



Date: 27 March 2002
Ref.: CESR/02-047

POSSIBLE IMPLEMENTING MEASURE ON MARKET ABUSE REQUEST FOR ADVICE AND CALL FOR EVIDENCE

Background:

On Wednesday 27 of March 2002, the European Commission published its requests to CESR for advice on technical implementing measures under the draft Directive on Insider Dealing and Market Manipulation (Market Abuse). CESR has been asked to deliver its advice by December 2002. The request for advice is attached.

To this end, CESR has set up an Expert Group on Market Abuse, chaired by Pr. Stavros Thomadakis, Chairman of the Hellenic Capital Markets Commission. Mr Nigel Phipps, member of the CESR Secretariat will support the group.

Call for evidence:

In releasing these requests for technical advice, CESR is inviting all interested parties to submit views as to what CESR should consider in its advice to the European Commission. All contributions should be addressed to Mr Fabrice Demarigny, Secretary General, CESR, 17 Place de la Bourse, 75082 Paris Cedex 02, France or by email to fdemarigny@europefesco.org by Friday 26 April 2002.

Timetable:

In order to meet the Commission's deadline of December 2002, the provisional timetable for the work that CESR will be undertaking in response to the request from the European Commission, is as follows:

- Call for evidence - March 2002
- First contributions to be received by 26 April 2002
- Publication of a first consultation paper - by end June 2002
- First consultation to close - on 30 September 2002
- Final paper to be signed off by CESR in December 2002.

NB: Depending on the outcome of the first consultation, CESR might hold a short second consultation and/or an open meeting in November 2002.

Previous papers published by CESR (or FESCO) in this area:

- Stabilisation and Allotment, a European Supervisory Approach – April 2002 - (Ref. CESR/02-020b)
- Measures to promote Market Integrity – February 2002 - (Ref. CESR/01-052h)
- A European Regime Against Market Abuse – September 2000 - (Ref. FESCO/00-096l)



EUROPEAN COMMISSION
Internal Market DG

Brussels, 18 March 2002
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Orig.

Provisional Request for Technical Advice on Possible Implementing Measures on the future Directive on Insider Dealing and Market Manipulation (Market Abuse)

In its Resolution on more effective securities market regulation, the Stockholm European Council called for rapid implementation of the prioritised Financial Services Action Plan, in order to achieve an integrated securities market **by the end of 2003**, including notably the priorities set out in the Lamfalussy Report.

To meet this challenge, the European Council not only endorsed the proposed four-level approach (essential principles, implementing measures, co-operation and enforcement), it also welcomed the proposed establishment of an independent Regulators Committee (CESR) to act as an advisory group to assist the Commission in its preparation of draft implementing measures.

If the deadline of 2003 is to be met, this means not only Directives being adopted before this deadline, but the technical implementing measures as well. If this is to be achieved, it will mean beginning the groundwork now.

This is one of the two first provisional requests for technical advice from DG Internal Market to CESR and follows the recent agreement on implementing the Lamfalussy recommendations reached with the European Parliament on 5 February 2002. In this agreement, the Commission committed itself to a number of important points including on transparency. For this reason, this request for technical advice will be made available on DG Internal Market's web site once it has been sent to CESR.

This request for technical advice to CESR does not prejudice in any way the discussions in the Council and the European Parliament on the final split between Level 1 "principles" and Level 2 "implementing measures". The formal mandates will be sent to CESR once the directive has been adopted by the European Parliament and Council.



1. The working approach agreed between DG Internal Market and the European Securities Committee

On 5 December 2001, DG Internal Market consulted the European Securities Committee on a draft request for technical advice. At that meeting, it was agreed that DG Internal Market would request technical advice on certain priority issues, and that CESR should immediately start the groundwork on these to meet the 2003 deadline set by the Stockholm Resolution. The meeting agreed that this request should be based on the following approach:

- CESR should take account of the principles set out in the Lamfalussy Report and mentioned in the Stockholm Resolution of 23 March 2001.
- The beginning of work on certain aspects of technical advice within CESR shall not, in any way, prejudice the outcome of the discussions between the European Parliament and Council. The request for technical advice does not cover Level 1 issues at any stage.
- CESR should start work on the basis of the Commission's proposal on Insider Dealing and Market Manipulation (Market Abuse – COM/2001/281 final of 30 May 2001), but also take full account of developments in the Council and Parliament. For this purpose, the Commission representative attending meetings of CESR or its working parties will regularly inform CESR of any such developments.
- The Commission itself will not issue formal mandates until the final adoption of the Directive on market abuse in the Council and Parliament.
- The technical advice given by CESR will not take the form of legal texts.

In addition, DG Internal Market invites CESR to take account of the European Parliament's Resolution on the implementation of financial services legislation of 5 February 2002 and of the Commission's formal declaration in response.

2. The Principles on Consultation of the Public that CESR should take account of

The Stockholm European Council endorsed the Lamfalussy recommendations on consultation and transparency. In particular, it invited the Commission to make use of early, broad and systematic consultation with the institutions and all interested parties in the securities area, especially by strengthening its dialogue with consumers and market practitioners. It also stated that CESR should "*consult extensively, in an open and transparent manner, as set out in the final report of the Committee of Wise Men and should have the confidence of market participants*".

Article 5 of the Commission Decision establishing the CESR provides that "*before transmitting its opinion to the Commission, the Committee [CESR] shall consult extensively and at the early stage with market participants, consumers and end-users in an open and transparent manner*".



DG Internal Market therefore welcomes CESR's recent public statement on its own consultation practices. In addition, DG Internal Market would endorse the setting up of a panel composed of market participants and other investors with CESR. In this respect, DG Internal Market also draws CESR's attention to the European Parliament Resolution on the implementation of financial services legislation, and the Commission's formal Declaration in response.

DG Internal Market will ensure that the Stockholm European Council recommendations on consultation have been fully met. In particular it will satisfy itself that CESR has consulted all interested parties on its technical advice in accordance with the CESR Public Statement of Consultation Practices.

3. CESR is invited to provide advice on the following priority issues by 31 december 2002 at the latest:

3.1. The definitions of 'Inside information', 'Market manipulation' and 'Financial instrument' (Article 1 of the proposed Directive)

In order to take account of developments on financial markets and ensure uniform application of the Directive in the Community, DG Internal Market requests CESR to provide technical advice on possible draft implementing measures on these definitions. Such measures shall not alter the substance of the definitions contained in Article 1:

(1) Implementing measures on the definition of 'Inside information':

The possible draft implementing measures should take account of:

- factors which need to be taken into account in deciding whether and when a piece of information is of a precise nature;
- factors which need to be taken into account in deciding whether a piece of information relates to one or more issuers of financial instruments or to one or more financial instruments;
- factors which need to be taken into account in deciding whether and when a piece of information would be likely to have a significant effect on the price of those financial instruments;
- factors which need to be taken into account in deciding which related derivative financial instruments should be covered by the definition.

(2) Implementing measures on the definition of 'Market manipulation':

The possible draft implementing measures should take account of:

- factors which need to be taken into account in deciding whether and when a transaction or an order to trade gives or is likely to give false or misleading signals as to the supply, demand or price of financial instruments;

- factors which need to be taken into account in deciding whether and when a transaction or an order to trade secures the price of one or several financial instruments at an abnormal or artificial level;
- factors which need to be taken into account in deciding whether and when a transaction or an order to trade employs fictitious devices or any other form of deception or contrivance.

(3) *Implementing measures on the definition of 'Financial Instrument':*

The possible draft implementing measures should specify which existing products would fall within the list of financial instruments..

3.2. *Technical methods and procedures for appropriate public disclosure of inside information and for fair presentation of research and other relevant information (Article 6 (6) of the proposed Directive)*

DG Internal Market requests CESR to provide technical advice on possible draft implementing measures on the following aspects of:

(1) *Appropriate public disclosure of inside information by issuers:*

The possible draft implementing measures should take account of:

- the criteria for when information should be regarded as having been publicly disclosed;
- the appropriate channels for disclosure;
- the technical factors which need to be taken into account in determining whether a disclosure is complete, immediate or prompt and not misleading;
- factors to be taken into account in determining whether a disclosure of inside information has occurred as soon as possible;
- factors to be taken into account when delaying the publication of inside information.

(2) *Fair presentation of research and other relevant information:*

The possible draft implementing measures should take account of:

- factors on how research and other relevant information depending on the profession concerned are to be presented;
- factors on what would require the disclosure of particular interests or conflicts of interest.

3.3. *Technical conditions under which trading in own shares in ‘buy back’ programmes and stabilisation will be allowed during an initial or secondary public offer (Article 8 of the proposed Directive)*

DG Internal Market requests CESR to provide technical advice on possible draft technical conditions on:

(1) Standards for trading in own shares in ‘buy back’ programmes:

The draft standards should take account of:

- developing criteria on how ‘buy back’ activities should be undertaken;
- different types of markets (e.g. depending on the market, different limits for maximum market volume share accepted for buying shares through ‘buy back’ programmes);
- the maximum proportion of share capital accepted for trading in own shares in ‘buy back’ programmes;
- disclosure requirements (disclosure to the public and to competent authorities);
- trade restrictions (e.g. prohibited limited periods before public disclosure of annual reports or of inside information).

(2) Standards for stabilising a financial instrument in an initial or secondary public offer:

The draft standards should take account of:

- the need to identify the conditions under which stabilisation is allowed, taking into account the different types of markets, in particular the time period during which stabilisation should be allowed, and the price limits for stabilisation activity;
- disclosure requirements (disclosure to the public and to competent authorities).
