

Milan, 31st October 2006
Prot. 130/06/GG/mco

CESR
11-13 Avenue de Friedland
75008 Paris
France

Re: ASSOSIM's remarks on CESR's Call for evidence – Evaluation of the Supervisory Functioning of the EU Market Abuse Regime.

ASSOSIM¹ welcomes the opportunity to express its views on the subject of this call for evidence.

We believe that the work CESR is carrying out to set the ground for convergent implementation and application of the Market Abuse Regime is of outmost importance. The third level of the Lamfalussy process is a key moment for the functioning of the entire process - a lack of convergent implementation would nullify the efforts so far carried out at the previous levels.

Assosim's members showed a great interest in this consultation and took it as an opportunity to compare their experience under the new legislation. What arose during our meetings was still a certain level of uncertainty among intermediaries on the way to being compliant with the relevant provisions, in particular as regards the obligation of notification of suspicious transactions. At all the different stages of the consultation conducted on this piece of legislation, ASSOSIM expressed concerns regarding such an obligation. Assosim's members still point out that they do not have the appropriate perspective for complying with the duty imposed upon them.

We regret that the obligation to report suspicious transactions is not on the agenda anymore in that we consider it necessary to find a way to make this discipline workable for the industry. In the light of a costs benefit analysis, intermediaries should not be asked to put in place unnecessarily expensive and complex systems and procedures to be compliant with the legislation.

Market intermediaries are indeed in a position to give an important and decisive contribution to competent authorities and markets in the detection of market abuses. They should not, however, be required to duplicate controls and procedures which are currently the responsibility of these authorities and regulated markets. Their contribution to market integrity should complement rather than duplicate surveillance activities carried out by the latter. As a matter of fact, intermediaries are required to

¹ ASSOSIM (*Associazione Italiana Intermediari Mobiliari*) is the Italian Association of Financial Intermediaries, which represents the majority of financial intermediaries acting in the Italian Markets. ASSOSIM has nearly 80 members represented by banks, investment firms, branches of foreign brokerage houses, active in the Investment Services Industry, mostly in primary and secondary markets of equities, bonds and derivatives, for some 82% of the total trading volume.

ASSOSIM

collect and make use of a good deal of information which is not available to competent authorities and market managers on an ordinary basis. Within this limit, they might intervene in the supervisory process in order to trace suspicious transactions which would not otherwise be detectable on the basis of the information available to competent authorities and market managers. On the other hand, there would be no use for intermediaries to monitor market data in order to detect transactions which give rise for instance to anomalous price movements - such a control would normally duplicate supervisory responsibilities under Articles 6(6) and 11 of the Market Abuse directive. And they would not be able to replicate such controls without having to bear the (unnecessary) costs related to the acquisition, storage and processing of the relevant market data.

Accordingly, competent authorities within CESR should acknowledge the differences in the different kind of contributions that the various entities involved in the detection of market abuses may give, in the light of the specific perspective each one of them has on the market events.

Moreover, it should be stressed that any obligation on intermediaries needs to be tailored to their actual size and the complexity of the activities carried out. Neither should it be made mandatory the adoption of technological systems for this specific purpose. As recognised by CESR in its paper "Level 3 – preliminary CESR guidance and information on the common operation of the Directive" (January 2005), *"the Directive and its implementing measures do not deal with the steps which those persons subject to this requirement need to take to identify such transactions"*.

To conclude, our perception is that the application of the obligation of notification of suspicious transactions differs across Europe. In our view this is an issue in which the convergence in the supervisory activity should be fostered in order to guarantee a level playing field for intermediaries.

We remain at your disposal for any further clarification you should require.

Yours sincerely


Il Segretario Generale
Gabriella Gugliotta