

Circular regarding Draft CESR Guidance on the Operation of the Market Abuse Directive

7th November 2006

The Prevention of Financial Markets Abuse Act came into force on the 1st April 2005. The purpose of the Act is to safeguard the integrity of **Maltese and European Community financial markets** and to enhance investor confidence in those markets. To meet this objective, the Act transposes and implements the EC Market Abuse Directive ('the Directive').

We would like to draw your attention to the attached consultation document published by the Committee of European Securities Regulators ('CESR') on 2nd November 2006, which provides guidance on the operation of the Directive. Following the first two years of experience gained under the new market abuse regime, CESR is of the view that this is the right time to provide further guidance to market participants regarding common understandings developed amongst supervisors with the intention of achieving a convergent application of the market abuse legal requirements on a day-to-day basis.

In this draft guidance, CESR has developed in relation to Articles 1 – 6 of the Directive, a draft common understanding amongst CESR Members, regarding treatment of the following aspects of the Directive and associated issues concerning market abuse:

1. What constitutes inside information?

The guidance in this context: **(a)** gives further clarification on what is meant by '*information of a precise nature*' as a term set out in the Directive; **(b)** provides further guidance on making inside information public; **(c)** amplifies what is meant by the concept '*information likely to have a significant price effect*'; **(d)** provides a non exhaustive list of purely indicative types of events or information which may constitute inside information.

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

CESR provides a few indicative examples of the two circumstances mentioned in Article 3 (1) of the Implementing Directive 2003/124 [transposed in regulation 6 (1) of Legal Notice 108 of 2005] which permits the legitimate delay of disclosure of inside information. For example, the guidance provides indicative examples in relation to: confidentiality constraints relating to competitive situations; product development; selling of major holdings in another issuer; and impending developments that could be jeopardised by disclosure.

3. When are client orders inside information?

This includes guidance regarding client's pending orders as inside information; guidance of a '*precise nature*'.

4. Insider lists in multiple jurisdictions:

CESR proposes and would commit itself to a mutual recognition system to be put in place (i.e. a competent authority would accept an insider list maintained in accordance with the rules of another CESR member).

MFSA encourages all interested parties to participate in the CESR consultation process by considering this consultation document and submitting their comments by 2nd February 2007 to Mr. Fabrice Demarigny, CESR's Secretary General, via CESR's website (www.cesr.eu) under the section 'Consultations'.

N.B. The MFSA Prevention of Financial Markets Abuse Guidance Notes will in due course be updated to include CESR's final guidance.

Relevant information on the implementation of the Market Abuse Directive in Malta, including copies of the Prevention of Financial Markets Abuse Act, 2005, its subsidiary legislation and past circulars in this area issued by the Authority, may be retrieved from the MFSA's web-page www.mfsa.com.mt.

Contacts

Should you have any queries regarding the **Market Abuse Directive** please do not hesitate to contact:

Mr. Christopher Buttigieg
2548 5229
cbuttigieg@mfsa.com.mt

Ms. Audrey Aquilina
2548 5193
aaquilina@mfsa.com.mt



Ref: CESR/06-562

Market Abuse Directive

**Level 3 – second set of CESR guidance and
information on the common operation of the
Directive to the market**

Public Consultation

November 2006



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Draft Second set of CESR Guidance on the Operation of the Market Abuse Directive

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Introduction

1. In December 2005 CESR agreed that CESR-Pol should carry out a second phase of market-facing Level 3 work in respect of the Market Abuse Directive. The scope of the mandate was set out in document CESR/05-747.
2. In relation to Articles 1-6 of the Directive, CESR-Pol developed a common understanding amongst its members regarding treatment of the following aspects of the Directive and associated issues concerning market abuse. CESR-Pol considers that in the following areas guidance to the market can be produced which should help amplify the definitions and descriptions contained in the Level 1 and 2 Directives/Regulations and accompanying recitals.
 - i. What constitutes inside information;
 - ii. When is it legitimate to delay the disclosure of inside information;
 - iii. When are client orders inside information;
 - iv. Insider lists in multiple jurisdictions – proposing a mutual recognition system to apply in this area (i.e. a competent authority would accept an insider list maintained in accordance with the rules of another CESR member).
3. The development of this guidance by CESR's permanent working group, CESR-Pol, has been informed by the experience gained by CESR Members during the transposition period and gathered from the day-to-day application of the Directive. Where relevant, CESR-Pol 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 draft guidance and its comments taken into account.
4. This work is intended to compliment the 'Call for Evidence' on the evaluation of the supervisory functioning of the EU market abuse regime. The consultation period on the 'Call for Evidence' closed on 31 October 2006 and responses are available on CESR's website under past consultations. As part of the 'Call for Evidence' on the functioning of MAD, CESR organised a public hearing which took place on 17 October 2006, at CESR's premises in Paris. At the hearing, market participants indicated that they had not only found the first set of CESR guidance issued in March 2005 helpful, but also requested further guidance.
5. Interested parties are welcome to submit their comments to the draft guidance set out in this paper and send their responses via CESR's website (www.cesr.eu) under section "Consultations". The consultation closes on 2 February 2007.

Draft Second set of CESR Guidance on the Operation of the Market Abuse Directive

Introduction

- 1.1 This section of the guidance covers what constitutes 'inside information' as defined by paragraph 1 of Article 1.1 of the Market Abuse Directive (2003/6/EC). It does not deal either with inside information relating to commodity derivatives or inside information relating to client pending orders (i.e. trading information).
- 1.2 Paragraph 1 of Article 1.1 of the Market Abuse Directive (MAD) defines 'inside information' by means of the following four criteria. It is
- information of a precise nature
 - which has not been made public
 - relating, directly or indirectly, to one or more issuers of financial instruments or to one or more financial instruments
 - and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments or on the price of related derivative financial instruments
- 1.3 The following paragraphs provide guidance on what CESR considers is covered by the four above criteria, taking into account the relevant provisions of the Level 2 Implementing Measures and drawing on the advice CESR provided to the Commission in December 2002 for these Implementing Measures¹. It should be noted that the criteria of information of a precise nature and significant price effect are very much linked to each other and that the characteristics of each criterion may have an intensifying effect on the presence of the other. However, CESR considers that it is possible to identify separately the factors which should be taken into account in respect of each criterion.

Information of a Precise Nature

- 1.4 Article 1 of Commission Directive 2003/124/EC amplifies what is meant by the term "information of precise nature" as follows.

"...information shall be deemed to be of a precise nature if it indicates a set of circumstances which exists or may reasonably be expected to come into existence or an event which has occurred or may reasonably be expected to do so and if it is specific enough to enable a conclusion to be drawn as to the possible effect of that set of circumstances or event on the prices of financial instruments or related derivative financial instruments."

- 1.5 The precise nature of information is to be assessed on a case-by-case basis and depends on what the information is and the surrounding context. However, the following general points can be made. CESR Members consider that in determining

¹ The advice provided to the Commission does not constitute Level 3 guidance

whether a set of circumstances exist or an event has occurred, a key issue is whether there is firm and objective evidence for this as opposed to rumours or speculation i.e. if it can be proved to have happened or to exist. When considering what may reasonably be expected to come into existence, the key issue is whether it is reasonable to draw this conclusion based on the ex ante information available at the time. It should be noted that CESR members consider that in general, other than in exceptional circumstances or unless requested to comment by the competent regulator pursuant to Art 6(7) of Directive 2003/6/EC, issuers are under no obligation to respond to market rumours which are without substance.

- 1.6 It is also important to note that, if the information concerns a process which occurs in stages, each stage of the process as well as the overall process could be information of a precise nature. An example might be a takeover bid. The fact that the proposed takeover might not in the end take place does not mean that the approach to the target company is not precise information in its own right.
- 1.7 In addition, it is not necessary for a piece of information to be comprehensive to be considered precise. For example, an approach to a target company about a takeover bid can be considered as precise information even though the bidder had not yet decided the price. Similarly, a piece of information could be considered as precise even if it refers to matters or events that could be alternatives. For example, the fact that a company was proposing to launch a takeover bid for one or other of two companies could be considered as precise even though the bidding company had not finally decided which would be its target (this example again assumes that the bidding company cannot take advantage of Article 6.2 of MAD).
- 1.8 As regards whether a piece of information is specific enough to allow a conclusion to be drawn about its impact on prices, CESR Members consider this would occur for example in two circumstances. The first would be when the information is such as to allow the reasonable investor to take an investment decision without (or at very low) risk. The second would be when the piece of information was such that it is likely to be exploited immediately on the market.

Made Public

- 1.9 As regards disclosure requirements, companies with inside information to disclose should use the disclosure mechanisms specified by their Competent Authority. So, for example, if they are required to make information publicly available through a particular electronic news service it will not necessarily be sufficient for them only to give the information to a newspaper. However, for the purposes of determining whether a transaction was made using inside information, it should be noted that information can be publicly available even if it was not disclosed by the issuer in the specified manner. This applies whether the information became public through an incorrect disclosure by the issuer or through a third party.

Significant Price Effect

- 1.10 Article 1 of Commission Directive 2003/124/EC amplifies what is meant by the concept of 'information likely to have a significant price effect'.

"...information which, if it were to be made public, would be likely to have a significant effect on the prices of financial instruments or related derivative

financial instruments shall mean information a reasonable investor would be likely to use as part of the basis of his investment decisions."

- 1.11 The 'reasonable investor test' set out above assists in determining the type of information to be taken into account for the purposes of the "significant price effect" criterion. In this context it should be noted Article 17.2 of MAD makes clear that implementing measures do not modify the essential provisions of the Level 1 Directive.
- 1.12 CESR Members consider that those with potential inside information need to assess on an ex ante basis whether or not information is likely to have a significant price effect. It is a question of determining the degree of probability with which at that point in time such an effect could reasonably have been expected. The Directive test is "likely" so on the one hand the mere possibility that a piece of information will have a significant price effect is not enough to trigger a disclosure requirement but, on the other hand, it is not necessary that there should be a degree of probability close to certainty.
- 1.13 CESR Members are clear that fixed thresholds of price movements or quantitative criteria alone are not a suitable means of determining the significance of a price movement. In determining whether a significant effect is likely to occur, the following factors should be taken into consideration²:
- i) the anticipated magnitude of the matter or event in question in the context of the totality of the company's activity;
 - ii) the relevance of the information as regards the main determinants of the financial instrument's price;
 - iii) the reliability of the source;
 - iv) all market variables that affect the financial instrument in question (These variables would include prices, returns, volatilities, liquidity, price relationships among financial instruments, volume, supply, demand, etc.).
- 1.14 Some useful indicators of whether information is likely to have a significant price effect that should be taken into consideration are whether:
- the type of information is the same as information which has, in the past, had a significant effect on prices
 - pre-existing analysts research reports and opinions indicate that the type of information in question is price sensitive
 - the company itself has already treated similar events as inside information

Companies should also take into account that the significance of the information in question will vary widely from company to company, depending on a variety of factors such as the company's size, recent developments and the market sentiment about the company and the sector in which it operates. In addition, what is likely to have a significant price effect can vary according to the asset class of the financial

² See Recital 1 to Commission Directive 2003/124/EC

instrument. For example, a piece of information which may be price sensitive for an equity issuer may not be so for an issuer only of debt securities.

Examples of Possible Inside Information Directly Concerning the Issuer

1.15 The following is a non-exhaustive and purely indicative list of events of the type which might constitute inside information (i.e. the fact that an event does not appear on the list does not mean it cannot be inside information nor does the fact that an event is included on the list mean that it automatically will be inside information). However, as noted above, it is the specific circumstances of each case which need to be considered.

Information which directly concerns the issuer:

- Operating business performance;
- Changes in control and control agreements;
- Changes in management and supervisory boards;
- Changes in auditors or any other information related to the auditors' activity;
- Operations involving the capital or the issue of debt securities or warrants to buy or subscribe securities;
- Decisions to increase or decrease the share capital;
- Mergers, splits and spin-offs;
- Purchase or disposal of equity interests or other major assets or branches of corporate activity;
- Restructurings or reorganizations that have an effect on the issuer's assets and liabilities, financial position or profits and losses;
- Decisions concerning buy-back programmes or transactions in other listed financial instruments;
- Changes in the class rights of the issuer's own listed shares;
- Filing of petitions in bankruptcy or the issuing of orders for bankruptcy proceedings;
- Significant legal disputes;
- Revocation or cancellation of credit lines by one or more banks;
- Dissolution or verification of a cause of dissolution;
- Relevant changes in the assets' value;
- Insolvency of relevant debtors;

- Reduction of real properties' values;
- Physical destruction of uninsured goods;
- New licences, patents, registered trade marks;
- Decrease or increase in value of financial instruments in portfolio;
- Decrease in value of patents or rights or intangible assets due to market innovation;
- Receiving acquisition bids for relevant assets;
- Innovative products or processes;
- Serious product liability or environmental damages cases;
- Changes in expected earnings or losses;
- Relevant orders received from customers, their cancellation or important changes;
- Withdrawal from or entering into new core business areas;
- Relevant changes in the investment policy of the issuer;
- Ex-dividend date, dividend payment date and amount of the dividend; changes in dividend policy payment.

1.16 The Directive definition of inside information also encompasses information which relates **indirectly** to issuers or financial instruments. The following is a list of examples of such information. These examples are again indicative and non-exhaustive with the same caveats as set out in paragraph 13 above. It should be noted that, in the case of these examples being inside information, the confidentiality duty and the prohibition to enter into transactions stated in Articles 2 and 3 of MAD apply. There is, however, no legal basis to require prompt disclosure under Article 6.1 of MAD, because this article only applies to issuers and to information that directly concerns them. Nevertheless, the disclosure requirement in Article 6 applies to the disclosure of the consequences, which directly concern the issuer, resulting from the examples like the ones listed below, provided these consequences constitute inside information.

- Data and statistics published by public institutions disseminating statistics;
- The coming publication of rating agencies' reports, research, recommendations or suggestions concerning the value of listed financial instruments;
- Central bank decisions concerning interest rate;
- Government's decisions concerning taxation, industry regulation, debt management, etc.;

- Decisions concerning changes in the governance rules of market indices, and especially as regards their composition;
- Regulated and unregulated markets' decisions concerning rules governing the markets;
- Competition and market authorities' decisions concerning listed companies;
- Relevant orders by government bodies, regional or local authorities or other public organizations;
- A change in trading mode (e.g., information relating to knowledge that an issuer's financial instruments will be traded in another market segment: e.g. change from continuous trading to auction trading); a change of market maker or dealing conditions.

II WHEN ARE THERE LEGITIMATE REASONS TO DELAY THE PUBLICATION OF INSIDE INFORMATION

Introduction

- 2.1 Article 6.2 of the MAD provides that *“An issuer may under his own responsibility delay the public disclosure of inside information, as referred to in paragraph 1, such as not to prejudice his legitimate interests provided that such omission would not be likely to mislead the public and provided that the issuer is able to ensure the confidentiality of that information.”*
- 2.2 This section of the guidance deals with situations in which there are legitimate interests for an issuer to delay the publication of inside information. It does not cover the other two conditions set out in Article 6.2 (that the delay would not likely to mislead the public; and that the issuer is able to ensure the confidentiality of the information).

Legitimate Interests

- 2.3 The term ‘legitimate interests’ is amplified by Article 3 (1) of the implementing Directive 2003/124/EC.

“For the purposes of applying Article 6(2) of Directive 2003/6/EC, legitimate interests may, in particular, relate to the following non-exhaustive circumstances:

- (a) negotiations in course, or related elements, where the outcome or normal pattern of those negotiations would be likely to be affected by public disclosure. In particular, in the event that the financial viability of the issuer is in grave and imminent danger, although not within the scope of the applicable insolvency law, public disclosure of information may be delayed for a limited period where such a public disclosure would seriously jeopardise the interest of existing and potential shareholders by undermining the conclusion of specific negotiations designed to ensure the long-term financial recovery of the issuer;*
- (b) decisions taken or contracts made by the management body of an issuer which need the approval of another body of the issuer in order to become*

effective, where the organisation of such an issuer requires the separation between these bodies, provided that a public disclosure of the information before such approval together with the simultaneous announcement that this approval is still pending would jeopardise the correct assessment of the information by the public.”

- 2.4 The article makes clear that the examples it sets out of circumstances where there are legitimate interests for delaying public disclosure constitutes a non-exhaustive list. So it is open to issuers to delay the disclosure of information in other situations, provided the conditions in Article 6 (2) of the MAD apply.
- 2.5 CESR has considered whether, in giving guidance on this issue, it should provide any further examples of such situations. However, CESR believes that, as the right to delay the disclosure of inside information is a derogation from the general rule rather than the norm, it would not be appropriate to give a long list of (other) circumstances in which the issuer has the right to delay. It remains the issuer's responsibility to determine whether, in its own specific circumstances, the disclosure of inside information can be delayed given due regard to the applicable conditions.
- 2.6 CESR is therefore confining its guidance to providing indicative examples of the two circumstances mentioned in Article 3 (1) of implementing Directive 2003/124/EC. The guidance has the objective of illustrating rather than extending the provisions of the Directive. The guidance draws on the advice CESR provided to the Commission in December 2002 (Ref: CESR/02-089d) in respect of this implementing Directive.

Illustrative Examples of Legitimate Interests for Delay

- 2.7 As is usual with CESR guidance, the examples below are not intended to be exhaustive and issuers will need to consider the particular circumstances of their case when deciding whether they can delay disclosure.
- 2.8 The following are examples of the first set of circumstances (“negotiations in course”) mentioned in implementing Directive 2003/124/EC:
- Confidentiality constraints relating to a competitive situation (e.g. where a contract was being negotiated but had not been finalized and the disclosure that negotiations were taking place would jeopardise the conclusion of the contract or threaten its loss to another party). This is subject to the provision that any confidentiality arrangement entered into by an issuer with a third party does not prevent it from meeting its disclosure obligations;
 - Product development, patents, inventions etc where the issuer needs to protect its rights provided that significant events that impact on major product developments (for example the results of clinical trials in the case of new pharmaceutical products) should be disclosed as soon as possible;
 - When an issuer decides to sell a major holding in another issuer and the deal will fail with premature disclosure;
 - Impending developments that could be jeopardised by premature disclosure.
- 2.9 Cases within the scope of the second set of circumstances (“decisions taken which need the approval of another body”) include those where there are complex decision-making processes involving multiple hierarchical layers in the issuer's

organization.

- 2.10 Finally it should be emphasized that meeting the test for having a legitimate interest in delaying a disclosure is not by itself sufficient reason to delay the disclosure. In all the situations a further evaluation should be done to decide whether the other conditions in Article 6 (2) of the MAD apply i.e. that the delay in disclosing the inside information would not be likely to mislead the public; and that the issuer is able to ensure the confidentiality of the information.

III WHEN DO CLIENT ORDERS CONSTITUTE INSIDE INFORMATION

Introduction

- 3.1 As regards client order information, the relevant legislative provision is Article 1(1) par.3 of Directive 2003/6/EC which specifies that “*For persons charged with the execution of orders concerning financial instruments, ‘inside information’ shall also mean information conveyed by a client and related to the client’s pending orders*”.
- 3.2 These persons should properly manage that kind of inside information in order to avoid the abuse of it. This means that, according to Art. 2 and 3 of Directive 2003/6/EC, these persons shall not:
- a. use that information by acquiring or disposing of, or by trying to acquire or dispose of, for his own account or for the account of a third party, either directly or indirectly, financial instruments to which that information relates³;
 - b. disclose that information to any other person unless such disclosure is made in the normal course of the exercise of his employment, profession or duties;
 - c. recommend or induce another person, on the basis of that information, to acquire or dispose of financial instruments to which that information relates.
- 3.3 According to Art. 4 of Directive 2003/6/EC the same prohibitions apply to any other person who possesses that information and who, at the same time, knows, or ought to have known, that that information is inside information.
- 3.4 The persons typically involved in the above situations are employees of intermediaries.
- 3.5 Considering that intermediaries work in complex environments, these prohibitions imply that they should find measures and tools that allow them to act without using inside information. Therefore, guidance could be helpful to allow intermediaries and their employees to better understand when information related to a client’s pending orders is inside information.

“Client’s pending order” as inside information: conditions set out by the Directives

- 3.6 According to Article 1(1) par.3 of Directive 2003/6/EC “*information conveyed by a client and related to the client’s pending orders*” is inside information if it satisfies three conditions⁴:

³ Article 2.3 provides that this shall not apply to transactions conducted in the discharge of an obligation that has become due to acquire or dispose of financial instruments where that obligation results from an agreement concluded before the person concerned possessed inside information.

⁴ In addition, implicitly the fourth condition is that information should not be already public.

- a. it *“is of a precise nature”*,
- b. it *“relates directly or indirectly to one or more issuers of financial instruments or to one or more financial instruments”*,
- c. *“if it were made public, it would be likely to have a significant effect on the prices of those financial instruments or on the price of related derivative financial instruments”*.

3.7 Conditions *sub a)* and *c)* are further defined by Art 1(1) of Directive 2003/124/EC.

As to condition a): *“information shall be deemed to be of a precise nature:*

- 1) *“if it indicates a set of circumstances which exists or may reasonably be expected to come into existence or an event which has occurred or may reasonably be expected to do so and”*
- 2) *“if it is specific enough to enable a conclusion to be drawn as to the possible effect of that set of circumstances or event on the prices of financial instruments or related derivative financial instruments”*.

As to condition c): *“information which (...) would be likely to have a significant effect on the prices” (...) shall mean information a reasonable investor would be likely to use as part of the basis of his investment decisions”*.

“Client’s pending order” as inside information: Guidance

- 3.8 The main difficulties in understanding when a client’s pending order is inside information basically refer to the problem of determining when the above mentioned conditions on the precise nature and the price sensitivity are met.
- 3.9 Before examining the scope of guidance on the precise nature and the price sensitivity of pending orders, it is convenient to recognise that orders are in general characterised by several elements concerning three parameters: price, quantity and execution timing. Many different combinations of these elements can be valued in different ways. The identity of the client may also be relevant.
- 3.10 In addition, these elements are different across markets according to their specific microstructure. For instance, some electronic trading systems can allow stop-loss orders, or partially-displayed orders, and so on.
- 3.11 Furthermore the market impact of the order execution may depend on the market’s liquidity; the way in which the order will be executed; the trading method used (auction, continuous trading, etc); and so on.
- 3.12 All the relevant factors should be taken into account in order to determine whether an order is inside information. It should be emphasised that the following guidance is indicative and not exhaustive.

Guidance on the order's price sensitivity

- 3.13 The price sensitivity of an order is likely to be influenced by:-
- a. its dimension/size, compared, for example, with the average size of the orders in that market or the daily trading volume. The greater the size of the order as compared with the average size of orders in that market, the more likely it is to have an influence on the price of the financial instrument;
 - b. the liquidity of the market during the period of the order execution;
 - c. the bid-ask spread: the wider the spread, the more likely that an order may have an impact on the price;
 - d. the price limit for the order and the relationship of that price limit to the current bid-ask spread;
 - e. the execution timeframe as instructed by the client (e.g. the quicker the client wants the order executed, the more likely there is to be a price impact);
 - f. the execution timing in relation to determining relevant or reference prices such as opening, closing minimum or maximum prices or exercise prices of related financial instruments such as derivatives, covered warrants, structured bonds, etc;
 - g. the identity of the client;
 - h. whether the order is likely to influence the behaviour of other market participants.

Guidance on the order's precise nature

- 3.14 As set out in Directive 2003/124/EC (see paragraph 7 above) the relevant conditions for determining if an order is information of a precise nature are twofold: *"1) if it indicates a set of circumstances which exists or may reasonably be expected to come into existence or an event which has occurred or may reasonably be expected to do so and 2) if it is specific enough to enable a conclusion to be drawn as to the possible effect of that set of circumstances or event on the prices of financial instruments or related derivative financial instruments"*.
- 3.15 While the second condition is very close in nature to that of price-sensitivity, discussed above, the first expresses quite clearly that information does not have to be certain to constitute inside information. i.e. an order could be inside information even if all of its characteristics are not yet completely defined. In this respect a set of useful guidance can be outlined as follows.
- 3.16 The test for the precise nature of an order is more likely to be satisfied:
- a. the more defined are the order's size, price limit and execution period;
 - b. the more predictable the pattern of the trading behaviour of a client, the more precise will be the nature of a particular order from that client.

IV INSIDER LISTS

- 4.1 Article 6 (3) paragraph 3 of Directive 2003/6/EC (MAD) ⁵ obliges Member States to require issuers, or persons acting on their behalf or for their account, to establish insider lists, to be regularly updated and to be provided to competent authority upon request. In addition, the implementing Directive 2004/72/EC ⁶ provides for further details as to the content of the insider list, the way it should be updated and maintained, and, the information duties related to such insider list.
- 4.2 In general, across Europe, Member States have implemented these provisions so that they apply to issuers whose financial instruments are admitted to trading on a domestic regulated market and/or to domestic issuers having financial instrument admitted to trading on a Regulated market of another EU or EEA Member State.
- 4.3 There are already a certain number of issuers whose financial instruments are admitted to trading on regulated markets in different European jurisdictions. Consequently, it appears that a same issuer has to comply with the requirement to draw up and maintain insider list in accordance with the legal framework applicable in each of the concerned jurisdictions. In other words, there may be overlapping requirements with respect to keeping the insider list, in certain circumstances. From the competent authorities' perspective, it is considered that overlapping is preferable to loopholes. However it may be argued that such overlapping could prove "burdensome" for issuers.
- 4.4 However, it should be recalled that the requirements to keep, maintain and provide the competent authority with Insider lists only applies to the issuer that has requested or approved admission of its financial instruments to trading on a regulated market in a Member State (Article 9 par. 3 MAD).
- 4.5 For an issuer subject to the jurisdiction of more than one EU or EEA Member State with respect to insider list requirements, it is recommended that the relevant competent authorities recognise insider lists prepared by an issuer that has its registered office in another EU or EEA Member State, according to this Member State's requirements.
- 4.6 This recommendation does not challenge the obligation on an issuer in each of the relevant jurisdictions to establish an insider list and the right for the competent authority from any of these jurisdictions to request such list.
- 4.7 With respect to the persons acting on behalf of for the account of the issuer, regardless of their nationality or their location or place of incorporation, the rules to follow have to be the rules of the jurisdiction applicable to the issuer.

⁵ Directive 2003/6/EC of the European Parliament and the Council of 28 January 2003 on insider dealing and market manipulation (market abuse)

⁶ Commission Directive 2004/72/EC of 29 April 2004 implementing Directive 2003/6/EC of the European Parliament and of the Council 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.