

MARKET ABUSE ADDITIONAL LEVEL 2 IMPLEMENTING MEASURES CESR CONSULTATION PAPER, APRIL 2003. ABI RESPONSE

1 GENERAL COMMENTS

- 1.1 The members of the Association of British Insurers (ABI) in total manage investments of over £1000bn (€1400bn) spread over all asset classes on behalf of millions of policy holders and savers. Though predominantly in Sterling (to match the principal liabilities) this portfolio is invested through many financial markets both within and outside the EU.
- 1.2 A number of ABI members, or the groups of which they are part, are significant issuers of equity and debt.
- 1.3 These two factors form the basis for the ABI general support of the aims of the Market Abuse Directive, the integrity of financial markets and investor protection.
- 1.4 In seeking to achieve appropriate risk adjusted performance on behalf of their beneficiaries. ABI members are concerned that financial markets should operate efficiently and under regulatory framework that is proportionate in terms of achieving the Directive's broad objectives.
- 1.5 Whilst their fiduciary duties to their beneficiaries implies a certain indifference as to through which markets institutional investors invest on their beneficiaries' behalf, nonetheless in the long term economic interests of those beneficiaries ABI members' aspirations include efficient European financial markets which are internationally competitive.

2 THEMATIC COMMENTS "Accepted Market Practices"

- 2.1 We agree with the CESR approach of principle, factors and procedures to be employed by the competent authorities (Questions 1 and 2).
- 2.2 At this stage in the development of the Single Market the role of the competent authorities will be crucial in the evolution, at Level 3, of harmonised standards. Given the diversity of markets within the EU, any attempt initially to list comprehensively accepted market practices on a generic basis may potentially run counter to practice in local markets with possible adverse consequences for their efficient operation.
- 2.3 In similar vein, as a safeguard for innovation and improved efficiency in markets, we agree that a practice need not be identifiable as already having been explicitly accepted by a competent authority before it can be undertaken.

Insider Lists

- 2.4 CESR acknowledges that its proposals imply a significant compliance burden.
- 2.5 We feel the proposals confuse the preventative objectives of the Directive, i.e. the maintenance of market integrity through the prevention of market abuse, with the regulatory requirement for evidence when investigation is called for.
- 2.6 We are unconvinced that the scale of the CESR proposals are proportionate to the risks being run. They suggest significant costs in terms of systems and administration to collect large amounts of data the vast majority of which will never be used.
- 2.7 We believe a more practical cost-effective approach would combine permanent lists of insiders at issuers and advisers, created at their discretion, to be made available to competent authorities when requested (Questions 11-13).
- 2.8 If ad hoc lists are to be a requirement then, for practical purposes, we believe they should be created on a project-by-project basis.
- 2.9 We are of the view that an events-based list approach, given the ill-defined nature and contextual basis for much information that could in due course become inside, would be administratively burdensome. It would lead to considerable data collection the great proportion of which would turn out to be redundant for the purpose of the Directive and with no other economic value (Question 10).
- 2.10 Conduct of business rules should provide a sufficient framework for competent authorities to obtain from regulated parties in the financial services sector the data they might require for investigation purposes. Company law or codes of practice should provide a similar function for the corporate sector.
- 2.11 Finally a proliferation of lists and systems required for their production carries within itself the potential for greater leakage of inside information.

Transactions Disclosure

- 2.12 We believe that permanent lists provide a suitable basis for defining those subject to the duty of disclosure in combination with existing personal account dealing regimes (particularly for within the financial services sector).

- 2.13 It is appreciated that disclosure practice may vary considerably within the EU. Encouragement of harmonisation at Level 3 would be of value.
- 2.14 Harmonising the regulatory structure in the EU, in respect of disclosure obligations, could perhaps be better achieved through other Directives rather than through creating a separate regime under the Market Abuse Directive.

Suspicious Transactions

- 2.15 CESR has recognised the issues arising out of the lack of a safe harbour (comparable to Article 8 of the 1997 Money Laundering Directive) for those making a suspicious transaction report in good faith from civil claim from the person in respect of whom the report was made.
- 2.16 Whilst this area is outside the remit of CESR's mandate it would be remiss not to register the concerns at the lack of coherence between the two directives in this respect and to underscore the need for remedial action, if necessary at national level if this proves impossible at EU level.