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Press release
CESR releases 2nd set of Guidance on the Operation of the Market Abuse Directive

CESR today published its second set of guidance on the implementation of the Market Abuse Directive (Ref. CESR/06-562b). In this guidance CESR has developed a common understanding amongst its Members regarding treatment of the following aspects of the Directive and associated issues concerning market abuse:

- What constitutes inside information?

The guidance in this context gives: further clarification on ‘information of a precise nature’ (a term used in the Directive); further guidance on making information public; amplifies what is meant by the concept ‘information likely to have a significant price effect’; and provides a non-exhaustive list of indicative types of events or information which may constitute inside information; (See Section I of Document)

- When is it legitimate to delay the disclosure of inside information?

The guidance provides illustrative examples of the two circumstances where the Directive generally recognises a potential legitimate delay of disclosure of insider information (for example ‘negotiations in course’ and ‘decisions taken which need the approval of another body’). Depending on the circumstances of the specific case in question, a delay can be legitimate where there are confidentiality constraints relating to competitive situations; or product development or selling of major holdings in another issuer that could be jeopardised by disclosure; (See Section II of Document)

- When does information relating to a client's pending orders constitute inside information?

This section of the guidance covers what can be defined as a client’s pending order and includes factors to be used in an assessment of when inside information would be involved; in particular it provides further specification of the terms ‘price sensitivity’ and ‘precise nature’; (See Section III of Document)

- Insider lists in multiple jurisdictions:

To reduce the burdens on issuers that are subject to the jurisdiction of more than one EEA Member State with respect to insider list requirements, CESR is recommending that the relevant competent authorities recognise insider lists prepared according to the requirements of the Member State where the issuer in question has its registered office, thus leading to a mutual recognition system. (See Section IV of Document)

In December 2005, CESR mandated CESR-Pol to carry out an evaluation of the supervisory functioning of the Market Abuse Directive and a second phase of market-facing Level 3 work in respect of the Market Abuse Directive. A draft second set of guidance was published for European-wide consultation on 2 November 2006 (Ref. CESR/06-562). The draft guidance has been revised to take account of comments made in the consultation exercise and, following approval of the CESR, is now published in its final form. A Feedback Statement on the consultation exercise (Ref. CESR/07-402) is also published today.



Where relevant, CESR has taken into account the advice provided by CESR to the European Commission in framing the implementing measures for the Directive. The European Commission has also been consulted in development of the guidance and its comments taken into account.

Preparation of the guidance has been undertaken by CESR-Pol. The permanent operational group CESR-Pol is chaired by Mr Kurt Pribil, Chairman of the Austrian Finanzmarktaufsicht (FMA) and developed in particular by a Sub-Group chaired by Mr Dilwyn Griffiths, Head of Market Monitoring of the Financial Services Authority (FSA) of the United Kingdom.



Notes for Editors:

1. CESR is an independent Committee of European Securities Regulators. The role of the Committee is to:
 - Improve co-ordination among securities regulators;
 - Act as an advisory group to assist the EU Commission, in particular in its preparation of draft implementing measures in the field of securities;
 - Work to ensure more consistent and timely day to day implementation of community legislation in the Member States.
 - The Committee was established under the terms of the European Commission's decision of 6 June 2001 (2001/1501/EC). It is one of the two committees envisaged in the Final Report of the Group of Wise Men on the regulation of European securities markets. Baron Alexandre Lamfalussy chaired this group. The report itself was endorsed by the European Council and the European Parliament. The relevant documents are available on the CESR website.

2. Each Member State of the European Union has one member in the Committee. The members are nominated by the Member States and are the heads of the national public authorities competent in the field of securities. The European Commission has nominated the Director General of the DG Market, as its representative. Furthermore, the securities authorities of Norway and Iceland are also represented at a senior level.

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