ABI RESPONSE ON CESR PROPOSALS ON ADDITIONAL LEVEL 2 IMPLEMENTING MEASURES FOR THE MARKET ABUSE DIRECTIVE

(JUNE 2003)

ACCEPTED MARKET PRACTICES

Questions

Question 1: is the proposed approach appropriate, focussing both on the characteristics of particular market practices and the procedures that Competent Authorities should follow?

The suggested approach may be the right one only if the Competent Authorities will perform their activity according with the maximum harmonisation principle. Accordingly to said principle, these Authorities should be ready to admit even practices that although are currently unknown in their own jurisdiction, they are used in the majority of others' ones.

Question 2: are the suggested principles, factors and procedures appropriate? Would you consider adding more factors such as the degree to which a practice has a significant effect on prices and in particular on reference prices?

We feel that in the CESR guidelines for Competent Authorities a specific call for co-ordination between them should be made.

Question 3: the Directive focuses on accepted market practices "on the regulated market concerned", but the prohibitions of the Directive also apply to OTC trading. Is it necessary to make any distinction between standards of acceptable market practices on regulated markets and OTC practices? Is it also necessary to make distinctions between standards of acceptable market practices in different kind of regulated markets or MTFs (e.g. order driven or price driven)?

This questions imply a distinction (regulated markets and OTC) that seems not taking in due consideration the current Community Directive proposals such as that on investment services that seem being over these kind of distinctions since it includes many other newcomers (i.e. the so-called "internalizers"). Thus, we feel that no distinction has to be made.

Question 4: do you agree that a practice need not be identifiable as already having been explicitly accepted by a competent authority before it can be undertaken?

Yes, we do agree.

Question 5: CESR is committed to the future discussion of specific market practices as part of the Level 3 work necessary to increase the harmonisation of accepted practices where appropriate. Please specify any examples of particular practices which you consider could be classified as accepted market practices for the purposes of the Directive.

The so called "Index rebalancing", "warehousing", "vwap: volume waited average price" are considered commonly accepted market practices provided that they are performed in a correct way.

INSIDERS' LIST

Questions

Question 10: do you agree on the relevance of establishing a list for each matter or event when it becomes inside information?

No, we do not agree. The establishment of a single list for each matter or event is excessively burdensome for intermediaries as well as too discretionary and debatable. Furthermore, such a list does not seem to be really offset by sufficiently valuable benefits for market integrity.

If CESR plans to keep said provision, at least it should be pointed out that the different lists have to be kept without any linkage between one each other.

Question 11: should the minimum content of the list be specified at Level 2?

See answer to Q. 10.

Question 12: should Level 2 give examples of those persons acting on behalf of or for the account of the issuer who should be required to draw up lists?

We think Level 2 should refrain from giving examples of persons who should be required to draw up lists since it may hinder the organisational autonomy.

Question 13: to what extent is drawing up a list of "permanent insiders" useful? Should Level 2 identify the jobs which typically provide access to inside information?

We think that drawing up a list of "permanent insiders" with a quotation of jobs that may typically provide access to inside information is quite useful.

Question 14: would it be useful to further develop at Level 3 the "illustrative system" outlined?

Yes it could be useful.

Question 15: would it be useful to describe the meaning of the expression 'working for them (article 6, Paragraph 3) for example, to give clarification regarding people who are not employees of the issuer?

Yes, it could be useful.

Question 16: do you agree with the approach adopted regarding the criteria which trigger the duty to update insiders' lists?

See answer to Q. 10.

DISCLOSURE OF TRANSACTIONS

Questions

Question 17: is the above description for " persons discharging managerial responsibilities within an issuer" sufficient for level 2 legislation? Are there other persons that should be considered as belonging to the management of the issuer or should there be a specific restriction to persons who can assess the economic and financial situation of the company?

We think that the categories of persons listed by CESR in order to single out the "persons discharging managerial responsibilities within an issuer" are too much wide.

Thus, we suggest CESR should make reference just to the Board of Directors members as well as to the Executive Committees and Management Committees.

Question 18: is the above description sufficient for level 2 legislation? Are there other persons that should be considered as belonging to this category?

No, we do not think it is a fair description whereby it includes persons sharing the same household. Thus, we propose the following wording: "All the transactions carried out by relevant persons, by the no legally divorced spouse, by the minor children, or those carried out by interposed persons, trust or controlled companies should be considered for the purpose of that disclosure obligation".

Question 19: is the above description sufficient for level 2 legislation? Should there be a threshold concerning the disclosure obligation to the competent authority?

We think a threshold concerning disclosure obligation to the competent authority should be established. We suggest to insert a threshold of 250.000 Euro in a three-months period.

We also suggest to specify that said obligation must be complied with not after ten days from the end of the three-months period.

Question 20: is the above description sufficient for level 2 legislation? Are there any other details that should be covered on this level, for example the number of the relevant securities that the person holds after the transaction?

Yes, we think it is sufficient.

SUSPICIOUS TRANSACTIONS

Questions

Question 21: do you agree with the proposed approach?

No we do not agree with the proposed approach since it is a too generic way to deal with a so sensitive issue. We feel that a strict concept of evidence should be provided for.

Thus, we suggest CESR to be more precise in identifying the criteria for determining the notifiable transactions. It could be envisaged the insertion of yield or price or trading volume thresholds referring to single financial instrument categories so that their overcoming implies the notification obligation.

Question 22: do you think that other possibilities should be taken into account (timeframe for notification)?

We find that even this issue is dealt with a too much generic approach that we cannot agree with.

Question 23: do you think that other elements should be mentioned (in the notification)?

The list proposed by CESR seems to be quite sufficient.

Nevertheless, we suggest to remove from the details of the list the following items since they are not known by the intermediary:

- "Reason (s) why the person professionally arranging transactions suspects that this transaction, or series of transactions, might constitute insider dealing or market manipulations"
- "Capacity in which the person subject to the notification obligation operates (for own account, on behalf of a third party, ect.).

Question 24: do you think that the proposed advice is appropriate?

Even as it regards the proposed means of notification, we think CESR adopted a too generic approach that we cannot agree with.