



**Irish
Association
of Investment
Managers**

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**Response to CESR's Consultation Paper Ref CESR/04-505: CESR's Consultation on
Market Abuse, Level 3 - preliminary CESR guidance and information on the common
operation of the Directive**

Dear Sirs,

I am writing on behalf of the Irish Association of Investment Managers, which is the representative body for institutional investment managers in Ireland, to express our views on the above consultation paper.

We very much welcome the opportunity to outline our position in relation to the draft advice as set out in the above consultation paper.

It was felt that the Consultation Paper on the Market Abuse Directive is ambiguous and lacks direction and clarity.

The disclosure thresholds should be defined. The Directive should give general guidelines to brokers and investment banks. It can only provide the basis for a more detailed internal code as to how the regulator should work as such detail should not be contained in a directive.

The mechanics of reporting suspicious activity or market manipulation should be clearly set out. The notification regime is too vague and leaves compliance officers exposed. A forum is needed in which decisions can be made with some certainty rather than second-guessing.

The criteria for the decision as to whether or not to notify a suspicious transaction are very subjective. What criteria would have been used in the case of Citibank, for example? Is quantum important or must the circumstances be pre-ordained?

Concern was expressed with regard to cross-trades on sub-funds. This could present a problem where the beneficial ownership is changed without going to the market in order to avoid incurring unnecessary costs. Would these be caught under the Directive as "wash trades" instead of being treated as genuine cross-trades?

The proposed measures are too vague especially where businesses are expanding and the criteria to be used are too subjective.

Directors:

R. O'Briain (*Chairman*), R. Richardson (USA) (*Vice-Chairman*), E. Fitzpatrick,
P. Lardner, N. McPherson, D. O'Donovan, M. Nolan, L. Selman, S. Hawkshaw,
K. Murphy, A. Powell, C. Fitzgerald, B. Hall

Secretary General:

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Another point of concern was with regard to the duty of confidentiality owed to clients where it is deemed necessary to notify any potential wrongdoing to the regulator. It was thought that protection could be afforded along the same lines as the Anti-Money Laundering Directive.

We trust that these comments are useful to CESR in finalising its advice and would be happy to provide any further assistance and comment if required.

Yours Sincerely,

Enda McMahon
Chairman, Regulatory and Compliance Committee
Irish Association of Investment Managers

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