

fdemarigny@europesefesco.org

Committee of European Securities Regulators

Mr. Fabrice Demarigny

Secretary General

11-13, Avenue Friedland

F-75008 Paris

FRANCE

Brussels, 5 March 2003

**Position on the Market Abuse Mandates – Second call for evidence
(Ref. CESR/03-037)**

Dear Mr Demarigny,

We would like to thank you for the opportunity to submit our views regarding the second call for evidence concerning the implementing measures under the directive on insider dealing and market abuse.

The European Association of Public Banks (EAPB) represents approximately 100 public banks and financing institutions from 8 European countries. Public banks, funding agencies and national associations of public banks are direct members of the EAPB. In the following we would like to provide you with arguments to the specified issue of directors' dealings, which is of utmost importance.

EU Commission's Mandate 3.2. – (2)

Implementing measures concerning the categories of persons subject to a duty of disclosure of transactions conducted on their own account and the characteristics of a transaction, including its size, which triggers that duty; implementing measures concerning the technical arrangements for disclosure to the competent authority. (directors' dealings)

General remark:

At present various but not consistent legal texts of the directive exist in the Member States. Therefore it should be expressively clarified by CESR that the directive only covers

"shares, or derivatives or other financial instruments linked to them"(Art. 6 par. 4).

The specific component of the provision should in any case not be made out as "shares or derivatives linked to them or other financial instruments".

Justification:

Concerning other financial instruments, there is practically no possibility to benefit from insider information – for example in case of investment in bonds or mortgage bonds. The risk to abuse insider information in connection to assets in the latter mentioned financial instruments is not of primary importance, because the investment objectives are related to fixed interest rates (non-volatile) and to low risk which comes along with such investments. The investment objectives are not connected to price fluctuations or developments concerning the issuer.

- Criteria for identifying persons discharging managerial responsibilities
The prime responsibility remains at the board of directors. Although these persons who perform policy-making functions act for many reasons, their actions also reflect optimism and pessimism about future prospects in a significant way and provide investors with insight into insiders' investment actions.
- Criteria for identifying persons closely associated with them
This circle of people should be defined in such a way that only close relatives, if possible in the same household, are covered. Other family members e. g. adults and/or married children can't be controlled effectively (e. g. a married son, living in USA etc.).
- Criteria (including in terms of size) for determining when a transaction triggers the duty of disclosure
The spirit of the law should cover executed transactions in the company's shares and derivatives which can influence the market price but should not cover trifling matters. Additionally adequate parameters should be set up for shares and derivatives which trigger off the duty of disclosure.

With kind regards,

European Association of Public Banks

Roger Dippel

Germaine H. Klein