COMMENTS

16 May 2012

INSIDER DEALING AND MARKET MANIPULATION

KEY MESSAGES

1 BUSINESSEUROPE is in favour of smart regulation for financial services.

2 Market abuse rules are essential in order to ensure market integrity and investor confidence.

3 BUSINESSEUROPE welcomes the Commission's revision of the legislative package on insider trading.

WHAT DOES BUSINESSEUROPE AIM FOR?

- Ensure that the definition of inside information is not so broad that it would introduce a grey area leading to legal uncertainty. Article 6(1)(e) should therefore be deleted.

- Avoid that too many obligations applied to regulated markets are transferred to SME markets. This is not the best way to improve SMEs access to finance. Both issuers and investors should have the choice between regulated markets and markets with lighter regulation tailored to the needs of SMEs.

- Avoid unnecessary burdens on businesses.

BUSINESSEUROPE

COMMENTS

16 May 2012

BUSINESSEUROPE comments on the proposed regulation on insider dealing and market manipulation

BUSINESSEUROPE welcomes the Commission's revision of the Market Abuse Framework. Still, it is concerned about the following aspects of this proposal:

- Extension of definition of inside information
- Extension of the scope to SME Growth Markets
- Rules on public disclosure of inside information
- Provisions on insider's lists
- Rules on disclosure of managers' transactions
- Admitted market practices
- Non-EU listed issuers and non-EU listed equity
- Safe-Harbours

1. Extension of definition of inside information - Article 6(1)(e)

This feature of the proposal, never put out for consultation by the European Commission, introduces a new definition of inside information which departs from two important criteria of that notion as known until now. There is neither a requirement that the information is of a precise nature, nor that it is likely to have a significant effect on the share price (price sensitivity).

The wording as it stands is too broad and it means that almost any information can constitute inside information. It would introduce a grey area leading to legal uncertainty as to what has to be considered as inside information. The definition should instead be more precise bearing in mind the legal implications of market abuse practices which might lead to criminal sanctions.

This lack of certainty and the extension of the violation as criminal sanction would have too far-reaching consequences: financial intermediaries would limit their activities and reduce liquidity on European stocks; corporate governance dialogue, often encouraged by European institutions, would be reduced; and the possibility for companies to act in general and operate on their shares would be hindered.

In this context, BUSINESSEUROPE requests the **deletion of Article 6(1)(e).**

BUSINESSEUROPE a.i.s.b.l
AVENUE DE CORTENBERGH 168 – BE 1000 BRUSSELS – BELGIUM
TEL +32 (0)2 237 65 11 – FAX +32 (0)2 231 14 45 – E-MAIL MAIN@BUSINESSEUROPE.EU
WWW.BUSINESSEUROPE.EU
EU Transparency register 3978240953-79

2. Extension of the scope to SME Growth Markets

BUSINESSEUROPE has some reservations regarding the expansion of the Market Abuse Regulation beyond regulated markets, in particular SME growth markets.

It is important to avoid exchange-regulated markets or multilateral trading facilities being covered entirely by the Market Abuse Directive – especially with respect to issuers' duties. Both issuers and investors should have the choice between regulated markets and markets with lighter regulation. Without lighter regulated markets that are tailored to the special needs of small and medium-sized enterprises (SMEs) and start-up companies, those enterprises would find it much more difficult to raise capital, with negative effects for the economy as a whole. Expanding the obligations applied to regulated markets to SME markets is not the best way to improve SMEs access to finance.

3. Rules on public disclosure of inside information

This article should be drafted in a way that it does not impose unnecessary burdens on traders and it ensures legal certainty.

Article 12(4)

It is key that the issuer of a financial instrument retains some discretion to decide whether or not to delay the publication of inside information. Informing prematurely can have an adverse effect to the interests of the company, shareholders and the market for instance by giving unlawful advantages to competitors.

Article 12(5)

The fact that systemic importance is one of the criteria for the authority to authorise the delay of publication of inside information, risks creating legal uncertainty as to which companies might benefit from this delay. In addition, these rules would create a split between financial and non-financial companies.

4. SME specific provisions on insider's lists – Article 13

The obligation for issuers to draw up and update lists of all persons who have access to inside information is simply too burdensome for companies. This will lead to a complicated system of employee monitoring and to overly extensive lists sent to authorities (for example, including persons who may have a disinterested contact with the information or people who work for another issuer).

In addition, BUSINESSEUROPE believes that the **exemptions foreseen for SME Growth Markets (para. 2) should be extended** in order to cover SMEs which do not fulfil the very low thresholds.

5. Rules on disclosure of managers' transactions – Article 14

BUSINESSEUROPE is pleased with the threshold of 20 000 euro (Article 14(3)) triggering obligations for managers to disclose certain transactions. However, the two-day time-limit of Article 14(1) is far too short. This may create difficulties considering that the duty of communication to the public also concerns transactions made by persons closely associated to managers and that it is the issuers who in many cases notify transactions on behalf of managers. It should be also noted that in some

countries automated processes have been established to produce the notification, but they are not able to process the information prior to the settlement. Such automated systems should still be possible and actually prioritised over manual notifications.

Therefore, **BUSINESSEUROPE requests that this deadline is extended** and that it should be clarified that every time the threshold is reached, the calculation of the threshold should restart from zero until the limit has been reached again, in order to avoid insignificant notifications to the regulator.

6. Elimination of admitted market practices – Article 35

The draft Regulation removes the accepted market practices which shall remain applicable 12 months after entry into force of the Regulation itself. This option, which is provided for in the rules still in force, was used by several Member States. It takes into account that a particular practice may well be appropriate for one market but inappropriate for another where the conditions differ (such as the market size etc.). There are currently 10 accepted market practices published in the European Securities and Markets Authority website.

The Commission, in the consultation paper on 2009, seemed to consider the opportunity to have greater convergence in this field, instead of a removal. It would be appropriate to keep them and, if necessary, strengthening the ESMA coordination role in order to solve the problem of financial instruments traded in more than one jurisdiction. In this context, the proposed removal of these AMPs should be reconsidered.

7. Non-EU listed issuers and non-EU listed equity

In general, BUSINESSEUROPE members from countries outside of the EU have some concerns concerning the application of the proposed Market Abuse Regulation to issuers which are not primarily listed in an EU regulated market or to non-EU listed equity. For example, we suggest that non-EU issuers should rely on their home-country rules relating to securities, public disclosure of inside information and manager's transactions.

8. Safe Harbours

Recitals 29 and 30 of the present directive (so-called safe harbours) should be reintroduced in the proposed regulation since we believe they are an important protection in the context of takeovers.

***