PUBLIC STATEMENT ON THE CRITERIA USED FOR REPORTING TREASURY SHARES TRANSACTIONS WHEN THE ISSUER HAS FORMALISED EQUITY SWAPS OR SIMILAR FINANCIAL INSTRUMENTS

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The obligation of listed companies to report transactions on their own shares (treasury stock) is regulated under Article 126 of the Recast Text of the Spanish Securities Market Act (LMV), approved by Spanish Royal Legislative Decree 4/2015, of 23 October, and implemented under Articles 40 and 41 of Spanish Royal Decree 1362/2007, of 19 October.

Article 40 of said Royal Decree 1362/2007 stipulates that the listed company shall "report to the CNMV the proportion of voting rights remaining in its power, pursuant to the provisions of the following article, when it acquires own shares conferring voting rights, **either by itself, through a controlled entity or a proxy**, and said acquisition reaches or exceeds 1% of the voting rights".

The Royal Decree, in its Article 24(2)(b), contains a definition for "proxy", which is applicable for the purposes of reporting treasury stock: "A person who in his or her own name, acquires, transfers or holds shares on behalf of another legal or natural person". Likewise, it is provided that the proxy shall hold such status, unless there is evidence to the contrary, where the risks inherent to the acquisition, transfer or holding of the shares is covered in full or in part.

For the purposes of reporting treasury stock, Article 40(3) of the Royal Decree also stipulates that "entities acting as counterparties of issuers executing transactions expressly aimed at hedging the market risk of a stock option plan, granted by the issuer in favour of its directors or employees, and which is formalised through financial instruments settled solely by differences, shall not be considered as proxies."

Pursuant to the above-mentioned regulations, the duty of reporting own shares transactions is solely applicable to trades executed by the issuer, directly, indirectly or through a proxy, with shares, and in principle, does not cover trades executed by the listed company with other financial instruments, or where the shares of the entity itself are the underlying asset. This is without prejudice to the fact that, in certain cases, transactions executed by the counterparty of the financial instrument with the listed company's shares as the underlying asset may be considered as treasury stock of the listed company itself, as it is considered as a proxy of the issuer (in which case the assumption above shall be taken into account). In such a case, the trades executed by the counterparty with the listed company's shares shall be included in the treasury stock report submitted by the listed company.

Ultimately, whether the counterparty acts as a proxy as mentioned above shall be determined on a case-by-case basis, bearing in mind the assumption above and the purposes for which the listed company requires the product or financial instrument and their specific features.

Nevertheless, doubts may arise with regard to how the assumption should be considered in certain cases where the listed company has entered into a financial instrument with a counterparty, which might retain ownership of certain shares of the listed company at some point in time. By way of example, a series of non-exhaustive factors are included hereby, in respect of financial instruments whose underlying asset areis the listed company's shares, and which should be taken into account by listed companies to determine that the counterparty does not act as a proxy, and therefore, that the trades executed with the listed company's shares should not be considered as own shares for the purposes of reporting treasury stock:

(i) Where the financial instrument, at maturity, is solely settled in cash; or when there is the option of settling by physical delivery, and the decision of settling by physical delivery lies solely with the counterparty.

In cases where the listed company has the option of settling through physical delivery, an additional analysis should be conducted of the remaining factors before concluding that the intermediary acts as a proxy.

(ii) Where the intermediary acting as a counterparty is not obliged to hold, in full or in part, the underlying shares of the financial instrument in its portfolio at no point in time throughout the life of the instrument. This implies that the counterparty is fully empowered to manage any potential shares held and retains full discretion on the different possibilities of hedging, where appropriate, the risks associated with the financial instrument throughout its life, and having the freedom to decide, where appropriate, the hedging of these risks through the use of shares or other financial instruments.

(iii) Where with regard to the shares potentially held by the counterparty, the latter has absolute freedom vis-à-vis the listed company for disposal and it is not obliged to follow the instructions or recommendations of the listed company, it being able to freely acquire, transfer, assign or lend the underlying shares of the financial instrument to third parties, as well as assigning the rights attached to such shares.

(iv) Where the counterparty retains full discretion for deciding how the shares, which may be held from time to time, are to be voted.

Therefore, it seems reasonable to assume that the intermediary does not act as a proxy when the financial instrument is settled solely in cash, or alternatively, when the option of settling through physical delivery lies exclusively with the intermediary and when, in addition, the latter is not obliged to hold, in full or in part, the underlying shares of the financial instrument at no point in time throughout the life of the instrument.

In any event, in order to assess whether the factors above are met, and in short, to determine whether the counterparty of the financial instrument should be considered as a proxy for the purposes of reporting own shares transactions, the agreement existing between the parties should be considered as a whole, and not solely the arrangements concluded in writing between the parties.

In the event of concluding, bearing in mind the criteria above, that the intermediary must be considered as a proxy for reporting purposes, all transactions executed by the intermediary with the listed company's shares under the contracted financial instrument shall be understood to be executed by the listed company itself and shall

be included in the relevant report of own shares transactions submitted by the listed company.

In this case, it is considered important that the listed company include in the agreement concluded with the intermediary a clause whereby the latter is required to promptly report transactions executed under the agreement, for the listed company to fulfil its reporting obligations in due time.

It is important to highlight that, in this case, what should be reported are the transactions executed with the listed company's shares which are related to such instrument and not the financial instrument itself.

Without prejudice to the foregoing, the CNMV considers that irrespective of whether or not the intermediary has been considered as a proxy for reporting transactions with own shares, the existence of the instrument and its main features should be publicly disclosed in order to guarantee the appropriate transparency for these financial instruments.

Firstly, it would seem advisable that, with the exception of those cases where the financial instrument is considered insignificant in view of its amount, a public disclosure be made through an "Other relevant information" public statement, pursuant to Article 227 of the Spanish Securities Market Act, or where appropriate, an "Inside information" public statement, in accordance with Article 226 of the Spanish Securities Market Act.

It would also be advisable that these financial instruments be reported in the public statement on own shares, when such public statement is applicable and the intermediary has been considered as a proxy. Specifically, this should be reported in section "8. Additional Information" of form IV of CNMV Circular 8/2015, of 22 December.

Finally, it should be recalled that, depending on its materiality, the listed company is required to provide a sufficiently detailed report on these financial instruments, and on their economic and financial impact, both in the annual accounts and the periodic half-yearly public disclosures, which may also include the equivalent information in the annual corporate governance report.