

Direct line +34 91 586 03 74
Direct fax +34 91 586 03 68
E-mail: ldc@uria.com

Madrid, June 16, 2003

Mr. Fabrice Demarigny
Secretary General
COMMITTEE OF EUROPEAN SECURITIES REGULATORS
11-13 Avenue Friedland
75008 Paris

Dear Mr. Demarigny:

**Draft dated April 2003 (Ref: CESR/03-066b) and Additional draft dated May 2003
(Ref: CESR/03-128) of CESR's advice on Level 2 Implementing Measures for the
Proposed Prospectus Directive**

Please find below our comments on the draft dated April 2003 (Ref: CESR/03-066b) and the additional draft dated May 2003 (Ref: CESR/03-128) of CESR's advice on Level 2 Implementing Measures for the Proposed Prospectus Directive. For ease of reference, we have followed the same numbering used both in the draft and the additional draft.

PART ONE - MINIMUM INFORMATION

LEVEL 2 ADVICE ON MINIMUM INFORMATION

- In connection with the disclosure requirements set out in Annex A "Minimum Disclosure Requirements for the Equity Registration Document" to CESR's technical advice, we generally agree with the disclosure obligations set out in such Annex A. Notwithstanding we would record the following comments:
 - (a) Section 1. PERSONS RESPONSIBLE: As we stated in our response to the Consultation Paper dated December 30, 2002, we think it should be made clearer that, in the case of legal entities, they assume responsibility for

the prospectus through the signing of the document by the signatory acting on their behalf.

- (b) Section 6. BUSINESS OVERVIEW: It would perhaps be worth considering whether it would be appropriate to add a new subsection within Section 6.2. Principal Markets dealing with the principal competitors of the issuer by products and/or markets.
- (c) Section 13. PROFIT FORECASTS AND ESTIMATES: As raised in the earlier Consultation Paper, we think that issuers should not be statutorily required to submit their forecasts and projections to reporting by an independent expert. In fact, we believe this measure would represent a significant considerable issuers which we does not seem to be sufficiently justified by the benefits of the investors' information and protection. Accordingly, when issuers decide to include a profit forecast or estimate, we are of the view that the company's auditors should not be required to report on the issuer's forecasts or estimates. Indeed conflicts could arise with national rules limiting the scope of the services (other than auditing) which statutory auditors may render to their audited corporations. In addition, their independence could be jeopardized or questioned. In our opinion, other parties such as investment banks, consultant firms or market research companies would be probably more qualified than auditors to carry out an assessment of an issuer's forecasts and estimates if necessary. On another score, in practice the reports on management's forecasts are very expensive and complex to obtain. In any event, these reports should not replace the investor's own judgement and assessment of the investment proposal.

In connection with Sub-section 13.4., we believe that if the issuer has published a profit forecast in a prospectus still outstanding, it should, as proposed, provide a statement confirming whether the forecast is still correct or explaining the reasons why such forecast is no longer valid, as the case may be.

- (d) Section 20 FINANCIAL INFORMATION: We generally agree that pro forma financial information (Sub-section 20.2) should be mandatory in case of a significant gross change in the size of a company due to a particular current or planned future transaction and we concur with the proposed 25% figure as a general materiality threshold for gross changes in the size of the business. In addition, we believe pro forma information should be required in all cases where a significant gross change has occurred in the size of the company and that the obligation should not be restricted to the cases where a securities note is being prepared in connection with the transaction giving rise to the changes.

As for the disclosure requirements in respect of pro forma financial information, in particular the obligation of an independent auditor's report, we generally agree with such disclosure requirements.

In addition we agree on the possibility for the issuer to restrict the financial periods for which pro forma financial information may be presented and therefore we agree on the possibility for the issuer to provide pro forma financial information for the two financial years prior to the most recently completed financial year on a voluntary basis.

Finally we believe that the specific disclosure requirements set out in the building block in Annex B in connection with pro forma financial information is appropriate as minimum disclosure standards. In particular, we agree on the columnar approach proposed, which contributes to fixing a European standard format allowing eventual pan-European comparisons and avoiding misleading construction of the financial information provided.

- (e) Section 24: DOCUMENTS ON DISPLAY: As mentioned in our response dated December 30, 2002, and in connection with Sub-section (b), in Spain there exist currently no requirement nor it is market practice to put on display documents (other than the annual accounts and audit reports and the current articles of association of the issuer) any part of which is included or cited in the prospectus. Problems could arise from the implementation of this measure such as, among others, the disclosure of potentially sensitive commercial information and conflicts with documents containing confidentiality clauses or other provisions limiting the circulation thereof, if the relevant party does not wish to waive the confidentiality provision. Accordingly, this measure would be likely, if approved, to impose an important burden on issuers which in our opinion would not be adequately balanced with the related benefit for investors, provided that the competent authority in charge of supervising and approving the registration document should review any cited documents to ensure that quotes are accurate and that the information extracted from the relevant document is not misleading. We would therefore suggest to limit the documents required to be put into display to those which are public by nature (i.e., memorandum and articles of association, annual accounts and audit reports).
- In connection with the disclosure requirements set out in Annex C “Minimum Disclosure Requirements for the Equity Registration Document” to CESR’s technical advice, we generally agree with the disclosure obligations set out in such Annex C. Notwithstanding we would record the following comments:
 - (a) Section 1. PERSONS RESPONSIBLE: please see our comment on Annex A to the Technical Advice in paragraph (a) above.
 - (b) Section 4: Sub-section 4.2. Legislation under which the securities have been created: We would suggest reallocating Section 4.2. as Section 3.5. under Section 3 KEY INFORMATION.
 - (c) Section 3. KEY INFORMATION:

Sub-Section 3.2. Capitalization and indebtedness: Under this Sub-section 3.2., all securities notes must contain a statement of capitalization and indebtedness. However, we do not think such a statement is indispensable for derivatives. Otherwise, in connection with debt and equity notes, we would suggest extending from 90 days to three or four months the length of the period prior to the date of the document within which the statement of capitalisation and indebtedness must be provided.

Sub-section 3.3. Interest of natural and legal persons involved in the issue/offer: We generally agree on CESR's approach, according to which advisers should not be mentioned in all cases, only if they could be held liable by an investor in relation with the information given in the prospectus. As indicated in our response to the Consultation Paper dated December 30, 2002, our position is that the issuer should disclose its financial and legal advisers for a particular transaction involving the preparation of a securities note. Otherwise, we believe the issuer's legal adviser should not, as a matter of principle, be held liable by investors for the information given in the prospectus, as this liability lies with the issuer and/or selling security holder, and with the lead managers of the issue or offering, as the case may be.

- (d) Section 10. ADDITIONAL INFORMATION: Under this Section, the securities note should mention any other information in the prospectus besides the annual accounts, which have been audited or reviewed by the auditors. In this regard, we believe the securities note should not contain the "auditors report relating to this information". The reference in the note confirming the information which have been reviewed by the auditors should be enough.
- In connection with the disclosure requirements set out in Annex D "Minimum Disclosure Requirements for the Debt Registration Document" to CESR's technical advice, we generally agree with the disclosure obligations set out in such Annex D. Notwithstanding we would record the following comments:
 - (a) Section 1. PERSONS RESPONSIBLE: Please see our comment on Annex A to the Technical Advice in paragraph (a) above. As indicated in paragraph (a) of our comment to Annex A, we do not believe the information on the principal bankers and legal advisers with which the company has a continuing relationship is worthwhile for an investor in the context of a registration document for either debt or equity securities. However, we consider that disclosure relating to the bankers and legal advisers who were involved in the issue of that particular debt instrument may be relevant.
 - (b) Section 6. BUSINESS OVERVIEW: We think that, as in Annex A, it would perhaps be worth considering whether it would be appropriate to add a new subsection within Section 6.2. Principal Markets dealing with the principal competitors of the issuer by products and/or markets.

- (c) Section 8. TREND INFORMATION: We concur with CESR's view that alongside voluntary quantitative projections provided through profit forecasts, disclosure of known trends or other factual data with material impact on the issuer's prospects should be mandatory.
 - (d) Section 9. PROFIT FORECASTS AND ESTIMATES: Please see our comment on Annex A to the Technical Advice in paragraph (c) above.
 - (e) Section 13. FINANCIAL INFORMATION: We generally agree on CESR's approach and attempt to adapt the disclosure requirements to the debt securities envisaged. We consider disclosure about a company's past, current and future investments in other undertakings might be material for an investor to make an investment decision about investing in the company's debt.
 - (f) Section 24: DOCUMENTS ON DISPLAY: Please see our comment on annex A in paragraph (e) above.
- In connection with the disclosure requirements set out in Annexes E, F, G, H to CESR's technical advice, we generally agree with the disclosure obligations set out in such Annexes.

PART TWO - INCORPORATION BY REFERENCE

LEVEL 2 ADVICE ON INCORPORATION BY REFERENCE

- Regarding documents that can be incorporated by reference in the prospectus, we would suggest specifying in the list the other statutory documents which may be required by national corporate law in connection with certain major corporate transactions which may give rise to registration of a prospectus, such as independent expert reports, auditors reports, directors reports, public deeds granted before notaries public, etc.
- Perhaps consideration could be given to the possibility of further defining and specifying the levels of comprehensibility and accessibility of the information incorporated by reference, since these are indefinite concepts. We would suggest that there be technical implementing measures further defining what is deemed to be "easy access".
- We concur with CESR's advice on the electronic availability of the documents incorporated by reference.

PART THREE- AVAILABILITY OF THE PROSPECTUS

LEVEL 2 ADVICE ON AVAILABILITY OF THE PROSPECTUS

- We agree on the minimum content of the notice to published determined by CESR.

URÍA & MENÉNDEZ
Abogados

* * *

I trust the foregoing proves helpful. Please do not hesitate to contact me if I can be of any further help.

Yours sincerely,

Luis de Carlos Bertrán