CESR The Committee of European Securities Regulations
Fabrice Demarigny, Secretary General, CESR
11-13 Avenue de Friedland
75008 Paris
France

Darmstadt, Germany - June 5, 2003

Re: CESR/03-102b
Market Abuse
Additional Level 2 Implementation Measures
Consultation Paper

Dear Sir or Madam,

Software AG is an issuer of stock in the German Prime Segment. We have participated in the German national open hearing on the consultation paper at the BAFIN in Frankfurt on May 5, 2003. We were represented by the German investor relations association DIRK - Deutscher Investor Relations Kreis e.V. as an interested party in the process of consultation which CESR has started on April 15, 2003.

We would like to comment on two sections of the draft.

Section V – Insiders' List

Comment:
While we understand the need to have available a permanent list of people who have regular access to insider information, we anticipate many difficulties in drawing up lists of potential insiders based on their involvement in certain activities that might become share-price sensitive.

Level 2 should identify the jobs that typically provide access to inside information in order to have common standards for the permanent list.

To make this manageable without causing inordinate cost for the issuers and thus for their shareholders, the definition of share-price-sensitive information has to be restricted to a limited number of major events, activities and developments.

- An acceptable level of disclosure with a proven record of feasibility would be the German regulations regarding ad-hoc public disclosure. These require such information to be based on facts rather than plans, ideas and scenarios.
- Using this definition, public disclosure is mandatory to avoid the unnecessary creation of insiders.
- Only if there is good reason for delaying the disclosure will there be a period where insiders can be created. In such a case, it would be acceptable to draw up a list of these insiders for reasons of documentation.
- Under normal circumstances, i.e., immediate disclosure of share-price-sensitive information, there would be no need for insiders' lists.
- There is a high probability that the people on supplementary lists will be the ones already covered by the permanent list.

If the new regulations ask for a wider definition of the insider information mandatory for disclosure, it ought to be sufficient to draw up lists after the fact upon specific request, for instance if an official insider investigation is initiated. This is because it is practically impossible to monitor all people who have access to the business plans of new products under development, sales people who gain first-hand information about customer acceptance of the issuer's offerings or the competition's offerings or information about the business development of competitors collected from outside sources. This would ultimately require a list of all employees to be drawn up, because they all could theoretically become insiders by accident.

- The creation of lists after the fact refers primarily to situations in which the trail must be traced back to those who gained access to information at an early stage where said information later became share-price sensitive and required disclosure.
- Issuers have set up internal reporting principles that allow them the timely collection of information that is considered price sensitive. This reporting may then also include a list of informed personnel.
- Any requirement to draw up lists prior to the stage where information that has emerged as price sensitive is reported would force issuers into conflict with the law, because they cannot fully manage and control earlier stages of information development.
- The result of such inappropriate requirements would be a collective rejection of the new regulations on fair disclosure – the opposite of the intended effect.

Answers to Questions:

Question 10:
Answer: Not in general. Such lists should be mandatory only if the matter or event has major significance. The current definition of issues that are relevant for ad-hoc publication according to German regulations would be used to determine potential impact.

A list of jobs – including those that are outside the issuer's organization – that typically provide access to inside information would be helpful.

Questions 11, 12, 14 and 15:
Answer: Yes.

Question 13
Answer: A list of permanent insiders would be very useful. As a matter of fact, it would be preferable to restrict the obligation to draw up lists to this list only. The people on the permanent list are most likely those who are involved in relevant insider issues.

Question 16
Answer: Yes for a permanent list. No for supplementary lists because of the difficulty of monitoring them in due time and because of unjustified bureaucracy.

Section VI Disclosure of Transactions

Question 17
Answer: In Germany, transactions executed by the issuer's directors or close family members must be disclosed already. To extend this group to include other managers could end up distorting the concise information provided through the current regulations.

- The more people report, the lower the level of transparency for the capital market.
- Lower-level managers could be less financially independent than board members and base their investment decision to a greater extent on personal financial needs than on their expectation of stock performance.
- If the documentation requirement were to be extended to managers with potential access to insider information, third parties with access to such information – including auditors, agencies and consultants – would also have to be added.
- In such cases, the permanent insiders' list of the issuer should be the applicable base group of personnel required to disclose transactions.
- Potential insiders would be informed of their reporting duty when they are added to or taken off the permanent list.

Question 18
Answer: Yes, more than sufficient; no other persons to be considered.

Question 19
Answer: Yes, but there should be a threshold of 25 k€ within 30 days or 100 k€ within one year.

Question 20
Answer: The description is sufficient. No further disclosures necessary.

Final Comment
In general, we favor restricted handling of disclosure and listing of potential insiders because the flood of information already on the market is a problem. Individual market participants cannot identify major share-price-sensitive information without the

help of third parties. This puts an extra cost burden onto the retail investor and creates an asymmetry in the market in favor of large organizations that can afford the expenses for market monitoring and analysis.

We are convinced that the limitation of disclosure to truly important issues (based on facts) would help to restore and maintain fair market conditions for all participants.

Yours sincerely,

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