

10 October 2003

Via E-Mail: [secretariat@europefesco.org](mailto:secretariat@europefesco.org)

Mr. Fabrice Demarigny, Secretary General,  
The Committee of European Securities Regulators,  
11-13 avenue de Friedland,  
75008 Paris - France.

Re: Directive of the European Parliament and of the Council on the  
prospectus to be published when securities are offered to the  
public or admitted to trading and amending Directive  
2001/34/EC (the “Prospectus Directive”<sup>1</sup>) – CESR/03-210b

Dear Mr. Demarigny:

We are submitting this letter in response to the request by the Spanish  
Securities and Exchange Commission (*Comisión Nacional del Mercado de Valores*,  
the “CNMV”) for comments on the Consultation Paper on Implementing Measures  
for the Prospectus Directive (the “**Consultation Paper**”).

Our analysis is focused on the proposed measures for disseminating  
advertising of an offer to the public of securities and, in particular, on blackout  
periods to be imposed for the dissemination of any advertisements when a prospectus  
has not been made available, and on the harmonization of the control over compliance  
of advertising activities with the principles referred to in article 15 of the Prospectus  
Directive (Questions no. 85 and 87 of the Consultation Paper).

#### Blackout periods

In our view, Spanish legal regime provides for fair rules on blackout  
periods. A prior notice (*comunicación previa*) must be filed with the CNMV by the

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<sup>1</sup> Amended proposal as of 9th August 2002, as amended by an European Parliament legislative resolution  
as of 16th July 2003.

issuer or the sellers in order to inform the market about the intention of launching a public offering. Such brief document must include a summarized description on the intended offering and on the general terms and conditions of the securities to be offered, which description does not have to be complete nor definitive.

Filing of the *comunicación previa* takes place automatically from the date of submission thereof (i.e., Spanish law states that the CNMV shall file the *comunicación previa* within a three (3) business day period from the date of submission). As from the date of filing of the *comunicación previa* the issuer or the sellers may initiate advertising activities on the public offering.

At this stage, advertising materials must meet the following prerequisites:

- (i) they must state that a prospectus shall be filed with the CNMV;
- (ii) they must not include any incitation to invest in the securities subject to the offering; and
- (iii) they must not provide for any information which is not disclosed in the *comunicación previa*.

#### Harmonization of the control over compliance of advertising activities

Spanish law already grants the authority to control over compliance of advertising activities to the CNMV.

We understand that Spanish legal regime on this matter is also quite reasonable since no prior authorization proceeding is regulated. Under article 24.4 of Spanish Royal Decree 291/1992, of 27th March, on issues and public offerings (hereinafter, the “**Royal Decree 291/1992**”), advertising materials must be available for supervision by the CNMV. The CNMV has the power to request by means of a motivated resolution a revision or cessation of advertising activities if the latter do not meet the provisions set forth in the Royal Decree 291/1992.

In practice, Spanish issuers and sellers submit to the CNMV prior to the prospective date of registration of the prospectus the advertising materials so the CNMV can review them in order to accept or recommend the amendment of the content thereof. Actually, the CNMV does not resolve expressly its acceptance about the advertising materials but does confirm it orally. Because of this, an issue could raise if harmonization of control over compliance of advertising activity would take place following rules similar to the Spanish ones. In case of a public offering

launched in several EU members, EU passport and mutual recognition principles could be hardly respected if no express confirmation was made by the competent authority of the home Member State. In order to avoid any additional control of the competent authorities of the rest of the Member States, it could be recognized the right of the issuer or the sellers to obtain an express confirmation on the advertising materials from the competent authority of the home Member State.

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The comments reflected herein represent solely the views, comments and concerns of the undersigned and do not necessarily represent the views of the undersigned's law firm or any of the members or clients of such firm. If you have any questions regarding this letter, feel free to contact the undersigned at phone number (+34) 91 576 19 00 or fax number (+34) 91 575 86 78.

Sincerely yours,



Sebastián Albella