



BANKING & FINANCE | Public Consultation no. 4/2009: Mandatory Disclosure Requirements of Derivative Positions on Shares of Listed Companies

The CMVM has recently approved and made available for public consultation, taking place until 15 February 2010, a proposed amendment to the CMVM Regulation no. 5/2008, on information disclosure duties. This proposal intends to create a communication duty in relation to “*long economic stake holds*”, under the terms of which the holder of “*long economic stake hold*” that reaches or goes over 2 per cent., 5 per cent., 10 per cent., 15 per cent., 20 per cent., 25 per cent., a third, 40 per cent., 45 per cent., half, 55 per cent., 60 per cent., two thirds, 70 per cent., 75 per cent., 80 per cent., 85 per cent. and 90 per cent. of the share capital of a Portuguese company listed in Portugal, as well as whoever decreases a “*long economic stake hold*” below any of the aforementioned thresholds, shall, within four trading days following such event, relay it to both the CMVM and the relevant company.

Within the context of this duty, the concept of “*long economic stake hold*” shall include voting rights imputable under the Portuguese Securities Code to the holder of said position, as well as the voting rights affected by agreements with an economic value similar to that of holding shares (according to the CMVM, these will be those which allow their holders to benefit from an increase in the underlying asset’s value and, symmetrically, to be exposed to any devaluations thereof), namely contracts for differences, cash settled swaps, cash settled options and cash settled futures and forwards contracts.

The above mentioned proposal also sets out that the financial agreements or instruments which have as an underlying asset an index or a basket of shares will only be relevant for this purpose should their composition include shares representing at least 1 per cent. of the share capital of a listed company or if a given share accounts for more than 20 per cent. of the total value of the underlying index or basket.

All of the aforementioned information, when sent to the relevant company, must be disclosed by the latter in the CMVM’s information disclosure system, within three trading days following receipt thereof.

The communications to be addressed by the acquirer of the relevant stake hold to the CMVM and to the relevant company shall include, further to the elements already foreseen in the context of communicating the acquisition of voting rights, information on the relevant financial agreements or instruments, such as:

- (i) the main characteristics thereof;
- (ii) their term; and
- (iii) the number of shares, percentage of share capital and percentage of voting rights which constitute their object.

