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Zentraler Kreditausschuss[1]:

Comments Regarding Level 3 – Second Set of CESR Guidance and Information on the Common Operation of the Directive to the Market

(CESR/06-562)

2 February 2007

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The ZKA is the joint committee operated by the central associations of the German banking industry. These associations are the Bundesverband der Deutschen Volksbanken und Raiffeisenbanken (BVR), for the cooperative banks, the Bundesverband deutscher Banken (BdB), for the private commercial banks, the Bundesverband Öffentlicher Banken Deutschlands (VÖB), for the public-sector banks, the Deutscher Sparkassen- und Giroverband (DSGV), for the savings banks financial group, and the Verband deutscher Pfandbriefbanken (VdP), for the mortgage banks. Collectively, they represent more than 2300 banks.

General Comments

The Zentraler Kreditausschuss (ZKA) would like to thank you for this opportunity to comment on “Level 3 - second set of CESR guidance and information on the common operation of the Market Abuse Directive to the market“.

In general, we consider the guidance presented in the consultation paper to be balanced and appropriate. This applies in particular to the definition of inside information and the distinction between insider information and rumours. We welcome the assessment that, except under extraordinary circumstances or in response to authorities’ requests, issuers are not under obligation to react to rumours which are without substance. We are furthermore convinced of the appropriateness of the elaborate explanations regarding the concept of “information likely to have a significant price effect”.

For those issuers whose securities are admitted for trading in different European countries, one would hope that the CESR’s recommendations to the supervisory authorities, namely that the respective authority should allow insider lists that said issuers have compiled according to the laws of their country of origin, will be heeded in practice. However, beyond this hope, we would welcome the CESR’s consistent application of the “mutual recognition“ principle to all situations in which credit institutions and other issuers’ service providers are under obligation to maintain insider lists: the parallel application of different national regulations pertaining to the obligation to maintain lists, which would otherwise be necessary, should be avoided at all costs (cp. 2. below).

In the case of spot markets for goods, especially in the fields of electricity, gas, coal and emission certificates, a significant information imbalance frequently exists between those market players who are associated with producers and those who are trading. This situation creates the potential for market abuse. As a consequence, we would like to suggest examining whether, and if so which, regulatory precautions should be adopted in order to prevent abuse on these markets.

Beyond these points, we currently do not see any need for further regulations or amendments of European market abuse legislation, especially given the complex imminent adjustments in the context of national transposition of the Markets in Financial Instruments Directive.

1. Examples of Possible Inside Information Directly Concerning the Issuer

Point 1.15 lists potential cases of insider information. The last indent includes not only the amount of the dividend (which we agree with) but also the dividend payment date and the ex-dividend date.

This interpretation is irreconcilable with general practice in Germany. As a consequence of the above interpretation, if the dividend payment date is based on the date of the general shareholders' meeting of the respective company (as is usual practice), the date of the general meeting itself would constitute insider information. We firmly object to such automatism: the publication of an ad-hoc announcement of the dates of general shareholders' meetings, which would thus become necessary, would constitute formalism and would devalue the importance of ad-hoc publications as an institution to disseminate "genuine" confidential company information that may affect prices. The only exception consists of the announcements of dividends that are distributed outside the regular schedule, e.g. extra dividends.

2. Insider lists (para. 4.1 - 4.7)

While we support fully the "mutual recognition" solution of insider lists CESR proposes, we have doubts at the moment whether CESR is already on that route for *banks*.

Indeed, CESR discusses a mutual recognition of insider lists for *issuers*. That would help as long as a bank is also an issuer. But it would not help a bank in its position as an agent for a client-issuer. In my view CESR expresses that banks acting as agents for issuers have to follow the rules applying to such an issuer. That would have the effect that banks would have to obey a multitude of different interpretations of the law: 1. as an issuer of securities of its own right, 2. as an agent for client A applying the law of member state A, 3. as an agent for client B applying the law of member state B and so forth. In order to avoid such an accumulation of obligations to maintain insider lists in accordance with the various Member States' regulations, we would welcome an extension of the CESR's mutual recognition approach to cover both the above cases and comparable cases.

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