

Mr Fabrice Demarigny
The Committee of European Securities Regulators
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And to: secretariat@europesefco.org

The Hague, June 13, 2003
Our ref.: \\ndhg01\advocatuur\063\10712704\market abuse\b005e-063demarigny.doc\jis

Dear Mr Demarigny,

Re: Market Abuse - second set of implementing measures

The Dutch Association of Listed Companies ("VEUO") is glad to be able to respond to certain aspects of CESR's consultation paper on its proposed advice to the European Commission regarding a second set of technical implementing measures for the Directive on Insider Dealing and Market Manipulation. The VEUO limits its response to Insiders' list and Disclosure of transactions.

Insiders' Lists

Question 10: Most issuers would prefer to draw up a permanent list of persons who may have access to inside information and if access to relevant inside information is limited to persons on such permanent list, it would not be useful and indeed unnecessarily expensive and inefficient to draw up and keep updated a separate list for each matter or event when it becomes inside information.

If other persons than those on the permanent list receive access to a matter or event which constitute inside information, it may be useful to establish a separate list for such matter or event.

It should be noted that when issuers use a permanent list it would be wrong for the competent authorities to assume that they have per se access to inside information relating to a specific matter or event. The text of paragraph 52 should be rewritten as it seems to suggest that a person on the list is deemed by the competent authorities to have access to inside information. In case of a permanent list this assumption is incorrect. In the case of a separate list for a separate matter or event the assumption may also be incorrect and in any event the burden of proving the possession of inside information must remain with the regulatory authority. In any event there should be a presumption that a person was not in possession of inside information if he acted with prior approval of a compliance officer or, if he is on a permanent list, acted within a "window" permitted by a compliance officer of the issuer.

It would be desirable that the minimum content of the list be specified at level 2, but level 2 should not require that the list should specify the persons on the list by name. It would be sufficient that persons are identified by function or department. For example, it should be possible for the list to identify: all persons working in the legal department at the offices in X rather than specifying the names of all persons working in such department.

Question 12: It may be helpful if level 2 would give examples of those persons acting on behalf of or for the account of the issuers who should be required to draw up a list, provided that level 2 only identifies by way of example those persons that fall within the definition of article 6 paragraph 3 of the Directive. The examples given in paragraph 62 includes persons which can not be said to act on behalf of or for the account of an issuer.

Question 13: Drawing up a list of permanent insiders would be useful, provided that there is no assumption that they are per se in possession of inside information. It would be undesirable to identify the jobs which typically provide access to inside information, considering the great differences in the organisational structures within companies.

Question 14: It would not be useful to further develop at level 3 the "illustrative system" outlined.

Question 15: It would be useful to describe the meaning of the expression "working for them" in regard of people who are not employees of the issuer. It would be useful to draw up a list of examples of the persons who "otherwise" work for the issuer and not by way of employment.

Question 16: We agree with the approach adopted regarding the criteria which trigger the duty to update insiders' lists, but would prefer that this be done "on a regular basis" rather than "on a continues basis". Consideration should be given to the possibility that different rules apply to the "updating" of permanent lists and "event" lists. It would seem sufficient for the permanent list to be updated only in the event of a change of function of persons concerned.

Disclosure of transactions

Question 17: The description for "persons discharging managerial responsibilities within an issuer" as

proposed in paragraph 73 is too broad. In the two tier board system only the members of the executive board have managerial responsibilities within the issuer. The members of the supervisory board have no managerial responsibilities. It would be contrary to the text of the Directive to include members of the supervisory bodies of the issuers as persons discharging managerial responsibilities. In addition, senior managers who are not necessarily members of the board could not be included as ultimate responsibility for management does not vest in such persons. In addition, it would be confusing and maybe even impossible to identify the level of management below board level that would fall within the scope of the Directive.

Question 18: The description of persons closely associated in paragraph 75 is sufficient for level 2 legislation.

Question 19: We regret the statement by CESR's - in paragraph 76 - that in its view level 1 and the mandate do not provide the possibility of exemptions, e.g. for transactions under safe harbours or transactions in connection with stock options. This statement appears to be based on an interpretation of article 6 paragraph 10 5th indent, which interpretation ignores the fact that the Commission shall adopt implementing measures concerning the characteristics of a transaction, including its size. The proposed advice of CESR now focuses only on size and incorrectly does not focus on the characteristics of a transaction. There are many transactions which by the very nature of their characteristics do not violate the principles of the Directive. For example, any transaction between a person discharging managerial responsibilities and his or her associated persons, transactions without consideration (such as donations), transactions which are the result of the division of an estate of a deceased or the division or creation of matrimonial properties should not be reportable. In our opinion CESR should take into account these transactions and draw up a list of examples of those transactions which need not be disclosed by way of their characteristics.

The proposed advice that the disclosure obligation should cover all transactions should therefore be amended.

It would be desirable to include a threshold concerning the disclosure obligation.

It would also be helpful if CESR could confirm that transactions which do not fall within the prohibition of article 2 pursuant to article 2 paragraph 3 - i.e. transactions which are carried out to comply with an existing obligations - are not reportable.

Question 20: Paragraph 78 states that the "Competent Authority" should be the competent authority in all the Member States in which the issuer has requested or has had approved the admission to trading of their financial instruments on a regulated market. Since article 6 paragraph 4 of the Directive clarifies that a notification need to be made to "the competent authority" and not to "the competent authorities" level 2 should clarify that only one notification to one competent authority is required. It will be useful to clarify that this is the competent authority of the home state of the issuer, if the issuer is established within the European Union.

A notification within two working days is difficult to achieve and does not serve a reasonable purpose. Notification within five working days from the moment that the person becomes aware of the transaction should be sufficient.

The notification need not specify the address of the person giving the notification.

The Directive does not seem to give a basis for a requirement that the number of the relevant securities that the person holds after the transaction be disclosed.

Yours sincerely,

S.E. Eisma
General Secretary