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**CALL FOR EVIDENCE- EVALUATION OF THE SUPERVISORY FUNCTIONING OF THE EU MARKET ABUSE REGIME**

The Confederation of Finnish Industries EK is the leading business organisation in Finland. It represents the entire private sector, both industry and services, and companies of all sizes. EK's member companies represent more than 70 percent of Finland's gross domestic product and over 95 percent of exports from Finland. EK has 44 different branch federations with a membership of 15.000 companies in all, which employ about 900 000 employees. Most listed Finnish companies, practically all, are members of EK.

With reference to the 19 June 2006 invitation to submit views as to what CESR should consider in its further work in the area of the Market Abuse Directive EK would like to submit the following views.

*General remarks*

As a general remark EK would like to note that the Market Abuse Directive (MAD) has been in force only for about one and a half year and there are still some delays in the implementation of the directive. Therefore, there is not enough experience of the implementation and application of the new regime. It also seems to be too early to collect views and experiences, benefits and eventually problems. As the description of inside information originates from the MAD that stipulates several preventive measures aimed at reducing the incidence of market abuse, it would be useful to gain more experiences before planning any further guidance on inside information. Further regulation and guidance should only be issued if it is necessary for the proper functioning of the securities market.

Even tough EK is of the opinion that at this stage there is no need to issue further guidance on the determination of inside information we would like to make the following general comments followed by some more detailed comments.

The guidelines set by the authorities based on the Lamfalussy procedure framework have to be flexible enough in order to guarantee proper functioning of securities markets. This is also in line with the general aims of the Financial Services Action plan. We would also like

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to point out that self-regulation is an effective tool to give more detailed rules in this area.

Issuing more detailed regulations does not necessarily mean that the foresee ability on the market increases. This may on the contrary have the result that the interpretation afterwards becomes more problematic, since things always look different in hindsight.

*What constitutes "inside information" under the Market Abuse Directive*

In our view it is not necessary that CESR issues further guidance on the assessment of what constitutes inside information given that the issuers subject to the insider rules are active in very different fields of business. The assessment of what constitutes inside information should in any event always be made case-by-case by the issuer's directors and management.

*When does information become "inside information"*

In our view it is important that the issuer has the possibility to evaluate the total mix of information in order to assess its status as inside information before a disclosure obligation arises. It is not desirable that pieces of information are considered inside information subject to disclosure obligation when the total picture is yet to be evaluated. Any guidance issued on the question when information becomes inside information should thus allow the issuer to let the circumstances and events develop so that it would be possible to make an informed decision on the status of the information as inside information (e.g. its materiality) before making the decision to disclose the information.

*When are large client orders considered "inside information"*

In our view, this should also be a case-by-case evaluation performed by the issuer in question, and therefore more detailed guidance on the issue would not be necessary.

*When are there legitimate reasons to delay the publication of inside information as well as on the application insider lists*

A consequence of the obligation to inform the authorities of the decision to delay the public disclosure of inside information is that there are a very limited number of circumstances where an issuer could take advantage of this possibility. Even if the issuer notifies the competent authority that publication of inside information will be delayed, the issuer will still be liable for the postponement of the disclosure.

If any further guidance is issued it should in our view relate to the circumstances where the possibility to delay disclosure could be a safe

harbour and no liability for the postponement would attach. This would reduce the risk in using the possibility to delay publication.

It is worth considering whether this is at all an issue to be regulated in more detail at the EU level, since to our understanding there are systems at national level for creating the relevant insider lists, and the systems used in different countries may vary to a considerable extent.

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