Does the disclosure model affect issuers of shares admitted to trading on the Spanish MTF Latibex?

It does not. The CESR`s proposed model does not apply to shares admitted to trading on an EEA regulated market or an EEA MTF if their primary market is located outside the EEA.

4. When does the new disclosure model come into effect?

The new model comes into effect on 10th of June 2010. Consequently, communications in accordance with the Agreement are expected from the 11th of June 2010.

5. Do holders of shorts positions already reported need to make an initial communication according to the new model?

Yes, they do. As a starting point of the new model and in order to get an initial snapshot of short positions, the CNMV requests that those market participants who hold short positions above 0.2% send a new communication updating their position, even though those short positions have already been reported under the previous disclosure regime. Communications will be handled under the new model concerning reporting and disclosure thresholds.

CALCULATING SHORT POSITION, THRESHOLDS

6. What are the new reporting thresholds?

There are two reporting and disclosing thresholds. At the lower threshold of 0.2%, positions would be disclosed to the CNMV, at the higher threshold of 0.5% positions would be disclosed to the CNMV and to the market as a whole. All changes of position would be reported at increments or decreases of 0.1%, first to the regulator (from 0.3% until 0.4%) and then to the regulator and the market (0.5%, 0.6%, 0.7% etc.).

7. How do I calculate short positions?

Net short positions held intra-day would not have to be disclosed. A holder of economic interests in an issuer should net its long and short interests in order to calculate its net short position. Net short positions, expressed as a percentage of the company's issued share capital should be calculated on the basis of financial instruments which create an economic exposure to the issued share capital of the issuer.

For this purpose, the net short position (numerator) should include any instrument (futures, equity swaps, contracts for differences, spread bets, options, etc) giving rise to an exposure, whether direct or indirect, to the issued share capital of a company as well as a short sale in the cash markets. Any economic interest held as part of a basket, index or exchange traded fund (ETF) would need to be included when calculating the position in each individual share. On calculating the net short position, any derivative and cash position would be accounted for on a delta adjusted, rather than a notional basis (cash position having delta 1), and for its price multiplier (the number of units of the underlying financial instrument represented by one derivative contract). On the other hand, instruments that give entitlement to shares not in issue at the time the position is calculated (i.e. nil-paid rights, convertible bonds, equity warrants issued by the issuer) should not be taken into account to net off short positions.

The relevant figure for the calculation of net short positions is the entire issued share capital of the company (denominator), comprising shares but not any debt securities (including convertible bonds). Where issuers may have several share classes it would be necessary to take into account the total number of shares issued in each class and to add them up. Other instruments giving entitlement to shares not in issue at the time the position is calculated should not be considered in this calculation.

8. How many decimal places should the short position communicated include when it is measured as a percentage of the total share capital of the issuer?

Three.

9. If I increase my previously reported short position, do I need to report the increase or do I report only increments of 0.1% of the issuer capital?

One of the main changes of the new model is that investors who already reported a short position should only communicate variations of the net position that reaches, exceed or goes below the closest 0.1% of the share capital or changes below or above the reporting and disclosing thresholds (0.2% and 0.5%). For example, a change from 0.44% to 0.54% must be communicated, but not one from 0.44% to 0.49%.

10. In the case of a private investor who holds a net short position through derivatives, already reported, should he report an updated net short position that comes only from variations in the delta?

Yes he should, provided that the updated position coming from a variation in delta triggers a reporting obligation.

To determine the net position in a portfolio which includes cash and derivatives the equivalent position in shares (adjusted delta) of each derivative must be calculated plus or minus the cash position.

11. Do retail investors need to calculate delta adjusted positions?

We advise retail investors to make sure investment firms that provide derivative financial products resulting in short position on an issuer, to commit themselves to offer short position calculation services. Nevertheless we remind market participants that the reporting obligation lies with the position holder.

The CNMV reminds that the proposal to clients of investment strategies that recommend taking short positions through the cash market and sometimes through the writing of derivatives must be done with actual warnings about the risk and leverage incurred. CNMV understands that investment firms should in those cases observe articles 78 and 79 of the Spanish Securities Market Act Ley 24/1988.

12. Can net short positions change even if there is no additional trade related? In the case of a change, should the position holder send a new communication?

Yes, it can (in answer to the first question). The percentage of the short position can change without the need of an additional trade. There are at least two different cases where net short positions can change with no additional trades. The first one is whenever there is a delta change that might affect a short position taken through derivatives. Delta changes may occur due to a change in the price of the underlying, volatility change and the passage of time, etc. Each change might take the delta adjusted position to a different net short position exposure and consequently reaches, goes over or under any reporting thresholds. The percentage can also change because of a reduction or increase in the share capital of the issuer. Briefly, the ratio of the short position can be affected by changes in the numerator as well as in the denominator.

However, a new communication has to be reported if the change implies arriving at either a fraction equivalent to the 0.1% of the share capital or the threshold above the 0.2% of the share capital.

13. If you hold a net short position which includes a long position in cash-equities of the issuer, must the shares received as a consequence of a bonus issue account to the calculation of the net short position? Do you need to send a new communication due to a bonus issue?

Yes, shares received as a result of a bonus issue must be accounted to calculate the position since there is a reduction of the net short position exposure. A new communication should be sent just in case the change takes the new short position percentage into a new reporting threshold.

14. What happens with nil-paid rights , convertibles-bonds and new shares coming from a capital increase?

They must not be accounted to the calculation of the net short position and thus the percentage of the short position will not be affected. The new shares issued from a capital increase must not to be accounted to the calculation of the share capital up to the day they are admitted to trading in market.

15. In short selling reporting, do I have to include information about each one of those related to the issuer's financial instruments?

No. The communication just refers to the final position.

16. If as a result of selling futures on an equity Index and a partial purchase of the equivalent equity basket there is a reporting net short position on some or one of the issuers of the index, should I report the short position?

Yes you should.

17. Do short positions taken through ETF`s have to be reported?

Yes, they do provided that they reach a reporting threshold

AGGREGATION OF POSITIONS

18.- Which is the overriding principle to aggregate positions? Where should the calculation take place in a group or a company?.

The overriding principle is the consideration of the person or body (for example, the investment committee) that is making the relevant investment decision. The CNMV`s view is that legal entity level will often, but not always, be the appropriate proxy for this.

19. I am the person or the company who decides the investment strategy for several funds, UCITS, non UCITS, etc., which belong to different legal entities, do I have to aggregate the different positions?

Yes you do. The overriding principle is the aggregation at the level of the person or body (for example, the investment committee) who takes the investment decision, although this particular case might be rather unusual.

20. What is the level of aggregation to calculate and report short positions within an investment group whose activity is not to provide investment services?

Calculation and reporting should be done at the legal entity level whenever the 0.2% threshold is reached.

For instance, if a legal entity of a group is holding a short position that reaches a reporting threshold but the overall position of the group does not reach that level, then only the legal entity will have to report the position.

If no legal entity within a group reaches the 0.2% reporting net short position but the aggregated short position of the group whose activity is not to provide investment services does, then only the group should make a communication.

If both the net short positions of a legal entity within the group whose activity is not to provide investment services and the one of the group do reach the 0.2% reporting threshold, only a single communication by the group aggregating short positions should be made.

This guidance also applies for the publication of short positions equal or above the 0.5% threshold.

21. Should financial groups whose activity is to provide investment services aggregate and calculate at group level?

In principle they should not. Aggregation and calculation should follow the overriding principle. Short positions should be calculated and reported at the level of

the person or body (for example, the investment committee) that is making the relevant investment decision. The CNMV's view is that legal entity level will often, but not always, be the appropriate proxy for this.

22. What is the level of aggregation to calculate and report short positions in an asset management company where decision-making is done through an investment committee? Do I have to aggregate across all relevant business (hedge funds, investment or mutual funds and or portfolio management)?

Again, aggregation follows the legal entity and decision making principles. In principle it will not be necessary to offset positions in the different activities or strategies. Every business activity (hedge fund, business, mutual or investment funds, portfolio management, other investment activities) will report its net short position provided that the reporting thresholds are reached.

Communications should be sent whenever any individual fund, legal entity, business line or activity within a management company or a group reaches the 0.2% reporting threshold. Similarly, if the aggregate net position of a specific investment activity or business line reaches the 0.2% reporting threshold (for example, hedge fund activity through more than one fund) that aggregate net short position should be reported.

If you have further queries on the aggregation criteria please do call the CNMV Secondary Market Department for additional explanation.

23. The shares of a Spanish issuer are admitted to trading in Spain (primary market, most liquid one) and also in Germany. I have a long position in Germany (cash equity purchase) and a short position (futures sale) in Spain which triggers a communication obligation. Who is the market supervisor I report to? Can I net-off the cash and futures positions?

The short position should be reported to the supervisor of the most liquid market (CNMV in the example).

Yes you can net off both long and short positions provided that the company or person who took the investment decision are the same.

MECHANICS OF THE DISCLOSURE

24. Where do I send the communication of short selling?

The communication should be sent to CNMV through the scheme explained below.

25. Who must report the communication?

The communication must be reported by the holder of the position or the representative (official delegate or agent authorized).

26. As the Agreement comes into effect from June 10th, what is the deadline to communicate short positions? How do I send the short selling communication?

Communications of short positions reaching the established thresholds from June 10th 2010 (T) must be sent at the latest on June 11th 2010 (T+1), 19:00 hrs. (Spanish time). In general terms disclosures should be made before the end of the trading day following the day on which the disclosure obligation is triggered (i.e. T+1).

27. How do I submit the communication?

The communications can be sent by the following ways:

1. FAX to ++/34/91 585 16 62
2. E-mail to area.mercados@cnmv.es

The CNMV will enable CIFRADOCC as soon as possible so that users can submit communications through this medium.

28. Is there any specific template for the disclosure?

Yes, there is. All communications must be reported filling the standard form that can be downloaded from the CNMV's web page (Legislación/Modelos normalizados/Comunicación de posiciones cortas).

Please find below a direct link to the standard form.

<http://www.cnmv.es/DocPortal/Legislacion/ModelosNormalizados/ModeloComPC.pdf>

29. As a CIFRADOCC user, can I use this system to report short positions?

Yes you can, if the net short position holder is identified as user of CIFRADOCC the CNMV will not admit other ways for disclosing. As stated in question 25, the CNMV will enable very shortly the use of CIFRADOCC to report short positions

30. I am not user of CIFRADOCC system, how can I communicate?

Before sending your first communication in case you do not have a NIF, CIF or BIC code you should contact the Secondary Markets Department of the CNMV to ask for an Identification Code which will be used for all your future communications.

You can contact either by phone ++34/91/5850954, by fax ++34/91/5851662 or by e-mail area.mercados@cnmv.es

31. Is it valid to use an identification code (for instance fiscal identification code) issued by an Authority (country) other than Spanish ones?

No it is not. The identification codes (for instance fiscal identification code) issued by Authorities (countries) other than Spanish ones should not be used. If you don't have an Spanish identification code (NIF, CIF) then you should use either a BIC code or an

identification code provided by the CNMV following the procedure explained in the previous question.

CRITERIA OF PUBLICATION ABOUT SHORT SELLING COMMUNICATION

32. What are the criteria used by the CNMV to disclose short positions? Will the CNMV disclose to the market the aggregated short position in each issuer and how often will this take place?

The CNMV will publish and update aggregated data on short positions on every issuer at least on a fortnightly basis. This frequency could be shorter in highly volatile market circumstances. The data disclosed by the CNMV will include the aggregated data it receives as a result of private disclosure (communications between 0.2%-0.5%) as well as the public communications over the 0,5% threshold. Communications where the position holder informs of a movement below the 0.2% threshold will not be taken into account.

33. - Short selling communications could previously be seen in the “CNMV latest” section of the web under “as price sensitive information (hecho relevante)”, where can I find them now?

From the 11th of June 2010 individual disclosable positions will be available in a new section within the information concerning any particular issuer (Registration files/company’s search/). Therefore you will not be able to see them in the “CNMV latest” section of the web

EXEMPTIONS

34. I am market member that deals as principal in the relevant share and/or related derivatives to fulfil orders initiated by clients or to do market making activities. Am I exempted from the disclosure obligations?

Yes, you may take advantage of this exemption provided that you make a prior notification to the Secondary Markets Department of the CNMV informing the issuers upon which you would like to be exempted from the short position communication obligation as well as the facts that support the exemption. The application must be submitted through the Official Registry of the CNMV including an exhaustive description of the reasons and circumstances that support the application and any detailed activity performed in any of the individual stocks included in the application. An explicit approval from the CNMV is needed to make use of the exemption. According to CESR document 10-088 of 2nd March 2010 it is not expected that a market maker will hold significant short positions other than for brief periods.

35. I am a market member or Investment firm who wants to be exempted from the Agreement. How do I send my request? Do I send one for each individual issuer?

General exemptions (for all issuers in a market) will not be granted. However, in order to make paper work easier, you may in your exemption request include as many issuers as you want provided that you fulfil the conditions set out in question 31.

36. I am the stabilization agent in an Initial public offering according to Commission Regulation (EC) 2273/2003. Do I have to communicate a temporary short position during the stabilization period?

Yes, the whole model applies in these cases. Due to the excess between the over-allotment and the green shoe, the stabilization agent might have a temporary short exposure. If this reaches a reporting threshold a short position communication should be sent.

CONCERNING NAKED SHORT SELLING

This section repeats the FAQs published on 30th September 2008 concerning the prohibition of naked short selling in Spanish markets, therefore this subject is not affected by the Agreement of the Executive Committee of the CNMV adopted on 27th of May 2010, which only applies to the short positions disclosure model.

37. Does the naked short selling prohibition affect only the listed companies on Annex 1 of the Agreement of the Executive Committee of the CNMV adopted on 22nd September 2008?

No, the regulations concerning naked short selling prohibition are binding for all the listed companies in Spanish Stock Markets.

38. Is the previous buying, the only way of having stocks before selling?

No, you could also become the owner of the stocks before selling them by borrowing them, or by executing an irrevocable conversion right, option or any kind of derivative instrument with physical delivery.

39. When will the prohibition come into force?

The regulation about naked short selling is not a new one, this rule is included in the Rule Book of the Stock Exchanges (Reglamento de Bolsas de Comercio), enacted by Royal Decree 1506/1967, on 30th June. The Executive Committee Agreement only constitutes a reminder of the rule.

40. Is it allowed to sell at the beginning of the trading session and repurchase along the day, in order to balance your stock position at the end of the trading session?

No. You only would be allowed to execute your sells before your purchases provided that you always have enough stocks for selling.

41. If the clearing and settlement system does not penalize the trading described in the previous question, Why I am not allowed to do it?

The naked short selling prohibition is independent of the mechanisms established by Iberclear in order to penalize delays beyond the settlement theoretical date for the sells

42. As a member of regulated markets, do I have to ensure that my selling client has enough available shares?

In the Agreement, we encourage to subordinate the order execution to the explicit assurance by the client that they are not conducting a naked short sale. Nevertheless, considering that the member of a regulated market not always has the capability for verifying the global position of the stocks ownership, it can accept, if it wishes, a client express statement confirming that the client is not executing a naked short selling.

43. Is it enough if the client informs by telephone, that he has sufficient available stocks?

A member of a regulated market could accept, if it wishes, an oral statement, provided that a proof of its statement exists, such as a tape recording.

44. Must the explicit statement of the seller be requested for each individual transaction?

Should the broker decide to ask for it, it could be based on a client's commitment in written declaring that he/she is not going to introduce any naked short sale through the broker.

45. Is there any exception concerning naked short selling?

No, this rule applies to all listed companies and every member of a regulated market. Nevertheless, the operational requirements of market maker and liquidity providers will be taken into account.

46. If a market maker introduces "non-aggressive" buy and sell orders simultaneously and, by the market's evolution the sell orders are executed first, buying later in the same session, Is this considered a naked short sale?

Market making, for the purpose of this rules, is placing, simultaneously and on own account, buy and sell orders of similar characteristics (volume, distance of prices from the best bid and ask prices) with the intention of providing liquidity on both sides of the order book. If as a consequence of this activity and of the market's evolution a market member sees its selling ordered executed first and later on buys during the same session, there could be a temporary excess of short sales. However, as long as this situation is temporary, it would be compatible with the operating needs of market makers mentioned in the 22 September Agreement.