

POSITION PAPER



**ESBG response to CESR consultation on the draft
third set of CESR guidance on the operation of the
Market Abuse Directive**

(CESR/08-274)

September 2008



The European Savings Banks Group (ESBG) welcomes the opportunity to comment on the draft third set of CESR guidance on the operation of the Market Abuse Directive.

In general, the ESBG welcomes the proposals included in the draft third set of CESR guidance, as they contain a number of valuable practical details as regards the application of the Directive and will lead to a convergent application within the European Union.

The ESBG would like to comment on some specific points included in the CESR draft:

- Point 11: CESR considers that the issuer should make third persons acting on his behalf aware that all persons who might be expected to have access to inside information are to be included in the insiders' lists. In our view this requirement cannot be deduced from the Level 1 Directive. In addition, we do not see a need for such a notice and refer to the current well-established practice.
- Point 12: We agree to CESR's analysis that persons having access to information as a result of their activities or duties within the issuer or person acting on their behalf shall be listed on the insider list. CESR adds that persons obtaining access by other means, such as by accident, shall not be included in these lists. In our view the latter description is in particular valid for employees of the IT departments.
- Point 16: We agree to the examples of professionals acting on behalf of the issuers to be also included in the insiders' lists. However, we consider it necessary to specify that employees of supervisory authorities supervising the entity shall not be included in these lists.
- Point 27 and 34: We believe that CESR should maintain the criteria for determining the notifiable transactions, which it defined in its first and second sets of guidance, and it should not add the criterion of "unexecuted orders". This means that there should be no requirement to report or file a suspicion before the execution of a transaction. Such a requirement would in our view not be compatible with the Level 1 Directive.
- Point 31: We would like to express our concern that the inclusion of the name of the person(s) who had direct contact with the client who placed the suspicious order bears the risk of threats or hostile actions. In this context, it should be reminded that according to the Anti-Money Laundering Directive Member States should do whatever they can to protect employees from threats or hostile actions.
- Point 35: CESR reminds institutions that a broker or any concerned individual within an institution who has suspicion about an order or a transaction consults about the need to notify it internally or within the group. We confirm that a compliance officer needs to report any suspicion in relation to the subsidiary to the holding company.



About ESBG (European Savings Banks Group)

ESBG (European Savings Banks Group) is an international banking association that represents one of the largest European retail banking networks, comprising about one third of the retail banking market in Europe, with total assets of € 5215 billion (1 January 2006). It represents the interest of its members vis-à-vis the EU Institutions and generates, facilitates and manages high quality cross-border banking projects.

ESBG Members are typically savings and retail banks or associations thereof. They are often organised in decentralised networks and offer their services throughout their region. ESBG Member banks have reinvested responsibly in their region for many decades and are one distinct benchmark for corporate social responsibility activities throughout Europe and the world.



European Savings Banks Group - aisbl
Rue Marie-Thérèse, 11 B-1000 Brussels Tel: +32 2 211 11 11 Fax : +32 2 211 11 99
Info@savings-banks.eu www.esbg.eu

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