02/13/2007

Market abuse directive – Level 3 – Second set of CESR guidance and information on the common operation of the directive to the market
Ref: CESR/06 – 562

Position du MEDEF

1. Insider lists

MEDEF strongly supports CESR proposal regarding a mutual recognition of insiders' lists by competent authorities.

In the consultation paper, CESR acknowledges that there may be «overlapping requirements with respect to keeping the insider list», which «could prove burdensome». MEDEF considers that CESR has to deal with such an overlapping, when identified and approve its proposal to recommend that regulators of host member state recognise the insider lists prepared by an issuer according to the prescriptions of its registered office's Member State regulator.

Nevertheless, two points must to be clarified:

- In case the host Member State accepts the mutual recognition and the issuer chooses to act on it , it must be perfectly clear that it has totally fulfilled its obligation toward the host Member State to keep insiders' lists. In case of a trial, it must be recognised that the issuer's obligations were fully respected, even if the local requirements are different.
- This mutual recognition should be accompanied by a discussion between regulators in order to harmonise their requirements, which is the sole way to enhance the level playing field.

2. Legitimate reasons to delay the publication of inside information

MEDEF considers that CESR's developments on legitimate reasons to delay the publication of inside information may be useful and has no particular comment on them.

3. Inside information definition

Regarding inside information definition, MEDEF is not fully convinced that CESR's development is useful and/or adds any real clarification. In particular, developments regarding information of a precise nature and the likelihood to have a significant price effect do not really clarify the directive interpretation.

Regarding the precise nature of inside information, the interpretation of rumours or speculations does not seem appropriate and would strip the companies from their legal security.

Regarding the appreciation of a significant price effect, in MEDEF's view, the reasonable investor test ("information a reasonable investor would be likely to use as part of the basis of his investment decisions”) constitutes an exercise of judgement, which must remain the focus of the analysis.

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