EMISORES ESPAÑOLES' COMMENTS TO THE GREEN PAPER ON THE EU CORPORATE GOVERNANCE FRAMEWORK

(1) Should EU corporate governance measures take into account the size of listed companies? How? Should a differentiated and proportionate regime for small and medium-sized listed companies be established? If so, are there any appropriate definitions or thresholds. If so, please suggest ways of adapting them for SMEs where appropriate when answering the questions below.

In general, Corporate Governance measures pursue defense of the investor, strengthening transparency, reinforcing the independence of directors vis-à-vis the controlling shareholder and strengthening the position of shareholders (e.g. facilitating exercise of the right to vote at the General Meeting electronically or eliminating restrictions on the number of shares required to attend the General Meeting), *inter alia*.

For Emisores Españoles, all of these Corporate Governance measures or practices the goal of which is defense of the investor should be the same for all companies listed on the same market, without establishing differences in function of the company's size. In this regard, we feel that the investor should have the same guarantees for any company that trades on the same market.

(2) Should any corporate governance measures be taken at EU level for unlisted companies? Should the EU focus on promoting development and application of voluntary codes for non-listed companies?

Good governance recommendations seek in part to correct the conflict between ownership and control. It must be borne in mind that the majority of non-listed companies are SMEs and that the ownership and control of such SMEs tends to be in the same hands. Consequently, many of the recommendations of the present Corporate Governance Codes would not, in practice, apply.

In case of taking corporate governance measures or good governance codes adapted to the context of non-listed companies, and even though such non-listed companies would benefit from the recognition vis-à-vis suppliers, investors, etc., Emisores Españoles feels that the cost-benefit equation would not be justified. It must be considered that the cost factor is a determining factor in the decision-making of any company. Consequently, prior to developing this point a viability study on this project for non-listed companies should be developed and, by extension, such study could even be expanded to listed companies in order to ascertain the impact on the income statement.

In any case, we are of the opinion that, as appropriate, these potential codes or corporate governance measures aimed at non-listed companies should be solely and exclusively voluntary. In this respect, one should not lose sight to the fact that, often what is voluntary ends up becoming in some form or another, compulsory.

Definitely, from Emisores Españoles it does not seem appropriate to us to establish Corporate Governance measures for companies that are not listed on the stock exchange.

(3) Should the EU seek to ensure that the functions and duties of the chairperson of the board of directors and the chief executive officer are clearly divided?

As per CNMV data, in 2009 the percentage of Executive Chairmen in Spain was 70%, a percentage on the rise year after year.

There are arguments in favor and against separating or pooling in one single person the positions of chairman and chief executive officer. It is clear that the pooling of positions guarantees better leadership of the company, both internally and externally, and reduces costs. However, at the same time it can imply the risk of an excessive concentration of power, governing body and executive management in the hands of one, single person.

That is why in the judgement of Emisores Españoles this decision should be left to the criteria not of the EU or of the country in question, but of each company. We believe the most adequate framework for addressing this matter are the company's corporate governance rules.

Notwithstanding the above, Emisores Españoles considers that in case of selecting a Chairman – CEO, the following would be appropriate: (i) the adoption by the Company of counterweight measures to avoid the excessive concentration of power in the hands of one single person such as the recommendation of the Spanish Unified Code of Good Governance, i.e. "when the Chairman of the Board is also the chief executive of the company several of the independent directors should be empowered to call a Board meeting or include new items on the agenda; to coordinate and reproduce the concerns of the outside directors" and; (ii) the obligation of companies to explain in their Annual Corporate Governance Report, the measures the company has adopted to limit the risks of accumulating powers in one single person.

(4) Should recruitment policies be more specific about the profile of directors, including the chairman, to ensure that they have the right skills and that the board is suitably diverse? If so, how could that be best achieved and at what level of governance, i.e. at national, EU or international level?

Emisores Españoles considers that recruitment policies should be defined internally within the company, in consideration of the company's technical and specific needs. There are no unique profiles, in function of the characteristics of each company. The necessary profile or profiles

for each Board, as well as the diversity of the Board, must be defined.

That is why we do not deem it appropriate to establish specific recruitment policies on the supra-corporate level. In any case, directors must meet personal qualifications such as intellectual capacity, social skills, interest, commitment or integrity and demonstrate their prestige, independence of judgement, professional competency. Finally, the criteria of the Appointments Committee will be essential in proposing or providing a preliminary report to the Board on the proposal or re-election of directors to be brought before the General Meeting.

(5) Should listed companies be required to disclose whether they have a diversity policy and, if so, describe its objectives and main content and regularly report on progress?

If we take diversity to mean the three factors referred to in the preamble to the question – professional diversity, international diversity and gender diversity, it must be highlighted that listed companies disclose such policies through publication on their websites of the curricula of their directors and of the procedures for appointment and re-election of Directors, as generally described in the Board Regulations.

In the case of Spain, with respect to gender diversity, the Annual Corporate Governance Report establishes that when the number of female directors is scarce or zero it must be indicated whether the Appointments Committee strives to procure that the selection procedures do not suffer from these implied defects when providing for new vacancies.

In practice, listed companies report in one way or another on diversity policies, which is why Emisores Españoles believes the obligatory nature of the question posed (the question to use the term "require") is excessive and considers it unnecessary to describe the objectives and periodic reporting on the progress of the policy. It believes that to require new reports will increase the bureaucratic burden when to a great extent the information is already available on websites.

(6) Should listed companies be required to ensure a better gender balance on boards? If so, how?

The imposition of quotas would without a doubt guarantee parity or the specific percentage of female representation wished to be established on Boards of Directors, within the period determined by Law.

Notwithstanding the above, this measure would not be exempt from controversy, since the doubt would always be generated as to whether those holding the positions of Directors are the best candidates or whether the positions are held by women who simply are entitled to such positions. Without a doubt, the success of a measure of this type requires, *inter alia*, a broad social consensus.

Prior to adopting a decision in the sense of requiring or recommending establishing deadlines or indicating quotas or percentages of representation, it would be good to evaluate the socio-cultural context of each country, in the sense of ascertaining, for example in the labor sphere the measures for reconciliation of the work life and family life of each country. We believe this

is the cornerstone for achieving equality in the workplace and, therefore, on Boards of Directors.

The experience in Spain has highlighted that it is possible to increase the number of women on Boards of Directors with no need for imposition. We believe a progressive incorporation, without controversies, is better.

In 2006, the Unified Code of Good Governance was approved. It recommends that when the number of female directors is scarce or zero, the Board explain the reasons and the initiatives adopted for correcting such situation. Furthermore, in particular, the Appointments Committee should strive to procure that, upon providing for new vacancies: a) The selection procedures do not suffer from implicit defects that place obstacles on the selection of female directors; b) The company deliberately seek out, and include among potential candidates, women who meet the professional profile sought.

In 2007, Organic Law 3/2007, of March 22, was approved, for the effective equality of women and men as established by article 75 thereof, the title of which is: Participation of women on the Boards of Directors of commercial companies, that companies required to file an unabbreviated income statement shall procure to include on their Board of Directors a number of women that allow achieving a balanced presence of women and men within a period of eight years from the entry into force of this Law.

The result of these two measures, as per CNMV data, in 2006 there were 26 women on the Boards of IBEX 35 companies, who represented 5.1% of the total. In 2009 there were 50 women, who represented 10.2% of the total.

As a consequence of the above, Emisores Españoles believes that gender balance on Boards should not be required via rules of law, but rather that each country should establish measures or recommendations that allow the progressive incorporation of women on Boards of Directors.

(7) Do you believe there should be a measure at EU level limiting the number of mandates a non-executive director may hold? If so, how should it be formulated?

In order that a director may perform his or her position efficiently a minimum time of dedication is necessary that includes the number of meetings held, duration thereof, as well as the time dedicated to adequately preparing for them and reporting on the operations of the company. Despite the fact that the majority of us are in agreement with these affirmations, it would be very difficult to establish quantitative measures with regard to the number of hours a Director must dedicate to the company, because, *inter alia*, this will depend on the company and on the director himself or herself.

Emisores Españoles is of the opinion that some measurable limit should be established that guarantees the dedication of Directors and this limit could be the number of mandates a director may exercise. Some 70% of Spanish listed companies limit the number of Boards of Directors of which a director may form part. In practice, the limit that is most frequently used

is the one established by the Banking System Act, which sets the limit of mandates at four Additional Boards in listed companies apart from that of the company itself.

In 2009, as per CNMV data, a total of 1,409 persons held the 1,627 positions of directors of listed companies. A total of 1,246 directors held one single director position. Of the remaining 163 directors, 8.8% of the total participate on two boards, 1.9% on three, 0.6% on four and 0.5% participate on more than five boards.

In our judgement, it should be the corporate governance system of the company itself which defines the duty of dedication of the Board members and, as the case may be, limits the number of mandates. It is in the interest of any company that its directors dedicate the greatest time possible to the tasks of the position. Therefore, it is the issuer company who must strive to work towards their own interest.

Therefore, regulatory protection beyond the decision itself of the affected company does not appear to be necessary.

(8) Should listed companies be encouraged to conduct an external evaluation regularly (e.g. every three years)? If so, how could this be done?

The purpose of the evaluation of the Board must be its operation (active participation of all members, information furnished prior to each meeting for the purpose of adequately preparing for the meetings, attendance of directors, functioning of Board Committees, etc.) and nobody better than the Directors themselves to evaluate it. Notwithstanding the above, and for the purpose of avoiding the partiality of Executive Directors, it would be convenient to evaluate the option that the evaluation be prepared by the independent Directors pursuant to objective, technical criteria.

Emisores Españoles believes that external evaluation should not be encouraged. Apart from being a greater cost to the company, its result is not necessarily better than that of the independent directors themselves. The latter present as an advantage, vis-à-vis the external consultants, a better knowledge of the functioning of the Board and of each and every one of its members. As with the case of the consultants, its abilities to perform this task are more than accredited.

Therefore, it appears advisable to encourage the practice of periodic evaluation of Boards of Directors. However, the procedure to be followed in order to perform such evaluation, whether with internal, external or a combination of means, should remain at the judgement of each company.

In any case, it will be the markets themselves which, in the last instance, evaluate the adoption of these practices.

(9) Should disclosure of remuneration policy, the annual remuneration report (a report on how the remuneration policy was implemented in the past year) and individual remuneration of executive and non-executive directors be mandatory?

It must not be forgotten that the Directors are elected at the General Meeting by the shareholders, i.e. the owners. It seems logical to think that the shareholders have full standing to know the individualized compensation of the Board members who they have elected.

Furthermore, it must be emphasized that just as the compensation of Senior Management is decided on and supervised by the Board, that of the members of the Board of Directors is defined in the Bylaws, approved by the General Meeting. Notwithstanding the above and even though the remuneration concepts of the directors are provided by the bylaws, the exact amount need not necessarily be defined, but rather reference can be made to a maximum percentage of the company's profits. That is why, in many cases, it is the Board of Directors itself who establishes the final amount of its members' compensation.

In consideration of the circumstances mentioned above, Emisores Españoles feels it should be mandatory to publish information on the compensation policy, the annual report relating to compensation and the individual compensation of executive and non-executive directors.

Furthermore, Emisores Españoles considers that the compensation report should have a homogeneous minimum content in order that the information on compensation may be evaluated clearly and comparably, both by the markets as well as by investors.

(10) Should it be mandatory to put the remuneration policy and the remuneration report to a vote by shareholders?

In line with the response to question 9, we consider necessary the obligation to submit to voting not only the compensation policy, the annual report relating to compensation, but also the individual compensation of executive and non-executive directors.

Notwithstanding the above, Emisores Españoles feels that voting should be on a consulting basis since it not require modifying the compensation policy applied in the fiscal year to which the General Meeting refers, nor, consequently, the compensation of directors accruing up until the date of the General Meeting, safeguarding the directors' right to amounts accrued and inherent to the exercise of the position up until the date of voting.

When the result of the consultative voting presents a high number of votes against, without a doubt the company will evaluate the change in the compensation policy of its Directors.

11) Do you agree that the board should approve and take responsibility for the company's 'risk appetite' and report it meaningfully to shareholders? Should these disclosure arrangements also include relevant key societal risks?

Experience demonstrates that the control and supervision of risk in all listed companies is a factor that cannot be removed from the competencies of the Board.

The Board of Directors holds as a competency the supervision of risk management. This duty may be attributed to the Special Risk, Strategy or Audit Committee. Within the Board's competencies an adequate supervision of risk management processes is ensured, as is reflected in the Corporate Governance Report and the Annual Report.

Therefore, in light of the above, generally speaking in the opinion of Emisores Españoles it would not be necessary to require the Board of Directors to formally approve the company's risk, except at such entities which, due to their special size or the activity they carry on, it may be necessary.

12) Do you agree that the board should ensure that the company's risk management arrangements are effective and commensurate with the company's risk profile?

Yes, in its supervisory duty, the Board must strive for the companies' risk management provisions to be efficient and, at the same time, in line with the company's risk profile.

13) Please point to any existing EU legal rules which, in your view, may contribute to inappropriate short-termism among investors and suggest how these rules could be changed to prevent such behavior.

In our opinion a harmonized scheme for regulation of the Securities Loan at the European level is necessary which, among other matters, avoids that these contracts can be used for excessively short-term purposes.

In relation to investment horizon, the consideration of long-term contributes perspective and discipline to attain the financial goals set and helps to avoid errors based on perceptions in the short term.

The longer an investment is held, the more possibilities of obtain a positive return, since the impact of the capitalization of our investment is greater while at the same time the negative impacts of volatility in the short term of the different assets are limited.

14) Are there measures to be taken, and if so, which ones, as regards the incentive structures for and performance evaluation of asset managers managing long-term institutional investors' portfolios?

In our opinion yes. The measures adopted should be inspired by the general rules set by financial institutions.

It is relevant that the investment policy refer to the sustainability in the long-term of investments. It is necessary to avoid excessive weight of variable remuneration in the short term and encourage a long-term incentive policy, payable within deferred periods. In any case, a public disclosure scheme similar to that of financial institutions, should be imposed.

15) Should EU law promote more effective monitoring of asset managers by institutional investors with regard to strategies, costs, trading and the extent to which asset managers engage with the investee companies? If so, how?

From the point of view of the issuers it is necessary to efficiently supervise asset managers since the interest of institutional investors is in many cases the same as that of the companies where they invest. Therefore, the European Commission's concern for avoiding that the managers' interests may enter into conflict with the interests of institutional investors whose portfolios they manage or of the companies in which they invest appears justified to us.

16) Should EU rules require a certain independence of the asset managers' governing body, for example from its parent company, or are other (legislative) measures needed to enhance disclosure and management of conflicts of interest?

Yes, we agree completely with establishing harmonized rules at the European level to ensure the management and transparency of conflicts of interest between asset managers and the investors in the companies in which investments are made.

Along this line, the existing regulation on this subject matter in Spain seems adequate to us.

(17) What would be the best way for the EU to facilitate shareholder cooperation?

It does not appear to be necessary to establish mechanisms for cooperation among EU shareholders. Nor is it a desire of the financial community, nor does it appear to be necessary, to have communication among them in an organized fashion, or that said communication work to the benefit of the company's governance.

What is truly important is that shareholders have a continued dialogue with the company, through relationship mechanisms which companies place into service, in such a manner that shareholders may contact the Company at any time and have continued information on the running of the company beyond that which is received punctually at the time of the General Meeting; apart from facilitating systems for delegating voting, that guarantee the exercise of the right to proxy and long-distance voting, including the casting of votes by post or electronically.

Notwithstanding the above, recently Spanish commercial legislation has contemplated a new instrument for the purpose of facilitating communication between shareholders on the occasion of the General Meeting. On the company's website an Electronic Shareholder Forum is enabled, through which the shareholders may publish proposals they intend to present as supplementary to the agenda announced in the meeting notices, requests for adherence to such proposals, initiatives to reach a sufficient percentage to exercise a minority right provided by law, as well as offers or requests for voluntary proxy. Notwithstanding the above, in practice, the data available to us on the use of such Forum at the General Meetings held in 2011 come to demonstrate the scarce interest of shareholders in communicating among themselves.

(18) Should EU law require proxy advisors to be more transparent, e.g. about their analytical methods, conflicts of interest and their policy for managing them and/or whether they apply a code of conduct? If so, how can this best be achieved?

In recent years, the impact of the evaluations of proxy advisors has grown to a global level and their influence on shareholders is greater and greater.

These entities have no economic tie to shareholders of companies and are not subject to any regulation. In addition, it is not clear that the proxy advisor business is sufficiently transparent in order that these companies may be under a market discipline.

Emisores Españoles considers it appropriate to develop: (i) a regulation of these entities that requires the application of transparent evaluation criteria (especially, the manner of performing their analysis in order to avoid application of the "one size fits all" principle); and (ii) the obligation of asset managers to inform their clients and the market in general of their voting procedures and, in particular, of their use in said procedures of proxy advisor services.

In addition, proxy advisors must take into consideration the local legislation of each country at the time of advising shareholders as to the direction of their vote. That is, it is necessary to define the framework and criteria of action of proxy advisors, in order not to confuse the shareholders, who on many occasions can think that the proxy advisor's voting recommendation, based on the proxy advisor's own criteria of corporate governance, is in line with what is legally required.

(19) Do you believe that other (legislative) measures are necessary, e.g. restrictions on the ability of proxy advisors to provide consulting services to investee companies?

Proxy advisors give advice to shareholders with respect to the voting at the General Meeting of certain companies. However, they also carry out, *inter alia*, roles of consulting to the companies affected by their recommendations. This is a clear example of conflict of interest: independence in the provision of services cannot be guaranteed if, on the one hand, the proxy advisor advises on voting at the General Meeting of shareholders of a company, but at the same time advises the company in question.

In this regard, Emisores Españoles considers the adoption of measures that guarantee the independence of the advice by proxy advisors to be necessary.

Furthermore, it would be appropriate for all of these entities to be registered in an Investment Advisor-type database, to be able to operate in this market. It is appropriate for issuers to know all entities that are operating, and not only the ones most internationally recognized.

(20) Do you see a need for a technical and/or legal European mechanism to help issuers identify their shareholders in order to facilitate dialogue on corporate governance issues? If so, do you believe this would also benefit cooperation between investors? Please provide details (e.g. objective(s) pursued, preferred instrument, frequency, level of detail and cost allocation).

Listed companies normally have a very broad, cross-border, shareholder base which makes knowing their shareholders difficult. This limits their communication with shareholders, the transmission of information and the participation of investors in the company's decisions, specifically through its General Meetings.

The intervention, on the other hand completely necessary, of central securities depositaries and chains of custodians, with constant recourse to omnibus accounts and various fiduciary figures, make the necessary transparency in this flow of information yet more difficult.

Emisores Españoles considers it necessary that, both on a national and European level, issuer companies can at all times ascertain the identity of their shareholders. All of this must be carried out at the regulatory level of each country, starting from a set of minimum parameters set by the EU by Community Directives or Regulations.

The purpose pursued is to facilitate communication with shareholders and, consequently, improve their implication in the governance of companies. The risk that shareholders can be manipulated by the company's executives, in an information society such as the present one, is remote and, in any case, is diminished as opposed to the benefits of shareholder participation in corporate governance.

On the other hand, we do not believe that these mechanisms could serve to favor communication among investors. Much to the contrary, to provide lists to shareholders may violate data protection regulations and disclose positions against investors' will.

A sole platform should exist on the European level that harmonizes shareholder reporting systems in such a manner that there could be cross-border information as to who, from time to time are the shareholders of a company. This system should have the necessary information for the issuer to be able to ascertain who is the ultimate beneficiary of the shares.

With regard to the frequency of the information, this should be provided daily, at the request of the issuer.

The detail should include the name of the shareholders (and, as indicated above, the final beneficiary of the shares) and the number of shares held by each one, address, as well as, in the event that the shareholders have so authorized, an e-mail address through which dialogue could be initiated with them concerning the matters of governance of the company which may be of their incumbency.

(21) Do you think that minority shareholders need additional rights to represent their interests effectively in companies with controlling or dominant shareholders?

Emisores Españoles considers that Spanish legislation and the Unified Good Governance Code sufficiently safeguard the interests of a company's minority shareholders.

In this regard the Law establishes that the company must afford equal treatment to shareholders who are in identical conditions, and the right to corporate information and transparency are shaped as essential elements in the life of the company. Furthermore, shareholders are entitled to participate and be adequately informed of potential structural changes in the company, in time and form, and have a right to participate effectively and vote at General Meetings, *inter alia*.

Finally, listed companies have the figure of the independent Director who, removed from the executive team and from the significant shareholders, strives to protect the interest of minority shareholders.

(22) Do you think that minority shareholders need more protection against related party transactions? If so, what measures could be taken?

In Spain this aspect is subject to two controls: internal control by the company itself and external control, under the umbrella of the Spanish Securities Market Commission (*Comisión Nacional del Mercado de Valores*).

Internally (the company), related party transactions must be authorized by the Board of Directors. The decision will be made by the Directors who are not affected by the conflict of interest, who shall strive for these transactions to be carried out at arm's length and in observance of the principle of equality of treatment of shareholders who are in identical situations.

Externally, communication and transparency, the obligation to disclose related party transactions that have been carried out to the market, in the company's legal report and in the Corporate Governance Report, govern.

(23) Are there measures to be taken, and if so, which ones, to promote at EU level employee share ownership?

Employee stock plans tend to be used as a mechanism to encourage motivation and loyalty of the company's employees, contributing towards structuring a compensation and benefits culture.

Employee company share ownership depends on the laws and practices of each country. In any case, Emisores Españoles considers that this practice must be discretionary on the part of each company since it is directly related, *inter alia*, to the running of the company, the sector to which it belongs, the type of shareholder structure or the applicable legal and tax scheme.

MONITORING AND IMPLEMENTATION OF CORPORATE GOVERNANCE CODES

(24) Do you agree that companies departing from the recommendations of corporate governance codes should be required to provide detailed explanations for such departures and describe the alternative solutions adopted?

The degree of monitoring the corporate governance recommendations and, in the case of non-compliance, an explanation of the recommendations, rules, practices or criteria, applied by the company, must be included in the annual corporate governance report.

Notwithstanding the above, it does not appear necessary to go beyond that, since it will be the market who, in view of the annual corporate governance reports, will evaluate whether or not it is appropriate to invest in a given company.

(25) Do you agree that monitoring bodies should be authorized to check the informative quality of the explanations in the corporate governance statements and require companies to complete the explanations where necessary? If yes, what exactly should be their role?

Emisores Españoles considers that the relevant monitoring bodies should verify the informative quality of the explanations of the corporate governance report, as well as request clarifications to such explanations, if necessary. In the Spanish case, the unified code of good governance establishes that "*the degree of compliance or the quality of the explanations must not serve as a basis for eventual CNMV resolutions, since if they do, the voluntary nature of the code's recommendations would be impeached. The foregoing is construed without prejudice to the competencies and monitoring powers attributed to the CNMV in relation to the Annual Corporate Governance Report of listed companies, by article 116 of the Securities Market Act and Order ECO/3722/2003, of December 26, pursuant to which the CNMV may require that omissions or deceitful or erroneous data, be corrected.*"