

**SPANISH STOCK EXCHANGES COMMENTS ON THE COMMITTEE OF EUROPEAN
SECURITIES REGULATORS CONSULTATION PAPER "MARKET ABUSE
ADDITIONAL LEVEL 2 IMPLEMENTING MEASURES" (APRIL 2003)**

This report contents the four Spanish Stock Exchanges comments on the COMMITTEE OF EUROPEAN SECURITIES REGULATORS (hereafter referred to as CESR) consultation paper "**MARKET ABUSE ADDITIONAL LEVEL 2 IMPLEMENTING MEASURES**" (APRIL 2003). We will from now on refer to the paper by CESR as "the Document".

1) Guidelines for determining accepted market practices

a) The concept of market practices

It seems that in CESR advice, the notion of accepted market practices has a different scope in the context of defence for market manipulation than it has in the context of inside information for commodity derivatives.

In particular, with regards to the first one, the Document makes a distinction between "activities" and "market practices", considering that market practices would cover the way that the activities are handled and executed in the market.

We consider that it is difficult to reduce the scope of market practices to the handling and execution. As the document provides, these aspects are particularly important and the way in which a practice is executed will in part determine the extent to which it has an unacceptable impact on a market. (Section 31).

Given so, it seems that the scope of market practice must be wider, being accepted the possibility of taking into account the particular activities that lead to the order execution.

In addition, it would be more consistent with the wider concept given to market practices in the context of commodity derivatives.

b) Liquidity agreements

In our written contribution to the first consultation paper, "CESR ADVICE ON POSSIBLE LEVEL 2 IMPLEMENTING MEASURES FOR THE PROPOSED MARKET ABUSE DIRECTIVE" (JULY 2002), we commented that the execution and performance of liquidity agreements entered into by companies with investment firms does not benefit from the definition of safe harbour as does not belong to buy-back programmes.

We pointed out then that as an activity managed by an independent investment firm, the performance of liquidity agreements could be included within the definition of accepted market practices.

c) The consideration of the regulation produced by the markets as a main guideline

The advice of CESR describes principles, factors and procedures for accepting market practices by the competent authority.

Even though there is a reference to the intermediaries and to the markets and self regulatory organisations, we believe that the advice could be completed with an express reference to the market regulation produced by the regulated markets themselves: the fact of being reflected in the regulation of the market should be taken as a main guideline.

Again, coming back to the example of the liquidity agreements, we could think on special kind of orders only available for specialists or providers of liquidity when developing that activity.

2) Insiders' lists

a) Development through internal codes

As this is a matter with a strong and direct impact in the organisation, procedures and structure of the affected entities, the main details could be left to be tackled within the internal codes of the entities.

b) Acknowledgement of the legal and regulatory duties (Section 59)

Section 59 indicates that the entities that draw up lists should ensure that persons in the list are aware and acknowledge the legal and regulatory duties.

It seems that the obligation provided in Section 59 exceeds the scope of the provision of the Directive of drawing up lists of insiders.

In addition, it is not clear if in that case the issuer and persons acting on their behalf should notify the affected persons about their inclusion in the lists.

Finally, it would provoke an additional effort for the entities as it would imply to keep records of those notifications.

It could even represent an additional responsibility in case of absence or lack of clarity of the notifications, which seems to be out of the scope of the Directive.

c) Permanent list

It is not clear the way of proceeding with the permanent list, where are those who have regular access to information, and its relationship with the other lists which refer to particular issues.

Then, if required by the supervisory authority the list of persons with information of a single operation, both the individual list and the permanent list would have to be sent. It is not well defined the consequences of being within the permanent list with regards to particular operations.

d) The information of the list

We have to insist on the necessary flexibility in the definition of the particular information to be indicated within the list as it directly affects to the internal organisation and procedure of the entities.

e) The term for keeping the lists

Section 63 indicates that lists should be kept until it is legally no longer possible for a case of insider dealing to be brought against the issuer, persons acting on its behalf or persons on the lists.

We are aware that apparently, this matter falls out of the mandate conferred in the Directive for the second level of regulation.

In addition, the term should be fixed in an objective and general way, indicating the term and its beginning.

f) Updating

The Directive indicates (art. 6.3) that the list shall be regularly updated. CESR level 2 advice is that the lists should be updated on a continuous basis.

Once again, it seems that a more flexible way to set up the conditions to update the lists would be to leave it to be determined within the internal codes of the entities.

An alternative option could be to be updated on a regular basis indicating the obligation to do, in any case, previous to its submission to the competent authority.

3) Disclosure of transactions

Identification of persons closely associated

CESR advice refers to all persons sharing the same household as the person discharging managerial responsibilities.

We do not share that criteria as it would leave apart close relatives of the person which do not share the same household and would affect other people sharing the household but only that.

4) Suspicious transactions

a) Determination by internal codes

As we commented before, with respect to "insiders' lists, the details of level 2 could be determined by internal codes of the entities, specially considering the impact on the organisation arrangements, the interest of the entity of keeping the best relationship with its clients and the need to deal with those cases in a consistent and objective way that guarantees a uniform treatment.

This interpretation is in line with section 101 of the Document, which accepts that the employees are not subject to any notification duties themselves, and alludes to the existence of internal procedures.

This will let the entity, as well, examine the eventual cases with more perspective and objectivity and with the possibility of coordinating the way of acting.

b) Timeframe for notification

In line what is has been commented above, notification to the competent authority should be carried out after following the internal communications and procedures.

Madrid, 15th June 03