

MARKET ABUSE DIRECTIVE

LEVEL 3-THIRD SET OF CESR GUIDANCE AND INFORMATION ON THE COMMON OPERATION OF THE DIRECTIVE TO THE MARKET

The purpose of AFEP is to present the views of large French companies to the European Institutions and the French authorities, mainly with regard to the drafting of non-sectoral legislation (on the economy, taxation, company law, financial information, competition, intellectual property rights, consumer affairs, social regulations, employment legislation, environment, financial and accounting information, etc.).

AFEP represents at present more than 90 of the top private sector companies operating in France. The stock market value of the French listed companies which belong to AFEP amounted in 2007 to 1300 billion euros, with more than 5,2 million employees, and a combined turnover of over 1350 billion euros.

The Presidents of AFEP's member companies are actively and directly involved in the definition of the main lines of economic and social policy to be submitted to the European and national authorities, as well as deciding which actions to carry out in the interest of the growth of companies in a market economy.

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The French Association of Private Companies (AFEP) believes that the proposed set of CESR guidance provides a clear outline of the purpose of the list and of how it is supposed to be used by issuers. AFEP nevertheless wishes to highlight a few specific issues:

- 1) Paragraph 13 states that *"the emphasis should rather be given to the access (regular/occasional) of persons to inside information related directly or indirectly to issuers than to the existence of a legal distinction between regular and occasional insiders"*.

Although this sentence is not perfectly clear, our understanding is that the reverse should be true. Indeed, what is important is to make a distinction between two main categories of individuals:

- Those who - because of their management role or because they have access to information which is at the core of the business model (i.e. patents in the pharmaceutical sector) - are granted regular access to inside information;
- Those who only have occasional access to privileged information in the framework of their involvement in a specific financial operation.

It is therefore our belief that a distinction should be made based on the nature of their access to information, regular on the one hand and irregular on the other.

In addition, it should be made clear that permanent insiders will not always appear on the list of irregular insiders, such as in the case of an accountant who would not be listed on a document dealing with a M&A operation, since such an operation would at first only involve the legal and financial divisions of the company.

2) Paragraph 15 and paragraph 16:

It is of the utmost important to keep a flexible approach concerning the enumeration of individuals who might be included in the insiders' lists. AFEP wishes to underline that, in any case, the responsibility to decide who should be included in the lists should remain with the issuer and the individuals acting on their behalf.

- For instance, as far as secretaries are concerned, every organisation has different rules regarding access to inside information through the manager's personal e-mails or other documentation.
- Similarly, IT agencies which access financial information system should be included in the lists, whereas they shouldn't if they only have access to human resources information.
- The same distinction applies for Credit Rating Agencies: while some companies never disclose any inside information to rating agencies, others remain in permanent contact and offer thorough access to information, given their importance in stock market valuation. In the latter situation, it is only logical they should be included in the lists.

3) **Further issues for consideration by CESR**

Issuers consider the update of the insiders' lists to be a very costly and burdensome process, specifically because of the mobility of individuals working within issuers (intra group mobility) The process would be facilitated if the persons could be identified through their functions instead of their names.

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