

Rome, March 6, 2003

Prot. n. 414/03

Mr. Fabrice Demarigny
Secretary General CESR
11/13 Avenue de Friedland
75008 Paris

Dear Mr. Demarigny,

Re: Market Abuse Mandates – Second Call for Evidence

Assogestioni welcomes the invitation to comment on the consultation paper “Market Abuse Mandates - Second call for evidence” in order to the “Additional Mandate to CESR for technical Advice on possible Implementing Measures concerning the Directive on Insider Dealing and Market Manipulation (Market Abuse)”. Assogestioni is the association representing the Italian mutual fund and asset management companies and its members, who manage assets of more than euro 700 billion, have a direct interest in the regulation which is being proposed.

In Italy, without prejudice to the provisions of article 180ff of Legislative Decree 58/1998 concerning insider trading and in accordance with the “Rules of the markets organised and managed by Borsa Italiana” (as amended with effect from 15 July 2002) and with “Instructions accompanying the rules for the markets organised and managed by Borsa Italiana” (as of 28 November 2002), the most important Italian issuers have already adopted rules of conduct in respect of the information treatment to be reserved to personal transaction effected by members of the corporate bodies and top management as well as by employees of those companies and their subsidiaries working in highly sensitive areas.

The aim of these rules is to ensure the maximum transparency and homogeneity of information to the market in respect of the individual behaviour of the members of the corporate bodies due to their access to confidential information on the companies and their groups.

Sometimes, furthermore, the rules adopted by these companies include some prescriptions more stringent than the respective rules issued by Borsa Italiana SpA, in order to better match the interest of the market to receive the said information with most exact and exhaustive terms and procedures as possible.

Therefore, we reckon that our domestic experience could suggest positive solutions for your purposes.

Referring to the implementing measures as indicated in the consultative paper:

1. with regard to the conditions under which issuers are to draw up and update a list of those persons working for them and having access to inside information, the criteria which trigger the duty to draw up and to update insiders' list could simply be to have listed shares, as indicated by the article 2.6.3, par. 1, of "Rules of the markets organised and managed by Borsa Italiana"⁽¹⁾;
2. with regard to the categories of persons subject to a duty of disclosure of transactions conducted on their own account and the characteristics of a transaction, including size, which triggers that duty (article 6 paragraph 10 fifth indent of the directive), the criteria for identifying persons discharging managerial responsibilities within an issuer should be referred to directors, members of the board of auditors and general managers of the company and any other persons who have access by virtue of their duties in the company or its main subsidiaries. On the other hand, for the purpose of identify the significant transactions, Borsa Italiana has adopted criteria in term of size and considers significant every transaction whose value, summed with that of any other transactions carried out in the reference period, and not previously notified, exceeds 250,000 euro for a single declarer. Then again, the notional value of derivatives, covered warrants and warrants should be calculated as the product of the number of shares controlled by the instrument and the official price of the underlying asset, observed on the day the transaction is concluded;
3. about the technical arrangements for disclosure to the competent authority (article 6 paragraph 10 fifth indent of the directive) would be needed to fix a time limit to communicate the transaction carried out by significant persons (for example not later than the tenth trading day following the end of each quarter, or such shorter period as the issuer may have chosen, for the transactions carried out in the reference period);
4. about the technical arrangements governing notification of suspicious transactions to the competent authority by any person professionally arranging transactions in financial instruments (article 6 paragraph 10 last indent of the directive), the criteria for determining how notify would be indicated on specific model forms in which report changes in current/previous and the number of securities converted/exercised.

With appreciation for the opportunity to comment, we remain at your disposal for any clarification should you need on the above.

Kindest regards.

Secretary General

¹ Article 2.6.3 (Code of conduct) "1. Every company having listed shares shall draw up a code of conduct aimed at regulating with binding effect disclosure requirements and any restrictions on transactions referred to in Article 2.6.4 carried out for own account by significant persons..."