



EFFAS THE EUROPEAN FEDERATION OF FINANCIAL ANALYSTS SOCIETIES

CESR
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via Email/Internet

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Market Abuse Directive Level 3 – second set of CESR guidance and information on the common operation of the Directive to the market (CESR/06-562)

Response by EFFAS European Federation of Financial Analysts Societies

Dear Mr. Demarigny,

The European Federation of Financial Analysts Societies, EFFAS, is the European umbrella organisation of national analysts societies. It comprises 24 members representing more than 14,000 investment professionals in the areas of Equity and Bond Research, Asset and Portfolio Management, Investment Advice.

The following response to the call of evidence will concentrate on those provisions in the MAD legislation which most affect the investment professionals organised in EFFAS' national member societies.

EFFAS welcomes the guidance draft submitted for public consultation. EFFAS is in agreement with the interpretation of the relevant texts of the European legislation. In particular, the lists of indicators (1.14) and examples (1.15, 1.16, 2.8), albeit non-exhaustive are most helpful. However we want to point out some details.

Concerning para 1.8, the term "(or at very low) risk" we suggest to better use the term "price risk" or "valuation risk" instead, because we consider the more general, more broad, risk linked to insider transaction to be extremely high.

According to the list of examples under paragraph 1.15 we have some suggestions to add. Other examples of information which directly concerns the issuer may be remuneration policy, inter-company and insider transaction, developments in corporate governance and specific supervisory requirements. Furthermore we like to add two suggestions to the list under para 1.16: first, government grants and subsidies (introduction, termination) and second, specific terrorist and antiterrorist actions which might have an impact on a sector, a group of companies or a specific company. For example, last EU regulations concerning

handheld baggage on planes did have enormous impact on earnings of duty-free shops, and at one phase this could be an inside information.

As the draft notes, the correct application requires a case-by-case analysis of the fact situations, involving market abuse knowledge. Case law and administrative guidance for its application require the collection of fact situations and their distinguishing characteristics on which courts of law have rendered decisions and competent authorities have ruled. The draft indicates that the experience of CESR members gathered from the day-to-day application has been used by the authors of the draft.

It is suggested that a collection and electronic publication in more detail and in anonymous form of cases decided in the courts of the member states and of the administrative practice of the competent authorities would greatly enhance the value of the guidance for all parties affected by insider legislation.

EFFAS fully agrees that it should be possible to delay disclosure of inside information. We support the further guidance along the lines of the consultation document. However, we would advise to include the need to properly put down in writing and keep for the files the (internal) consideration for delay, with reference to the earliest date the information was received or considered to be price sensitive, the employees and persons involved etc. This would allow the regulator to verify ex-post that the procedures have been properly complied with. The decision to delay should not be to the sole derogation to the company or person involved without any possible verification.

In the future work of CESR concerning guidance for the application of insider legislation under MAD, CESR might consider the duties of investment firms and credit institutions under Art. 11 of the Commission Directive 2004/72/EC concerning the notification of suspicious transactions.

Such guidance should address the issue of implicitly informing the suspected insider of such notification by terminating the business relationship, by closing out the suspicious transactions or by other reactions short of explicit information.

The provisions of the directives and of the implementing national laws provide that the notifying investment firm cannot be held liable for a notification made in good faith. However CESR guidance could assist the proper reaction of investment firms in some dubious cases, especially whether (and in what circumstances) an investment firm should (or must not) carry out the suspicious transaction, as not to be liable for "aiding" the prohibited insider transaction or, on the contrary, for not performing a transaction which finally turned-out not to be prohibited. Nevertheless, each investment firm and credit institution is responsible for doing its own case-by-case analysis and CESR guidance could only be one part in this process.

Yours sincerely,



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Chairman of EFFAS



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