CESR second set of guidance and information on the common operation of the Market Abuse Directive

Reply of Euronext
2nd of February

Euronext thanks CESR for the opportunity to comment on its work to set up guidance on the common operation of the Market Abuse Directive.

We fully support the development of a common understanding of certain aspects of the Market Abuse Directives. We are indeed of the opinion that such common approach will promote the implementation and the functioning of the market abuse regime and facilitate both the compliance of issuers and the supervisory surveillance by the competent authorities.

While answering to some of the proposal made in this guidance, we would also like to reiterate to CESR our concerns regarding two topics not dealt with in its paper, i.e. Accepted Market practices and managers' transactions:

- Regarding the Accepted Market Practices ("AMPs"), we are of the opinion that, in the interest of cross-market activities, more convergence in the recognition of such AMPs needs to be reached. In this respect, we expect CESR to take further steps to confirm and state that as in its Level 3 - First set of guidance and information on the common operation of the Market Abuse Directive – "*in most of the cases considered, conduct of the practice in conformity with the rules of the relevant regulated market would be sufficient in itself to promote market integrity and therefore the question of giving the practice accepted market practice status would not arise*".
- In respect of transaction by managers and persons closely associated, while the Directive and its implementing measures set up clearly the Home Member State regime, overlapping competences have been created because of the way some Member States have implemented the directives. This, in our view, oversteps the Level 1 & 2 requirements and obliges issuers to go beyond their obligations. We therefore ask CESR to produce guidance on this issue.

1. Criteria of the definition of "inside information"

Made public

With respect to disclosure requirements, Euronext supports a regime that would require companies with inside information to disclose, using the disclosure mechanisms specified by their Competent Authority.

However, in our view, the Market Abuse Directive does not establish a definite regime of competent authority. It is said in the Directive (art.6.1 of 2003/6/EC) that: "*Member States shall ensure that issuers of financial instruments inform the public as soon as possible of inside information which directly concerns the said issuer*". Moreover, art.10 provides that: " *each Member State shall apply the prohibitions and requirements provided for in this Directive to: (a) actions carried out on its territory or abroad concerning financial instruments that are admitted to trading on a regulated market situated or operating within its territory or for which a request for admission to trading on such market has been made*".

Depending on the interpretation of the text by Member States' competent authorities, issuers that have their financial instruments admitted to trading on several regulated markets have to reconcile with different competent authorities and requirements.

We are therefore of the opinion that a clear regime regarding the Home Member State designation should be put in place, as it is the case in the Transparency Directive, or that an explicit reference should be made to the regime applicable in accordance with the Transparency Directive.

Examples of possible inside information directly and indirectly concerning the issuer

Regarding the list of information that directly concerns the issuer and therefore could constitute inside information that need to be disclosed, we understand the drawing up of such list.

However, we would like to add that, as stated in art.4 and 5 of 2003/124/EC, such events should not necessarily be deemed in themselves to constitute inside information requiring disclosure in the sense of art.6.1 of 2006/3/EC.

As regards information that indirectly concerns the issuer, we do not agree with CESR reading of art.6.1 of 2006/3/Ec regarding events that may have consequences on the issuers. We consider that this interpretation goes beyond the level 1 provisions. Moreover, such a list of events would require a systematic and on a case-by-case analysis, by issuers, of macroeconomic events and market data. We consider that such analysis and the need to disclose it should be left to issuers' appraisal and discretion

2. Legitimate reasons to delay the publication of inside information

Euronext agrees with CESR view that examples of legitimate interests for delaying public disclosure are a non-exhaustive list and we welcome CESR decision not to provide with a list of other circumstances in which the issuer has the right to delay.

However, and as stated in our reply to the later Call for Evidence[1], we are supportive of any

[1] Member States have transposed the possibility to delay the publication of inside information, as provided for in the Directive. Some Member States additionally require the issuer to inform their competent authority of its decision to postpone the disclosure of inside information (as also provided for in the Directive) and others don't. Multi-listed companies often conclude MoUs with their different regulators, which require for the same level of information between all the regulators of the company. So a multi-listed company would have to notify all its regulators of its decision to delay, while it is required by the law of the Member State of only one of its regulators. However, in some Member States, regulators have to make public immediately any information transmitted to them by issuers. In this particular case, the multi-listed issuer would be in fact totally prevented to postpone the disclosure, while provided in the directive. Actually, if one regulator just discloses this kind of decision, it will create such market conditions that market manipulation would be inevitable because of the speculation and rumours.

convergence in the postponement regime or any cooperation regime that would avoid contradictory implementation. There are indeed situations where multi-listed issuers would be in fact totally prevented to postpone the disclosure of inside information due to the discrepancies between the delay regimes, which, in our view, is neither fair nor acceptable.

3. Insider Lists

As concerns the insider lists, we fully support CESR recommendation that, for issuer subject to the jurisdiction of more than one EU or EEA Member State with respect to insider lists requirements, the relevant competent authorities should recognise insider lists prepared by an issuer that has its registered office in another EU or EEA Member State, according to this Member State's requirements.

We would moreover re-insist on the needs of such peer-recognition, in particular for multi-listed issuers. We recognise that issuers whose financial instruments are admitted to trading on regulated markets in different European jurisdiction have to comply with the legal framework applicable in those jurisdictions. However, without questioning the drawing up, maintenance and updating of insider lists, we are of the opinion that overlaps are unnecessarily burdensome for issuers. We therefore recommend that multi-listed issuers should be able to use insider lists drawn up, maintained and updated according to the requirements of their Home Member State and transmitted, on request, to all its relevant Home and Host Member States, where appropriate.

Finally, as already expressed in former consultations[2] and above, we encourage CESR to make the same recommendation with regard to managers and persons closely associated transactions and reaffirm the application of the Home Member State regime.

***

[2] Some Member States have transposed the directives in such a way that managers or persons closely associated of any issuer whose financial instruments are admitted to trading on a regulated market situated or operating on their territory have to notify their transactions under the regime provided by the Directive. This is once more problematic for multi-listed issuers whose managers and persons closely associated would have to comply with several regimes, which sometimes differ from a more practical point of view (language, documents etc). It is even more difficult because Member States do not require the notification of the same transactions. For instance, in some countries, the notification of the exercise of stock options is required while other Member States require the notification of the stock option leg and the share leg in itself. This results, for managers and closely associated persons of multi-listed companies, in different notifications.