

ASSOCIATION OF GREEK INSTITUTIONAL INVESTORS

Dear Sirs

We welcome the opportunity to participate in the consultation on the areas covered in document CERS/03-102b on additional level 2 implementing measures of Directive 6/2003 on Market Abuse. In this letter we focus on the sections and the questions of the aforementioned documents that relate to the nature of activities of the members of our association.

(i) Accepted Market Practices:

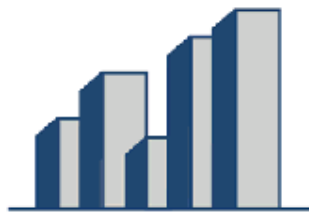
We believe that the judgment of whether a market practice is an “accepted” one should not be based whether a practice falls within a catalogue of practices prepared in advance by the Authorities. The judgment has to be based on more flexible criteria and on the merits of each case. Instead of describing particular actions as being acceptable, the proper exercise is to determine a number of factors that the authorities should consider before reaching a decision. In this respect it is important for the Authority when examining a particular case to ask the views of the market participants on what constitutes widespread and accepted market practice.

We believe that OTC market participants must be in a position to put forward the defense of acting pursuant to an acceptable market practice. We see no reason why OTC participants should be at such a legal disadvantage.

(ii) Insiders’ List

We believe that a combination of a list of “permanent insiders” and of insiders in connection with a particular matter or event would be the most appropriate solution. Being a permanent insider should not lead to the conclusion that each and every transaction in the stock of the issuer entails an infringement of the law. The permanent insiders’ list can be used to determine the scope of applying a prohibition from transacting during a price sensitive period (i.e. window trading restrictions”), for example prior to the announcement of the issuers quarterly financial results.

On the other hand, a list of insiders compiled at hoc each time inside information is communicated in limited number of persons in relation to a specific matter or a project relating to the issuer. This second list may be



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useful for corporate governance purposes and also in relation to investigation by the Authorities if and when such investigation arises about transactions conducted before the information became public. The content of the list should not be exhaustive to the extent that it would refuse its purpose and make the compilation of the list impracticable.

It is also crucial that this second list is admitted by the Authorities as conclusive evidence (subject to counter-evidence) on who were the primary insiders on a particular matter and that persons who face charges of insider dealing are allowed to build a defense on the basis that according to the list they did not possess inside information.

(iii) Disclosure obligation

We agree in principal with the position the persons involved in the decision making process of the issuer should notify transactions concluded on their account. However, we believe that the economic criterion for determining whether a legal entity is associated with the aforementioned persons is mistaken. There are many case where although a person maintains a majority interest in an entity is not in a position to dictate its investment decisions. We believe that the criteria of economic control and control over the business of an entity should apply on a cumulative and alternative basis.

Imposing an obligation to disclose transaction irrespective of their size would beat the purpose of the law. The result would be consecutive disclosures for trifle trades that nobody in the market would take into account. In turn this could lead to an “inertia” of the investors towards all disclosures from such persons. We believe that imposing a materiality threshold for a transaction or series of transactions would help the market focus on signaling which is actually price sensitive.

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