

**BME SPANISH EXCHANGES COMMENTS ON THE SECOND
CONSULTATION PAPER CESR/05-023b ON ADMISSION OF FINANCIAL
INSTRUMENTS TO TRADING ON REGULATED MARKETS**

Bolsas y Mercados Españoles (BME) integrates the companies that direct and manage the securities markets and financial systems in Spain. It brings together, under a single activity, decision-making and coordination unit, the Spanish equity, fixed-income, derivatives markets and their clearing and settlement systems.

In response to CESR invitation to analyse document CESR/05-023b "CESR's Draft Technical Advice on Possible Implementing Measures of the Directive 2004/39/EC on Markets in Financial Instruments" on the second set of mandates from the Commission, we would like to put forward the following comments.

1. General approach and scope of the Advice

We find that many of the queries that BME had with the approach and the wording of the previous Consultation Paper on this issue are now satisfactorily tackled.

We would like to outline the issue, previously drafted, of the responsibility of the Regulated Markets to verify whether a prospectus is needed or not, which now clearly lies on the issuer or the alternative person asking for listing.

The mandate of the Commission, as indicated in the advice, aims at specifying the characteristics of the different classes of instruments that will have to be taken into account by the Regulated Market when assessing whether an instrument is issued in a way that allows it to be traded in a fair, orderly and efficient manner, in the case of transferable securities, and at defining the conditions under which financial instruments are freely negotiable.

In our view, the mandate does not intend to achieve the harmonization of every requirement demanded to issuers but, specifically, of the aspects to be evaluated for the purpose of fair, orderly and efficient tradability and for consideration of freely negotiable instruments.

Therefore, the requirements covered by the advice should then be restricted to those matters and not to other aspects that are not foreseen in level 2 advice, such as, for instance, the reference to an appropriate level of historical financial information.

Moreover, we would like to point out that in the advice, there are certain topics which are already tackled by other European Directives. The advice should just

deal with the measures needed for the MiFID level 2 avoiding interferences with other Directives which may have their own level 2 legislation.

Furthermore, it should be clarified within the advice that these are the minimum requirements with respect to admission to trading and, therefore, additional requirements may be adopted by the Regulated Markets.

2. The choices within the concept of freely negotiable transferable securities

CESR advice in section 13 refers to the Member States having the choice of considering as freely negotiable shares those which may be acquired only subject to approval and also securities that are not fully paid.

According to article 40 of the Directive, the Regulated Markets should have the competence to choose, rather than the Member States.

In addition, it has to be pointed out that in the event that the reference to the Member States is kept, it would affect harmonization conditions on a global level.

3. The requirement of adequate trading mechanism

This requirement is formulated with respect to shares and other instruments and for units in collective undertakings.

In the case of shares and other securities the advice proposes, as a requirement for admission to trading on a Regulated Market of shares and other securities, that the intended trading mechanism should facilitate fair, orderly and efficient trading, taking into account the expected trading activity.

In fact, this requirement does not refer to the instrument but to the Regulated Market itself. As formulated, this requirement cannot be fulfilled by the issuer performance or activity. It is not even a requirement that may be evaluated "ex ante", i.e. before the admission.

As indicated in the Advice, in reference to the responses received by CESR, such provision could be consistent within the context of article 39 of the MiFID as an organizational requirement of the market but, in our view, not as a requirement for admission to trading.

An alternative idea might be that the Regulated Market should try to find the trading system or mechanism that may provide, to any instrument, more efficient trading. In any case, that would be out of the scope of level 2 of article 40 of the Directive.

In the case of the UCITS, the wording of this requirement indicates that the arrangements for trading are capable of creating a viable market. In addition to what has been said before, the term “viable” does not have a clear meaning, in contrast with the requirement for shares and other securities which establishes that the trading mechanism should facilitate “fair, orderly and efficient” trading, as far as viability has not been defined. In any case, we believe that such definition should not be linked to the trading mechanism.

Madrid, March 3rd 2005