

ANNEX II

RECOMMENDATIONS TO THE GOVERNMENT, CNMV AND FINANCIAL INSTITUTIONS

RECOMMENDATIONS TO THE GOVERNMENT

1. Rationalisation of disclosure requirements.

The Government is urged to review the reporting requirements applying to listed companies in order to eliminate unnecessary repetitions and duplications and, in particular, to unify and standardise the information they must disclose in connection with related-party transactions.

2. Extension of the maximum tenure of the chairmen of listed company Audit Committees.

The importance and complexity of the matters entrusted to the Audit Committee mean members in general and the chairman particularly must unite knowledge and capabilities that are not always easy to find. This being so, the current requirement to change chairman every four years can occasionally cause problems.

The Government is therefore recommended to amend the eighteenth additional provision of the Securities Market Law in order to relax the requirement that the chairman of the Audit Committee of listed companies must be replaced at four-year intervals.

3. Coordination among small shareholders in defence of the corporate interest

The Government should look at ways to foster coordination among the small shareholders of listed companies, so they have a bigger say in the General Shareholders' Meeting and can better exercise the "minority rights" they are accorded under current law, while ensuring that any such mechanisms are used in good faith, and to defend the corporate interest.

Among the coordination mechanisms worth considering, singly or in combination, would be:

1. Creation of an Electronic Shareholder Forum so individual shareholders and shareholder groups can seek others' backing or proxy for proposals to be put to the General Shareholders' Meeting.
2. Creation by the CNMV of a Voluntary Register of Shareholder Associations.
3. Promotion of independent institutions and associations to analyse and assess the quality of listed company corporate governance.

4. Review of the regulations on proxy request forms with a view to their greater transparency and neutrality.

4. Shareholder lists and attendance cards

The Government is called on to amend Royal Decree 116/1992 in order that listed companies' entitlement to know their shareholders, as enshrined in the first additional provision of the Public Limited Companies Law is available to all – and not only to those companies whose shares must be registered under legal mandate.

This would mean attendance cards could be issued by the listed company itself, and not by the multiplicity of financial intermediaries acting as share custodians, ensuring their more uniform content at company level while facilitating the organisation of General Meetings.

5. Challenging of shareholder resolutions

The Government is urged to study the necessary legal amendments to prevent the excessive, improper or abusive use of the powers to challenge General Shareholders' Meeting resolutions provided by article 117 of the Public Limited Companies Law.

6. Directors' liability for breach of trust

The Government is urged to tighten up and toughen the civil liability regime for breaches of trust by company directors. Some measures that might be considered are:

- a) A better typification of the duties of loyalty and the procedures to follow in the event of conflicts of interest;
- b) The extension of duties of loyalty, and the associated liability, to controlling shareholders, as well as to de facto directors, including shadow directors.
- c) Direct empowerment of shareholders to file a derivative suit for breach of trust, to be typified perhaps as a "minority right";
- d) Establishment of a leave to proceed filter so the judge can reject any cases constituting abuse of process;
- e) Imposing of heavier penalties, to include at least the return of sums corresponding to unjust enrichment.

This Recommendation refers solely to breach of trust, and not to actions taken for negligence or breach of care.

RECOMMENDATIONS TO THE CNMV

7. Change of auditor

As a means to safeguard auditor independence, the CNMV should procure the following information whenever a listed company changes auditor:

- a) From the company: the corresponding significant event notice should state whether discrepancies arose with the outgoing auditor and, if so, explain their nature.

- b) From the outgoing auditor: a declaration of conformity or dissent regarding the above statement by the listed company;
- c) From the incoming auditor: confirmation that it had no conversations with the company, prior to its services being engaged, regarding the accounting or audit principles it would apply.

8. Use of Unified Code recommendations

Listed companies voluntarily subscribing to Unified Code recommendations may need to submit certain changes to their Shareholders' Meetings; for instance, the amendment of General Meeting and board regulations and, in some cases, the company's bylaws. It seems advisable, therefore, for the CNMV to wait until the Annual Corporate Governance Reports for the year 2007 (i.e. those published in 2008) before obliging firms to specify fulfilment or otherwise of the Code's corporate governance recommendations, pursuant to article 116 of the Securities Market Law.

RECOMMENDATIONS TO FINANCIAL INSTITUTIONS

9. Exercise of voting rights by institutional investors

Collective investment schemes, pension funds and plans and other institutional investors are urged to actively exercise the voting rights conferred by their ownership of listed companies' shares, and to inform their members or final investors of the general criteria used, if any, for the exercise of such rights.

10. Exercise of voting rights through intermediaries and custodians

Financial intermediaries belonging to the Sociedad de Sistemas (central depository company) and acting as depositories or custodians of listed company shares are urged to be scrupulous in passing the details of General Shareholders' Meetings onto their principals, and procuring their instructions on how to vote.