

POSITION PAPER



MARKET ABUSE DIRECTIVE
ESBG response to CESR's consultation on the second
set of level 3 guidance

2 February 2007



EUROPEAN SAVINGS BANKS GROUP

The European Savings Banks Group (ESBG) welcomes this opportunity to comment on CESR's proposal for the second set of guidance and information on the common operation of the Market Abuse Directive (MAD). We consider that this initiative by CESR is a positive one as it aims to clarify the definitions and descriptions contained in the MAD.

I. What constitutes “inside information” under the Market Abuse Directive?

Art 10 (a) of the MAD requires Member States to apply their laws with extraterritorial effect, which means that issuers operating on a cross-border basis face different requirements as regards inside information in different jurisdictions. Against this background, in relation to making information public, we consider that Member States should mutually recognise each other's information disclosure mechanisms as being sufficient for adequate public disclosure. Moreover, we consider that it would be helpful if CESR would put forward an indicative list of what is considered as *disclosure mechanisms*. With regard to this issue, we also consider that the provisions of the MAD should be harmonised with the relevant provisions of the Transparency Directive in order to enhance the efficiency of the whole system.

Furthermore, we consider that the examples in the consultation paper that refer to possible inside information which indirectly concerns the issuer should be amended. Specifically, the information contains in the proposed examples should be regarded as inside information only for the institutions, entities or companies that can exercise control over it. It must be made clear that an issuer is only responsible if he has access to the information before it is made public and if the information source entity has included the issuer in its insider list as a result of the access to this information.

Finally, we would also consider it helpful to have additional guidance that would bring further clarification as regards when *information* becomes *inside information*.

II. When are there legitimate reasons to delay the publication of inside information?

We firmly agree with CESR that it should be the issuer's responsibility to determine whether, on the basis of its own specific circumstances, it considers that the disclosure of inside information can be delayed.

We consider that CESR should exercise its influence to guarantee a harmonised approach on this issue throughout the EU in order to avoid situations where a company listed in multiple jurisdictions would be allowed to delay the publication in one Member State but not in the other.

III. When do client order constitutes inside information?

We consider that some of CESR's draft guidelines on the order's price sensitivity should be further clarified. With regard to par. 3.13 (e) of the guidelines, the execution timeframe as instructed by the client cannot be considered a sufficiently relevant circumstance which would by itself influence the price sensitivity. With regard to par. 3.13 (g) of the guidelines, the identity of the client should only be deemed relevant if observed in relation to the securities of issuers in which the client can exercise influence.



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IV. Insider lists

We fully support the recommendation of mutual recognition relating to insider lists as a way to facilitate an efficient playing field for issuers subject to requirements in multiple jurisdictions. Moreover, we would appreciate it if CESR would propose a standard harmonised format for insider lists, specifying the level of information required in order to avoid significant divergences between the requirements of different national regulators in the EU.



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About ESBG (European Savings Banks Group)

ESBG (European Savings Banks Group) is an international banking association that represents one of the largest European retail banking networks, comprising about one third of the retail banking market in Europe, with total assets of €4,716 billion (1 January 2005). It represents the interests of its members vis-à-vis the EU Institutions and generates, facilitates and manages high quality cross-border banking projects.

ESBG members are typically savings and *retail* banks or associations thereof. They are often organised in decentralised networks and offer their services throughout their *region*. ESBG member banks have reinvested *responsibly* in their region for many decades and are one distinct benchmark for corporate social responsibility activities throughout Europe and the world.



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Published by ESBG. February 2007.