



Date: 22 November 2007
Ref: CESR/07-762

PRESS RELEASE

CESR identifies the Administrative Measures and Sanctions as well as the Criminal Sanctions available in Member States under the Market Abuse Directive (MAD)

CESR publishes today a Report on Administrative Measures and Sanctions as well as on Criminal Sanctions following the entry into force of the Market Abuse Directive (MAD 2003/6/EC). The purpose of this report is to inform the EU Institutions and market participants about the different legal frameworks to apply sanctions and administrative measures across the EU.

The “Report on Administrative Measures and Sanctions available in Member States under the MAD” consists of a compilation of the responses provided by all the CESR’s Members on the legal tools available nationally, to enforce infringements of the requirements set out in the Directive.

The MAD required Member States

‘to ensure, in conformity with their national law, that the appropriate administrative measures can be taken or administrative sanctions be imposed against the persons responsible where the provisions adopted in the implementation of this Directive have not been complied with. Member States shall ensure that these measures are effective, proportionate and dissuasive’ (Article 14 para.1).

According to the MAD provisions it is left to the national discretion of Member States to decide on the amount of pecuniary fines and the types of administrative measures applicable on Market Abuse cases. Furthermore, the Member States may also introduce criminal sanctions on Market Abuse cases.

The report published today, is therefore of a fact-finding nature and sets out the situation in each Member State, as of 17 October 2007. The accuracy of the responses is the sole responsibility of each CESR Member.

The Report does not seek to analyse differences or to draw any conclusions on the impact of differences, nevertheless, a broad range of sanctions within Europe can be identified. These include the ability to administer fines; force imprisonment; withdraw licenses; disgorge profits; require settlements amongst others. CESR notes that the differences that exist are largely due to the fact that Members States’ legal systems differ, and that the division of responsibilities between competent authorities in each Member State, in relation to the investigation of cases and subsequent enforcement of national law, may also vary. Due to the size of the document, CESR would like to do further work to summarise the reports content in an overview format and this will be published subsequently on CESR’s website.

Today’s report should also be seen in the context of CESR’s efforts to monitor the extent of equivalence of supervisory powers across Europe, under the Market Abuse Directive. On 21 June 2007, CESR published a correspondence table on the Market Abuse Directive (Ref. CESR/07-382). This illustrated through a tick box approach what supervisory powers CESR Members hold and how they are exercised. Furthermore in a report which includes an executive summary, CESR described its members’ supervisory powers under the Market Abuse Directive and the relevant implementing measures (Ref.CESR/07-380). The report not only assessed the attribution of the powers to CESR Members, but also considered the ability to issue practical rules; the general powers provided to CESR Members to apply the Directives; the co-operation powers of each Member and an assessment of supervisory practices. An overview report (Ref. CESR /07-334) which included a high level analysis of the findings in relation to both MAD and the Prospectus Directive, was also submitted to the FSC, alongside the detailed findings on the MAD itself.



Background on the development of the Report:

The development of the Report published today, followed what was initially an internal mapping exercise undertaken in 2005 by CESR Members through its operational working group for co-operation and enforcement (CESR-Pol). The internal mapping exercise sought to identify powers and sanctions in the area of market abuse to inform and assist the development of supervisors' understanding of each others systems.

As a result of this initial work, CESR recommended that the European Commission draw up a list of administrative measures and sanctions available to Member States under the MAD to achieve more transparency. In March 2007, the European Commission requested CESR to assist in setting up, for information purposes, a list of administrative sanctions and measures as well as of criminal sanctions under the MAD, in order to facilitate effective implementation and application of the Directive. A copy of the Commission's letter requesting CESR to undertake this fact-finding exercise is included in the report (p 4-5).



Notes for Editors:

1. CESR-Pol is a permanent operational group within CESR. It is made up of senior officials, from each CESR Member, who are responsible for the surveillance of securities activities and the exchange of information. CESR-Pol's purpose is to facilitate effective, efficient and pro-active sharing of information, in order to enhance cooperation upon, and the co-ordination of, surveillance and enforcement activities between CESR members. CESR-Pol's key objective is to make information flow across borders between CESR Members as rapidly as it would be internally and, by so doing, to enhance the transparency, the fairness and the integrity of European markets as a whole. The ability of CESR-Pol Members to co-operate in the field of enforcement has been established by their signature of the CESR multilateral Memorandum of Understanding on the Exchange of Information and Surveillance of Securities Activities (MoU) in January 1999.

Kurt Pribil, Chief Executive Officer of the Austrian Financial Market Authority (FMA) was appointed Chairman of CESR-Pol in September 2003. The group's work is supported by a member of the CESR secretariat, Angie Reeh-Schild. Eleftheria Apostolidou from the Hellenic Capital Market Commission acted as co-ordinator of the Drafting Group of CESR-Pol on MAD preparing this report on the list of administrative measures and sanctions as well as of criminal sanctions applicable under the MAD.

Background on the Market Abuse Directive and its development under the Lamfalussy Process:

2. The Market Abuse Directive (2003/6/EC) "MAD", which is a key directive of the Financial Services Action Plan (FSAP) was set up to achieve a harmonized legal environment for all financial markets within the European Economic Area and came into effect on 12 October 2004. The implementation of the MAD results in an EU-wide market abuse regime.

The MAD was the first European Directive to be adopted following the introduction of the Lamfalussy procedure which established a four level legislative procedure intended to speed up the law setting and application process within Europe.

Level 1: The Market Abuse Directive (2003/6/EC) defines what behaviour is considered as market abuse, namely insider dealing and market manipulation. There is a separate description of inside information for the commodity derivative markets. The MAD applies to any financial instrument admitted to trading on a regulated market, or those where a request for admission to trading has been made.

The Directive stipulates several preventative measures aimed at reducing the incidence of market abuse. The preventative measures cover the disclosure and handling of inside information by issuers and also oblige issuers and their advisers to maintain insiders' lists. It requires directors and senior management to disclose dealings in their own company's shares to the market and obliges firms to report suspicious transactions to the competent authority. The MAD also includes a requirement for those producing or disseminating research reports to disclose conflicts of interest. MAD provides two so called safe harbours which permit market activities that might otherwise be considered as market abuse – these are for share buy-backs and stabilisation of financial instruments.

Level 2: CESR provided the European Commission with a Level 2 Advice for technical measures in August 2003 which the Commission adopted by releasing the following three Commission Directives and one regulation:

- Commission Directive 2003/124/EC implementing MAD as regards the definition and public disclosure of inside information and the definition of market manipulation.
- Commission Directive 2003/125/EC implementing MAD as regards the fair presentation of investment recommendations and the disclosure of conflicts of interest.
- Commission Directive 2004/72/EC implementing MAD as regards accepted market practices, the definition of inside information in relation to derivatives on commodities,



the drawing up of lists of insiders, the notification of managers' transactions and the notification of suspicious transactions.

- Commission Regulation (EC) No 2273/2003 implementing MAD as regards exemptions for buy-back programmes and stabilisation of financial instruments.

At Level 3, the level of the Lamfalussy procedure where competent authorities set up guidelines for a convergent treatment of the provisions of financial service directives, CESR released in May 2005 the publicly consulted "First set of CESR guidance and information on the common operation of the Directive" (Ref. CESR/04-505b) providing guidance on the application of MAD as regards "Accepted Market Practices", short AMPs, including formats for the publication of AMPs and the notification of suspicious transactions.

A "Second set of CESR guidance and information on the common operation of the Directive" was published on 12 July 2007 (Ref. CESR/06-562b) providing assistance for the assessment of

- What constitutes inside information?
- When is it legitimate to delay the disclosure of inside information?
- When are client orders inside information?, and on
- Insider lists in multiple jurisdictions where CESR members recommended that Competent Authorities recognize an insider list that is maintained in accordance with the rules of another CESR member.

A work programme (Ref. CESR/07-416) identifying further areas for guidance where appropriate has been published on 26 July 2007. Following the input provided market participants on the Call for Evidence (Re. CESR/06-078) CESR launched after 1 ½ years of the existence of the Directive to consult with the public to hear views and experiences, benefits and eventually problems, with the new market abuse regime in Europe and internal review exercises the following issues are considered as being of highest priority:

- Harmonisation of requirements for insiders lists;
- Suspicious Transactions Reporting;
- Stabilisation Regime;
- The twofold notion of inside information.

3. 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).

4. 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, chaired by Baron Alexandre Lamfalussy. The report itself was endorsed by the European Council and the European Parliament. The relevant documents are available on CESR's website.

5. Each Member State of the European Union has one Member on 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.

6. For further information please contact:

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