

**REPLY BY THE CNMV ADVISORY COMMITTEE TO THE CESR
CALL FOR EVIDENCE ON EVALUATION OF THE
SUPERVISORY FUNCTION OF THE EU MARKET ABUSE
REGIME**

CESR Call for Evidence (19 June 2006)

Based on the experience accumulated since the entry into force of Royal Decree 1333/2005, of 11 November, which completed transposition of Directive 2003/6/EC of the European Parliament and of the Council on insider dealing and market manipulation (market abuse) and of Directives 2003/124/EC, 2003/125/EC and 2004/72/EC of the Commission which, with Regulation (EC) 2273/2003 of the Commission, implement and complete the provisions of Directive 2003/6/EC, the CNMV Advisory Committee hereby reports the following:

1. The supervisory functions developed to date with respect to the market abuse regime are very positive.
2. Nevertheless, it is advisable to maintain a dialogue so that viewpoints can be exchanged and potential problems identified; for this reason, the meetings arranged for exchanges of views, such as the Open Hearing scheduled for 17 October 2006 in Paris, are very welcome.
3. One of the first issues to be analysed is whether it is advisable to preclude regulatory arbitrage in the area of market abuse supervision as a result of differences in the organisation and working of the various trading, settlement and record-keeping systems. This issue is vital in the context of the forthcoming application of MiFID since systems should not be allowed to compete which are not subject to the same limitations, in

terms of scope and purpose, as the existing markets and clearing and settlement systems or which do not meet the same transparency standards and do not disclose information to the supervisors for the purpose of market abuse oversight (e.g. because they operate basically via omnibus accounts). For all these reasons, it is essential to ensure the same degree of auditability, traceability and ease of tracking transactions in all systems so as to avoid cases of regulatory arbitrage in the field of market abuse supervision that might favour more opaque systems and be detrimental to more transparent systems.

4. In this line, the disciplinary regimes applicable in the various countries and the criteria with which they are applied should be reviewed to ensure uniform treatment in identical circumstances.
5. Another aspect to consider is accepted market practices. It is advisable to adopt a dynamic view so as to accept professional activities that are necessary for the smooth working of a market that is constantly in transition.
6. The various items of legislation referenced in the first paragraph of this document refer generally to all securities and financial instruments, without distinction on the basis of capitalisation or liquidity. Nevertheless, capitalisation and liquidity are important factors to consider in practice when supervising market abuse since small-cap and illiquid securities may experience sharp price fluctuations and this greater volatility may be of interest to certain investors who wish to hold speculative positions; nevertheless, such positions should not be classified as market abuse if they are held in compliance with the applicable rules and the trading orders and transactions are not preceded or followed by the dissemination of false or misleading information or of investment research or recommendations that are false, biased or demonstrably the result of vested interests.

7. Finally, this Committee considers it advisable to develop guides so that both CESR members and the market in general are aware of what constitutes "inside information" under the Directive and when information becomes "inside information", when large client orders are considered "inside information" and when there are legitimate reasons to delay the publication of inside information, as well as the application of insider lists.