Secrétariat

Committee of European Securities Regulators
Att. Mr. Fabrice DEMARIGNY
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Notre référence	Votre référence	Date	Page
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Concern: Comments from the Luxembourg Stock Exchange on CESR consultation paper ref: CESR/04/-505 on guidance for the Market Abuse Directive

Dear Mr. Demarigny,

We are pleased to provide our comments on one particular issue included page 14, item 4.14 of CESR's consultation document.

We would like to highlight the following remarks on the paragraph related to the dissemination of false and misleading information.

First, it is important to note that these comments are only referring to possible legal difficulties and not to opportunity views on whether or not dissemination of false and misleading information should be sanctioned. The Luxembourg Stock Exchange is committed to the highest principles of market integrity and obviously considers that issuers or other persons should not disseminate false or misleading information on the issuer's securities or on the company itself.

However, on a purely legal basis' point of view, we have some concerns on the linkage made between Article 6 (1) of Directive 2003/6/CE, creating the obligation for issuers to disclose all inside information, and the definition of market manipulation in its Article 1 (2) notably its point c).

Failure to disclose inside information as required in Article 6 (1) seems not caught by the definition of market manipulation and therefore cannot be sanctioned as a market manipulation. Such sanction regime should be autonomous and based on the non-compliance to the requirements provided for in Article 6 (1) of the said Directive. The recently adopted Transparency Directive and its sanction regime could also be the legal basis for sanctioning such wrongdoing practices.

Article 1 paragraph 2 point c) indicates 'dissemination of information through the media…… which gives….false or misleading signals **as to financial instruments**

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Point a) of item 4.14 of the CESR proposed guidance seems to extend the scope of market manipulation to dissemination of false/ misleading statements **about a company**.

We consider that there is a clear differentiation between information on financial instruments of a given issuer and information on the issuer (or company), in form but also in substance. This differentiation also results from the negotiations of the Directive itself. Article 6 (1) and Article 1 (2) c) of Directive 2003/6/CE do not use the same terminology and do not target the same objectives. Article 6(1) repeals and modernizes the requirements provided for in Articles 68 (1) and 81 (1) of Directive 2001/34/EC which were incorporated in Community legislation in 1979. These articles are neither linked to insider dealing nor to market manipulation. This differentiation on the scope of information could be found also in Directive 2003/71/EC where a prospectus can be divided in a registration document (information on the issuer) and in a securities note (information on the securities). The same reasoning is valid for the recently adopted Transparency Directive with specific information requirements related to the issuer and others related to its securities. It should also be noted that some financial instruments such as futures and options have no issuer at all (bilateral contracts) and therefore there is no possible application of Article 6 (1) but it is possible to do a market manipulation by disseminating false or misleading information on such financial instruments (rumours on future price for instance).

Therefore, this extensive interpretation of market manipulation seems arguable especially in the context of possible penal and administrative sanctions. Restrictive interpretation of legislation with penal or quasi-penal consequences should always prevail in order to avoid attempting the right of defense. We invite CESR members to be more cautious on this issue because extensive interpretation might lead to future litigations of this issue.

Yours sincerely,

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