



ASOCIACION ESPAÑOLA DE BANCA

SPANISH BANKING ASSOCIATION COMMENTS ON THIRD DRAFT RESPONSE TO SECOND SET OF CESR GUIDANCE AND INFORMATION ON THE COMMON OPERATION OF THE MARKET ABUSE DIRECTIVE (LEVEL 3).

1. Spanish Banking Association is a member of the European Banking Federation. As far as the EBF has submitted his own comments to the CESR's draft document we would like, in first place, to express our support to these observations.
2. Nevertheless, there are certain aspects of the CESR's document that arises some specific comments from our Bank members.
3. In particular, we would like to reinforce the principle of legal certainty in all Market Abuse issues and, in particular, the need of the industry of having safe harbours for normal market practices. In this sense, we would like to express our concern about the very general nature of the examples used by CESR's draft guidance when it is trying to describe what constitutes inside information. In example: the use of expressions such as "operating business performance" or "significant legal disputes", "decrease or increase in value of financial instruments in portfolio" could lead to considerer that nearly everything could be relevant information for the purpose of the implementation of the MAD.

To avoid this effect, we would like CESR's document to include some objective criteria (may be a certain percentage of the share capital) that could effectively and safely guide the companies to identify relevant information for the purposes of MAD.

4. Dealing also with the legal certainty principle, we would like to remark the idea about the importance of not imposing obligations to issuer's on the base of very general rumours which are without substance. We would like to insist in the idea of not imposing obligations in every case in which the rumours hadn't caused any effect on the market.
5. We would like also to remark the importance of a level-playing field in MAD application in the European Union. For that purpose, we strongly support the idea of a common standard in respect of the content of insider lists. We consider this common Standard more important that the system of mutual recognition for insider lists, although we recognize that the practical effect of this system could be the standardisation of the contents of insider lists in the main capital markets in Europe.

6. As far as specific aspects of the CESR's document, we would like to make some more comments, regarding the following points:

- **“Information of a precise nature”, point 1.6.** - Using a takeover bid as an example of a transaction with several stages, this paragraph states that “the fact that the proposed takeover might not in the end take place does not mean that its approach to the target company is not precise information in its own right”. This being correct, it is also important to make it clear that very preliminary stages of a take over would not in all cases constitute information relevant or precise enough to be considered inside information.
- **Point 1.8.** - This paragraph describes two different tests in order to appreciate whether information is specific enough: the judgement of a reasonable investor and the probability of the information, if known, to be exploited on the markets.

In our opinion, these two tests could lead to a contradiction, because markets include non-reasonable investors. In our view only the first test should be considered.

- **“Examples of possible inside information directly concerning the issuer”. Point 1.15.** - The list included in this paragraph is not coherent because in some cases the situations described as being inside information are qualified by using terms such as “serious”, “relevant” or “significant”, while others that would also merit similar qualification do not benefit from it.
- **Point 1.16.** - As far as in many of the cases mentioned in this item the inside information is originated by third private or public entities or bodies different from the issuer it could be advisable to encourage the importance of their responsibility when producing such information. It could be also important to remark that, in such cases, responsibility would not lay on the issuers.
- **III. When do client orders constitute inside information?** It could be useful to clarify that the behaviour of persons executing orders that constitute inside information or the participation of third parties when it is necessary for the proper execution of such orders (for instance, investors that are offered to buy shares in a “block trade”) is not restricted by inside information rules. Of course, those rules would be applicable if any of the above mentioned persons intend to use the information for purposes other than the execution of the order itself (i.e. one investor that has been contacted by the broker executing the block transmits to a third entity information about the deal, even its mere existence).