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15 June 2003
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CESR's Consultation Paper on Market Abuse Additional Level 2 Implementing Measures

On 15 April 2003, CESR invited comments on the above via its website.

The draft gives rise to the following comments from the Copenhagen Stock Exchange:

General comments

The Copenhagen Stock Exchange finds it difficult to get an overall view of the contents and the consequences of the extensive regulation, which is being processed at EU level at present. In this connection the consistency of the many EU initiatives is hard to determine, just as it is difficult to foresee the consequences resulting from the measures expected to be implemented at level 2.

The Copenhagen Stock Exchange feels induced to mention that it seems neither logical nor practical to gather various disclosure requirements to be met by issuers and shareholders in a number of different EU directives. Thus, the existing directives on acquisition offers, market abuse and transparency requirements already contain a number of provisions that regulate the disclosure requirements to be observed by issuers and shareholders.

Specific comments

V Insiders' list

Advice 58 suggests that issuers and persons acting on their behalf or for their account immediately should establish an 'insider' list of natural and legal persons who have, or have had, access to a matter or event when it becomes inside information. Advice 63 suggests that the 'insider' list should be closed when the inside information becomes public. Advice 61 suggests that in the event that an issuer has internal persons who have regular access to inside information within the issue, the issuer should draw up a 'permanent' list of these persons.



It is thus suggested that issuers shall prepare and currently update two types of lists, viz. a list for each matter or event when it becomes inside information that is not yet disclosed and a permanent list. Under the existing draft the ad hoc list must be prepared in a vast number of cases, which would cause considerable inconvenience and involve significant costs for the individual issuer. Thus, CESR also states in its comments that CESR is aware that the duties of drawing up the list and of updating it on a continuous basis generate significant costs for issuers and related persons.

In the Exchange's opinion the desired result may just as well be reached by laying the issuers under an obligation to draw up and update a list of all persons who have or have had access to inside information and in connection with mergers, acquisition offers, major acquisitions/divestments and the like, to prepare a list of the internal and external persons who are granted access to inside information and at what time.

VI Disclosure of transactions

The Exchange has noted that the directive and thus also the level 2 drafts do not oblige the issuers in any way whatsoever to notify the competent authorities about the share transactions in question. Moreover, the Exchange has noticed that the shareholders shall not publish aggregate statements of their shareholdings.

Advice 75 defines which persons are closely associated. It should be considered more closely who should be subject to this definition.

Yours sincerely

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