

**CESR's Advice on Level 2 Implementing Measures  
for the Market Abuse Directive**

**Reply of Euronext to consultation paper CESR/03-102b of April 2003**

Euronext welcomes the possibility to comment on the implementing measures for the Market Abuse Directive and is happy to confirm that, on the whole, it has no major difficulties with the advice presented in consultation paper CESR/03-102b of April 2003.

However, the advice for implementing measures could be improved on a number of points. In this respect, Euronext fully supports and points out to the views expressed in the detailed reply submitted by the International Petroleum Exchange to which it has given input. Euronext also supports the views expressed in this respect by the Federation of European Securities Exchanges. The present contribution will therefore not reiterate the points already made in these replies (please see attachment) and will only add on a limited number of issues.

1) Guidelines for determining accepted market practices

1.1 Euronext is of the opinion that the approach proposed by CESR is appropriate.

However, as far as factors are concerned Euronext wishes to reiterate a comment it has already made in previous submissions. In our opinion, the relationship between the benefits obtained by way of a specific practice in comparison with the market risks taken on in the course of conduct concerned, constitutes an important indicative factor. The more the risks taken on are important, the less the practice is likely to be abusive.

1.2 Considering that a list of acceptable practices would be impracticable at level II (the list could not be exhaustive, practices change over time and can be acceptable for a period of time and not after, they depend on the market model and the jurisdictions, etc), Euronext underlines the need for appropriate flexibility if such a list was to be drawn up at level III (as suggested by question 5). Moreover, in order not to limit innovation, it would appear more appropriate to identify what is forbidden rather than what is authorised. Therefore, rather than a list of acceptable practices, we would prefer that level III concentrates on a list of non-accepted practices specifying the circumstances (including markets and instruments concerned) as well as the reasons why such practices are considered as not acceptable. Indeed, what is not acceptable under certain circumstances can perfectly be acceptable under other circumstances

(e. g. what is not acceptable for a retail market may perfectly be acceptable in a purely wholesale market and a given practice should not be banned from the wholesale market just because it is inappropriate in a retail market). Consequently, the aim of such list would not be to extend the prohibition to markets or instruments in other jurisdictions but rather to help regulators to assess emerging practices.

## 2) Definition of « inside information » for derivatives on commodities markets

The proposed advice with respect to the inside information in commodity derivatives markets broadly reflects the views of Euronext.liffe, the International Petroleum Exchange and the London Metal Exchange as expressed in relation to the CESR's call for evidence. It ensures the necessary flexibility to take account of the specific features of commodity derivatives markets in establishing a useful framework to counter market abuse.

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