REFLEXIONS ON THE REPORT DRAFTED BY THE COMMITTEE OF EUROPEAN SECURITIES REGULATORS ON POSSIBLE MEASURES TO IMPLEMENT THE PROPOSED DIRECTIVE ON PROSPECTUS IN RELATION TO SPECIFIC ISSUES.

I. INTRODUCTION

The purpose of this report is to set forth diverse legal reflexions on the document (Ref. CESR/02-286) published by the Committee of European Securities Regulators (hereinafter referred to as the "CESR") regarding the measures to implement the proposed Directive related to the prospectus which should be published in connection with public offerings or their admission to controlled markets (hereinafter referred to as the "Report"). This document is an addendum to those published in October 2002 (Ref. CESR/02/185b), in respect of which we issued certain thoughts and reflexions and which we sent to the secretary general of the CESR on 31 December 2002.

Our firm has once more been invited by the Spanish Securities and Exchange Commission to collaborate in the analysis and review of this latter addendum. In this connection, we thank you once again for taking our firm into consideration to participate in the consulting period.

In a manner similar to that of our previous report, we set forth hereunder some of the rudiments of reflexions from a legal perspective in those matters we have considered to be of special relevance pursuant to our professional experience on the Spanish Stock Exchange.

II. REFLEXIONS CONCERNING THE DOCUMENT

The following are the rudiments of reflexions we have deemed to be of special interest in relation to the Report and, in particular, the specific information requirements to which certain security issuers will be subject.

FIRST PART: INFORMATIVE PROSPECTUS

1. Debt issue.

1.1. Past, present and future investments (questions 15 and 16)

The fact that the issuer provides information on the investments it has accomplished or it intends to carry out in the future is of paramount importance for the future investor, since these are data which will allow the investor to assess the possibilities of success and, consequently, the possibilities of recovery the investment and the obtaining of certain profitability from such investment.

In this respect, past and current investments may offer investors an idea of the company's evolution. Nevertheless, we believe that the most relevant information for the investor, with a view to deciding the viability of investment, is that referring to future investments. The main object of this information is precisely that of notifying the investment policy which the issuer of the securities is going to put into effect.

1.2. Liquidity and own resources (question 18)

It is our understanding that future capital increases, or even a commitment by the partners to carry out some kind of disbursement in favour of the company, is information which must be taken into consideration by the future investor, since the adopting of such decisions may influence the cost-effectiveness of his/her/its investment. The future investor must be aware not only of the sum to which this

kind of commitment which the issuing company may have amount, but also the allocation of this injection of capital.

It is true that share and bond holders hold different positions in a company; hence, as regards bondholders, it could be said that, since they have no right to ordinary dividends, but rather to the interest initially agreed upon, irrespective of the financial results of the company, the obligation of the issuing company to provide information should be more flexible. However, the issuing company may not have sufficient resources at its disposal to satisfy such interest due to the bondholder and, in this sense, it is essential that he/she/it be provided with sufficient information to enable him or her to evaluate any possible risks which subscription of a debt in a company may entail. From this viewpoint, to make a distinction between the kinds of information to be offered according to whether this is an investment in shares or bonds would not appear justifiable.

1.3. Estimate of profits (questions 22 and 23)

Any profits estimate is a study starting from certain variables, but it does not offer absolute reliability. The results of the issuing company are calculated bearing in mind those factors which a priori may reasonably be considered necessary to obtain an estimate as close to reality as possible, but which may be altered by subsequent circumstances. For this reason, to require that such forecast be audited could be somewhat exaggerated. The maximum concept that an auditor could verify would be that such forecast is reasonable according to the results obtained by the issuing company in previous years.

At all events, in our view a statement by the issuing company declaring that the estimate has been reached on the basis of certain variables (which should be determined) and real and audited data from previous years, always bearing in mind the evolution of the company up to that time, would be sufficient.

1.4. Common practice of the board of directors

The composition of the board of directors, as well as its manner of acting and decision-making in its role as governing body of the company, are details of special importance for the future investor. However, given the characteristics inherent to bonds, the requirement for publicity should in some measure be lessened, abiding by the very nature of the securities.

In any event, we believe it necessary, with a view to good governance of the company, that, although supply of the said information be less extensive, the future investor be informed of the manner in which the board of directors operates.

1.5. Majority shareholders (questions 27 and 28)

It is not easy to reconcile the need for ample publicity and the right of investors to greater transparency of the company with the need to keep concealed any internal measures adopted by companies to limit excessive control by majority shareholders. It is our belief that publication of these measures or covenants which could exist between shareholders, whether or not these be majority shareholders, could give rise to uncertainty in the management of listed companies and, consequently, in quoted prices.

Nevertheless, it is our understanding that it would be advisable to disclose such information with a view to ensuring that, in all cases, the company's interests prevail, and never those of the group to which the majority shareholder belongs.

We also believe it advisable that the prospectus demands a statement of to what extent the majority shareholders comply with the obligations imposed on the company administrators.

1.7. Interim financial statements (question 33)

The obligation to attach to interim financial statements, in a case where the prospectus is published once nine months as of the date of closing of the economic year have elapsed, would appear reasonable, since this is a considerable length of time during which the results of the last annual accounts could have been subject to modification. Furthermore, it is our belief that the reliability of these interim financial accounts would be guaranteed if they were verified by the auditors of the issuing company.

1.8. Documents of the issuing company (question 35)

It is extremely difficult to determine which documents of the issuing companies should be disclosed on the market so that potential subscribers or acquirers can obtain a true picture of the issuing company and a well-founded judgement of the investment proposed. At all events, as we mentioned in our previous report, it is essential to consider that to reveal more information than that which is strictly necessary could be contrary to the interests of the company from a competitive point of view.

2. Issues carried out by Banks.

2.1. Introduction (questions 43-45)

Given the special characteristics of banks, as well as their applicable legal regime, it would be advisable to impose more rigorous information requirements in such manner that potential investors may evaluate to what extent their investment will or will not be profitable, or whether the risk exists of not receiving the interest agreed upon at the right time, among other matters.

It is our understanding that non-European banks should not be subject to the Directive contained in the prospectus, inasmuch as they would not have the benefit of a Community passport. For this reason, issue of their securities must be subject to wider supervision and control than that of entities with a Community passport.

2.2. Past, current and future investment (question 47)

Any investment which a bank intends to carry out in the future constitutes that which truly offers the investor sufficient and reliable information for the purpose of analysing the profitability of investment and the possibility of recovering the capital invested. Nevertheless, a description of past, current and future investment by the bank, explaining the basic form of which this has consisted, would allow a potential investor to check whether the forecast made by the issuer is or is not reasonable according to the experience of previous years.

2.3. Estimate of profits (question 49)

The ratios of solvency of a bank constitute extremely useful data to ascertain its financial status. However, if such ratios are given in isolated form, with no explanation annexed, these may only be analysed and evaluated by professionals of the same sector.

For this reason, since the main aim of the Directive is to guarantee that with one sole prospectus the principle of market transparency is satisfied, we consider it would be advisable for the bank to provide not only its solvency ratios but also that it explains these, placing them in context, and relating them to other financial and economic details, in such manner that any investor would be capable of understanding them and forming an adequate picture and well-founded judgement of the proposed investment.

2.4. Common practice of the board of directors. (question 51)

Since banks are subject to quite severe specific legislation as regards the composition of their administrative bodies, among other matters, it would appear that the composition of their boards of directors would take second place. However, as in any other issuing company, it seems reasonable that any data which is or

could be relevant for the market, among which could be the number of members of the board of directors, worthiness and the requirement for trustworthiness of same, ort the manner in which resolutions are adopted, should be revealed to the market.

It would also be advisable to provide information on the bank's policy regarding investee companies.

2.5. Majority shareholders (question 53)

All information related to who the bank's principal shareholders are and what percentage they hold in the share capital, in addition to whether any voting syndicate exists among them, whether or not these form a majority, is important so that the investor is aware of the management and functioning of the company, and can likewise guarantee that the interests of the company prevail at all times, and never those of the group to which the majority shareholder belongs.

2.6. Intermediary financial statements (question 57)

The volume of business of a bank is relatively important, and its financial statements may vary significantly in a period of nine months. Operations in which banks participate because of their own capacity for indebtedness or investment using their own resources are especially relevant for an investor intending to deposit funds in a bank.

For this reason, the financial statements and accounts should be drawn up at a time very close to that of publication of the issue prospectus. It would appear reasonable therefore to draw up intermediary financial statements, always provided that nine months have elapsed as of the date of closing of the last financial year.

2.7. Documents of the issuer (question 59)

It should be remembered that from analysis of the information and documentation to be provided by the bank, the potential investor must form an opinion as to the

solvency and liquidity of the issuing bank, which would be of paramount importance when the investor is assessing the risk of recovery of invested capital.

In any event, what does appear obvious is the fact that all of the documentation must be translated into the language of the country where the offer is made or where admission is requested, since the purpose of disclosing this information is that of providing the potential investor with sufficient premise to obtain a well-founded judgement of the proposed investment.

3. Deriving securities.

3.1. Past, current and future investment (question 66)

In our opinion, a brief reference to the past, current and future investments of the issuer would suffice for the investor to get to know, in general terms, what form the investment policy of the issuer has taken.

However, we believe that the future investment is particularly useful to the investor when studying the profitability of his or her or its investment, especially when taking into account the very characteristics of the deriving securities. Profitability of these securities depends upon the valuation of another type of financial asset in the future, so that it is absolutely necessary for the investor to be aware of ensuing investments on the part of the issuer when considering investing in this type of asset.

3.2. Members of the board of directors of the issuer (questions 69, 73 and 74)

It appears obvious that to inform the market of the composition of the board of directors and their manner of acting is of relevance in the issue of this type of securities, bearing in mind the fact that profitability of the investment will depend, in all cases, on management by the board of directors.

It should be remembered that the board of directors is the governing body of the company. It is important that the investor be aware of who form part of same, and of the fact that they are the persons holding representation of the company, and that they can bind the company by causing it to undertake rights and liabilities, among other things. However, it could happen that persons other than the board members may hold office with executive functions within the company, and insofar as this occurs, the obligation to provide details in respect of the board members should also be extended to these.

The need for an investor to be aware of the identity, directorship and functions of the members of the board does not lie in their office as members of the board, but in their executive management function which the board holds as governing body, and for this reason if persons other than these also hold such functions, their details should also be provided to investors.

3.3. Management and conflict of interests with the members of the board of directors (question 71)

It is our view that it is the issuer's responsibility to advise the investor of the circumstances related to a possible conflict of interests which could arise between the issuing company and its board members as part of the information provided by the company in respect of its governing body. This obligation should also extend to situation of conflict of interests in which the majority shareholders may find themselves.

4. Securitised bonds (question 96)

Since securitised bonds are new to our country, we consider it appropriate that, in addition to all the information requested from the issuer in Annex 4, the issuer should also be required to notify the possible title holder of the bonds of whether it has any kind of experience in dealing with such bonds, as well as the means and infrastructure it has available in order to carry this out.

5. Certificates representing shares (questions 102-104)

On the basis of the fact that the issue of certificates representing shares entails the corresponding issue of shares itself, we consider it necessary to supply the investor with all the information possible so that the investor is aware, in as precise a manner as possible, where it is investing its money and what the possibilities of making profit on its investment are.

CESR considers that the issuer of the shares is that which likewise issues the certificates representing such shares. From this point of view it is logical that no additional information be required from the issuer in order to carry out both issues. However, common practice leads us to affirm that it is normally the depositary of the shares that issues the certificates representing these, and it is from that perspective that guarantees must be provided to the investor for the supply of all the related and pertinent information in respect of the issue.

As a result of all the foregoing, we believe it is appropriate the facilitate information concerning the issuer of the certificate if the latter is not the same party as that issuing the shares. We consider it important that the investor is aware of the data related to same, not only the data set forth in Annex 5 but also, and above all, details of the administrative body of the issuing company, as well as the empowered persons of same.

6. Shipping companies (questions 111-115)

Bearing in mind the fact that the profits obtained by the shipping company sector are based on the profit margin of each sale, forecast for future business and contracts are extremely important for the investor to be able to determine investment profitability. For this reason, we consider especially relevant that the issuer, in this case a shipping company, provide abundant information on its potential contracts and business, in an even more detailed manner that that set forth in the general budget.

Given the characteristics of the sector, we believe special requisites for information are necessary for this type of company. In particular, it would be advisable that the investor knows not only how many ships the issuer has, whether as owner or on lease, but also what type of ships these are (including the name of classification company it has been granted) or its available material means for potential contracts or future financial prospects which will allow the company to expand in the short/long-term.

Similarly, we believe the insurance held by the company to be crucial in this specific sector, for which reason a thorough description of insurance should be facilitated.

As regards the date on which the valuation report should be published, it is important to point out that within the sphere of the specific sector under comment, one sole agreement implies total alteration of the overall valuation. Such report should therefore be published on a date as close as possible to that of the date of publication of the prospectus, and never, of course, with a difference of more than ninety days between the two dates.

SECOND PART: CERTIFICATION OF SECURITIES

1. Residual clause (questions 122 and 123)

We fully share the view of CESR when they state that for a given issue or admission to listing, depending on the nature of the securities themselves, it may happen that certain information required from the issuer does not exist, or that it is not appropriate to provide this according to its specific scope of activities or the legal nature of same. Nevertheless, a residual clause can be used as an escape route so that certain issuers omit information which should in fact be facilitated to potential investors.

2. Floating capital (questions 125 and 126)

We consider that the information related to the issuing company's net worth should be contained in the issue prospectus and not in the title.

The floating capital amount is information which can easily be obtained by means of a detailed analysis of the balance sheet which the issuing company must provide, so that, in principle, this could be excluded from among the data to be supplied.

However, considering that the information the issuing company has to facilitate must be as clear as possible, and that its ultimate aim is to offer data which will be of use to the investor when analysing its investment, it would be advisable that the information concerning working capital also be included in the prospectus as supplementary information to that already offered, and related to same, including the appropriate explanation or construal.

3. Additional information in capital issues (question 132)

It would be too complicated to attempt to elaborate different models of prospectus, with different requirements in each of them according to the type of shares the company is to issue. For this reason we deem CESR's proposal of preparing one sole model wise, on the basis of which and depending on the type of shares, more or less information will be provided.

In this regard, it would seem advisable that the issuing company facilitate in as precise a manner as possible the rights which the shares effectively entail, and all other aspects relating to these and which are of special importance for a potential investor (i.e. for shares without vote, what preferential acquisition rights they hold, how the annual dividends to which their holders are entitled are calculated, the circumstances in which the shareholder may recover its voting right; for preferred shares, what the dividend on preferred stock consists of, how it is calculated, what happens when due to circumstances beyond the company's control the latter cannot pay same; for redeemable stock, how equity of redemption is exercised, whether this can be exercised by the holder of the shares, the company or both, whether it is subject to any kind of terms or conditions, etc.).

4. Additional information on the debt issue (question 136)

We consider the CESR's view appropriate as regards the additional information to be included in the prospectus of the debt issue, which is a consequence of the diversity of securities which can be issued, and which may not necessarily fit into one of the three big categories which the prospectus comprises.

In this respect we believe it appropriate that this additional information include, above all, the risk factors which the purchase of certain debt securities, classed as "personalised bonds", since this information is vital to potential investors for their consideration before adopting the decision to invest.

5. Additional information in derivative securities issues (question 139)

One of the main objectives the prospectus aims to achieve is that of offering the potential investor the information necessary, in the clearest and most comprehensible manner possible, so that such investor may study its investment, analysing possible risks and circumstantial factors, and decide whether or not to invest money in the project. In this connection, we consider it appropriate that the information the issuer must provide the investor with in the prospectus has been extended, since the more information is included in same, the greater the ease with which a clearer image can be formed and the easier an in-depth study of the intended project will be.

In particular, since we are speaking of derivative securities, we believe it would be even more convenient, in the case of securities of another nature, to extend the information required in view of the high degree of randomness these entail. To include details concerning the interest rates applicable to such securities, to the exercise price or the exchange price or equation would appear necessary in any event.

6. Additional information in the issue of securitised bonds (questions 143 and 144)

The characteristics typical of this type of bond imply that the issuer find itself obliged to supply the investor with certain information in such manner that the latter can be informed in detail of how it will receive the interest corresponding to the bonds subscribed, as well as the principal upon maturity.

The fact that payment of interest and principal are guaranteed by other securities which likewise accrue interest, in addition to the obligation to return principal at a future date, introduces a third element on the scene. Consequently, the investor must know in detail the terms and conditions of such guarantee.

In this regard we fully share the view of the CESR, and we believe it is necessary to set out in as much detail as is possible what the nature of the securities guaranteeing the bonds is, and all the relevant details connected with them. In particular, we consider that it would be advisable to include a mention of the manner in which interest will be paid, since the proposed prospectus provides abundant information on the nature of the securities but it does not require that how the legal relationship between the investor, the issuer and the holder of the securities guaranteeing the debt be determined.

7. Information requirements related to the guarantor and the guarantees of issue (questions 149, 150 and 151)

It seems reasonable to separate the information to be supplied by the guarantor of the issued securities. In this way a break down of the information in respect of the security guarantee can be offered.

8. Information requirements in relation to subscription rights (questions 155 and 159)

It seems reasonable that conversion and exchange rights for securities issued as shares be included, since subscription rights likewise entail rights of that nature.

When an issuer of this kind of securities is at the same time the issuer of the underlying shares, it becomes obvious that all the information required has already been supplied and therefore it would not be necessary to include this information again. However, should the securities give the right to subscribe or exchange shares in a company other than that which has issued the first shares, the situation becomes more complex.

Insofar as the securities confer the right to subscribe, convert or exchange shares of a company other than that issuing such securities, it could be said that the ultimate aim of the investment is to acquire shares from the second company, and it is therefore necessary to supply information on same. The investor therefore will acquire a series of securities which at a subsequent time will confer the right to acquire shares from another company, it is of the other company that the investor will become a shareholder. The investment should therefore be considered from this viewpoint, and the investor should be provided with information on that company, in which it will eventually acquire shares.

THIRD PART : SUMMARY

Question 168

At all events, the main purpose is to guarantee that the potential investor can obtain descriptive knowledge of the proposed investment. For this reason it is essential, initially, to have a none too extensive summary, drafted using non-technical language. Otherwise the intended purpose of offering adequate information to the unsophisticated investor would not be achieved.