

INFORMATIVE NOTE

CAPITAL MARKETS

PLMJ

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SHORT SELLING – BRIEFING

The Portuguese Securities Market Commission (CMVM), similarly to other European regulators, approved a set of regulatory measures aiming to enhance the transparency and supervision of the “short selling” transactions in Portugal, by expanding the disclosure duties on such transactions. Also, taking into account exceptional circumstances that the financial markets are facing, CMVM ordered that members of Euronext Lisbon and PEX should not accept or execute orders for selling shares and other relevant securities issued by certain financial institutions should the person issuing such orders not be in a position to ensure the availability of said securities in advance.

These measures have been approved and become in force, since last 19th September, through Instructions progressively notified to its addressees. Moreover, it was approved Regulation 4/2004 (Duty to Disclose Information on Short Positions), which enters into force today. Finally, CMVM has updated the 2001 General Statement of Opinion on the Practice of Short-Selling and made public some Q&A¹ (although this set of measures raised other important questions).

PLMJ Capital Markets Team has been closely following these discussions and, in accordance, prepared a summary of the main Portuguese new regulatory measures on “Short Selling”.

CMVM Rules	Entry into force	Duties and / or Restrictions	Targeted Entities	Deadline	Minimum Content
Instruction 01/2008 “Short-selling Transactions” Link: http://www.cmvm.pt/NR/exeres/A0BF5A48-BA88-4CD1-82A6-173AEC445477.htm	Notification Date. Presumably on 22/09/2008.	Disclosure duties: Reporting Short-selling Transactions to CMVM ² . Short-selling Transactions: Transactions where the seller does not have the ownership of the Relevant Securities and those where the seller has acquired ownership through loans or other types of credit, provided that said transactions were carried out on Euronext Lisbon and/or PEX. Relevant Securities: Shares and other securities granting the right to its acquisition, subscription or conversion.	Euronext Lisbon and PEX members.	Daily report.	Gross short transactions. (See annex ³ to the Instruction).
Instruction 02/2008 “Short-selling Transactions on Financial Institutions” Link: http://www.cmvm.pt/NR/exeres/ACFE461E-3AF6-4454-B94C-179A6AE1B622.htm	Notification Date. Presumably on 24/09/2008.	Short selling prohibition: Prohibition of accepting or executing orders to sell in the market of the Relevant Securities, when the person issuing the order or the market member acting on its own behalf respectively, does not ensure the availability or makes available said securities at the time of transmission or execution of the order. Relevant Securities: Shares of the financial institutions listed in the Instruction and other securities granting the right to its acquisition, subscription or conversion. Exemption: Market makers.	Euronext Lisbon and PEX members.	Transitory measure.	N/A
Instruction 03/2008 “Information on Granting Credit for the Carrying Out of Financial Instrument Transactions” ⁶	01/12/2008	Disclosure Duties: Reporting to CMVM the amount of credit in cash, for the purpose of buying, or the number of financial instruments for the purpose of selling, related to several Relevant Transactions. Relevant Transactions: (i) Loans for public offers; (ii) Margin account; (iii) Other short, medium and long term loans; (iv) Other similar financing arrangements.	Authorized financial intermediaries, excepting those acting under LPS.	Up to the 3 rd business day of the following month.	(See annex ⁴ to the Instruction).

“Portuguese Law Firm of the Year -” IFLR Awards 2006 & Who’s Who Legal Awards 2006, 2008
 “Best Portuguese Tax Firm” - International Tax Review - Tax Awards 2006, 2008
 Award Mind Leaders Awards™ - Human Resources Suppliers - 2007

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<p>Regulation 04/2008</p> <p>“Duty to Disclose Information on Short Positions”</p> <p>Link: http://www.cmvm.pt/NR/exeres/21DC9519-7929-45CD-B322-DDABE6A7039F.fr_ameless.htm</p>	29/09/2008	<p>Disclosure Duties: Acquisition and extinction / reduction of Short Positions over:</p> <p>(a) Shares of listed financial institutions set out in the Annex to this Regulation; or (b) Shares at any time including PSI 20 index</p> <p>Short Positions: Any financial interest resulting from an obligation for future delivery or similar obligation, equal to or higher than a net short position of 0.25% of the share capital of the relevant company, such as:</p> <p>(i) Loans; (ii) Derivatives traded in a market or OTC; (iii) The interests of the holder and any related entity under Article 20 of the Portuguese Securities Code.</p> <p>Exemption: Market makers.</p>	<p>Investors and financial intermediaries shall report the Short Positions referred in (a) to the issuing entity and CMVM and the Short Positions referred in (b) solely to CMVM, within the following day.</p> <p>The issuing entity shall immediately make public the information via the CMVM's Information Disclosure System.</p>		<p>Disclosure to the public and CMVM:</p> <p>(i) Type of transactions or instruments; (ii) Related entities.</p> <p>Notifications to CMVM:</p> <p>(i) The holder's identification data; (ii) The entity <i>vis a vis</i> which the exposure is held, if applicable.</p>

CMVM Understanding approved on 26/09/2008⁵

<p>Understanding on Short Selling</p> <p>Link: http://www.cmvm.pt/NR/exeres/CAD8EB9A-D343-4052-B4B4-843B0554E9F9.htm</p>	<p>Short sale: Sale transaction in which the client obtained the financial instruments through a loan or any other arrangement granting the temporary ownership of the securities and imposing it a future delivery obligation.</p> <p>Duty to refuse an order: In case of lack of legitimacy of the client issuing an order, the financial intermediary shall refuse such order, so as to ensure the due settlement of the transaction. For this purpose, the legitimacy arises from the availability of the instruments required for the due settlement, at the time of the reception of the order by the financial intermediary.</p> <p>“Right” to refuse an order: The intermediary may refuse the order in cases where, although the client does not have the relevant instruments available at the time of the reception of the order, it evidences that such availability is ensured for the settlement. In this scenario, the intermediary is deemed jointly liable for the due settlement.</p> <p>Sanctions: Should the relevant legal requirements be met, in the following cases, short-selling may be considered as market manipulation or the breach of the duty to protect the market:</p> <p>(i) Circumstances where short-selling transactions aggravate or are able of aggravating the volatility or instability of the financial markets or of a particular financial instrument; (ii) Large number of short sales, either considering its overall number or the liquidity and extent of the relevant market, or as a result of its concentration in a short period of time; (iii) Expectable or actual substantial influence on the listing price of the financial instrument; (iv) Important settlement failures, when the non-availability of the disposed securities is confirmed.</p>
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¹ <http://www.cmvm.pt/NR/exeres/CF3B8F07-24C0-4897-9AB4-67D301B35CC1.htm>

² Portuguese Securities Exchange Commission.

³ <http://www.cmvm.pt/NR/rdonlyres/A0BF5A48-BA88-4CD1-82A6-173AEC445477/10404/19092008AnnexENG.xls>

⁴ http://www.cmvm.pt/NR/rdonlyres/A2904B6E-8625-4D44-9DAA-3E9DC151F6E7/10439/Anexoinstrucao3_2008EN.pdf

⁵ Update of CMVM's understanding on short selling dated of January 2001.

⁶ <http://www.cmvm.pt/NR/exeres/A2904B6E-8625-4D44-9DAA-3E9DC151F6E7.htm>

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