Association of British Insurers

Level 3 – third set of guidance and information on the common operation of the Market Abuse Directive to the market

The ABI's Response to CESR/08-717

The ABI is the voice of the insurance and investment industry. Its members constitute over 90 per cent of the insurance market in the UK and 20 per cent across the EU. Through the ABI their voice is heard in Government and in public debate on insurance, savings, and investment matters. The ABI prides itself on thinking for tomorrow, providing solutions to policy challenges based on the industry's analysis and understanding of the risks we all face.

We welcome the opportunity to comment on this paper. ABI members are large institutional investors controlling funds worth some £1.3 trillion, including holdings in European companies. Insurers are responsible for investing a large proportion of the savings of the UK public, including the funds providing their pensions. As a result, ABI members – as both issuers and investors - have a strong interest in the integrity and efficiency of financial markets and in promoting the confidence of the investing public. Matters relating to market abuse are of fundamental importance to them.

Stabilisation and buy back programmes

We have no comments on the CESR guidance on stabilisation and buy back programmes.

The two-fold notion of inside information

We are concerned about the work on the two-fold notion of inside information. CESR says that the EU Commission will address this issue in its own review of MAD. At last year's MAD conference organised by the Commission in Brussels, we believe the Commission mentioned the work on the definition would be conducted by CESR in the first instance.

This issue has been subject to a great deal of debate and controversy in the UK. Addressing it comprehensively at the EU level will be important. We therefore hope that CESR and the Commission will cooperate in reviewing the Directive.

Our members are of a view that the super-equivalent UK regime is better placed to protect investors from market abuse offences. This is because the notion of 'relevant information not generally available (RINGA)' that it contains in addition to 'inside information' creates a distinction between the information that can be abused and that which can be disclosed. The broader scope of RINGA, and its principles-based nature, mean that it is applicable in circumstances that may not be covered by MAD. For example, information about what the issuer is planning to do or the state of negotiations of a contract could be highly market sensitive but may not qualify for

the status of inside information. It could therefore be abused in the absence of RINGA. Either that, or issuers may choose to disclose it too early which could potentially mislead the market and lead to excessive volatility.

RINGA provisions mean that wherever the regulators choose to set the threshold for preciseness or price sensitivity in relation to the information that has to be disclosed by issuers, the information can become abusable at an earlier stage.

Our members believe this is preferable to a single definition as under MAD. They would therefore wish to see the EU regime changed to mirror the UK super-equivalences.

In terms of rumours, we agree with the guidance that issuers are under no obligation to respond to speculation or market rumours which are without substance. We would, however, note that the policy of 'no comment' may be problematic if a false market is created as a result of a rumour which is not based on inside information.

If you have any questions, please do not hesitate to contact me.

Yours faithfully,

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