THE COMMITTEE OF EUROPEAN SECURITIES REGULATORS

MEASURES TO PROMOTE MARKET INTEGRITY

A follow-up paper to CESR's first paper on market abuse
(Ref: FESCO/00-96l)

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PRELIMINARY REMARK

The paper is published by CESR as an orientation paper that sets out CESR's current consensus on the development of the preventative measures identified primarily in CESR's first paper on market abuse (ref: Fesco/00-96L). It covers measures relating to issuers, investment firms, regulated markets and other market participants such as participants with market power and independent analysts.

This paper stands outside the formal Lamfalussy proposals, and is not a response to a mandate from the European Commission. As such, it is not linked to any European legislation currently proposed or being prepared by the European Commission. In the light of the EU's negotiations of a market abuse directive, CESR members will not work towards implementation of these agreed principles and measures until the directive has been adopted and full agreement reached on the Lamfalussy process*. CESR will undertake a review of these principles and measures on the basis either of any level 2 mandates given to CESR by the European Commission or the necessity to develop level 3 regulatory standards and guidance.

CESR, however, has decided to publish these principles and measures for two reasons. First, they reflect a current consensus amongst Europe's regulators on the measures to promote market integrity. Second, they reflect the comments received from an extended period of national consultation (see the compilation of responses (Ref. CESR/02-007).

CESR, therefore, has concluded that it is in the interest of market participants to publish this paper. It sets out a clear indication of CESR's starting point on a number of issues that might be covered by any requests for advice on technical implementing measures from the Commission.

* At this stage, the Article 4.3 of the CESR Charter does not apply to these principles and measures.

A - Introduction

1. Under the terms of the EU's Action Plan for Financial Services, CESR submitted a paper to the Commission setting out the regulator's view of the key elements of an effective EEA regime against market abuse. (ref: FESCO/00-96l). The prime concern in regulating market abuse is the public interest in maintaining the integrity of markets and protecting them from the damage that can be caused by market manipulation or misuse of information. It is therefore necessary not only to pursue and impose sanctions for market abuse but also to promote those practices that defend and enhance the integrity of the market.

2. CESR has agreed to undertake further work to develop a set of detailed, technical measures to underpin market integrity in the EEA. A group of experts, convened under the Chairmanship of Mr Stavros Thomadakis, Chairman of the Hellenic Capital Market Commission, has developed the measures set out in this paper.

3. In accordance with the group's mandate, the focus in this paper is primarily on methods of implementation of preventative measures outlined in chapter D. of the above mentioned CESR paper[1]. These measures, which are aimed at promoting market integrity, were an innovative pillar in CESR's approach to fighting market abuse in the EEA. The members of CESR therefore deemed it necessary to further develop CESR's approach in this area.

4. With regard to the provisions of the paper it is emphasised that the paper is without prejudice to the provisions of any of the existing Directives of the European Union, or national laws and regulations implementing such Directives, and in particular as regards Directive 89/592/EEC (insider dealing).

5. One particular development since the completion of the first CESR paper on market abuse is that a paper by CESR on the harmonization of core conduct of business rules for investor protection has been issued for consultation and is in the process of finalisation. The investor protection paper focuses on investment firms' conduct of business rules for the protection of customer interests. These are customer-facing principles and rules, as opposed to market-facing measures upon which this paper concentrates. CESR recognizes that while the focus of the two papers is different, the issues that need to be addressed (conflicts of interest, compliance etc) are substantially the same, regardless of whether the objective is the protection of investors or the market. It follows that the appropriate procedures and structures that should be established to address these issues are also substantially the same. This paper will highlight those areas where explicit links to the investor protection paper exist. Relevant extracts from the investor protection paper will be set out in the annex to this paper.

6. This paper also specifies measures that draw on other already approved CESR standards (such as Standards for Regulated Markets under the ISD (99-FESCO-C) and Market Conduct Standards for Participants in an Offering (99-FESCO-B)). Relevant extracts from these papers are set out in the annex to this paper.

7. This paper has been structured in several parts. Section B provides definitions and delineates the scope covered. Sections C, D and F address issues relating to market participants (issuers, investment firms and other participants). Section E specifies additional principles for regulated markets.

8. For each section, the paper recommends a series of principles, followed by more detailed measures (or tools) to achieve compliance with those principles. It should be noted that, additionally, the paper envisages that there is more than one method of implementing the measures for issuers (section C) and for other market participants (section F).

B. Definitions and scope

9. **Chinese Walls:** adequate written and enforceable policies and procedures that segment effectively, and in a manner that is appropriate to the nature of an entity's business, the flow of inside information between clearly identified business areas in order to prevent the misuse of that information.

10. **Code of conduct:** a compilation, together with the firm's relevant explanations, of the laws, self-regulatory codes (where applicable), standards and rules that apply to a particular firm. A code of conduct will highlight the standards applicable to the staff of that firm and the procedures to be used in applying those standards. A code of conduct may often be in the form of a staff handbook or compliance manual.

11. **Communication:** is deemed to include, but is not limited to marketing communication as defined in cesr 01-014[2], plus research reports (as defined below), communications in and with the press and wires, and memoranda to branch offices or *other entities* which are shown or distributed to customers or the public..

12. **Financial Instrument** shall mean all instruments defined in Section B of the Annex to Directive 93/22/EEC (Investment Services Directive)[3].

13. **Issuer:** an issuer of securities listed on a 'regulated market' as defined by Directive 93/22/EEC (Investment Services Directive) and companies which have applied for listing.

14. **Inside information** shall include inside information as defined in the Insider Dealing Directive 89/592/EEC.

15. **Investment firm**: Firms as defined in point 2 of Article 1 of Directive 93/22/EEC (Investment Services Directive)[4].

16. **Relevant instrument**: a financial instrument issued by the issuer or its subsidiaries or associated companies, and any instrument whose price is derived from such financial instruments.

17. **Relevant persons**

A) **Relevant Persons of an issuer**, who have permanent or temporary access to inside information, include:

- Leading persons within the issuer, including but not restricted to executive members of the board of directors (including the chief executive officer), significant shareholders represented on the board of directors, the general manager, the chief financial officer, the chief accounting officer, the compliance officer, directors of the issuer's legal department and any others with access to inside information.

- Any legal or natural person not employed by the issuer, but in a business, contracting or information relationship with, or acting on behalf of, the issuer, with permanent or temporary access to inside information about the issuer. This includes, inter alia, independent auditors, legal advisors, and leading persons as defined in (a) above of subsidiary, associated and parent companies of the issuer.

- the issuer itself.

B) **Relevant Persons of an investment firm**, who have permanent or temporary access to inside information, include:

- Leading persons within the investment firm, including but not restricted to executive members of the board of directors (including the chief executive officer), significant shareholders represented on the board of directors, the general manager, the chief financial officer, the chief accounting officer, the compliance officer, directors of the investment firm's legal department, staff who handle client accounts and any others with access to inside information.

- Any legal or natural person not employed by the investment firm, but in a business, contracting or information relationship with, or acting on behalf of, the investment firm, with permanent or temporary access to inside information about issuers. This includes, inter alia, independent auditors, legal advisors, and leading persons as defined in (a) above of subsidiary, associated and parent companies of the investment firm.

- the investment firm itself.

18. **Research report**: All circulars disseminated to clients by investment firms that provide information about an issuer, financial instruments, and/or an offering of financial instruments. This information can be factual and/or contain opinions on the investment merits of any of the above.

19. **Self Regulatory Code:** a set of measures agreed by a self-regulatory industry body and implemented by all members of that body.

20. **Scope:** In line with the previous paper on market abuse (ref.: FESCO/00-96l), the scope of this paper is not limited to transactions on a regulated market, but embraces all off-market transactions, including OTC transactions, which affect, directly or indirectly, the Financial Instruments listed on Regulated Markets.

C. Duties of issuers and major shareholders

Overall Objective

21. CESR has identified four key principles which apply to issuers to promote market integrity. These are:

    - Disclosure
    - Confidentiality
    - Restrictions on relevant persons
    - Internal organisation

22. This section sets out the principles and describes measures which should be used to meet them. CESR envisages that the principal method of implementation of these principles and measures will be through Competent Authorities using their rule-making and standard-setting powers, and where they do not have the relevant powers, using their best endeavours to ensure implementation of the principles and measures. CESR accepts, though, that in certain jurisdictions, implementation of this section of the paper might instead be achieved through the adoption by issuers of a Self-Regulatory Code and not through the direct use of regulatory rule-making powers.

23. This section should be read in conjunction with the paper issued by CESR on a "European Passport for Issuers" (FESCO/00-138b). The principles and measures within this Section are without prejudice to the provisions contained in that paper.

Disclosure

Objective

24. In order to promote market integrity, CESR endorses the principle that issuers should disclose all inside information as soon as possible.

25. The obligations below should apply to parent companies and subsidiaries of issuers as well as to issuers themselves, if material to the issuer. Issuers should satisfy themselves that these obligations can be met.

Principle on Disclosure

26. Issuers should disclose all inside information as soon as possible.

- For the purposes of this paper, this is the principle being applied by CESR. The standard will of course be set out in a new Market Abuse directive.
- This principle should be read in conjunction with the principle on confidentiality set out below.

Measures

Disclosure procedures

27. Issuers are responsible for assessing whether particular information concerning the company or the issuer's financial instruments is inside information.

28. Inside information should be made available to the public through officially appointed or approved mechanisms for the dissemination of information. Each Competent Authority should

be satisfied that adequate mechanisms are in place to ensure that inside information is made available to the market as a whole as soon as possible. The market covers all those jurisdictions in which an issuer's relevant instruments are traded.

29. Following, or simultaneously with, disclosure to the market as a whole, issuers may make this information available through other channels.

Qualitative requirements on disclosure

30. Disclosure of inside information should be complete, fair, clear and not misleading.

31. If the issuer chooses to use several languages, the content of the information in each of these languages should be the same in all essential respects.

Disclosure of dealings in own shares

32. The first CESR paper on market abuse (FESCO/00-096l) considered trading under agreed rules governing dealings by issuers in their own shares. These dealings can take the form of either buy-back programmes, or trading its own shares (in jurisdictions where this is permitted), where the issuer trades for its own account.

33. A safe harbour for such dealings is required as such dealing is likely to constitute behaviour that abnormally or artificially affects, or is likely to affect, the formation of prices or volumes of Financial Instruments. However, in view of the high risks to market integrity, CESR recommends that three measures are put in place providing that any transactions do not have a significant influence on a relevant instruments price pattern or price fluctuation: the treatment of the issuer as a relevant person; trading restrictions; and disclosure requirements.

34. When dealing in its own shares, an issuer must act in accordance with the restrictions on relevant persons set out in paragraphs 47 to 50 below.

35. Where an issuer initiates a buy-back programme, the programme should be announced to the market in advance and the amount of the buy-back and time period over which the buy-back will take place should be disclosed. Any changes to a previously announced buy back programme should also be announced. Furthermore, the buy-back programme should either be lead managed on behalf of the issuer by a single investment firm or the issuer should place the orders to trade with one investment firm at a time. When trading its own shares, an issuer should channel its operations through a single investment firm at a time. CESR recognises that these trading restrictions limit the freedom of choice available to the issuer. However, they provide the basis for not only ensuring orderly markets during these operations but also an effective disclosure regime.

36. Whether as part of a buy-back programme, or when trading in their own shares, issuers should disclose to the market all transactions, and the total volume, in their own shares (both ordinary and preference shares) on at least a monthly basis, together with the high, low and average prices obtained for these transactions in aggregate. More detailed disclosure of these transactions (such as prices and volumes for individual transactions) should also be made at least on a weekly basis to the Competent Authority and more frequently if deemed necessary. Full details of all transactions carried out by the issuer should be available upon request to the Competent Authority.

Disclosure at the request of the Competent Authority

37. CESR supports the provisions of Directive 2001/34/EC, paragraph 2, article 16, that the Competent Authority may at any time require an issuer to publish immediately any information that the Competent Authority considers appropriate for protecting investors and for maintaining the smooth operation of the market. The Competent Authority may publish this information itself if the issuer fails to do so.

Disclosure of transactions of major shareholders

38. The Directive 2001/34/EC refers to shareholding disclosure duties when shareholders' dealings reach, exceed or fall below the specified thresholds (art. 89). CESR recommends that the minimum level of disclosure should be enhanced. First, with regard to the initial threshold, the minimum threshold should be set at 5% or less. Second, the boundaries for disclosing changes in shareholdings above the initial threshold should be at 5% or less.

39. For an initial public offer of an issuer's shares, shareholders who hold more than 10% of total voting rights, should have a duty to disclose the lock-in period and the proportion of shares which are locked-in.

Confidentiality

Principle on Confidentiality

40. Prior to disclosure, issuers should take all reasonable measures to ensure the confidentiality of information and to control access to inside information held by them.

41. If it is not, or is not likely to be, possible to maintain confidentiality, disclosure through an officially appointed mechanism should be made without delay to avoid the misuse of inside information.

Measures

Restrictions on access to information

42. Issuers should only allow access to inside information to those who require it in connection with the exercise of their functions within the issuer. Other members of the issuer's staff should be prevented from having access to this information.

43. Issuers should further ensure that the persons that may have access to inside information are aware of and acknowledge the legal and regulatory duties, as well as the penal, administrative and disciplinary sanctions that may be incurred through the misuse or undue circulation of such information.

44. Where unauthorised access has occurred through negligence or deliberate misconduct, internal sanctions, within the issuer, should also be applied.

45. If an issuer, due to unusual movements in the price or volume of its listed securities, or for any other reason, becomes aware of a breach of confidentiality, the issuer should disclose the inside information where confidentiality has been breached through an officially appointed mechanism without delay to the market.

Third party procedures

46. Issuers should ensure that all third parties, to whom inside information is intentionally disclosed (including third party relevant persons), know and acknowledge that they are bound by the obligation of confidentiality. Penal, administrative or disciplinary sanctions may be incurred through the misuse or undue circulation of such information. In cases where the third party is already bound by an obligation of confidentiality, the issuer's duty is to inform the third party that the information is inside information.

Restrictions on Relevant Persons

Principle on Restrictions on Relevant persons

47. Issuers should take measures to limit the potential for market abuse by their relevant persons.

Measures

48. Trading restrictions are a useful measure in situations where there is a risk of relevant persons committing market abuse through the abuse of inside information. Without prejudice to the provisions of the market abuse laws, relevant persons should not trade relevant instruments during specified periods, such as before the publication of full year, half year and quarterly financial statements, when the risk is most significant. The Competent Authority may establish exemptions to this rule to cover urgent financial commitments, employee share schemes, the exercise of options, savings schemes, third-party schemes/unit trusts/Open Ended Investment Companies (OEICS) and inheritance cases. These exemptions may only be granted where the justification for trading is based on commitments that pre-date any specified period and become due

49. Relevant persons should be precluded from trading relevant instruments unless they fulfil special reporting duties. In particular, prior notification of their trading should be made to the compliance officer who should have a duty to ensure that the appropriate trading restrictions have been adhered to.

50. Trading restrictions apply both to direct transactions and also to indirect transactions carried out by nominees or by parties to whom the management of the securities beneficially held by issuers' relevant persons is assigned.

Internal Organisation

Principle on Internal Organisation

51. Issuers should have appropriate internal organisational measures in place to promote market integrity and meet the principles described above.

Measures

Restrictions on circulation of inside information

52. Issuers should prescribe and enforce a set of provisions (such as Chinese Walls) to prevent the unauthorised circulation of inside information. The requirements of Section A2[5] of CESR Market Conduct Standards for Participants in an Offering (99-FESCO-B) on information flow within an organisation should apply to issuers whether they act as participants in an offering or not.

Compliance function

53. The executive body of each issuer should designate at least one natural person as the "compliance officer". The duty of the compliance officer is to take reasonable steps to ensure that the issuer and its relevant persons comply with the principles contained in this paper. The role of the compliance officer need not amount to a full-time post.

54. The compliance officer's tasks should include at least the following:

- Preparing a code of conduct .
- Identifying, and recommending to the executive of the issuer, appropriate measures to ensure compliance with the code of conduct.
- Providing assistance and guidance to help the issuer's staff comply with the code of conduct.
- Monitoring compliance by the issuer and its staff with all the code of conduct rules.
- Ensuring that the appropriate measures are taken in the event of non-compliance.

55. The compliance officer may delegate some of the functions to one or more persons in operational positions, for example, in departments separated by Chinese Walls.

56. The compliance officer should keep a register of his activity on an ongoing basis and have the staff and technical resources necessary to perform his function. The technical resources should be suited to the nature and volume of the business conducted by the issuer and should include, in particular, a permanent system for ensuring compliance with internal procedures.

57. The executive body of each issuer should ensure the independence of the compliance function within the firm.

58. The compliance officer should draw up an annual report. The report should include a description of how the compliance function is operated, a list of the tasks performed, any recommendations made by the compliance officer and measures taken as a result of such recommendations. This report should be made available upon request to the Competent Authority.

59. Where there is a supervisory board, the executive board should inform the supervisory board of the compliance officer's appointment and of the contents of the report.

D. Duties of Investment Firms

60. As mentioned in the introduction a substantial part of the considerations contained in cesr 01-014 apply to investment firms in a market integrity context as well. This is true for the principles and rules with regard to conflicts of interest, internal organisation and codes of conduct comprising personal transactions as well as compliance (paragraphs 4-6, 11-18 and 19-20 of Section III[6] of cesr 01-014). The relevant extracts are quoted in the annex to this paper. As a consequence, this paper re-affirms the importance of these principles and rules and deems them to be an integral part of its own recommendations.

61. Furthermore, CESR's first paper on market abuse (FESCO/00-096l) called for a general duty of care towards market integrity to be imposed on investment firms (Measure 43 of FESCO/00-0961[7]). In this paper, CESR re-affirms the importance it attaches to this measure to prevent market abuse. CESR recommends that practices that enhance liquidity such as short selling, stock lending and margin trading (also known as trading on credit) be employed under clear, strict and transparent rules as well as be subject to constant monitoring in order to prevent their use for manipulative purposes.

62. This paper focuses on principles in three areas;
    - Dissemination of communications;
    - Acting as an advisor to issuers;
    - Restrictions on relevant persons.

Dissemination of communications

Objective

63. For investment firms, any communication is an area of particular relevance to market integrity. In this context, an investment firm must apply the measures set out below for all communications it disseminates whether the communication is either produced by the firm itself or by a third party.

Principle on Disclosure

64. Investment firms should take reasonable care that those responsible for the dissemination of communications to distribution channels or to the public present information fairly and disclose any conflicts of interest in the financial instruments to which that information relates.

65. It is permitted to disclose conflicts of interest in a general manner if detailed disclosure of a conflict of interest would itself pose a risk to market integrity.

Measures

Independence and due diligence of research

66. All relationships or circumstances that are likely to influence the neutrality of research to be disseminated should be disclosed. The firm should disclose to the market any direct or indirect links with the company being researched. It should particularly disclose if the research is commissioned by or paid for by any third party.

67. Investment firms should adopt and maintain consistent standards of communication and research. Research should be based on objective and professional analysis.

68. Any projections or forecasts of future events or data should be clearly labeled as such. They should contain the basis, data sources and assumptions upon which they are made.

69. Any recommendation (even though not labelled as a recommendation) to purchase, sell or switch specific financial instruments should have a basis which can be substantiated as reasonable.

70. Any communication should disclose the following information:

    a. if the investment firm is a market-maker in the security being recommended;

    b. if the investment firm was a participant in an offering of any relevant instruments of the recommended issuer within the last twelve months;

    c. if the investment firm or its employees involved in the preparation of the communication may have positions in any relevant instruments of the recommended issuer.

    d. if the employees of an investment firm involved in the preparation of the communication have compensation packages dependant on the value of any relevant instruments of the recommended issuer.

71. When investment firms are participants in an offering and issue related research, the relevant standards and preventative measures[8] outlined in FESCO 99-B "Market conduct standards for participants in an offering" apply to them in any case.

Restrictions on trading and advice ahead of analyst research to be issued to the market

72. Trading and/or providing advice ahead of research to be issued to the market can be construed as a breach of the duty to have effective Chinese Walls. The departments of an investment firm responsible for own account trading and advising clients should not, based on prior knowledge of a recommendation before that recommendation is issued to the market:

    (a) effect purchases or sales for own account of the financial instruments that are the subject of the research;

    or

    (b) exclusively advise a restricted number of clients on the financial instruments that are the subject of the research.

Acting as an adviser to issuers

Objective

73. An investment firm could possess inside information when acting as advisor to an issuer. At the same time, an investment firm will be dealing in financial instruments for proprietary or customer accounts. The overlapping area of possessing inside information and dealing in relevant instruments constitutes a potential for insider dealing and market manipulation.

74. Chinese Walls are fundamental to prevent market abuse and to allow an investment firm to carry out safely both corporate finance and dealings activities. These Chinese Walls must be designed to prevent effectively the circulation of inside information, both intended and unintended, and ensure that those making dealing decisions or giving dealing advice are not doing so on the basis of inside information.

Principle

75. Investment firms should have effective Chinese Walls in place to ensure the confidentiality of any inside information received when acting as an adviser toan issuer.

Measures

76. Investment firms should implement and enforce Chinese Walls. These Chinese Walls may extend to the physical separation of offices if that is an effective way to achieve this objective. In some cases, it may be appropriate for firms to establish Chinese Walls within business areas.

77. The operation of the Chinese Walls should be known and understood by directors, managers and other employees, and compliance procedures should take account of them.

78. The following measures should, inter alia, be implemented, under the responsibility of the compliance function:

    a) Policies and procedures which clearly identify those business areas which need to be kept isolated from each other. Of particular concern in the context of these principles are corporate finance, research, asset management, proprietary dealings and customer dealings departments.

    b) Procedures to categorise and control access to inside information whether in documented or electronic form.

    c) The provision of instructions about information handling, safeguarding, record keeping, communication between areas and disclosure.

    d) The identification to the compliance function of those who have access to inside information across a Chinese Wall or who may be brought over the wall under clearly drawn up and implemented policies and procedures. The compliance function should be in a position to provide reports to the competent authority.

    e) To promote, and increase, staff awareness of the prohibition on the misuse of inside information.

Restrictions on Relevant Persons

Principle on Restrictions on Relevant persons

79. **Investment firms should take measures to limit the potential for market abuse by their relevant persons.**

Measures

80. Trading restrictions are a useful measure in situations where there is a risk of relevant persons committing market abuse through the abuse of inside information. Investment firms should establish a list of those financial instruments where the firm itself is most likely to hold inside information.

81. Relevant persons should be precluded from trading in the instruments on the list unless they fulfil special reporting duties. In particular, prior notification of their trading should be made to the compliance officer who should have a duty to ensure that appropriate trading restrictions have been adhered to.

E. Additional Principles for Regulated Markets

Objective

82. All principles and measures for regulated markets under the ISD should share the objective of preventing market abuse. However, as mentioned in Standard number 7 of the Standards for Regulated markets under the ISD (99-FESCO-C), *"CESR does not regard it as a role of the regulator to prescribe market design...Rather, it considers that a regulated market's trading arrangements should seek to meet certain objectives..."*

83. While it is also recognized that market microstructure is an area where national stock exchanges are primarily competent, the duties of this section should be construed as principles for all those who operate regulated markets. In any case these market operators should be monitored by competent authorities.

84. The principles of this section cover four main areas of market microstructure - liquidity, transparency, reference prices, and trading halts/suspensions. These four areas are linked with each other and should therefore be considered as an inter-related set of measures. Whilst market monitoring is not specifically covered in this paper, CESR re-affirms the importance of market monitoring and discipline for regulated markets, as set out in the CESR Standards for Regulated Markets under the ISD[9] (99-FESCO-C).

Liquidity

Objective

85. Liquidity is a goal for financial markets, investors and issuers alike. Liquidity has an important role to play in reducing market abuse, since increased liquidity reduces the susceptibility of a market to manipulation, as any attempt to distort a financial instrument and/or a market through trading activity would need to be conducted in a far greater size and would be more likely to be detected. With the advent of the Euro, increased innovation in Europe's markets and greater consolidation, it is important that measures to promote liquidity remain appropriate for any new market environment.

Principle on Liquidity

86. **Regulated markets in promoting liquidity must do so in a manner that discourages abusive practices. In particular, appropriate arrangements should exist, on a continuing basis, in the following areas:**
- the role of market makers;
- arrangements for less liquid financial instruments
- the market access provisions;
- the trading hours;
- the relationship between markets.
- the free float of shares

Measures

Market makers

87. Market makers operate in some markets within the EEA where they carry on their trading activity along with the rest of market participants. The presence of market makers may be a way of promoting liquidity, especially in less liquid financial instruments. However, standard number 7 of the Standards for Regulated Markets under the ISD must always be borne in mind; *"In regulated markets operating market maker systems, or where special arrangements are in place for firms to enhance*

liquidity, the market operator should approve, and periodically review, any incentives or protections made available to dealers in return for providing a liquidity service."

88. Competition between market makers should be enhanced. Where market makers are used and there is no central public order book, CESR recommends that there should be a minimum of two market makers per financial instrument. However, this recommendation does not apply where the financial instrument is subject to special trading arrangements as described in the following paragraph. CESR also recommends that regulated markets periodically evaluate the market makers' performance and effectiveness in increasing market liquidity.

Arrangements for less liquid financial instruments

89. As per paragraph 15 of Standard 7 of the CESR Standards for Regulated Markets[10], it may be advisable to establish special trading arrangements for less-liquid financial instruments, in order to reduce the means and incentives for manipulation of these financial instruments. If such arrangements are used, the criteria for using them should be disclosed to market participants and investors alike.

Promoting access to the markets

90. Regulated markets in a competitive environment have a strong incentive to promote access to their markets and thus enhance liquidity. In promoting access to markets, regulated markets should bear in mind the risk related to the establishment of automatic order routing systems to their clients. CESR Standard 15 for regulated markets sets out that:

A regulated market should satisfy itself that member firms/participants which provide clients with an electronic link to their computers for transmission of the clients' orders to the market, have proper safeguards in place. At a minimum, the safeguards which should be in place are that:

- *the member firm/participant is able to detect the input of orders that could be regarded as 'abnormal' in the current market conditions;*
- *the member firm/participant is able to halt any orders that would result in the client breaching any credit limits or any restriction on the order size or type it may place;*

In any event regulated markets should ensure that the member/participant remains fully responsible for any order entered into the market from the member's trading computer.

91. In addition, safeguards, including controls over access points, should be in place so that the member firm is able to halt a client engaging in abusive behaviour or breaching rules specified in this set of measures. These safeguards should be in place even where a firm establishes electronic real time order routing systems.

Trading hours

92. The general tendency in most markets is for the progressive extension of trading hours in order to satisfy the demands of investors in an environment of globalization of international financial markets. CESR Standards for regulated markets sets out in paragraph 25 that *"the regulated market should in any event have processes which enable it to monitor the orderliness of trading real time"*. Appropriate surveillance standards should be applied to extended trading periods. These standards would need to be determined and implemented in such a way as to ensure that market surveillance is not compromised during any extended trading period. The implementation of the standards will need to reflect the characteristics of trading and particular risks which may arise during extended trading periods.

Transactions between markets.

93. Transactions between markets, including between cash and derivatives markets, can help improve market liquidity. Enhancing the interaction between the markets can facilitate the development of broader trading strategies. This can help to promote liquidity and for that reason, it is important to set up adequate mechanisms to develop and ensure the integrity of the markets. Such mechanisms could consist of:

    (a) Monitoring of large transactions which could have cross-market effects;

    (b) Special surveillance of underlying market transactions on days or periods of derivatives' expiration, or when the cash market is taken as a reference for derivatives, or at the delivery of the underlying financial instrument;

    (c) Arrangements with other regulated markets, in the EEA or elsewhere, for co-operation in the surveillance of cross- market effects when financial instruments or related derivatives are traded in more than one market.

Free float on shares

94. As per Standard 19 of CESR Standards for Regulated Markets[11] (99-FESCO-C), a sufficient free-float is very important to enhance liquidity. When the amount of shares available to be traded is too small, the potential for manipulation through trading is increased. It is therefore important that a sufficient level of free float is established and maintained in all financial instruments traded on regulated markets. CESR recognises, however, the inherent difficulties in measuring the free float and has therefore decided not to recommend any specific measures in this regard.

Transparency

Objective

95. The opportunity and incentive for market abuse is reduced by a high level of transparency of trades in financial instruments admitted on regulated markets, aiming at reducing any asymmetric information. A high level of transparency is the hallmark of an efficient market, and is the best safeguard for its integrity.

96. There are already a number of existing disclosure regimes in the EEA that seek to ensure that there is adequate and timely disclosure of both transactions and inside information. These include disclosure obligations under conduct of business rules, legal obligations, listing rules and the specific disclosure requirements imposed by competent authorities and exchanges. A number of these requirements will be dealt with in other sections of this paper.

Principle on Transparency

97. Transparency should be promoted. Selective pre-trade transparency should be avoided and post-trade transparency should be achieved. Orders should benefit from time priority for the purpose of execution, only to the extent that they are disclosed to the market prior to execution.

98. In implementing measures to promote transparency, regulated markets will need to assess the impact of these measures on liquidity and ensure that they achieve an appropriate balance for both the principles on liquidity and transparency. Any restrictions on transparency may be justified only by the objective of increasing liquidity.

Measures

Pre - trade transparency

99. Selective pre - trade transparency of the best bids and asks should be avoided. Real time public disclosure, of bid and ask prices and the size of possible transactions at those prices should not be limited only to the best bid and ask level but should be extended to deeper levels of the order book.

100. Knowledge of the identity of counter parties may increase the opportunities for manipulation, although knowledge of counter parties is important for market participants' counter party risk management and may also improve identification of market abuse. Where there is not a central counter party, regulated markets should evaluate the arguments for and against identifying counter parties and keep this decision under periodic review.

Post - trade transparency of large transactions

101. In accordance with Article 21 of the Investment Services Directive, a number of EEA markets have some form of rules that deal with large transactions, some of them allowing a delay in the publication of transaction details. As stated above, any restrictions on transparency may only be justified by the objective of increasing liquidity. Additionally, according to CESR Standard 7 for regulated markets: *The use of these kind of derogations of the transparency requirements should be periodically reviewed.*

102. If systems to support such rules are developed, the criteria used by these systems should be made available to all market participants so that the market is aware of the type of transaction that can be processed through the system, the applicable obligations and timings for disclosure and the maximum allowable period of delay in disclosure. Such systems should be carefully designed, implemented and monitored.

Reference Prices

Objective

103. Prices in a market should reflect the conditions of supply and demand in order to ensure market efficiency. This is particularly important at key reference points such as the closing price of an exchange or index. The closing price of a trading session is often taken as the reference price for the opening of the next trading day (although some markets use an opening auction system). The closing price of a defined financial instrument or index can also often be used as a reference price or value for other assets or contracts, or used as a benchmark for performance measurement. Examples include derivative products, warrants, OTC contracts and managed funds. Moreover, reference prices are often used to supply prices for other platforms, such as electronic platforms, or for other markets. This correlation heightens the importance of ensuring the credibility of reference prices.

104. Reference prices can offer an incentive for market manipulation, since a small movement in reference prices can result in major benefits to a market abuser. Therefore, it is essential to ensure that reference prices fully and accurately reflect the genuine trading conditions.

Principle on Reference Prices.

105. Single trade prices should not be used for reference purposes, unless the liquidity profile of the financial instrument means that the only option is a single validated price. Closing prices should be obtained with a method which produces a representative price taking account of adequate trading volume.

Measures

Mechanisms for determining closing prices

106. In general, the higher the trading volume involved to determine the closing price, the more representative the closing price is likely to be. The trading rules used to determine the closing price should take into account the adequacy of the trading volume.

107. In markets which allow trading in extended hours, it must be made clear which prices are used as official closing prices.

108. Representative prices can be ensured by the adoption of mechanisms that are tailored to the needs of different market structures. CESR recognises the benefits of mechanisms such as call auctions or weighted average prices to determine the closing price of trading sessions. In purely quote driven markets, the mid-price of market maker quotes might be a more appropriate method of determining the closing price.

Trading Halts and Suspensions

Objective

109. *"Investor confidence is particularly likely to be harmed where markets become exceptionally volatile or the price behaviour of individual instruments is erratic. In the case of the former, market operators need to weigh the benefits of allowing continuous trading against the desirability of interposing processes which afford market users the opportunity to reassess a changed situation and to alter their orders accordingly. There should be procedures to suspend trading in fast markets where this is necessary to maintain an orderly market."* (CESR Standards for Regulated Markets (99-FESCO-C) standard 7, paragraph 14)

110. Tools available to regulated markets and/or competent authorities to suspend trading include mechanistic trading halts, trading suspensions and listing suspensions.

111. 'Mechanistic' trading halts occur due to the movement of prices or volumes beyond pre-set parameters, and can be applied to the trading of a specific financial instrument or to the market as a whole. Additionally, a number of trading halts of individual financial instruments may trigger a market-wide trading halt. Many regulated markets have introduced in their trading rules certain restrictions on the appropriate daily price variation to reduce the volatility in the price of the financial instruments.

112. Suspensions, either under Directive 2001/34/EC, article 18, paragraph 1 [12]or otherwise, are discretionary measures which are typically employed when there may have been a breach of confidence in relation to inside information, the market may have been materially misled or there may have been manipulation. Two types of suspension are available:

a) Trading suspension, in which the regulated market suspends the trading of an individual financial instrument on its market, or trading in its whole market.

b) Listing suspension (as distinct from a discontinuance or cancellation of listing – 'de-listing'), when the competent authority suspends the listing of a particular financial instrument. The competent authority may suspend the listing of the financial instrument until the situation has been remedied, during which time trading in this financial instrument is prohibited on all regulated markets.

113. It is important to remember that whenever a suspension or halt of a specific financial instrument or of the whole market occurs, then this can have serious repercussions on pricing mechanisms, the trading strategies of market participants, and arbitrage between cash and derivatives markets. In addition, restrictions on daily price and volume variations may themselves create opportunities for market manipulation. Therefore, when formulating policies and procedures for halts or suspensions, the implications of these repercussions should be considered. It should be recalled, though, that a fair and orderly market supposes that all investors should have simultaneous access on a timely basis to the information they require to take their investment decisions.

Principle on Trading Halts and Suspensions

114. Competent authorities and operators of regulated markets should establish procedures for ensuring that any suspension, whether of trading or listing, is communicated without delay to all markets where the instruments are listed or traded (of which they are aware).

115. Where regulated markets admit to trading financial instruments that may become dependent on suspensions from jurisdictions outside the EEA, they should be satisfied that communication channels exist to meet the standards established in the EEA. Conversely, where financial instruments that are traded on their market are admitted for trading in juridictions outside the EEA, regulated markets should make best endeavours to be satisfied that communication channels exist to meet the standards established in the EEA.

Measures

Mechanistic Trading Halts

116. Regulated markets should keep the use of this measure under regular review. The criteria in place for the occurence of a trading halt should be fully disclosed to all market participants and investors.

117. Regulated markets should also examine whether a corresponding trading halt in the derivatives market should be triggered by a halt in the cash market.

Suspensions

118. Regulated markets should have the power to suspend the trading of particular financial instruments and, in exceptional circumstances, the power to suspend all trading on that market. The criteria for the exercise of these powers should be fully disclosed to market participants and investors.

119. Competent authorities should have the power to suspend the listing of a particular financial instrument. The criteria for the exercise of this power should be fully disclosed to market operators, market participants and investors.

F Duties of other market participants

Objective

120. The promotion of market integrity places importance on the adoption of specific duties and restrictions on dealing by persons other than those covered by the preceding parts of this paper.

121. The measures outlined in this section are particularly addressed to all persons that either have considerable market power or have special access to inside information, including institutional investors, journalists, non authorised consultants and analysts, employees of regulators and so forth. In most cases, CESR believes that these principles should be implemented through Self-Regulatory Codes rather than through regulatory rules.

Market participants with market power

Objective

122. Financial markets rely on the presence of large market participants, such as institutional investors (see [13] for definition) and, in some circumstances, individual investors (see [14] for definition), to allow companies to raise finance and for market prices to converge towards fundamental values. Market integrity is an essential condition for that environment.

Principle on Market Participants with market power

123. Market participants with market power should establish measures to promote market integrity. Due care should be exercised in transactions undertaken by all who wield market power.

Measures

Trading behaviour

124. Market participants with market power should not enter into trading strategies which are likely to cause abnormal movement in the price of one or more financial instruments and thus likely to be perceived as potential manipulative trading behaviour. In particular, market participants with market power should not undertake short-term reverse trades (eg trades carried out to close a position opened on a financial instrument when prices of that financial instrument are still significantly influenced by trades carried out to open that position).

Duty of care in markets with low liquidity

125. Due care should be exercised when trading in markets or financial instruments with low liquidity.

Arrangements to be applied by legal persons

126. Market participants with market power should:

- adopt and comply with a Code of Conduct (in particular by adopting the self regulatory code of their relevant professional association) and ensure that those who make their investment decisions or trade on their behalf are aware of these codes;

- define internal procedures and arrangements to ensure that inside information is not misused, unduly circulated or disclosed;

127. These procedures and arrangements should, at least:

- establish a compliance function that would monitor procedures, receive questions, approve conduct and propose sanctions;
- impose limitations and restrictions on personal trading, both direct or indirect (through relatives, nominees or agents);
- require staff, those who make their investment decisions and those who trade on their behalf, involved in the organisation to disclose their trading in financial instruments to the compliance function;

Media and financial journalists

Objective

128. Fair and efficient financial markets rely on information flows. Therefore, it is important that information should be conveyed to financial market participants in the most appropriate way. The media and financial journalists have a fundamental role to play in facilitating that process.

129. The principles and measures set out below can be found in the codes of conduct of many media organisations around the EEA. In most cases, these codes reflect principles established in self-regulatory codes. CESR is supportive of best practice in this area in the context of the overriding legislation relating to the freedom of the press. Furthermore, CESR would call on all relevant industry associations to keep under regular review the effectiveness of their self-regulatory codes.

Principle on the Media (Newswire, Newspaper, Radio, TV, Information Web Sites), Financial Journalists and their associations

130. The media in general, and financial journalists in particular, should comply with the highest ethical principles of independence, accuracy and fairness.

Measures

131. Specifically to avoid the dissemination of unfair or misleading information, CESR would recommend that mass media organisations and financial journalists consider the following measures:

Disclosure
Media and financial journalists should disclose, within the story, if an issuer is not independent of the mass medium or the publisher; for instance, "… GM (the company that controls this newspaper) …"

Conflicts of interest
Financial journalists should not publish any material concerning companies while having a significant interest, directly or indirectly, in their performance, without disclosing this at the same time to the market within the article.

Sanctions
CESR believes that to deal with infringements of rules, it is of utmost importance that the mass media and their associations should define an effective sanctions system.

Self-Regulatory Codes

Financial journalists and mass media should adopt and comply with a Self-Regulatory Code, and ensure that all persons are aware of the Code.

The procedures and arrangements in this Code should at least:

- establish a compliance function that should monitor procedures, receive questions, approve conduct, and propose sanctions;
- require disclosure of personal trading to the compliance entity;
- pose limitations and restrictions on personal trading both direct or indirect (through relatives, nominees or agents), for instance:
  - on persons with general knowledge of forthcoming articles, items or advertisements concerning a company or industry, from trading in related financial instruments; or, more generally, from short-term trading;
  - on writers and chief editors, during sensitive periods, such as during the cover period of a story, from trading in related company financial instruments;
  - on persons regularly assigned to a specific industry, from trading in related company financial instruments unless subject to internal disclosure rules.

Analysts, rating agencies and other advisors

Objective

132. Communications issued by persons that are not authorised by competent authorities play an increasing role in enriching the quality of publicly available information.

Principle on Analysts and Other (non authorized) Advisors

133.	**Researchers, advisors, rating providers and commentators not authorized by competent authorities should ensure that information they provide is fairly presented, and disclose any conflicts of interest in relation to the financial instruments to which that information relates.**

Measures

Compliance with other measures

134. CESR underlines the importance for the persons above mentioned to comply with similar measures as the ones recommended in this paper for investment firms (section D).

Standards of integrity

135. CESR additionally emphasises the importance of analysts employing the highest standards of integrity. In particular, analysts should refrain from publishing opinions contrary to the results of their professional analysis.

Persons in Regulatory Authorities

Objective

136. Because regulatory authorities have access to inside information, dealings by their employees in financial instruments may come under close scrutiny. It is therefore essential for market integrity that proper arrangements are in place in order to guarantee that individual investment decisions have not been influenced by information made available in confidence in the course of undertaking their regulatory duties.

137. Regulators should ensure that decisions taken are not affected by conflicts of interest to which its employees may be subject.

Principle on persons employed in Regulatory Authorities (including the regulatory functions of market operators)

138. All persons employed in Regulatory Authorities should operate with the highest standards of due diligence and integrity

Measures

Internal rules

139. Internal rules should provide a robust framework for managing conflicts of interest and ensuring confidentiality of information, and protect employees against any suggestion that regulatory decisions have been influenced by personal interests, or that their investment decisions have been influenced by information made available in confidence to the regulatory authority.

Control procedures

140. With regard to possible conflicts of interest and personal dealings, regulatory authorities should formulate and adopt a code of conduct and enforce it through a compliance function. This code should at least cover:

a) conflicts which may arise between the duties of the regulatory authority and the personal interests, associations and relationships of individual employees of the authority;

b) personal dealings in financial instruments.

Any infringements of the code should lead to appropriate disciplinary action being taken.

Endnotes

[1] Paragraph 3

EXTRACT FROM CESR MARKET ABUSE PAPER (FESCO/00-96L)

D. Preventative measures

37. As a key defence of market integrity, the Directive should include high level preventative measures that need to be implemented and enforced by the relevant Competent Authorities. CESR members believe that any damage to market integrity has such widespread consequences that preventative measures need to be put in place to reduce the possibility of abuse occurring in the first place. These preventative measures should be broadly defined in the Directive, and further developed through harmonized implementing rules and guidance.

38. For preventative measures to be effective, market participants must be able to establish that they took measures to avoid engaging in Market Abuse and Competent Authorities must have the power to sanction proven breaches of these measures. Any sanction should reflect the extent to which market integrity has been put at risk by a breach of these measures.

39. The preventative measures would include the following:

Core preventative measures to be imposed on Authorised and Listed entities

40. **Confidentiality of Material Information:** The integrity of markets will be threatened if all Authorised and Listed Entities do not maintain the confidentiality of Material Information. It is therefore critical that entities maintain effective controls over the flow of this information within their organisation. Appropriate systems and controls will need to be put in place. These might include:

(a) The use of Chinese Walls between the trading area and other business areas;

(b) Trading restrictions on the company itself, company directors and significant shareholders represented on the Board.

41. Where these systems and controls are not in place, or are not complied with, the Material Information must be deemed to be held by the whole firm [1].

42. **Internal codes of conduct:** Each Authorised and Listed Entity must establish an internal code of conduct ("the Code"). The Code should be approved as fit for purpose and its implementation regularly monitored and reviewed, by each entity's Management Board. The Code should be made available on request to the Competent Authority. The Code should include procedures to enable the entity to comply with the implementing rules and guidance issued by the Competent Authorities under the powers established by this Directive.

Measures to be imposed on Authorised Entities

43. **General duty of care**: Authorised Entities should refrain from entering into transactions, and reject orders on behalf of clients, if the provider can reasonably expect that a transaction would constitute Market Abuse.

44. **Research:** Where an Authorised Entity issues research relating to a Listed Entity, it should ensure that the material has been prepared to a high standard of due diligence, is fairly presented and discloses the interest of the firm in the company[1].

Measures to be imposed on Listed Entities

45. **Information disclosure to the market:** As set out in paragraph 9(c) above, there are a range of Directives governing the disclosure duties of Listed Entities. Failure to fulfil the disclosure duties set out in these Directives will threaten the integrity of markets. If a Listed Entity fails to disclose promptly and fairly all price sensitive information to the market, in accordance with these duties, this failure should be sanctioned by the Competent Authority.

[2] Paragraph 11

extract from Standard s and Rules for Harmonizing Core Conduct of Business Rules for Investor Protection (cesr 01-014)

Marketing communication: any form of information issued by or on behalf of an investment firm to the public, that advertises, makes a recommendation or acts as a solicitation regarding investment services and/or financial instruments. So-called "image" advertisements, however, which are not used to recommend any particular service or instrument or to solicit business, but which are designed simply to make the public aware of a investment firm's existence are not deemed to be marketing communications.

The wording "to the public" refers to the fact that a marketing communication is designed for and addressed to a number of people and not to one specific client or potential client. This does not preclude the investment firm, however, from addressing marketing communications to its existing client base.

There is no restriction on the media of communication, which is used for the marketing. The definition therefore applies to marketing information communicated by way of printed advertising, radio, television, e-mails, the Internet and electronic media such as digital and other forms of interactive television or any combination of these means of communication. Activities and communications potentially covered by the definition of marketing communication include, for example: (a) the distribution of written product brochures; (b) general advertising; (c) the distribution of mailshots (whether by post, facsimile, e-mail or other media); (d) telemarketing activities, including oral communications such as from call centres; (e) presentations to groups of private customers; (f) securities research reports, tip-sheets; and (g) other publications, which may contain non personal recommendations as to the acquisition, retention or disposal of financial instruments of any description.

[3] Paragraph 12

SECTION B of the ISD (93/22/ EEC)

Instruments

1. (a) Transferable securities.
   (b) Units in collective investment undertakings.

2. Money-market instruments.

3. Financial-futures contracts, including equivalent cash-settled instruments.

4. Forward interest-rate agreements (FRAs).

5. Interest-rate, currency and equity swaps.

6. Options to acquire or dispose of any instruments falling within this section of the Annex, including equivalent cash-settled instruments. This category includes in particular options on currency and on interest rates.

[4] Paragraph 15

Definition of investment firm art 1(2) ISD (93/22/ EEC)

investment firm shall mean any legal person the regular occupation or business of which is the provision of investment services for third parties on a professional basis.

For the purposes of this Directive, Member States may include as investment firms undertakings which are not legal persons if:
— their legal status ensures a level of protection for thirdparties'interests equivalent to that afforded by legal persons, and

— they are subject to equivalent prudential supervision appropriate to their legal form. However, where such natural persons provide services involving the holding of third parties' funds or transferable securities, they may be considered as investment firms for the purposes of this Directive only if, without prejudice to the other requirements imposed in this Directive and in Directive 93/6/EEC, they comply with the following conditions:

— the ownership rights of third parties in instruments and funds belonging to them must be safeguarded, especially in the event of the insolvency of a firm or of its proprietors, seizure, set-off or any other action by creditors of the firm or of its proprietors,

— an investment firm must be subject to rules designed to monitor the firm's solvency and that of its proprietors,

— an investment firm's annual accounts must be audited by one or more persons empowered, under national law, to audit accounts,

— where a firm has only one proprietor, he must make provision for the protection of investors in the event of the firm's cessation of business following his death, his incapacity or any other such event.

No later than 31 December 1997 the Commission shall report on the application of the second and third subparagraphs of this point and, if appropriate, propose their amendment or deletion.

Where a person provides one of the services referred to in Section A (1) (a) of the Annex and where that activity is carried on solely for the account of and under the full and unconditional responsibility of an investment firm, that activity shall be regarded as the activity not of that person but of the investment firm itself;

[5] Paragraph 52

Extract from Market Conduct Standard s for Participants in an Offering (99-FESCO-B)

A.2) INFORMATION FLOW WITHIN ORGANISATIONS

- *Objective*

30. The establishment of policies and procedures within organisations to segment the flow of material information - Chinese Walls - is fundamental to the prevention of information misuse. They are essential particularly, but not only, in large, integrated investment banks or other finance or credit institutions which may be among the key organisations involved in an offering. It is also of great importance that issuers take adequate precautions to segment the flow of material information. In the absence of such policies and procedures, there would be considerable potential within these organisations for sensitive information to move from, for example, the corporate finance division, which will typically have access to it in relation to an offering on which it may be advising, to the trading floor, where it could be misused.

31. Although there are many ways in which material information can reach those not entitled to receive it and be misused, internal transfers within organisations involved in an offering or other activity, such as a takeover, are a significant means. The members of FESCO believe it is important that this area is specifically addressed in developing market conduct standard s for participants in an offering.

32. Chinese Walls must be designed to prevent effectively both intended and unintended transfers of material information and ensure that those making investment decisions or giving investment advice for an organisation are not doing so on the basis of material information.

- *Standard*

> - *Participants in an offering must have adequate written and enforceable policies and procedures in place, appropriate to the nature of their business, to segment effectively the flow of material information between clearly identified business areas in order to prevent the misuse of material information. These policies and procedures are normally collectively known as "Chinese Walls".*
> - *If adequate policies and procedures are not in place or are not complied with, the material information must be deemed to be held by the whole firm.*

- *Preventative Measures*

33. Participants in an offering should implement and enforce adequate internal policies and procedures appropriate to their business to segment flows of material information between business areas. These policies and procedures may extend to the physical separation of offices if that is an effective way to achieve this objective. In some cases, it may be appropriate for firms to establish Chinese Walls within business areas.

34. These policies and procedures should be known to and understood by directors, managers and other employees, and compliance procedures should take account of them.

35. The following measures should, inter alia, be implemented, under the responsibility of the compliance officer:

i) Policies and procedures which clearly identify those business areas which need to be kept isolated from each other. Of particular concern in the context of these standard s are the corporate finance, research, asset management and trading departments.

ii) Procedures to categorise and control access to material information whether in documented or electronic form.

iii) The provision of instructions about information handling, safeguarding, record keeping, communication between business areas and disclosure.

iv) The identification to the compliance officer of those who have access to material information across a Chinese Wall or who may be brought over the wall under clearly drawn up and implemented policies and procedures. The compliance officer should be in a position to provide reports on request to the regulator.

v) To promote, and increase, staff awareness of the prohibition on the misuse of material information.

[6] Paragraph 60

extract from Standard s and Rules for Harmonizing Core Conduct of Business Rules for Investor Protection (cesr 01-014)

III. CORE CONDUCT OF BUSINESS RULES FOR THE « RETAIL REGIME »

1.2. CONFLICTS OF INTEREST AND INDUCEMENTS

STANDARD

An investment firm must take all reasonable steps to ensure that conflicts of interest between itself and its customers and between one customer and another are managed in such a way that the interests of customers are not adversely affected. For these purposes the investment firm must establish an internal independence policy, including Chinese walls as appropriate, designed to prevent conflicts of interest.

Where inducements are received in connection with business undertaken for the customer, adequate disclosure of such inducements must be made to the customer.

- *RULES*

Where conflicts of interests arise, an investment firm should act in the best interest of the customer, by establishing an internal independency policy aimed at preventing and managing these conflicts. Where the conflicts cannot be reasonably avoided or managed with Chinese walls, an investment firm must not undertake business with or on behalf of a customer where it has directly or indirectly a conflicting interest, including any such interest arising from intra-group dealings, joint provision of more than one service or other business dealings of the investment firm or any affiliated entity, unless it has previously disclosed to the customer the nature and extent of its interest in the business and the customer has expressly agreed to engage in such business with the investment firm.

The disclosure to the customer and the agreement by the customer must be given at the beginning of the relationship, where applicable, or before entering into a transaction either in writing or by telephone and recorded by the investment firm.

Where cash inducements are received, or are to be received at a later stage, in the course of business undertaken for the customer, an investment firm must inform the customer at the beginning of the relationship and at least once a year in writing of the relevant details of such inducements. The same applies where an investment firm has received inducements in kind, which may materially affect the provision of the service to the customer.

1.3 COMPLIANCE AND CODE OF CONDUCT

- *STANDARD S*

Executive directors/senior management must take reasonable measures to ensure that the investment firm is acting in accordance with the best interests of its customers and the integrity of the market by establishing and implementing adequate compliance policies and procedures.

An investment firm must establish an independent compliance function and an internal code of conduct, aimed at ensuring that members of the supervisory board, directors, partners, employees and agents behave in accordance with the best interests of its customers and the integrity of the market.

An investment firm must be able to demonstrate that it has acted in compliance with the conduct of business rules and the internal code of conduct and that its organization, policies and procedures facilitate such compliance.

- *RULES*

The persons responsible for the compliance function must have the necessary expertise, resources and authority and must perform their monitoring duties independently.

The results of the monitoring must be reported to the senior management of the investment firm and to the internal or external auditors. The investment firm must report these results, together with remedies adopted, to the competent authority at least once a year.

An investment firm must ensure that the competent authority is informed, without undue delay, of serious breaches of the conduct of business rules, either directly or through the internal or external auditors. In assessing whether the breaches are serious, an investment firm must take into account the impact on regulatory goals and on the capacity to provide services, their frequency, the damages suffered by customers, and the corresponding remedies adopted by the investment firm.

The compliance function must:

a) regularly verify the adequacy of policies and procedures to ensure compliance with the regulations on investment services;
b) regularly verify whether complaints relating to investment services are adequately processed;
c) provide advisory assistance and support to the various business areas of the investment firm on problems concerning compliance with the regulations on investment services.

The persons responsible for the compliance function must have full access to all relevant information enabling them to perform their duties.

An investment firm must keep relevant records for a period of five years in order to enable the competent authority to verify compliance with the conduct of business rules.

An investment firm must keep a register of customer complaints related to the provision of the investment services and the measures taken for their resolution.

An investment firm must establish a code of conduct for members of the supervisory board, directors, partners, employees and agents. The code of conduct must contain:

a) the obligation to protect data of a confidential nature;
b) the rules and procedures for carrying out personal transactions involving financial instruments;
c) the rules and procedures governing the business relationship with customers in order to ensure that the persons referred to above, in particular where a conflict of interest may arise, always act in the best interests of customers, and that such persons do not take advantage of any confidential information;
d) the investment firm's policy on conflicts of interest and inducements.

1.4. OUTSOURCING

- *STANDARD*

An investment firm that outsources activities, which might affect the provision of investment services to its customers, retains full responsibility for the outsourced activity [6].

[7] Paragraph 61

Extract from CESR MARKET ABUSE PAPER (FESCO/00-96L)

General duty of care: Authorised Entities should refrain from entering into transactions, and reject orders on behalf of clients, if the provider can reasonably expect that a transaction would constitute Market Abuse.

[8] Paragraph 71

Extract from MARKET CONDUCT STANDARD S FOR PARTICIPANTS IN AN OFFERING (99-FESCO-B)

Where a Participant in an offering issues research relating to the securities to be offered, it should ensure that the material has been prepared to a high standard of due diligence, is fairly presented, discloses the interest of the firm in the offering, and, in the case of an offering where the relevant securities are already listed or admitted on a regulated market, indicates and explains any change in recommendation from that contained in the most recent research preceding the announcement of the offering (standard A1).

Where a Participant in an Offering issues research, that research should be based on objective and professional analysis and the firm's normal standard s of research should be maintained during an offering. In any research, analysts must make clear the basis on which interpretations and judgements are reached as well as any forecasts made. Any alteration in the recommendation relating to the offered securities compared with that prior to the offer announcement must be indicated and explained. Any analyst "brought over the

wall" and made privy to material information during an offer should be precluded from disseminating research related to the offering (measure set out in paragraph 29).

[9] Paragraph 84

Extract from CESR Standard s for Regulated Markets under the ISD (99-FESCO-C).

Resources and procedures, including adequate data recording and audit trails, must be in place to ensure that a regulated market monitors compliance with its rules effectively. Where some of the data is not stored by the regulated market, the regulated market should have arrangements under the responsibility of the regulated market to obtain this information in a timely fashion. If a regulated market identifies serious breaches of its rules, or breaches of other regulations or legislation relevant to the regulatory authority , it should notify its regulatory authority.(standard 10).

There should be arrangements for handling complaints and effective and impartial disciplinary arrangements for addressing breaches of a regulated market's rules or other behaviour by members or participants that is likely to damage the market. There must be provisions, in the case of serious rule breaches or other misconduct, for the expulsion of members and the termination of trading in securities it has admitted to trading. The regulatory authority should be informed beforehand of such an expulsion or termination. (standard 11).

Fundamental to the regulated market's ability to discharge those responsibilities is the quality of the data collected and the processes used for recording it. However, it is not sufficient for a regulated market simply to collect and record data. It also needs to have processes that enable it to make use of the data, either for real-time monitoring or for post-event audit. The regulated market should in any event have processes which enable it to monitor the orderliness of trading in real-time, whether the trading takes place on an electronic order-book, on a floor, in a pit, or via telephone, fax or any other messaging system. (paragraph 27)

There should be strong and impartial disciplinary procedures. A good disciplinary arrangement is the establishment of an impartial disciplinary committee (or committees). Such committees must be empowered, in the case of serious breaches of trading or other membership rules, to suspend or expel members. Where the regulated market becomes aware of events that mean there may no longer be a proper or orderly market in specific securities, there should be adequate arrangements through which trading (on its market) in those securities can be suspended or permanently terminated. The regulatory authority must be informed beforehand of such an expulsion or termination. In some jurisdictions in these circumstances a prior authorisation by the regulatory authority will be needed. (paragraph 28)

[10] Paragraph 89

Extract from CESR Standards for Regulated Markets under the ISD (99-FESCO-C).

In respect of individual securities, erratic trade to trade pricing and market abuse is more likely to occur in the case of illiquid and relatively infrequently traded securities. Traded prices of less liquid securities are always likely to be inherently more volatile than those of liquid ones and market operators should consider in the first instance the most appropriate methods for trading such securities. Some regulated markets may prefer to concentrate supply and demand in periodic auctions, while others may prefer to offer a continuous liquidity service (albeit in small size) via contracted liquidity providers. The process employed by a regulated market will to some extent reflect investor preferences, but market operators should be encouraged to review, periodically, their approach to trading in less

liquid securities. If an investor is trading in an illiquid security, he must be able to obtain the information to be aware of that fact. (paragraph 15 of standard 7)

[11] Paragraph 94

Extract from CESR Standards for Regulated Markets under the ISD (99-FESCO-C).

Regulated markets should have procedures to ensure that securities that no longer meet the admission requirements are removed from trading. When taking such a decision, the regulated market should consider the advantages and disadvantages of the withdrawal of securities, including investor protection, the cost and loss (for investors) in liquidity. (standard 19)

[12] Directive 2001/34 art 18

1. The competent authorities may decide to suspend the listing of a security where the smooth operation of the market is, or may be, temporarily jeopardised or where protection of investors so requires.
2. The competent authorities may decide that the listing of the security be discontinued where they are satisfied that, owing to special circumstances, normal regular dealings in a security are no longer possible.

[13] Paragraph 122

Extract from CESR Implementation of article 11 of the ISD: categorisation of investors for the purpose of conduct of business rules (cesr 01-015).

Institutional investor covers the following professional investors identified in the above paper:

- Credit institutions
- Other authorised or regulated financial institutions
- Insurance companies
- Collective investment schemes and management companies of such schemes
- Pension funds and management companies of such funds
- Commodity dealers
- Other institutional investors whose corporate purpose is to invest in financial instruments.

[14] Paragraph 122

Individual investor with market power covers an entity other than an institutional investor as defined in endnote of 13 above or individual that could significantly influence prices or volumes when it trades in financial instruments.

CESR

Compilation of Responses

to the national consultation on

CESR paper

MEASURES TO PROMOTE MARKET INTEGRITY

01-052f

Ref. CESR/02-007b

February 2002

INTRODUCTORY COMMENT

This document sets out a compilation of all the comments received by members from the national consultation that was undertaken in the second half of 2001. In some cases, individual members of CESR have provided either a summary of the submissions received from the national consultation or informal translations of submissions received in languages other than English.

CESR is also aware that some potential respondees choose not to respond to CESR's national consultation in view of the ongoing negotiations on the Commission's proposed directive on market abuse. This was particularly the case with potential respondees in Germany.

At the end of each section, CESR has included a short feedback statement to indicate the key areas that have been considered by the Expert Group on Market Abuse. This document should be read in conjunction with the final paper reference cesr/01-052h.

GENERAL COMMENTS RECEIVED

PORTUGAL

PUBLIC CONSULTATION: COMMENTS

We have only received comments from the other supervisors (the insurance supervisor and the central bank), which were very much in favor of the measures established in the paper.

The Central Bank called our attention to the fact that the definition of standards applicable to the market could also take into account the work of the Joint Task Force on Securities Settlement Systems of the CPSS/IOSCO.

FINLAND

The respondents support FESCO's aim to promote preventative practices among market participants and other actors in the securities markets. In the general comments especially the increased transparency and harmonizing the practices are pointed out.

HEX, as the holding company of Helsinki Exchanges, finds that the proposal doesn't add many new viewpoints to the standards and practices already applied by market participants. As a whole HEX finds the paper too broad and general and favours an approach where the paper is shortened substantially and focused more on the main points. On the other hand CCCF thinks that regulating the market practices should not continue in a too detailed manner but a more general approach would be preferable and the differences between large and small companies should be taken into account.

HEX also points out that there are several references in the paper to the other papers issued earlier by FESCO. Therefore it is difficult to get the 'whole picture' of what the FESCO standards are.

DENMARK

The report was sent to 33 associations and authorities for consultation.

Eleven of the consulted responded by answering that they had no comments to the report, eighteen did not respond at all and five organisations had comments to the report.

These are The Copenhagen Stock Exchange, The Danish Shipowners´ Association, The Danish Securities Dealers´ Association and The Danish Bankers´ Association.

NASDAQ EUROPE

Nasdaq Europe welcomes the opportunity to participate in the consultation launched by the market abuse working group of the Committee of European Securities Regulators (CESR) with respect to its Paper on measures to promote market integrity.

The enhancement of market integrity directly contributes to increase investor confidence in the financial system and to build efficient and competitive financial markets in Europe. Nasdaq Europe, therefore, fully supports the CESR's initiative.

This letter follows on from the comments sent by Nasdaq Europe to the Banking and Finance Commission at the first stage of this consultation (cf. letter to Mr. S. De Maght of May 2, 2001). Most of these comments are reiterated in this letter, as we feel that they have not been taken into account in the revised Paper.

LUXEMBOURG

We have submitted the above-captioned consultative paper for comment to the "Comité Marché des Valeurs Mobilières", (hereafter Comité MVM) a consultative Committee of the CSSF dealing with securities issues and the members of which are representatives of the professional intermediaries, including bankers, brokers and lawyers as well to the "Comité PSF", a consultative Committee of the CSSF dealing with matters of the other professionals of the financial sector (e.g. brokers, market makers, professional custodians of securities or other financial instruments).

The members of both Committees first welcomed the initiative of CESR to develop measures to promote market integrity.

SWEDISH SECURITIES DEALERS ASSOCIATION

On the whole SSDA is in favour of the main proposed principles. However, on certain issues SSDA would like to give specific comments.

SWEDISH SHAREHOLDERS' ASSOCIATION

The Swedish Shareholders' Association (Sveriges Aktiesparares Riksförbund, SARF) has been given the opportunity to give an opinion on the follow up paper to FESCO's first paper on market abuse. SARF believes it is important to provide clear rules regarding market integrity in order to maintain the public confidence in the financial markets. SARF also believes that the proposal can be adopted in its entirety but has decided only to make a few comments on the report. Where we have made no comments we agree with the rules proposed.

NORDIC GROWTH MARKET (NGM AB)

NGM share the general view that preventive measures are important to protect market integrity and that there are strong reasons to set up a series of standards and more detailed measures in this field. Since these standards and rules shall cover activities in all member states and on all levels it is obvious that the standards must be rather general.

GERMAN ASSOCIATION OF ACCOUNTANTS (IDW)

According to the preliminary remark, the present draft is based on the existing European legislation in the securities field and on national practices and as such it reflects the views of FESCO members. Since it stands outside the formal European securities market harmonisation process, the preliminary remark goes on to say, it is not linked to any European legislation currently proposed and being prepared by the European Commission.

But precisely because the amount of European legislation currently being proposed, FESCO standards being drafted and national legislation being prepared in the securities field is so great, the standards now being considered, which, while they will not be directly binding on market participants under national law, will be binding on the supervisory authorities involved, should not stand outside the legislation currently being proposed and prepared by the European Commission. This applies all the more to standards such as the present one, which prescribes objectives, procedures and measures in very great detail, but only on the basis of legislation which is currently (still) in force but which is in the process of being revised, such as Directive 89/592/EEC (Insider Trading Directive) or are competing with plans that have not yet reached the draft stage, such as the proposals to amend the Directive on Investment Services in the Securities Field (Investment Services Directive 93/22/EEC).

For reasons of clarity and transparency, issues that have already been taken on board in EU legislation currently proposed or being prepared or – as a preliminary stage to this – have already been adopted in the form of FESCO standards should not be dealt with on several different fronts, i.e. in several sets of standards. If FESCO believes that existing standards need to go into greater detail or be up-dated, any such changes should be introduced by amending the standard in question and not by being dealt with in a different, new standard.

German Central Credit Committee

Represents all major bank associations in Germany

Our intention is not primarily to go into the details of FESCO's proposals. Instead, we would like to express our concern that FESCO has chosen this point in time to publish a document which is somewhat programmatic in character and cannot be easily integrated into the existing European legal framework or the proposed directives in the capital markets area that are currently under discussion.

It is perfectly true that all these proposals may well, in principle, go some way towards preventing market abuse. In our view, however, no proper consideration has as yet been given to the principle of proportionality, or to how these proposals will fit in with the legislative initiatives currently in the pipeline. We are therefore not in a position to make a detailed evaluation of the proposals at the present time. In any event, however, we cannot support them in their present generalising and programmatic form.

In conclusion, we would like to point out that the German banking industry is currently dealing with a substantial number of proposals for far-reaching legislative reforms in the capital markets area. Examining these proposals and assessing their implications ties up considerable personnel and organisational resources. Against this background, the FESCO paper, which fails to take account of current legislative initiatives and calls into question issues which have not been the subject of discussion up to now, is not, in our view, very helpful.

LONDON STOCK EXCHANGE

As a general point, given the ongoing development of EU legislation such as the Market Abuse Directive, I think it might be useful in a future version of the paper to link the CESR proposals with other such developments.

HELLENIC BANKS ASSOCIATION (HBA)

Banks – members of the HBA confirm that the measures proposed are necessary and indeed promote market integrity. Their adoption by the concerned parties will greatly contribute in fighting market abuse and particularly, insider dealing.

The measures' categorization according to market participants is pertinent and aims at protecting investors from manipulative practices and misuse of information.

The measures are clearly stated and can be considered as complete.

ASSOCIATION OF COMPANIES LISTED ON THE ASE - GREEK INDUSTRIES ASSOCIATION

We would like to express our satisfaction for the establishment of FESCO as a formal body of European Union. We hope that CESR will help EU capital markets. A good start would be a codification and simplification of EU Directives as well as of all FESCO work now inherited by CESR. Regarding the latter, let us give a general remark: FESCO/01-052f paper contains 24 pages. These pages pave the way to 9 more FESCO papers (of 228 pages) and 22 more EU Directives: For ease of reading, FESCO/01-052f could directly mention points of other FESCO papers and EU Directives, avoiding making only reference to them.

ATHENS STOCK EXCHANGE (ASE)

The adoption and implementation of the measures proposed in this paper will upgrade the role of the stock exchange in the economy. The basic principles from which the proposed measures are derived, are in line with the general guidelines of the ongoing Athens Stock Exchange policy within the framework of harmonization of European stock exchanges.

In the introductory note it is mentioned that the paper is not linked to any European legislation currently proposed or being prepared by the European Commission. We believe though that the paper should be linked with EU proposal for a market abuse directive (which, besides, is based on FESCO proposals) at least in common points, in order to avoid controversial interpretations.

GOODBODY STOCKBROKERS / IRELAND

Intent Test and Safe Harbours

Paragraph 25 of the first paper notes the FESCO view that intent should not be an element of a market abuse offence. Your cover letter notes the importance of ensuring that barriers not be placed in the way of legitimate transactions. In the absence of an intent test or a significant extension of the safe harbours available under the regime legitimate transactions will be caught.

The UK has developed an extensive market abuse regime over the last few years. Under that regime intent is not an element of a market abuse offence but there are several balancing protections which do not feature in the FESCO proposals. These include the following:

- A "reasonable user" test as to whether the behaviour in question fell short of the standards that would be expected by an objective reasonable user of the market in question. The guidance on how this test is applied makes it clear that, as standards and legal/regulatory requirements vary from one market to another, behaviour acceptable on one market may not be acceptable on another.

- A "legitimate commercial rationale" test under which behaviour carried out primarily for a legitimate commercial rationale is not considered abusive.

- Safe harbours for conduct in accordance with other regulatory codes or legal obligations.

- Safe harbours where reasonable preventive measures are in place to prevent abusive behaviour or where a person on reasonable grounds does not consider the behaviour in question abusive.

This is a far from comprehensive list of the provisions in the UK code. While the UK Code itself has been criticized for not having a formal intent test, significant detailed consultation was needed to come up with a model which addressed at least to some extent the need to allow for legitimate transactions to proceed. The FESCO proposals should allow for a similar process.

THE ASSOCIATION OF NORWEGIAN STOCKBROKING COMPANIES

The Association of Norwegian Stockbroking Companies are in favour of most of the principles given in the above mentioned paper. In general most of the standards and measures regarding the issuers and market participants are already satisfactory regulated through the Norwegian Securities Trading Act and the present stock exchange regulations. The latter includes the present trading rules and membership agreement for Oslo Stock Exchange. To some extent the duties of investment firms (section D) are regulated through the ethical norms and recommendations for members of our association.

AUSTRIAN CHAMBER OF COMMERCE, DIVISION FOR CREDIT INSTITUTIONS AND INSURANCE

The objectives of the Paper, namely preventing manipulation and misuse of information, strengthening investor confidence, and safeguarding the integrity of the markets, are welcome by the credit industry (also in terms of preventing terrorist organizations from being active on financial markets), which has already taken numerous measures in this direction. The work on insider dealing and market manipulation in one single paper is supported, as well.

Of course, the credit industry is in favour of sensible investor protection measures, though a cost-benefit analysis is required, in particular, in the interest of clients.

BRITISH BANKERS ASSOCIATION

We note that the paper is stated to stand outside the Lamfalussy proposals and is not a response to a mandate from the European Commission or linked to any European legislation prepared by the European Commission. However, as it was published on 1 August 2001, subsequent to the Commission's own proposal for a Market Abuse Directive (published at the end of May) it is impossible not to see a close connection between this paper and the proposed Market Abuse Directive.

We welcome the paper as a positive contribution to discussion between the EU, CESR and market users about the appropriate framework for regulating market abuse on a pan-European basis. We consider that any such framework needs to combine regulatory enforcement powers with a sensitive and flexible understanding of the wide range of European financial markets and financial instruments traded upon them. There needs to be a good working relationship between regulators, exchanges, self-regulating bodies (such as, for example, in the UK the Takeover Panel) and also banks and investment firms.

While there will always be some firms, or individuals within them, which do not abide by the law the overwhelming majority of banks and firms simply wish to conduct profitable legitimate business in a business environment where they can be sure of the regulator's expectations and confident that the business which they do will meet those expectations.

We represent banks wishing to conduct legitimate business in European markets. We hold no brief for insider dealers or market manipulators. Our comments are directed towards ensuring that measures to promote market integrity are sensible, proportionate and effective. Where we consider that any of the measures proposed in the paper are not appropriate we will explain why and, if the object of the measures is clear and we consider that there is an equally effective alternative we set this out.

Consultation Process

The CESR paper was published as a FESCO document at the beginning of August and, we understand, comments were sought by the end of October. In the normal run of things a 3 month consultation period is not an unreasonable one. However, CESR/FESCO is aware that during the same period substantial work has been going on in relation to proposals for Market Abuse and Prospectus Directives while the Commission has been carrying out consultation on regular reporting (deadline end of September) and proposed changes to the Investment Services Directive (deadline end of October).

In this context, and given that the document was published at the start of the summer holiday period, we would not be surprised if there is a relatively poor and tardy response to this particular paper.

If this proves to be the case we suggest that it is not an indication of lack of industry interest or concern about the subject but rather a reflection of the current burden of EU consultation and resource constraints in responding on a number of fronts simultaneously. In the UK context this burden is increased by the heavy workload arising from implementation of the new UK Financial Services and Markets Act 2000 which comes into force at the end of November 2001.

We welcome the consultation but it would be helpful for there to be more co-ordination between DG Markt of the Commission and CESR regarding the times of publication of consultation papers and proposals for Directives on the one hand and deadlines for responses on the other.

General Comments on Regulation to Promote Market Integrity

Apart from a helpful passage requiring individual regulators to maintain confidentiality and high standards of market integrity (paras. 129 to 133) there is no reference to the role of national regulators in taking their own action to promote market integrity.

We consider that the national regulator, working in conjunction with national exchanges and any self-regulating bodies which exist (such as the UK Takeover Panel), is the entity best placed to identify market abuse and investigate it. This is because the regulator is usually the only entity which is capable of looking across a range or markets and at transactions carried out through a variety of different means. More often than not a market abuser is not an investment firm but an investor. The investor will often use more than one broker – and may use a variety of financial instruments to achieve his aim. Individual firms cannot see this activity in its entirety and may well have no reason to suspect abuse. The regulator, on the other hand, can see the whole picture.

However, it can only do this effectively if it has invested adequate resources. This means significant investment in good quality data collection, good electronic transaction analysis tools to identify possible abuse and the recruitment of experienced staff who understand markets and inappropriate market behaviour. We consider that this investment should be a priority for national regulators. Without such investment the measures proposed in the paper will only pay limited dividends.

As a general point we consider that some of the proposals for preventative measures are too detailed. We consider that the paper should seek to establish general standards (as it does) but that some of the more detailed comment developing those standards should be removed. We comment on specific examples elsewhere in this response.

We also note that there would appear to be a potential conflict between the standard requiring disclosure as soon as possible (para. 25) and the standards requiring confidentiality (paras. 38 and 39). We consider that this can be resolved by a recognition that not all inside information can, or should, be disclosed “as soon as possible” and that at times such disclosure will be unhelpful. For example to disclose that initial contact has been made between two parties with a view to a merger or an acquisition could cause inappropriate volatility in the share price of the target company or even prevent the transaction from taking place.

Moreover there is no "safeharbour" for the situation where you know that you intend to do something e.g. acquire a company. Is this something you must disclose? The UK authorities have considered this position in the UK Code of Market Conduct and have provided a safeharbour in such circumstances. We consider that this should also be done on a pan-European basis.

LONDON METAL EXCHANGE

We note that the focus of the paper is mainly on the equity and equity derivatives markets where FESCO record that there is greater retail involvement, greater volatility of prices and a "consequent need for greater regulatory protection". This could be read as inferring that FESCO see less need for regulatory protection in commodity derivatives markets where there has historically been little direct retail participation. We support that approach.

Overall we agree with the standards suggested by FESCO in the paper. However, given our area of interest, our comments are restricted to section E of the FESCO paper – "Additional Standards for Regulated Markets". We believe that the issues raised in that section apply to most markets, and could influence the Financial Services Authority should it introduce the standards quoted for all UK markets.

DUTCH REPRESENTATIVE ORGANISATION OF LISTED COMPANIES (VEUO)

The VEUO welcomes the effort to create an effective EU-regime against market abuse. However, the VEUO regrets the fact that the FESCO/CSER initiative is not linked to the European legislation currently proposed or being prepared by the European Commission and in particular that this initiative is not embedded in the proposal for a Directive of the European Parliament and the Council on insider dealing and market manipulation. (Market Abuse).

The VEUO would prefer a focussed approach by both the EU legislator, the national legislators and the national supervisory authorities towards a uniform set of rules and regulations concerning market abuse and market integrity. Such uniform set of rules and regulations should avoid a situation where certain market conduct is permissible in one country and is not permissible in another. The VEUO believes that the current proposal of FESCO/CSER is unlikely to meet this target without supporting legislation. For example: the definitions of "inside information" differ from country to country and nothing in the text of the proposal is intended to abolish such differences.

ITALIAN NATIONAL CONSULTATION

On October 9th 2001 Consob invited main national associations interested in the FESCO paper for a day meeting in Milan to discuss FESCO standards. Consob has also received five written comments from the Italian Association of Financial Analysts (AIAF), the Association for Italy's Limited Liability Companies (ASSONIME), the Italian Association of Financial Intermediaries (ASSOSIM), the Italian Association of Asset Management Companies (ASSOGESTIONI) and the Italian Association of Portfolio Management and Trust Companies (ASSOFIDUCIARIA).

Please find comments as follows (note: we quote "participant" to indicate those who have attended meeting in Milan).

Participants have expressed a general positive appreciation of the paper with some remarks.

ASSONIME

ASSONIME points out that "The FESCO document takes a broad view of market integrity and outlines behavioural rules concerning all market participants. In general we share this approach but would like to comment on the nature of FESCO documents and on specific parts of the document that may require clarification. In our opinion, the FESCO document may become a source of confusion and conflicting interpretations, since its adoption will presumably occur before the adoption of the Directive on market abuse. Confusion may be engendered since FESCO members and tasks overlap with those of the Committee of European Securities Regulators (CESR).

ASSOGESTIONI

ASSOGESTIONI says that "We really appreciate and encourage any attempt to establish a more coherent and harmonised discipline for market abuse, following the path traced by Directive 89/592/EEC on insider trading and the guidelines set in the Financial Services Action Plan of the Lamfalussy Committee. Our associates strongly support a complete regulation of any abusive behaviour on the market, which may guarantee that the value of the financial products they buy is the genuine result of the supply and demand interaction and not affected by any artificial manipulation".

Another critical issue arising from the document is the blurred distinction between "standards" for market integrity and "measures" for implementation of those standards. It is not clear whether those measures are merely examples of how to reach those standards or whether they are mandatory. This distinction should be clarified, since the adoption of FESCO standards commits each FESCO member to implement these standards within its home jurisdiction, either directly by means of secondary regulation or by recommending their adoption to national Governments. Those "measures" would have important effects not only on the behaviour of market participants but also their internal organization".

ASSOSIM

ASSOSIM says that it "agrees with the regulatory nature of the standards in the document. It fills a gap in the primary Italian legislation, which only looks at market abuses from the point of view of the penalties involved. This regulatory choice is seen as a more effective measure and better aimed at defending and pursuing market integrity. We understand that the reason both FESCO and the European Commission have produced a document on the same subject is due to the overlapping period when these documents were produced, i.e. in the months just before the CESR was formally constituted. We do, however, wish to point out that, looking forward to the achievement of progressively more effective activities by both the Authorities and market players, we hope there will be the highest possible level of co-ordination between European Institutions".

ASSOFIDUCIARIA - ITALIAN ASSOCIATION OF PORTFOLIO MANAGEMENT AND TRUST COMPANIES

It seems to be appropriate to give a clear definition of the expression "inside information". Being the same definition a key concept on which the document is based, we deem necessary to define it in a more appropriate way, taking into account that its content defines the field and extension of the obligations of the intermediaries and issuing companies.

ASSOCIATION FRANCAISE DES ENTREPRISES D'INVESTISSEMENT (AFEI)

The market participants within the Association Francaise des Entreprises d'Investissement (AFEI) that have examined the paper, wonder about the structure of the proposed standards in relation to the current work being done. Particularly in view of the proposed Market Abuse directive, and the current review being undertaken by the DSI (which is introducing new concepts, such as organised markets). They consider that it would have been preferable that the implementation of the detailed work on the enacted principles at a directive level, be conducted once these principles had been established.

The definition of such standards by FESCO, without any real explanation of its motives, and without a preliminary consultation with the concerned players, is not conducive to the favourable adherence of the latter to the proposed principles. Some of these principles aim at commendable objectives, but difficult to put in place in the absence of the FESCO members' powers over the implicated players. There is a strong risk for these to remain on a "whish list", which would weaken the overall strength of this document.

Moreover, at this stage, the present paper only states the measures that will be applicable to investment firms and to credit institutions which have the capacity to provide investment services (hereinafter known as "investment service providers" or ISPs). The letters and numbers refer to the FESCO document paragraphs.

SWEDISH CONSUMER AGENCY

The Swedish Consumer Agency said that they have nothing to object to the content of the document.

SWEDISH BANKERS' ASSOCIATION

The Swedish Bankers' Association said that they agree with the comments made by the Swedish Securities Dealers Association.

CESR FEEDBACK STATEMENT:

There was a good response to the consultation launched on 1st August 2001 with respect to CESR paper "Measures to promote market integrity" (CESR 01 –052f). The fact that this was a consultation at national level gave the opportunity for a wide range of market participants (e.g. stock exchanges, professional associations, intermediaries and other regulators) to participate in the consultation.

The majority of responses welcomed the objective of the paper and stressed the need for clear rules regarding market integrity in order to maintain public confidence in financial markets. A number of respondents agreed with the standards and measures established in the paper and viewed them as filling the current gap in the prevention of market abuse. Other respondents favoured a more general approach.

A number of respondents sought clarification of the link between this paper and recent EU legislative initiatives such as the draft Market Abuse Directive. The preliminary remarks to the final paper set out the nature of this link.

There has also been a request to minimize all cross referencing to other CESR papers so that market participants be provided with a clear set of CESR standards. All the relevant cross-references have been set out in the endnotes to the paper.

CESR's overall evaluation of the responses was that the general outcome of the consultation did not reveal significant problems. Consequently, the revised proposal of the document has been adjusted to take account of any significant points raised (as indicated in the remarks at the end of each section below) while remaining in substance in line with the initial approach.

The expert group on market abuse has opted to present the consultation responses by grouping all responses under the relevant section headings of the consultation paper "Measures to promote market integrity". This clearly facilitated due consideration of responses received.

Major points raised and thus subsequently considered, are stressed at the end of each section or sub section of the present document.

A – Introduction (1- 8)

GERMAN ASSOCIATION OF ACCOUNTANTS (IDW)

Para.6: Principles governing investment firms, which, on the basis of the first FESCO paper on market abuse (ref: FESCO/00-961), have in the meantime already been addressed in Paragraphs 4-6, 11-18 and 19-20 of Section III of FESCO/00-124b. Other FESCO standards (99 FESCO C: Standards for Regulated Markets under the ISD and 99 FESCO B: Market Conduct Standards for Participants in an Offering) should be made more specific by the present draft.

B. Definitions and scope (9-19)

SWEDISH SECURITIES DEALERS ASSOCIATION

A comparison of point 12. Issuer, with point 18. Scope, indicates a contradiction, namely that, as to point 12 only issuers of securities listed on a "regulated market" will be considered by the FESCO proposal, whereas the scope according to point 18 is not limited to regulated markets, but embraces all off-market transactions including OTC transactions.

SSDA considers this contradiction could be troublesome in the interpretation of the regulation as such.

ATHENS STOCK EXCHANGE (ASE)

Point 13

The definition of "inside information" is already studied at EC level, regarding the replacement of the existing Insider Dealing Directive with the proposed one on market abuse. Furthermore, the recent terrorist attacks demonstrate that there are cases of market abuse that do not fall under the existing concept of "inside" information. For this reason ECOFIN council asked for the proposal of the market abuse directive to capture market abuse linked with terrorist acts. We therefore agree with the proposal of Mr. Thomadakis, chairman of HCMC, to the hearing before the EMAC of the European Parliament concerning the replacement of the term "inside" information with the term "privileged" information.

EURONEXT BRUSSELS (Market Authority)

pt 19 : the focus of this paper is mainly on the equities and derivative markets but does not handle the eurobond and other bond markets which are certainly widely spread between retail.

LUXEMBOURG

19. The members of the Comité MVM were of the opinion that it should be clarified if this paper is applicable to the derivatives markets in general or only to the derivatives markets on equities.

GOODBODY STOCK BROKERS / IRELAND

The initial FESCO market abuse paper dated 29 June 2000 states that "the objective of a European legislative framework is to defend the integrity of the market" (Para 18). Paragraphs 19 and 20 of that paper make clear that "market" refers to regulated market.

Paragraph 18 of the second FESCO paper proposes including within the regime "off market transactions" which affect directly or indirectly "the financial instruments listed on regulated markets". The phrase "off market has different meanings in different markets – in many it means any transaction not carried out through a central order book and would thus

include a large element of institutional trading. In others, including Ireland, the phrase is much more limited. It should be clear what the phrase is intended to catch. More fundamentally, whatever the definition of "off market" transactions, it is not appropriate for the test to be whether it affects "financial instruments listed on regulated markets". Every transaction in a listed instrument affects that instrument. As currently worded even private transactions not involving investment firms would be caught – a gift from a husband to a wife or to minor children would be caught within the regime.

Presumably the purpose of this wording was to catch trading in derivatives and other instruments which are not directly listed on a regulated market but which directly or indirectly impact the value of listed instruments. We accept the principle that such transactions should be caught. It would be appropriate for the test to be whether off market transactions "affect directly or indirectly the conduct of business on one or more regulated markets".

The proposals as they stand do not incorporate any materiality test. We do not believe that a market abuse regime is appropriate for transactions with no material impact on a regulated market and believe this should be explicitly recognized.

ASSOCIATION OF COMPANIES LISTED ON THE ASE - GREEK INDUSTRIES ASSOCIATION

Chinese Walls. Since 99- FESCO-B gives a definition of Chinese Wall and since FESCO/01-052 f uses the term freely, it should be included in the definitions.

THE ASSOCIATION OF NORWEGIAN STOCKBROKING COMPANIES

The Association will notwithstanding underline one important difference between the FESCO proposals and the Norwegian regulation. That is the different definition of "inside information". In our opinion the Norwegian definition in the securities trading act § 2-1 covers much more information than the Insider Dealing Directive. This can cause some problems regarding the practical implementation of different of the proposed measures.

AUSTRIAN CHAMBER OF COMMERCE, DIVISION FOR CREDIT INSTITUTIONS AND INSURANCE

Par. 10: pursuant to par. 10 any form of communication of an investment firm is within the relevant scope of this paper. This is even more significant as par. 63 provides that any form of communication of an investment firm has to disclose any possible conflict of interest or any interest by the investment firm itself (par. 69). This is too broad, and therefore neither objectively justified nor possible in practice. Therefore, these par. should become more specific. Moreover, we propose that the information required could also be made public by posting it on the homepage, which would have the effect, both, of giving clients easier access to information and making the handling easier for the undertakings.

Par. 19: it should be made clear whether the standards would also be applicable to "fixed-income products, listed on a regulated market" (= bonds).

ASSOCIATION FRANCAISE DES ENTREPRISES D'INVESTISSEMENTS (AFEI)

Para 9

Code of conduct: a "code of conduct" within the French regulation, is a code of conduct elaborated by market participant associations (cf. RG CMF, art. 3-1-2) and not by an investment service provider. It would be advisable to see to the harmonisation of terms amongst the different member states.

Para 10&16

Communication: includes "research reports", defined as "circulars issued to clients by ISPs that provide information about an issuer and/or an offering. This information can be factual and/or contain opinions on the investment merits of an offering".

This definition does not specify whether these circulars result from the financial analysis produced by ISPs or of other documents (prospectus,…) This specification is important within the application of rules, as will be shown later on.

CESR FEEDBACK STATEMENT:

Major points that have been revised in the paper were:

- to insert a definition of "Chinese walls"
- to refine the definition of "code of conduct"
- to make sure that the scope of the paper is sufficiently clear.

C. Duties of issuers of securities listed on a regulated market

Overall Objective (20 – 22)

FINLAND

As a whole we find that part C. of the paper does not add any particular new viewpoints on the matter.

ASSOCIATION OF COMPANIES LISTED ON THE ASE - GREEK INDUSTRIES ASSOCIATION

Para 22

The "European Passport" for issuers FESCO /00-138b should only be adopted if other demands from national authorities are reduced. This prospect is not indicated anywhere in FESCO/01-052f and according to a Greek saying too many rules do not necessarily lead to better governance.

Disclosure (23-37)

FINLAND

Disclosure. Concerning disclosure of dealings in own shares we note that at least in Finland many of the issues dealt in the paper are regulated in legislation, i.e. the Companies Act and the Securities Markets Act. Therefore it seems quite unlikely that all the related questions can effectively be regulated by FESCO or its members as they may need changes in legislation.

However, in this issue HEX draws the attention of FESCO to the fact that in Europe no uniform rules exist on the procedure that listed companies should comply with when acquiring their own shares in order to be certain that no objections regarding market manipulation or the abuse of insider information could be raised against them[14]. HEX proposes that FESCO commences separately preparation of such harmonised rules.

As a technical comment HEX does not find it necessary to require that disclosure of transactions should be made on a weekly basis to the Competent Authorities (item 33). It should be sufficient that Competent Authorities may require such information.

HEX finds that item 36 (disclosure of transactions of major shareholders) should be deleted altogether as this question is regulated in European Directives and national legislation

GOODBODY STOCK BROKERS / IRELAND

Para 23 of the second paper endorses the principle that inside information should be disclosed as soon as possible. The Listing Rules set out exceptions to this principle which should be recognized here.

The section on disclosure of dealings in own shares should not apply to dealings by an investment firm on a regulated market in the ordinary course of its business as such. This exception is already recognized in national law in most if not all member states.

GERMAN SAVINGS BANKS ASSOCIATION

For example, paragraph 25 (on page 4 of the paper) proposes a standard stipulating that issuers disclose all insider information as soon as possible. The question arises of how this requirement is to be viewed in the context of the existing Listing Directive's ad-hoc disclosure requirements and the planned article 6 provisions of the Proposal for a directive on insider trading and market manipulation (market abuse) of 30 May 2001. The ad-hoc disclosure proposed by FESCO is evidently intended to go much further than the requirements of existing law or the proposed legislation currently under discussion.

A case in point is the extensive disclosure on buy-back of shares envisaged in paragraph 33 (page 5 of the paper). The same goes for the similarly far-reaching broadening of disclosure requirements for changes in shareholdings; the paper proposes that the threshold for initially reaching or exceeding a relevant shareholding should be reduced from the current 10% to 5% and that further thresholds for additional shareholdings acquired above this 5%

should be set at 1% intervals. Regrettably, FESCO's paper fails to explain whether, and if so why, there might be any legal necessity for such requirements.

ASSOCIATION OF GREEK INSTITUTIONAL INVESTORS (AGII)

Para 25
It would be useful to enumerate elements which objectively constitute inside information in order to minimize subjectivity in this respect (see para. 26) as the related draft directive on Insider Dealing focuses on actions which are related to "inside information" rather than on what actually constitutes "inside information".

Para 27
Though positive, we believe that regulatory authorities will have difficulty in implementing monitoring mechanisms.

Para 29
Qualitative disclosure requirements are difficult to evaluate.
The proposed percentage boundaries for disclosing changes in percentages at every 1% above 5% (para 36) seems excessive. It may be preferable to leave these percentages at the discretion of domestic regulatory authorities in order to be aligned with particular issuers characteristics in local markets.

LUXEMBOURG

23. In order to include the relationship existing between the disclosure of an information and the impact on the marketprice of the disclosure, the members of the Comité PSF suggested to adopt a more precise definition of "inside information" following the example of the proposal for a directive of the European Parliament and of the Council on insider dealing and market manipulation (market abuse).

The members of the Comité MVM would like to obtain more detailed explanation on the meaning of the term "as soon as possible". Furthermore, the disclosure of the information may not be immediate where the disclosure prejudices the legitimate interests of the issuer. It should be clear here that this focuses on the disclosure to the public and not only to the authorities.

As it is the case for existing directives, the members of the Comité MVM considered it necessary to provide for certain exemptions to the obligation of disclosure of an information if for the example the information is not material. In fact, the obligation of disclosure of this paper is particularly strong as it refers all inside information including inside information as defined in the insider dealing directive.

NASDAQ EUROPE

Paragraphs 26-28. Nasdaq Europe believes that the type of "inside" information which an issuer should make available to the public is broader than the information included within the scope of the definition of "inside information" referred to in the Paper. The information which should trigger such disclosure requirements should cover any information of a specific or precise nature, which has not been made public, relating to an issuer, any financial instruments of such Issuer, or the trade in such financial instruments, which, if it were made public, could have a significant effect on the price of those financial instruments

or could influence investors' decisions to purchase or sell such financial instruments. Exchanges should have the freedom to determine the mechanisms to be used for the dissemination of price sensitive information to the public.

Paragraphs 31-34. The proposed requirements as to the disclosure of dealings in own shares seem excessively burdensome. Although the Nasdaq Europe Rule Book does not give any guidance on this subject, the recommendation of the Nasdaq Europe Market Supervision department states that buyback programs have to be pre-announced and that periodic updates on the program should be given. Nasdaq Europe allows, in view of best international practices, for these periodic updates to be given on a monthly or bi-monthly basis rather than every week, as proposed by CESR. The requirement to give detailed overviews on a weekly basis, not only to the Competent Authority but also to the public, is also excessive.

Paragraph 36. Nasdaq Europe welcomes CESR's willingness to reduce the level of participation in an issuer's capital, and changes to such shareholdings, which trigger disclosure requirements, in line with best international standards. We would like, however, to point out the lack of European integration with respect to the way that such changes are made available to the public. A couple of examples illustrate this: Meta4 NV is a Dutch incorporated company with head offices in Spain and which is listed on Nasdaq Europe. Pursuant to Dutch securities law (i.e., Wet melding zeggenschap in ter beurze genoteerde vennootschappen 1996), the company must file any changes of five percent in the shareholder structure with the Dutch competent authority (i.e., the Stichting Toezicht Effectenverkeer). The notifications made by the company are then made public by the Dutch authorities on their website, while the company is not traded on a Dutch exchange and does not even have any activities there. Also, according to Belgian law, companies must file these notifications with the Belgian Banking and Finance Commission and publish them in newspapers (the information is not accessible on the CBF-website), whether or not they are listed on a Belgian market. The current system, therefore, leads to fragmentation of information and pleads for centralizing the place where such notifications should be made.

EURONEXT BRUSSELS (Market Authority)

Pt 34 : we don't understand which other transaction could occur other than buy-backs by or on behalf of an issuer in its own instrument.

Pt 36 : the boundaries for disclosing changes in share holdings above the initial thresholds should be set at every 5% and not every 1% which would create a lot of disclosures which would not allow a decent follow-up anymore.

LUXEMBOURG

Disclosure of dealings in own shares

32. and 33. As paragraph 32 refers to information to be disclosed where an issuer initiates a buy-back programme and paragraph 33 refers to information to be disclosed when an issuer initiates a buy-back programme or when an issuer trades in its own shares, the members of the Comité MVM asked to add by CESR a definition of "buy-back programme" in order to avoid any doubts and any confusion with the case when the issuer trades in its own shares.

Disclosure of transactions of major shareholders

36. The members of the Comité PSF reluctantly considered the threshold of 1 % because they pointed out that too much information may destroy the value of information and lead to unjustified speculation.

SWEDISH SHAREHOLDERS' ASSOCIATION

SARF share the opinions of the report concerning disclosure of information. However, SARF believe that dealings in own shares should never be allowed to significantly influence the price of Financial Instruments. Dealings in own shares should only be allowed when the issuer wants to reduce the company capital or buy other companies. SARF believe that there is a danger in allowing issuers to buy their own shares in order to artificially affect the formation of prices. When doing so the issuer distorts the function of the market. SARF believe that the issuer should always disclose the true purpose of a buy back program before taking it into effect.

NORDIC GROWTH MARKET (NGM AB)

Art 30, Qualitative requirements on disclosure: It could be added that if the issuers shares are quoted on several marketplaces, the information should be disclosed simultaneously at all the markets, to prevent a situation where some investors have a more information.

Art 32, Disclosure of dealings in own shares: A good idea could be that the market also should get information whether the issuer intends to buy back the shares through the open market or through a public offer. It could be argued that the issuer also ought to leave information regarding what the issuer intends to do with the shares; e g shall the shares be extinct, so that the total amount of shares diminish, or do the issuer intend to sell the shares over the market at a later stage?

Art 36 and 37, Disclosure of transactions of major shareholders: NGM shares the view that disclosure should be enhanced. The proposed boundaries are, however, too tight. It seem appropriate that also the thresholds above the initial threshold should be set att 5 %. That is the general rule set by the Swedish self-regulatory organisation in this respect.

It could well be argued that the obligation to disclose the deal (art 37) should rest on the issuer and not the shareholders. A good idea could be to integrate the agreements in the prospectus that the issuer shall submit.

SWEDISH SECURITIES DEALERS ASSOCIATION

The points 32 and 34 restrict buy-back programmes on behalf of the issuer to be managed only by a single investment firm.

SSDA considers this to be an unnecessarily harsh restriction and suggests that the issuer for the reasons of efficient competition and "best execution" opportunities may be entitled to choose more than one investment firm. The regulation on disclosure of all buy-back transactions, see provisions in points 33 and 34, should cater for the necessary transparency.

SSDA finds point 34 unclear regarding the restrictions on using only one investment firm and whether the provision applies per issuer or per financial instrument. Apart from what has been said above about the harshness of the restrictions, SSDA finds that it should be made clear that such restrictions apply per instrument. Furthermore, the focus of the consultation paper is on equities (please refer to p 19). It must thus be made clear to what extent this regulation applies to other instruments such as hybrid securities, e. g. convertible bonds, has to be regarded.

According to point 36 shareholding disclosure will be enhanced to disclose initial stake of 5% or less and the boundaries for disclosing changes in shareholdings above the initial threshold should be at every 1 % above 5 %.

SSDA deem this to be too far reaching and suggests as a model the rule currently in force in Sweden namely, that the initial 5 % and changes of p to 90 % should be disclosed. A limit of 1% would be less proportionate and even contra-productive to market transparency due to the foreseen market behaviour of an investor who might change his holdings by increases and decreases during the same period depending on the price movements on the market.

GERMAN ASSOCIATION OF ACCOUNTANTS (IDW)

Disclosure of dealings in own shares: Paras. 32 & 34
Whether as part of a buy-back programme (Para. 32) or when trading in their own shares other than by way of buy-back programmes (Para. 34), issuers would be required to ensure that the buy-back programme is managed on behalf of the issuer by a single credit institution or single investment firm or that all transactions other than buy-back programmes by or on behalf of the issuer are channelled through a single credit institution or single investment firm.

No reasons are given for the procedure which the paper calls for and which is a considerable impairment of the issuer's freedom to contract. It seems quite possible to frame the disclosure requirements called for by the paper, which are the declared objective of the "Standard on Disclosure" as currently worded, in such a way as to make them less extreme for the issuer, eg in the sense of disclosure of the credit institutions or investment firms involved in the buy-back programme or other share-dealings. The required details would still remain available on request to the supervisory authorities, so the position would not be adversely affected by this.

Disclosure of dealings in own shares, heading and scope: Para. 34, Para. 19 & Para. 15
According to the heading, share buy-back programmes are meant to be covered. Accordingly, the measures set out in Paras. 31-33 are concerned with shares. The measures set out in Para. 34, on the other hand, refer not only to own shares, but extend beyond that, since they refer to transactions in "own instruments". This is a point on which some clarification is desirable, if not necessary, in order to render the scope of application unambiguous. Furthermore, Para. 19, which puts the focus of the area of application of the present draft on the equities and derivatives markets, remains unclear on this point. The concept of "instruments" is not defined in Section B, only the concept of "relevant instruments" (Para. 15), which in that case should also be used throughout. On that basis debt instruments would then also fall within the scope of Para. 34.

Disclosure of transactions of major shareholders: Para. 36
The last sentence of Para. 36 would require changes in shareholdings above the initial threshold of 5% to be disclosed in 1% steps. Given the administrative costs that this would entail for both shareholders and issuers, this appears too narrow a range when set against

any extra benefit from the information for the market or the general public. It would seem more practical to prescribe variable boundaries based on the company statutes and articles laid down by current national law or on the issuer's own statutes and articles.

LONDON STOCK EXCHANGE

We support the purpose of CESR's proposed standard on disclosure, which states that "Issuers should disclose all inside information as soon as possible." A general obligation on issuers to make ongoing disclosures is important. We believe it would be beneficial to alter the wording of the standard to refer only to material inside information, as is the case in the UK at present, and also recommended in the European Commission's ongoing consultation on companies' disclosure requirements.

ASSOCIATION OF COMPANIES LISTED ON THE ASE - GREEK INDUSTRIES ASSOCIATION

Para 33 (1) Trading in own shares should have the same rules for all jurisdictions.
(2) Disclosure of such transactions should be similar to SEC rules. The first ten calendar days of the next month after the trade.

Para 36 (1) Initial threshold should be set at 10%.
(2) Boundaries for disclosing changes could be 1% when above threshold only.
(3) The phrase "disclosure should be enhanced" is unclear and should be eliminated.

ATHENS STOCK EXCHANGE (ASE)

Disclosure of "inside "information by issuers should be handled with care since there may be an overlap with Directive 2001/34/EC.

Point 37 : The percentage of 10 % of voting rights should preferably be set at 5% . This is consistent with current ASE lock- in requirements, capital market regulation as well as the implementation in hellenic legislation of EU directive 88/627/EC.

DENMARK

Paragraph 31-37
The Danish Shipowners´ Association is not in favour of that buy-back programs should only be managed by a single investment firm. The association is of the opinion that such a condition will assist in raising the costs of securities trading in general.

The Danish Bankers´ Association and The Danish Securities Dealers´ Association think it should be considered whether all the detailed information as mentioned in paragraph 33 really is in the market´s interest.
The associations question whether the disclosing of the information offers an advantage to the market.

The Danish Bankers´ Association, The Danish Securities Dealers´ Association and The Danish Shipowners´ Association are not in favour of the boundary for disclosing changes in shareholdings at every 1% above 5%. They question the administrative costs this change in the disclosure requirements will cause compared to the markets advantages in receiving the information.

ATHENS STOCK EXCHANGE MEMBERS ASSOCIATION

It has to be clarified that there will be uniform implementation of this set of rules throughout the European Union avoiding conflicts between different national legislations.

In order to ensure investor protection there should be a clear and precise definition of "insider / confidential" information. The next step is to define the persons that are entitled to that information in order to determine the limit between insider and legally obtained information, thus eliminating price manipulation and market distortion.

Referring to the cases of share buy – backs, listed companies, in order to avoid price manipulation, since the repurchase price is not known a priori but is floating within pre-defined price-limits, should place constant "buy" orders within this range until the announced share volume is aquired.

NORTHERN GREECE INDUSTRIES ASSOCIATION

The percentage of 1% above 5% is considered very strict for the greek capital market. The implementation in Hellenic legislation of the Major Holdings EU directive is sufficient. This measure would place an extra burden in the already over loaded Athens Stock Exchange Daily Official List Announcements.
Nevertheless, point 36 could be rational in the context of important European capital markets.

THE ASSOCIATION OF NORWEGIAN STOCKBROKING COMPANIES

Regarding section C of the paper we are of the opinion that all the standards and measures are satisfactory covered by the stock exchange regulation chapter 5, the securities trading act § 3-1 and circular 2/99 from the Oslo Stock exchange. The only exception is measure 36 regarding shareholding disclosure. It is important to note the proposed changes in the securities trading act § 3-2 after which the Norwegian regulation will in harmony with the proposed measure.

AUSTRIAN CHAMBER OF COMMERCE, DIVISION FOR CREDIT INSTITUTIONS AND INSURANCE

Par. 25: pursuant to this standard, any inside information has to be disclosed as soon as possible, regardless whether this information is price-relevant or not. (Under Austrian law an ad-hoc-disclosure obligation only applies where the relevant information is price-relevant.) This general disclosure obligation, which even has to be assessed by the issuer itself, is not acceptable, in particular bearing in mind the extensive power of the competent authority to publish the information itself if the issuer fails to comply (par. 35 is not sufficiently precise concerning this power). In our view, it is not sufficiently clear which information the competent authority qualifies as being known to the issuer. Therefore, this power of the competent authority goes too far. Thus, we propose to include a provision whereby disclosure is waived in case that disclosure would pose a risk to the issuer's legitimate interests.

Par. 32: it is not clear to us, why in a buy-back programme issuers should be forced to channel their operations through one single investment firm. In case of multiple listings it appears appropriate to be able to have one investment firm in each country.

Par. 36: it is not justified to lower the boundaries for disclosing changes in shareholdings to every 1 per cent, only 5 per cent are acceptable.

BRITISH BANKERS ASSOCIATION

Broadly speaking the disclosure obligations proposed are reasonable. However, some of the proposals are too intrusive.

We can see no reason why the issuer should be restricted to using one investment firm to manage buy back programmes (paras. 32 and 34). The issuer should have the discretion to adopt whatever approach will be most sensible for effecting the buyback. There can be no danger of the market being misled if the buyback programme is disclosed in advance as proposed in para.32.

- We agree that issuers should be obliged to announce buy backs and provide the information requested. We consider that the announcement of an intended buy back should be made no later than the day preceding when purchases commence. Purchases made should be announced at close of day on each subsequent business day in which purchases are made. Completion of the buy back should also be announced.

- We consider that there should also be a provision requiring issuers to be transparent about other corporate actions relevant to a buy back programme. For example if an issuer is contemplating an acquisition and has announced a buy back programme there should be transparency about both if they are likely to be happening at the same time.

- No rationale has been provided for the proposition that major holdings should be disclosed when they reach 5% and for every 1% above this (para.36). This would be a substantial increase of the disclosure obligations included in Art. 4 of Directive 88/627 where initial disclosure obligations do not begin until 10% and subsequent thresholds are 20%, 33.33%, 50% and 66.66%. The obligation to disclose at every additional 1% is particularly onerous and we do not consider it is proportionate. In the absence of any justification of the need for a higher level of disclosure we cannot support this proposal. We also note that in the UK an obligation is triggered to bid for a company once a shareholder acquires 30% of the shares.

- We support the proposals contained in para. 37.

ITALIAN NATIONAL CONSULTATION

Paragraph 25.

ASSONIME

ASSONIME challenges that: "The same kind of information (inside information) is the basis both for the prohibition of market manipulation and the obligation to disclose; the same approach is taken for general disclosure obligations in the proposed directive on market abuse[14]. This entails a hardening of issuers' obligation relative to the present Union discipline on price-sensitive information[14], that require disclosure of "major new developments" according to the definition of art.68 of Directive 2001/34.

In this respect the new FESCO document is also different from their document of June 2000, that required listed companies to disclose "promptly and fairly all price sensitive information to the market", thus not including inside information.

It seems to us that the identification of the two definitions of information -price-sensitive information and information relevant for abuses (inside information) – is erroneous and would run counter to establishes market practices. On one hand, disclosure obligations should be concern solely facts or events that have already occurred: this would eliminate any obligation to inform the public of facts, such as negotiations of contracts or discussions on a potential takeover bid, that are at an embryonic stage, whose outcome is uncertain and whose disclosure may very well not contribute at all to informational efficiency".

Paragraph 33.

ASSONIME points out that "As for disclosure of issuers' dealings in own shares, disclosure within a week would raise difficulties for many companies, notably the holdings of large groups which would have to disclose all the dealings made by all the companies belonging to the group".

ASSOCIATION FRANCAISE DES ENTREPRISES D'INVESTISSEMENTS (AFEI)

Para 34
The unique intermediary required raises two difficulties:

-On one hand, firms having entrusted the market's liquidity to investment firms, within the scope of a market liquidity contract within a certain period of time, would be compelled by this measure to entrust to the intermediary that implements the liquidity contract, the carrying out of share purchases.

-On the other hand, this would hinder the possibility for the issuer, who partially realises his purchasing program by using derivative products, to resort to two intermediaries per market session.

CESR FEEDBACK STATEMENT:

A summary of the major points raised are:

- to work on the "type" of inside information which issuers should make available to the public. This is a major issue and the draft market abuse directive will cover it. CESR has decided not to expand on this in the current paper.
- regarding dealings of issuers in own shares, to allow for more flexible measures as to the frequency of disclosure to the market and the management and placing of orders in buy back programmes.
- to reconsider the proposed percentage boundaries regarding the disclosure of transactions of major shareholders.

Confidentiality (38-44)

NASDAQ EUROPE

Paragraph 40-43. Nasdaq Europe believes that Competent Authorities should have the right to request issuers to provide them with any information as to the way that they have restricted the access to inside information within their organisation, and the persons involved by such measures.

LUXEMBOURG

41. In order to harmonise the wording of the whole paper, the members of the Comité MVM suggested to replace “Issuers of listed securities” by “Issuer”, as the term "Issuer" is already defined under 12.

43. The members of the Comité PSF suggested to restrain the obligation of disclosure of any inside information in the case described to the obligation of disclosure of the sole information relating to the breach of confidentiality.

44. The members of both Committees would like to obtain some clarification on the meaning of “third parties”. They considered that it was a heavy task to cover all third parties, even those where disclosure may be done unintentionally as for example the taxi driver. They also pointed out that certain professions are however already bound by their professional secrecy.

GOODBODY STOCK BROKERS / Ireland

Para 44 – requires issuers to ensure that third persons to whom they release inside information “know and acknowledge” their confidentiality obligations. There should be provision for an employer to whom such information is provided to confirm that any of its employees to whom it releases such information are subject to such obligations and for the issuer to rely on that assurance rather than obtaining undertakings from each employee individually.

ASSOCIATION OF GREEK INSTITUTIONAL INVESTORS (AGII)

he proposed confidentiality method (points 38, 39) seems difficult to implement in practice.

THE ASSOCIATION OF NORWEGIAN STOCKBROKING COMPANIES

The proposed measures regarding confidentiality are already implemented in Norway through the securities trading act § 2-2 and the stock exchange regulation section 5.

BRITISH BANKERS ASSOCIATION

The standards (paras. 38 and 39) appear reasonable subject to the comments noted above regarding para. 25.

The provisions in paras. 40 to 43 also appear reasonable provided that what is envisaged is that these obligations can be met by, for example, having confidentiality obligations written into staff's employment contract and having a confidentiality policy communicated to staff (e.g. through a compliance manual or some other internal handbook or document).

However, the obligation to take internal disciplinary proceedings (para.42) should only apply to negligent or deliberate misconduct by staff.

We consider that it is too restrictive and bureaucratic to require that all third parties should "acknowledge that they are bound by the obligation of confidentiality, and the sanctions that may be incurred through the misuse or undue circulation of such information".

Generally professional advisers are bound by the general law and by their own professional bodies' confidentiality obligations. They are very well aware of their obligations. It is completely unnecessary to require them to produce some written acknowledgement. The wording of para. 44 should not apply where the third party is bound by obligations of confidentiality already (e.g. because regulatory rules impose this on him, or his professional body imposes such obligations). The real need for written confidentiality agreements is where the information is passed to someone not subject to such obligations e.g. to a potential buyer of a business.

ITALIAN NATIONAL CONSULTATION

Paragraph 38.

A participant suggests, accordingly to the paper, to delete partially the wording “issuers ~~of securities listed on a regulate market~~” and to keep only ”issuers”.

CESR FEEDBACK STATEMENT:

CESR has taken into account the need to recognise that either a legal obligation or other similar professional obligation relating to confidentiality may already bind some third parties.

Restrictions on Relevant Persons (45-50)

FINLAND

Restrictions on Relevant Persons and Internal Organisation. Even though HEX can well agree with the aim of items 45 to 59, they can be seen as too detailed and in particular when it comes to smaller listed companies, too onerous.[14]

DENMARK

Paragraph 45-59
The Danish Shipowners´ Association thinks there is a contradiction between Relevant Persons mentioned in paragraph 46 (a) and 46 (b), because (b) broadly contains "employees of subsidiary " whereas (a) more precisely defines relevant persons as " leading persons" of the parent company.

Also The Danish Shipowners´ Association is of the opinion that the specific exemptions mentioned in paragraph 49 should be made by the issuer himself as an example the chairman of the board of directors. This because the association hardly can imagine that the competent authority is in a possession of better knowledge about the issuer than the issuer is himself.

Finally The Danish Shipowners´ Association thinks that the proposal in paragraph 53 to designate a compliance officer is redundant.

NASDAQ EUROPE

Paragraph 47. The definition of trade restrictions seems incomplete or inaccurate.

EURONEXT BRUSSELS (Market Authority)

Pt 49 : we don't see how specific exemptions may be made in exceptional cases by the competent authority. The competent authority cannot overrule the law and only the courts will be competent for judging these exceptional cases. The value of such interpretation is even dangerous because this could lead people to act against the law with the approval of the competent authority.

LUXEMBOURG

48. and 49. The members of both Committees shared the opinion that this standard is too restrictive. There may be cases where a person has to sell its shares by financial necessity or for any other reason even in a "specified period" without taking any advantage of inside information and there is no argument opposing such a sale of shares from an existing portfolio. However, this standard supposes that everyone, who is in the position to have inside information, automatically makes market abuse, if this person has executed a transaction in "a specified period". Furthermore, as the issuers may disclose significant information, that may influence the market, even outside such "specified periods", the standard foreseen in this point 48 seems to be impracticable.

In addition, the members of the Comité MVM think that the involvement of the regulators in the exemption decisions to the standard stated under point 48. is inappropriate. They suggested to strike out the second sentence of 48. and 49.

NORDIC GROWTH MARKET (NGM AB)

Art 48, Trading restrictions: What could be added here are restrictions regarding the shortest length of time that the relevant person are aloud to possesses the securities. Such rules can be a devise to prevent the relevant persons to use their insider position to do trades with a short range. A relevant length of time could be three months, with is what prevails in Sweden, due to self-regulation.

SWEDISH SECURITIES DEALERS ASSOCIATION

Referring to p 49, SSDA finds it questionable whether the competent authority is well suited to decide on exemptions from trading restrictions. A more reasonable approach is that an officer of the issuer (for instance the compliance officer) grants exemptions and that sanction against too liberal exemption policies are to be considered.

SSDA finds that the introduction of a compliance officer (p 53) in the organisation of the issuer seems to be a good way of improving the standards of conduct.

GERMAN ASSOCIATION OF ACCOUNTANTS (IDW)

Restrictions on Relevant Persons – Standard on Restrictions on Relevant Persons: Para. 46
Para. 46 provides a list – which is not definitive – of people in respect of whom the issuer should make special precautionary measures, enumerated in the following Paragraphs, in order to prevent abuse of insider information.
Para. 46 (a) includes in the category of relevant persons persons who are employed by the issuer company as a member of an executive body (board of directors) or on the basis of a permanent employment contract, as a rule in a senior management capacity. Para. 46 (b) extends the category of relevant persons to include legal and natural persons who have permanent or temporary access to insider information about the issuer in any other way.

Here we believe that a distinction should be made to the effect that the issuer has to take preventive measures only in respect of those relevant persons mentioned who do not already have a statutory and professional duty towards the issuer not to disclose confidential information, as is the case with, for example, lawyers, tax consultants and independent auditors, and are prohibited from exploiting confidential information (§ 43, Para. 1, of the Law Regulating the Profession of Chartered Accountants; § 323, Para. 1, of the Commercial Code; §§ 203-204 of the Penal Code). These obligations operate alongside the ban on insider trading that applies to everyone.

For the professional class of independent auditors, being subject to the rules of procedure, authorisation requirements or prohibitions on trading specific to particular issuers would in practice result in their having to submit to a great many measures and special arrangements being imposed on them by their clients. Furthermore, if the issuers are investment firms, such measures would result in independent auditors also having to audit this process as part of the Investment Services Directive requirements that the requisite compliance organisation has to meet.

As pointed out above, because of the statutory duty imposed on independent auditors not to disclose confidential information, breaches of which are punishable by law, there is no need for any such arrangement.

Disclosure of Trading: Para. 50
The 3rd sentence of Para. 50 would, among other things, require the persons concerned to inform the issuer's Compliance Officer prior to trading in relevant instruments, so that the latter can take into consideration the appropriateness of any trading restrictions. It is unclear here whether what is meant by this is nothing more than a notification (the heading "Disclosure of trading" and the linkage with the reporting duties referred to in the 2nd sentence of Para. 50 suggest as much), or whether Para. 50 establishes an authorisation requirement or an option for "exemptions" to be granted by the Compliance Officer in the context of any trading restrictions imposed by the Compliance Officer pursuant to Paras. 47 - 49. This point needs to be clarified.

ASSOCIATION OF COMPANIES LISTED ON THE ASE - GREEK INDUSTRIES ASSOCIATION

Para 48 (1) "Specified Periods" should be specified themselves. Otherwise major shareholders could be forbidden to trade on their own shares for a large part of the year; in itself an absurdity.

ASSOCIATION OF GREEK INSTITUTIONAL INVESTORS (AGII)

We agree on the proposed restrictions on relevant persons which are in line with current Hellenic regulation. Furthermore, trading restrictions rightly allow competent authorities make exemptions in particular cases including Collective Investment Schemes (OEICS, Unit trusts, UCITS, etc. point 49)

THE ASSOCIATION OF NORWEGIAN STOCKBROKING COMPANIES

The same as for confidentiality applies for the proposed restrictions on relevant persons, even though the definition of "relevant persons" differs from the comparable definition in the securities trading act chapter 2.

BRITISH BANKERS ASSOCIATION

The standard and the commentary on it appear reasonable.

ITALIAN NATIONAL CONSULTATION

Paragraph 45.

ASSONIME

ASSONIME claims that: "Greater clarity is needed with respect to trading restrictions and disclosure obligation. In particular it is not clear whether the relevant person who wants to trade has to report the trading only to the compliance officer or to the market. It is also not clear whether the prior notification of the trading to the compliance officer, who can take into consideration the appropriateness of any trading restrictions, will render such trading legitimate".

Assogestioni

ASSOGESTIONI, in relation to the provisions on restrictions on relevant persons, says that "those restrictions are actually welcome and will prove to be useful, provided that a stricter discipline for disclosure is set out. Any disclosure on transactions made by a company's *relevant person* on the company's financial instruments should not be treated as information reserved for the compliance officer (as now provided in paragraph 50), but should actually be made available to the whole market.

CESR FEEDBACK STATEMENT:

The definitions and scope of the paragraphs referring to trading restrictions and disclosure of dealing have been clarified.

Internal Organisation (51-59)

NASDAQ EUROPE

Paragraph 53-59. The Paper's proposed requirements as to the design of the compliance function should be reviewed taking into account smaller listed companies with a limited market cap. For such companies, the appointment of a Compliance Officer should be recommended/encouraged but not made mandatory. The Paper should also clarify what is meant by "a permanent system for ensuring compliance with internal procedures".

SWEDISH SHAREHOLDERS' ASSOCIATION

The report proposes that every issuer should designate a compliance officer who is to ensure that the company has a code of conduct concerning market abuse. The compliance officer will make sure that the staff comply with the code and that everyone is aware of the code. SARF is of the opinion that a compliance officer would have an important role to play in a company whose securities are traded on the financial market. However, the responsibility of ensuring that inside information is kept within the organisation of the issuer should always rest on the managing director.

ASSOCIATION OF GREEK INSTITUTIONAL INVESTORS (AGII)

In broad lines we have no further comments on the compliance officer function. We believe that the part – time option is positive for SMEs not to bear additional operating costs. We note that there is no mention as to internal control which seems to be in force in all European regulations.

ASSOCIATION OF COMPANIES LISTED ON THE ASE - GREEK INDUSTRIES ASSOCIATION

Para 53 (1) The compliance officer could well be the internal auditor. This should be specifically stated.

GOODBODY STOCK BROKERS / Ireland

Para 53 and 57 – the word "ensure" implies strict liability. Something like "take reasonable measures to ensure" is more appropriate.

THE ASSOCIATION OF NORWEGIAN STOCKBROKING COMPANIES

When it comes to the proposed regulation on issuers internal organisation, we are in favour of the proposals, but we will underline that an implementation of the measures probably will require changes either in law or the stock exchange regulation.

AUSTRIAN CHAMBER OF COMMERCE, DIVISION FOR CREDIT INSTITUTIONS AND INSURANCE

Par. 54: the Compliance Officer would also be required to make third parties aware of the compliance code. Such an extension of duties could result in the Compliance Officer's liability for external areas/persons, over which the Compliance Officer has no control. Therefore, we reject this proposal.

BRITISH BANKERS ASSOCIATION

We note the proposal that an issuer should have a compliance officer. This appears to us to be a completely new requirement which arguably is beyond the competence of most, if not all, securities regulators. In the UK, for example, while the FSA has extremely wide ranging powers extending to anyone authorised to do business in the financial services sector it does not have any powers over issuers (except through its role as UK Listing Authority).

Issuers who are in the financial services sector will, in the UK at any rate, have compliance officers but other issuers will not (e.g. a corporate in the food industry).

It seems to us that paras. 51 to 59 therefore would represent a very substantial policy change which member states would have to take a view on and which, therefore, could only be implemented through EU or member state legislation. It would amount to a substantial extension of the existing regulatory regime beyond financial services institutions.

ITALIAN NATIONAL CONSULTATION

Paragraph 51-53.

ASSONIME

ASSONIME says that "As already pointed out, it is necessary to specify whether the measures are merely examples of how to reach those standard or they are mandatory, therefore becoming an integral part of the standards. In fact, to impose on each issuer to set up a specific compliance function, independent within the firm, having "the staff and technical resources necessary to perform his function", will be quite burdensome notably for small companies. The compliance officer's tasks appear too prescriptive and bureaucratic: for example, he is required to prepare and enforce a code of conduct for the issuer and his staff; to keep a register of his activity; to draw up an annual report, available upon request to the Competent Authority. The compulsory creation of a compliance function could discourage the listing of small firms, In our view many such a measure, which deeply affect the internal organization of issuers, should be adopted through a self-regulatory code".

Paragraph 51

A participant has expressed a strong appreciation for the measures concerning the internal organization of issuers.

ASSOGESTIONI

ASSOGESTIONI support the provisions on the internal control systems contained in paragraphs 52 to 59: either the *Chinese walls* or the establishment of a compliance officer are fundamental. It is commonly said that such measures are expensive and that they hinder the activity of the company: this opinion does not consider, however, that the further expenses hypothetically caused by the introduction of a *Chinese walls* and/or a compliance officer will be compensated by the diminution of abuse or malpractice risks within the company, thus having an overall positive effect; any supposed slowdown will also be reduced – after an initial period – since the inclusion in the standard routine of the company will be habitual, not causing any particular delay.

CESR FEEDBACK STATEMENT:

Following the replies received, the creation of a compliance function has been introduced as a completely new requirement. In addition, the duty of the compliance officer towards third parties has been reduced.

D. Duties of Investment Firms (60-72)

GERMAN SAVINGS BANKS ASSOCIATION

We have concerns about the proposals to impose additional rules of conduct and organisational obligations on investment firms for the separation of research and trading, the proposals to introduce new standards for regulated markets and to include other market participants in the regulatory regime.

FINLAND

As a technical comment HEX suggests that item 69.b. should read: "… in the most recent offering or is a participant in an offering underway of any securities…".

The FSFA recommends that any communications should disclose information if the investment firm was participant in the most recent offering of the issuer.

SWEDISH SHAREHOLDERS' ASSOCIATION

The report suggests that Investment Firms should not be allowed to give advise to a restricted number of clients based on an analysis not yet issued to the market. Many investment firms base their income on advise given to a restricted group of clients. SARF believe that an investment firm that has made an analysis based on official information should be allowed to sell it to whoever is interested, even though the analysis is not yet

issued to the market. The investment firm should however always be required to disclose their interest in the analysed company.

SWEDISH SECURITIES DEALERS ASSOCIATION

In Point 61. FESCO is characterising short selling, securities lending and purchase of securities based on credit as possible manipulative practises.

SSDA oppose strongly to this view, because, as is the case with the use of derivatives (calls and puts), an investor should be able to invest according to his belief and forecast of price-movements on the market. There should be no difference in the legal possibilities to take positions to meet either a bullish or a bearish market. Thus, the practices mentioned by FESCO is not more exposed to manipulations than other practices on the market.

In point 65, last sentence, it says that if a research is commissioned by or paid for by any third party this should be disclosed to the market.

However, SSDA suggests that this must be confined to circumstances when the research is published. The provision is not relevant in cases where a third party for its own use has ordered such a research. Thus, the wording has to be clarified on this point.

Point 72. (a) An exception is made in the proposal from the ban of trading ahead of research to be issued, namely in case of "the transaction is effected as part of normal market making or normal business of the investment firm".

SSDA finds that the wording of the last part of this sentence is unclear and ought to be clarified regarding the kind of normal business that might be exempted from the ban.

DENMARK

The Danish Securities Dealers´ Association and The Danish Bankers´ Association note concerning paragraph 65-70 (research) that The Danish Securities Dealers´ Association at the moment is preparing a code of conduct for its members containing the items mentioned in these paragraphs. Therefore the associations think that such items should be a subject of self-regulation.

ASSOCIATION OF GREEK INSTITUTIONAL INVESTORS (AGII)

We agree with the proposed measures with regard to the connection established between communication, trading from investment firms and analysis produced by them, the degree of their independence and their investment proposals. We believe however that the implementation of a certification mechanism for analysts in all EU countries is of equal importance so as to ensure the existence of a minimum objective scientific level. Also, it is necessary that Competent authorities monitor the proper implementation of these rules by all market participants (e.g., relevant bank departments and bank employees) in order to preserve equal treatment amongst all. In countries where there are separate supervisory authorities for inv firms and banks , a mechanism must be put in place to ensure co-operation in this matter.

ASSOCIATION OF COMPANIES LISTED ON THE ASE - GREEK INDUSTRIES ASSOCIATION

Para 60&61 The references to para III 4-6, 11-18, 19 – 20 from FESCO 00-124b as well as measure 43 of FESCO/00-0961 are short enough to be integrated into FESCO/01-052f. All of this cross – referencing only creates confusion.

ATHENS STOCK EXCHANGE MEMBERS ASSOCIATION

Apart from the present paper there is a range of European directives, papers and FESCO documents addressing the market abuse issue. There should be an effort to harmonize all this legislative work and eliminate any possible conflicts and contradictions on implementation as well as on competencies of relevant authorities.
Otherwise the risk for misinterpretation and ineffective regulation is high. In the same context any differentiation on the implementation of these rules within various national jurisdictions could lead to severe market distortion and will not facilitate the anti – market abuse objective.

We agree on the duty of care of Investment Firms regarding the possible identification of market manipulation undertaken by their customers. Nevertheless, on one hand this should be a duty for all investment firms and not a discretional decision and on the other hand investment firms should be legally entitled to proceed to such transaction refusals and be protected against possible legal claims by their customers. Moreover, there should be clear criteria for outlining which customer orders constitute market abuse and which form part of normal market transactions.

Short selling , stock lending and margin trading are practices that enhance liquidity and facilitate price discovery process. These practices should be employed under clear, strict and transparent rules as well as be subject to constant monitoring in order to prevent their use for manipulative purposes.

We agree on all the duties for enhanced disclosure and transparency. There is however a need for further clarification of expressions which are not clearly understood, such as:
Point 71b " exclusive advise to selected customers"
Point 72a " normal market making activity" and finally at
Point 72b, the criteria that prove which transactions carried out on customer's behalf are not product of the firm's advice.

NORTHERN GREECE INDUSTRIES ASSOCIATION

Point 67
Forecasts with regard to technical analysis and fundamentals analysis should always mention the data sources, methodology employed as well as the hypothesis retained.

GOODBODY STOCK BROKERS / Ireland

Para 65 – Needs more definition of exactly what disclosures are required.

Para 69 b – should include a provision that this disclosure is not required if the most recent offering is more than X months ago. Should also require disclosure of the scale of participation.

Para 72 Should allow investment advice where given by a department which is independent of the research unit because of effective Chinese Walls.

THE ASSOCIATION OF NORWEGIAN STOCKBROKING COMPANIES

Regarding section D we will mention that the trading restrictions in measure 71 seems to be a bit unclear, not at least because of the different definitions of "inside information". We will also like to stress the fact that researches like analyses should be based on public information and not inside information.

AUSTRIAN CHAMBER OF COMMERCE, DIVISION FOR CREDIT INSTITUTIONS AND INSURANCE

Par. 63/69c: there are cases where disclosure of conflicts of interest would be counterproductive:

- in the case of effective Chinese Walls;
- in the case of conclusion of a non-disclosure agreement.

BRITISH BANKERS ASSOCIATION

We agree that any CESR Investor Protection standards will be relevant to market integrity as well. We shall be responding separately to the new Investor Protection paper which was published in late October. You already have our comments, and those of the European Banking Federation, on FESCO/00-124b.

We consider that para.58 is an example of excessive detail. It is reasonable to require firms to produce a report but the standards should not be unduly prescriptive about what it should contain.

Many of the proposals which particularly relate to research are reasonable. We can, for example, support paras. 66 to 68.

We are concerned, however, that the disclosure obligations proposed are excessive if they are intended to apply to every individual piece of research produced. At present, in the United Kingdom, it is typically the case that a piece of research will contain a statement that the firm concerned may have a position in the securities of the issuer to which the research relates. We consider that such disclosure adequately warns the customer of any potential conflict of interest. We do not consider that the information required in para. 69 is proportionate. We also consider that there should be time limitations e.g. any disclosure should relate only to the period since the last disclosure was made – e.g. since the last annual accounts.

The obligation in para. 69 is too widely drafted. "Communication" has an extremely wide meaning and it would be completely impractical to apply para. 69 to all "communications" including, for example, an e-mail from a salesman to his client. Something needs to be constructed which can be sent out as part of standardised disclosure – and in this respect the wording should apply to research, not to all communications. Overall the obligations in para. 69 seem too precise for it to be practicable to provide this information to customers.

We agree that if research has been paid for by a third party this should be disclosed.

We agree with the restrictions proposed in paras. 71 and 72 provided that in para. 72 it is made clear that a market maker/supplier of market liquidity buying or selling stock in advance of a recommendation in expectation of customer demand resulting from the recommendation is engaging innormal market making activity. This could be included as a specific additional bullet point – 72c.

ITALIAN NATIONAL CONSULTATION

ASSOSIM

ASSOSIM says that: "A comment must be made on research in general, in analysing the obligations which the FESCO standards lay down and that are an addition to national regulations which, at least in the case of Italy, seem to be tight enough already. The Association is in full agreement with regulating research to protect market integrity from being disturbed. We cannot understand, however, why the research produced by dedicated areas in investment firms and the intermediaries themselves should be subject to rigid regulations when the obligations contained in them do not have to be fulfilled by other parties who perform similar, or even the same activities, e.g. independent consulting companies".

Paragraph 61.
About the "general rule of care" for intermediaries, that is stated also by art.6.5 of the draft directive, ASSOSIM expresses two difficulties:

"The concern which arises from both rules is related to the extremely generic nature of the adjective "reasonable", which defines the reasons which should make the intermediary reject the order. It is necessary to identify the criteria, used to detect the suspicious operations, that give the intermediary the confidence to refuse the order. Moreover, in case of a check by the Authority, the intermediary should be able to demonstrate the legitimacy of its actions by having clear and defined terms of reference. ASSOSIM thinks that it would be useful if FESCO considered whether it was opportune to create a safe harbour as already done for Stabilization and Allotment.

Another concern which arises from the provision in paragraph 61 is that the legislator does not consider the consequences of the rejection of the order in the relationship with the client, i.e. if the criteria are not clear one intermediary can process an order previously refused by another. We believe that this rule would be very onerous and difficult to comply with for the intermediaries. The investment firms must carry out procedures to detect that their clients are not using their services to perpetrate market abuse, when the intermediaries do not have the necessary technical tools to detect this market abuse. How can these procedures be carried out if the intermediaries do not have objective criteria to define them?"

Paragraph 66.

AIAF

AIAF asks for information on "standards of research" and on "professional analysis". Where are this "standards" outlined? Who is a "professional analyst"? In this respect AIAF challenges how points 125 and 126 could consider the existence of not authorized analysts.
Paragraph 69 (b).

ASSOSIM

ASSOSIM states that: “Regarding the information that any communication should disclose, there is the case of an investment firm which "was a participant in the most recent offering on any securities of the recommended issuer". ASSOSIM asks for a definition of a time limit, which should be a clear term of reference, to discover the "most recent offering"”.

A participant believes that the investment firm should disclose if it was a participant in an offering during, at least, the last two or three years.

A participant proposes to insert a further letter (d) in paragraph 69 in order to include conflicts of interests arising from the way the analyst is compensated.

Paragraph 71.

AIAF

AIAF is in favour of this point and also suggests to include a USA rule that requires, in case there is a problem in the timing of the publication such that some clients has received the research in advance, the second publication should disclose this fact. In addition, AIAF supports the recent Italian regulation on research.

Paragraphs 71 – 72

ASSOSIM

ASSOSIM points out that: “In paragraph number 71 (a) we read that investment firms should not effect purchases or sales of those securities or derivatives for own account ahead of the issue of the research on the same financial instrument. The exceptions, considered in paragraph 72, include the transactions effected as a part of normal market making activity or the normal business of an investment firm (paragraph 72 (a)).

ASSOSIM thinks that, except for the market making activity, which constitutes an exception to the prohibition under n. 71 (a), the dealing activity of the financial intermediaries could be heavily limited if the wording "normal business" is interpreted in a restrictive manner. A clearer indication would be useful, in the context of paragraph 72, of the organisation of the financial intermediary. In other words, if there are Chinese Walls, between the different sectors where the financial services are performed, the investment firm should be allowed to perform them. ASSOSIM wants to stress in its remarks on this paper that paragraphs 71 and 72, considered above, must not be read as a limitation of the dealing activity on a particular financial instrument if another sector of the firm is producing the research on the same instrument.

Regarding this we want to underline the fact that preventing intermediaries from dealing on own account in a specific financial instrument, while the analysts are studying the same instrument, means not having properly understood the real nature of research activity. The analysts process data and information, which is actually already in the public domain, on a subjective basis. They bring to this analysis their technical knowledge and are able, due to the skill sets they have acquired, to read and interpret the data more in depth. This is the analyst's added value and not accepting this basic difference is equivalent to saying that intermediaries are carrying on insider trading.

As regards paragraph 71 (b) the rule which relates to those researches to be issued to the market, foresees that an investment firm should not "exclusively advice a restricted number of clients", based only on prior knowledge of recommendation, before its issue to the market. It is not clear the reason for which paragraph 71 (b) says a "restricted number of clients", instead of "its clients", since it is clear that any kind of discrimination among clients cannot be made if market integrity is to be defended".

ASSOFIDUCIARIA - ITALIAN ASSOCIATION OF PORTFOLIO MANAGEMENT AND TRUST COMPANIES

As to part D which concerns intermediaries' duties, it should be noted the treatment disparity which currently exists and arises from liberalization of the advisory activity. The code of conduct and the undertakings provided for in part D, being stated that the undersigned Association agrees with the existence and aim of the same, are exclusively addressed to authorised intermediaries, not to the plethora of individuals which freely carry out the advisory activity. This gives rise to a serious beach of the principles of treatment on an equal basis and free competition.

As to paragraph 69, letter b, where it obliges the intermediaries to make clear, in any notice concerning the analysis, whether the intermediary has participated to the securities'offering of the issuer which is the subject of the financial analysis and of possible advice, the term "most recent offering" is used. In this regard, it seems appropriate to use more accuracy in order to limit, from a temporal point of view, the disclosure obligation of the intermediaries.

As to paragraph 71, it seems appropriate to clarify that the obligation provided for in sub-paragraph b) does not deal with the so-called confidential studies, that is studies rendered to customers and addressed to the same.

As to paragraph 72, besides the exceptions provided for in letters a) and b), the exception arising from the application of the Chinese walls principle could apply. In other words, if the structure which supplies financial analysis and research is divided from the structures which supply other investment services, such as dealing or reception and transmission of orders, an exemption from restrictions aimed to restrain trading ahead could be applied.

ASSOCIATION FRANÇAISE DES ENTREPRISES D'INVESTISSEMENTS (AFEI)

Para 62
The fact of including the concept of "communications" leads to the recommendations made in paragraph 63 and 72. One will notice that:

-On account of the definition of the "communications" concept, the obligation featured in §63 compels ISPs for both their established "communications" (home research) as for other documents. How can we appreciate, then, the obligation to disclose conflicts of interest? What will happen when an ISP disseminates "communication" that he did not establish? Shouldn't the conflict of interest to eventually be identified, rest on the person who wrote the "communication", and not the one who disseminates it?
This question is notably addressed in §65.

-The generation or dissemination of research is not an investment service. How does FESCO foresee applying these standards to non-ISPs?

Para 63
The regulation relative to the disclosure of any conflicts of interest regarding information related to financial instruments leads to the denial of the existence of Chinese walls. In fact it is precisely up to the ISPs to avoid conflicts of interest by putting in place the appropriate Chinese wall. This, entails the risk of being confronted with a situation where conflicts of interest will be conceded and this situation will be presented to the public through "disclaimers": and this does not appear to be desirable.

Para 72
What should be understood by "normal business of the investment firm"? Taking into account the very large character of exceptions, it seems that trading ahead will always be permitted?

It would be advisable to confine one self to the actual general CMF regulations, in terms of (Article 3-1-10): "the list of prohibitions makes an inventory of the financial instruments for which, taking into account the nature of the information held by the habilitated provider, the latter abstains from intervening on his behalf or of disseminating a financial analysis.

The compliance officer determines which services the habilitated provider must abstain from formulating to clients regarding a recommendation concerning the negotiation of shares registered on the prohibited list.

The compliance officer foresees the conditions in which he can, notwithstanding the dispositions of the first paragraph and when the absence of an analysis constitutes in itself an undesirable information, authorise, under his control, its publication".

In §72 b), in order to avoid any possibility of not acting within the clients' best interests, it would be advisable to replace "in order to execute" by "following the execution of a customer order".

CESR FEEDBACK STATEMENT:

The following major points have been dealt with:

- to clarify whether the "dissemination of communications" objective extends to communications simply disseminated by investment firms and not only to communications produced by them
- to specify a twelve month time period during which an investment firm has to disclose in its communications that it was a participant in an offering of any securities of the recommended issuer
- to permit investment advice when given by departments separated by effective Chinese walls within investment firms
- to take account of possible conflicts of interests analysts are subject to.

E. Additional Standards for Regulated Markets

Objective (73-75)

FINLAND

HEX would also like to emphasize here, in order to enhance innovation and competition and to serve the needs of different kinds of issuers, the need for operators of regulated markets to establish different types/segments of regulated markets. In this respect HEX believes that FESCO does not favour the 'one size fits all' approach proposed by the European Commission in its recent proposals[14] where in fact no distinction between different types of issuers (large companies/SMEs; international/domestic) traded on regulated markets is made. Concerning this paper we mean that FESCO should avoid setting strict standards concerning e.g. liquidity in order to avoid too inflexible and onerous rules. In this respect the size of the relevant market must also be taken into account as e.g. the Finnish securities markets are rather small.

NASDAQ EUROPE

The concepts of market operators (vs. regulated markets in the FESCO standards for regulated markets), market microstructure, national exchanges (vs. regulated markets under the ISD in the FESCO standards for regulated markets) and some others terms (such as trading halts and suspensions) would gain in being clarified.

EURONEXT

Euronext notes with satisfaction that the proposed standards recognise the essential role of liquidity and transparency in the enhancement of market integrity. In this respect, Euronext wishes to draw the attention of FESCO to the European Commission proposal on the revision of the ISD, as such proposal appears to be detrimental to the liquidity and transparency of regulated markets. By allowing widespread internalisation, the European Commission proposal will undermine the interaction of orders and the price-making process. The obligation of investment firms to report such in-house transactions to the so-called “leading market / market of first quotation” will not restore transparency, as a post trade reporting mechanisms will not be sufficient to ensure the interaction among orders and formation of the best possible price. This is obviously not in favour of market integrity and for the sake of the establishment of a consistent framework at European level, this should be made clear by FESCO to the European Commission. In our view, if the ISD proposal becomes law as it stands, regulated markets will no longer have any chance to implement the proposed additional standards for regulated markets in relation to transparency and liquidity.

NORDIC GROWTH MARKET (NGM AB)

Art 73, Objective regarding standards for regulated markets: NGM share the opinion that it is not the role of the regulator to prescribe market design. It is obvious that the market design must vary according to the size of the market, the financial instruments traded etc.

ASSOCIATION OF GREEK INSTITUTIONAL INVESTORS (AGII)

As a first general remark, these rules should be seen in conjunction with the current revision of the ISD, where definitions and procedures relevant to regulated markets are re-examined.

ASSOCIATION OF COMPANIES LISTED ON THE ASE - GREEK INDUSTRIES ASSOCIATION

Para 75 Paragraphs 27&28 of 99- FESCO – C are on page 17 and not on page 21. Are we talking of the same document? Doesn' t this go to show why it is important to drop all minor cross – referencing?

ATHENS STOCK EXCHANGE MEMBERS ASSOCIATION

CESR recognizes that market operators may have monitoring powers, in parallel with supervising powers of competent authorities. We agree with this and it should be made clear that supervisory obligations and requirements should not differ greatly between different monitoring bodies. In that way, extra operational burden or enormous costs for investment firms to comply with different monitoring obligations, will be avoided.

Another issue is the contradiction between the "transparency" and "market liquidity".

These may be opposite concepts i.e. increased transparency is reducing liquidity and vice versa. The trade off lies on the will of the supervising authorities and the underling market conditions.

Therefore the proposed measures should provide broad and flexible guidelines and avoid technicalities in order to preserve orderly market conditions at any time.

THE ASSOCIATION OF NORWEGIAN STOCKBROKING COMPANIES

Regarding section E, we agree to the objectives as described. Most of the objectives and measures are met through the stock exchange regulation and the trading rules for Oslo Stock Exchange.

BRITISH BANKERS ASSOCIATION

Our comments on this part of the paper are less detailed as it is primarily for the regulated markets themselves to raise points on these standards. Overall, however, our impression is that some of the standards appear too detailed and prescriptive. For example, we consider that it is too prescriptive to state that closing prices should be obtained using either a call auction or a weighted average price system (para. 95). It seems to us that it is reasonable enough to have a general standard which states that exchanges should ensure that reference prices are based on a method which produces a representative price and that the standard should be limited to this supplemented by the guidance given in paras. 96 and 97. To go further than this is to break FESCO's own standard 7 (see para. 73) by prescribing an element of market design. Indeed, overall, this part of the paper reads too much like an attempt to design a market model for a pan-European market for financial instruments. At this stage of the development of EU markets it is impossible to do this in such a way as to apply to all the different EU markets for a variety of asset classes. The principles need to be more flexible.

LONDON METAL EXCHANGE

The LME notes that FESCO "does not regard it as a role of the regulator to prescribe market design", but rather sees it as the role of regulated markets to meet liquidity, transparency, reference prices and trading halts / suspensions objectives. We agree with that approach.

ITALIAN NATIONAL CONSULTATION

Participants have expressed concerns about the absence of standards for ATS and not regulated markets.

Liquidity (76-84)

LUXEMBOURG

Point 77. The members of the Comité PSF pointed out that it may be difficult for small markets to establish and to maintain a sufficient level of free-float in all instruments traded on such a regulated market.

Point 80 market makers
The members of the Comité MVM suggested that the standard relating to the enhancement of competition between market makers should eventually be adapted to the size of the concerned market in each country.

NORTHERN GREECE INDUSTRIES ASSOCIATION

Point 76 - 77
Taking account of the free float data of companies listed on the ASE, we consider that in this market there is adequate liquidity as well as adequate mechanisms to promote it.

Point 83
While there are obstacles in finding common ground regarding the operation times of stock exchanges, we propose the use of Central European Time (CET) as common operation time for European stock exchanges.

NASDAQ EUROPE

Paragraph 78.
Exchanges, by essence, provide the necessary framework and vehicle for a liquid securities market. We believe, however, that the standard should not be worded in such a way as to imply, as such, an exchange's duty to promote liquidity.

Paragraph 79.
The standard for regulated markets under the ISD referred to in this paragraph should be clarified as to the types of incentives and protections that would be subject to periodic review and approval. While agreeing that the review and/or approval of arrangements to provide liquidity would contribute to enhance market integrity, and that adequate mechanisms should be put in place to this effect, we believe that such mechanisms and/or the way that they are enforced should not put the exchange at a competitive disadvantage compared to other regulated markets.

Paragraph 80.
The Paper rightfully points out that the presence of several market makers dealing in a security contributes to increase liquidity and enhance price competition to the benefits of the investors. We, however, believe that exchanges should have some flexibility as to the required number of market makers for highly liquid stocks and/or securities that are traded on several markets.

The Paper recommends that exchanges adopt mechanisms (such a standards and/or algorithms) to assess market maker performance and effectiveness in increasing market liquidity. Nasdaq Europe fully supports the principle that market makers must contribute to market efficiency and liquidity. However, Nasdaq's experience in the U.S. has been that it is difficult to quantify or measure "good market making". Market makers are constantly reacting to different market circumstances, which may be limited to an individual security or reflect a shift in market wide sentiment. Creating measures or algorithms invariably requires the exchange to make a judgment as to what constitutes appropriate behavior in all situations. Consideration should therefore be given to the scope of this requirement and any of its subsequent effect.

Paragraph 82.
The duties discussed in this section ("promoting access to the markets") are essential to market integrity but constitute primarily duties of the exchange's members. These duties should be enforced at two levels: through the exchanges' rules (trading rules and/or conduct of business rules) and/or through the prudential supervision effected by the competent public authorities.

Paragraph 83. We agree with FESCO that the exchange must provide appropriate market regulation and surveillance at all times, including during extended trading hours. However, trading activity outside the regular market hours may be significantly different from regular trading hours. The Paper should therefore reflect the fact that different exchange's services and/or rules may be provided/in effect during each of the trading sessions. The Paper should also emphasize the need to have the exchange's members fully disclose to their clients the potential risks of executing transactions during the extended trading hours.

EURONEXT BRUSSELS (Market Authority)

Pt 84 : here we foresee arrangements with other regulated markets in the EU or elsewhere for joint surveillance of cross market effects when financial instruments or related derivatives are traded in more than one market.

The notification of the amount of the market participants open interest in a given financial instrument seems to be commercially difficult to indicate to another regulated market. Moreover, the information should only be exchanged between markets that list some securities and not the ones that are only trading them without the approval of the issuers.

NORDIC GROWTH MARKET (NGM AB)

Art 76, 79 and 80, Market makers: As mentioned in art 76 the presence of market makers may be a way to promote liquidity. When considering efforts to reduce liquidity the market

operator must however also consider that to severe measures in this field might create a too superficial market.

The evaluation of the market makers performance and efficiency has connections not only with liquidity but also with the general confidence for the financial markets. The more transparency in the relationship between the market maker and the market the lower the risks will be that the market maker abuses his position, e g by making too large spreads between buy and sell rates and that the market maker get too generous conditions compared with members that are not market makers. It is therefor important that such evaluation takes place. This is however a task that primary should be executed by the supervisory authority and not the market operator.

LONDON STOCK EXCHANGE

We agree that liquidity has an important role to play in reducing market abuse and that cross-market transactions can help increase liquidity. We consider that, in general, competent authorities are better placed than regulated markets to provide the necessary oversight of cross-market transactions.

ASSOCIATION OF GREEK INSTITUTIONAL INVESTORS (AGII)

We consider the reference to measures for enhancement of liquidity in conjunction with an adequate level of free float, the monitoring of electronic market access and the dangers that derive from long market operation times to be very important.

GOODBODY STOCK BROKERS / Ireland

Para 82 – What level of sophistication is required here? It would appear to catch much internet trading. In the absence of clarity as to exact requirements the provision may restrict the development of internet trading.

AUSTRIAN CHAMBER OF COMMERCE, DIVISION FOR CREDIT INSTITUTIONS AND INSURANCE

Pursuant to par. 82 stock exchanges shall get the competence to require their members to have certain safeguards in place, which should help to minimize the risk of market abuse. However, it is not clear what measures the exchanges may implement. This power over market participants is too imprecise and far-reaching, even more as it is not clear why there is a need for a further institution responsible in this respect in addition to the competent authority. As electronic order routing is usually straight-through routing, a detailed control of each single order in respect of market abuse would involve considerable delay and additional cost for clients.

BRITISH BANKERS ASSOCIATION

Liquidity and Transparency

Another important issue is the overall approach to liquidity and transparency. Para. 78 states that liquidity should be promoted while para. 87 states that transparency should be promoted. Para. 88 states that: "Any restrictions on transparency may be justified only by the objective of increasing liquidity."

The overall approach, therefore, appears to be to prioritise transparency. However, there is no articulated definition of what CESR/FESCO means by transparency or why it comes to the conclusion that it should be prioritised over liquidity. We are concerned, for example, that there are circumstances where market transparency can actually be used as a means to manipulate a market. For example, transparency brings with it the risk that someone "paints the tape" in an attempt to mislead other market users.

We consider that both CESR/FESCO and the Commission needs to more clearly articulate its view of what transparency is required, in what markets and why. The case for strong transparency is clearest in cash equity markets where prices are most likely to be influenced by company information and where there are many retail investors. The case is less strong in bond markets and derivative markets. We favour transparent markets. However, we consider that the most important aspects of any markets are adequate liquidity and maintenance of an orderly market. Excessive transparency can drive out liquidity, to the overall detriment in the market. It is important to find the right balance between transparency and liquidity – and this varies from market to market and from asset class to asset class. The main priority should be liquidity and the premise should be that transparency should be sought where it will not damage liquidity – not the other way round.

Good quality transparency is very important but it tends to be a product of more mature markets where there is considerable liquidity, many participants and well-developed communication mechanisms. Electronic trading also facilitates transparency by making it easier to collate and publish data. Typically new markets have to focus on developing liquidity and an undue emphasis on transparency in such markets could strangle them at birth. We propose, therefore, that CESR should re-examine the balance between transparency and liquidity outlined in this part of the paper and introduce sufficient flexibility so that regulators can adapt transparency and disclosure requirements to the different circumstances of different types of market and financial instrument.

An issue not raised in the paper – but relevant here is the issue of extension of trading hours. As electronic trading makes it even easier to trade around the clock many exchanges have extended the normal trading day. Notwithstanding this most users of the market are still following long established patterns of trading and, therefore, the bulk of daily trading is still done within a traditional 8.30 to 4.30 period. The consequence of extending hours is to make liquidity more patchy – particularly when volumes fall off and, in particular, to significantly lower the volumes of shares traded at the market close – as this often occurs much later in the day now.

Lower volumes at the close make the close more easy to manipulate – and consequently there is something to be said for considering whether a better approach would be to draw a distinction between the normal trading day – which should revert perhaps to 8.30/4.30 or thereabouts – and after hours trading – which could continue during the period into which opening hours have currently been extended. This would allow the close to occur at 4.30 or thereabouts when, significantly, fund managers and the large investors will still be available to provide orders and liquidity for the close. A large number of funds use the close as the pricing benchmark for their funds, increasing the importance of it being a representative and verifiable pricing mechanism.

Another preventative measure which has not been mentioned – but which can prove useful is the power to order a firm to reduce its positions. This should be used sparingly but it can be a useful way of avoiding, or eliminating, a squeeze. It may be that the best way for a

regulator to operate such a mechanism would be indirectly – through the exchange on which a large cash position is held.

ITALIAN NATIONAL CONSULTATION

Paragraph 82.

ASSOSIM

ASSOSIM challenges that paragraph 82 is linked to paragraph 61 and restates that: "A regulated market should satisfy itself that member firms which provide clients with an electronic link to their computers for transmission of the clients' orders to the market have proper safeguards in place. Again it is the investment firm's obligation to detect the input of orders that could be regarded as "abnormal" in the current market conditions. Therefore the investment firm is also being asked to check the market conditions not just the client's activity. Moreover, the detection of a suspicious activity in case of transmission through an electronic link is more difficult because of the lack of the interaction with the client".

Transparency (85-92)

EURONEXT BRUSSELS (Market Authority)

Pt 89 : supposes compulsory centralisation of orders because otherwise it makes no sense to make a rule on real time disclosure of bid and ask prices to everyone.

Pt 91 : indicates that any restriction of transparency may only be justified by the objective of increasing liquidity. This cannot be the reason. When a large transaction occurs, transparency can only be restricted to allow a principal trader to unwind his position.

SWEDISH SECURITIES DEALERS ASSOCIATION

Point 90. Regarding disclosure of the identity of counter parties in a pre-trade (i.e. standing behind an order), the proposal says that…"regulated markets should evaluate the arguments for and against identifying counter party and keep this decision under periodic review."

SSDA appreciate the flexibility of this provision that caters for different market situations.

LONDON STOCK EXCHANGE

We agree that appropriate pre- and post-trade transparency is a critical element of an efficient equity market and is an important safeguard for market integrity. Clarification from CESR on the meaning of the phrase "selective pre-trade transparency should be

avoided" would be useful and extending the standard to take account of the nature of differing market models desirable.

We are supportive of CESR's principle that post-trade transparency in equity markets is desirable, while still allowing for delayed publication for large trades where they are designed to enhance liquidity or, in addition, to avoid short-term volatility.

ASSOCIATION OF GREEK INSTITUTIONAL INVESTORS (AGII)

Measures for the promotion of transparency are linked with the general regulatory framework and liquidity of each market. It is therefore difficult to define common levels and these should be set by competent authorities in collaboration with market participants.

GOODBODY STOCK BROKERS / Ireland

Para 89 – Disclosure can be to members of a regulated market alone or to the investors as a whole. Which is intended?

Para 90 – Knowledge of a counterparty can reduce the scope for manipulation rather than increase it because the behaviour is more transparent.

LONDON METAL EXCHANGE

The LME agrees that liquidity and transparency have important roles to play in reducing market abuse. That is why the LME has made stenuous efforts over the last five years to increase the amount of price sensitive information on quotes, traded prices, positions and stocks made available to users of the LME.. It agrees with FESCO that regulated markets need to assess the impact of transparency on liquidity and that they should seek to achieve an appropriate balance between the two. The LME believes that this is particularly true where markets introduce new contracts, products and/ or trading systems, when restrictions on transparency might be justified by the need to promote usage and, hence, liquidity.

The LME notes that FESCO suggests that real – time disclosure of bid and ask prices and size should not be limited only to the best bid and ask level, but should extend to deeper levels. The LME believes that disclosure of order and price depth can harm the establishment of liquidity of new products, services and contracts.
With respect to post trade transparency, the LME endorses the view that there can be justifiable reasons for delaying disclosure of large transactions.

We agree with FESCO that the disclosure of the identity of counterparts to trades could harm markets and increase the opportunities for manipulation.

The LME accepts the need for markets to review periodically derogations of transparency requirements.

ASSOCIATION FRANCAISE DES ENTREPRISES D'INVESTISSEMENTS (AFEI)

Para 90
Taking into account the introduction of the recent anonymity on the markets managed by Euronext, and that market professionals do not argue this principle, they however would like to attract the attention of the authorities, on the necessity for those responsible of controlling ISP investment services to be able, eventually, to dispose of the information permitting the identification of ISP counter parties, in a way to detect any eventual collusions.

Reference Prices (93-99)

DENMARK

The Copenhagen Stock Exchange notes concerning the standard on reference prices in paragraph 95 that the exchange does not agree in FESCO´s view that single trade prices should not be used for reference purposes/as closing price.

For the time being the Copenhagen Stock Exchange uses the last trade in a listed financial instrument as the closing price at the particular day. This procedure is used considering that it is not unambiguous that call auction or weighted average price are better ways to calculate the closing price. The international analyses, which the stock exchange knows of, do not unambiguous document that using other procedures besides single trade prices is better.

It is The Copenhagen Stock Exchange´s view that if the last trade is chosen the topical price will be reflected in the closing price. An average of several trades will not in the same way reflect a topical price but an average price and it is not that information which is attempted to be brought about by disclosing a closing price. The same goes for call auctions.

NASDAQ EUROPE

Paragraphs 93-99. Reference prices should indeed be calculated in such a way as to reflect the true state of the market and guarantee their integrity. However, we consider that choice and the definition of the method of calculation of such prices directly derives from the type of market structure and should, therefore, be left at the discretion of the exchange.

EURONEXT BRUSSELS (Market Authority)

Pt 99 : indicates that in thinly traded financial instruments where market makers are available, the mid-price of the market maker quotes may be a more appropriate method of determining the closing price. The market authority estimates that in thinly traded financial instruments, the market maker quotes can be more easily manipulated without execution and thus cannot serve as a reference for a reference price.

SWEDISH SECURITIES DEALERS ASSOCIATION

Point 95. The problems that arise when representative reference prices are to be determined are very complex, delicate and not always understood well enough.

Therefore SSDA is of the opinion that the wording of p. 95 seems to promote the alternatives of a call auction or a weighted average price system. It must be taken into account the multitude of uses that the reference prices have, throughout the economy, which makes it very hard to decide that one set of reference prices is the most suitable for all purposes. Of course the end users of the reference prices (households, investors, accountants, tax authorities) are always free to decide what set of prices they prefer to use for their own purposes. The exchange that publishes reference prices must therefore be aware of the limitations of their data and its reach.

LONDON STOCK EXCHANGE

We are generally supportive of the principle that "single trade prices should not be used for reference purposes". There is a risk, however, that specifying in the standard the mechanisms by which reference prices are obtained may discourage further market innovation. Were specific mechanisms to be included in the standard, a reference to quote-driven markets would be desirable to allow for market maker prices.

ASSOCIATION OF GREEK INSTITUTIONAL INVESTORS (AGII)

Rules proposed regarding reference prices are to our opinion widely accepted and are already implemented in regulated markets. Furthermore, trading halts or suspensions should be put in place in accordance with particular conditions of each market.

Trading Halts and Suspensions (100 - 110)

AUSTRIAN CHAMBER OF COMMERCE, DIVISION FOR CREDIT INSTITUTIONS AND INSURANCE

Par. 100 and following: trading halts in case of price movements can be problematic regarding leveraged instruments, as in these cases of necessary buy- or sell-orders panic having an impact on the price of the securities would not be prevented, but would simply take place at a point in time before trading is expected to be halted.

SWEDISH SECURITIES DEALERS ASSOCIATION

Point 100. If the term "orderly market" should be used at all, SSDA thinks it must be properly and clearly defined. Of course there are circumstances, e. g. breakdowns of information systems, that are not compatible with "orderly markets", but the term seems open up different interpretations in other respects. For instance, SSDA has got the impression that in the U.S.

the market term "orderly" implies that price volatility should be limited. The requirement in p. 100 that "There should be procedures to suspend trading in fast markets…" seems to indicate the same. SSDA recommends that this view should not be imposed on the European markets without a much more thorough discussion.

NASDAQ EUROPE

Paragraph 105.
We also support the idea of an instant communication of trade halts and suspensions between the relevant markets, but consideration should be given as to the means and/or mechanisms necessary to achieve this goal.

Paragraphs 107 and 109.
The Paper points out that the conditions for imposing a trade halt or a suspension of trading should be fully disclosed to all market participants and investors. These powers, indeed, should not be exercised in an arbitrary way so that adequate safeguards and general conditions of exercise should be referred to in the exchange's rules. We believe, however, that these guidelines should not prevent the exchange's own determination based upon the facts and circumstances of the case. The review of the procedures in place to adequately make such determination is potentially subject to the second-tier supervision of the exchange's procedures and should not be as such disclosed to the market.

Paragraph 110.
If it is deemed essential to authorize the Competent Authority to intervene in the decision making process of suspensions, Nasdaq Europe believes that - like in the United States - the framework and circumstances of such interventions should be clearly specified, and that suspensions decided on such grounds should be limited in time and imposed in full concertation with the Exchange.

EURONEXT BRUSSELS (Market Authority)

Pt 106 : the same conclusion as for the point 84 : communication channels on suspension and trading halts should only be installed between markets listing foreign companies. Markets trading stocks without agreement of the company should be excluded.

Pt 110 : Competent authorities should not have the power to suspend the listing. This should belong to the market. Otherwise, it would create double suspension power and no single transparent methodology would be followed.

EURONEXT

With regard to paragraphs 109. and 110. ('suspensions'), it is indeed crucial that regulated markets have the power to suspend the trading of a particular financial instrument and, in exceptional circumstances, the power to suspend all trading on the market as this power touches upon the core of the business of the exchange. Euronext wishes to underline that where a suspension power is also given to an administrative competent authority the way this power relates to the power of the exchange should be clear as well as the practicalities needed to make this work in practice. It would notably be useful to refer in the document to the need for a close cooperation in this respect between administrative competent authorities and regulated market operators at national as well as European level.

NORDIC GROWTH MARKET (NGM AB)

Art 107, Mechanistic Trading Halts: The principle to fully disclose the criteria for a trading halt to the market participants and investors can be said to be extra important when regarding mechanistic trading halts. This is also a situation that the market operator might foresee, since they follow the courses. One could also consider to impose a measure that the market shall give a warning when a mechanistic trading halt is near.

LONDON STOCK EXCHANGE

We welcome the proposal for ensuring trading halts and suspensions are communicated promptly to other markets. The standard makes an important distinction between suspensions of an issuer from listing, which are imposed by competent authorities, and halts in all trading in a security, which are imposed by regulated markets. We would make a further distinction between the halting of all trading in a security by a regulated market - which would require notification - and the suspension of automatic execution in a security on an order book where off order book trading continues where notification is not required. The body imposing the suspension or halt should also have the responsibility for communicating it to other jurisdictions.

We would note that where financial instruments are admitted to trading in jurisdictions outside the EU, there are practical limitations to the degree of control that exchanges are able to exercise to ensure that communication channels exist to meet EU standards. Whilst we take steps to ensure proper liaison, if an international market chooses to trade a UK traded instrument we would not necessarily be aware of this unless that particular market informs us.

ASSOCIATION OF COMPANIES LISTED ON THE ASE - GREEK INDUSTRIES ASSOCIATION

Para 103 "suspensions, either under Directive 79/279, article 14, para 1 or otherwise, are .." Double underlining added to point out lack of clarity.

NORTHERN GREECE INDUSTRIES ASSOCIATION

Points 109-110
Reference should be made to crisis management especially with regard to terrorist attacks and natural disasters. A proposal could be to render mandatory the operation of alternative operation sites ("recovery site").

ASSOCIATION FRANÇAISE DES ENTREPRISES D'INVESTISSEMENTS (AFEI)

Para 106
A question of form: in the second phrase, who does "their" and "they" refer to?

Para 108
Are the regulated markets to appreciate the opportunity of such a decision? Would it not rather be for the "competent authorities" to make such an appreciation? What coercive power do the markets have over each other?

Para 109 & 110
Would it not be useful to add an explanation on how the powers of regulated markets and the competent authorities are articulated?

CESR FEEDBACK STATEMENT:

There has been a request to:

- clarify the requirement for disclosure in the measure referring to pre – trade transparency
- adapt the standard and measures on reference prices to take account of the nature of different market structures
- include a reference to quote driven markets regarding reference prices.

F Duties of other market participants

Objective (111-112)

SWEDISH SECURITIES DEALERS ASSOCIATION

Point 112. FESCO is in of favour of self-regulation for other market participants, such as institutional investors, journalists, non-authorised consultants and analysts and so forth, a standpoint in which SSDA strongly agrees. However, the FESCO proposals leave very little room for self-regulatory measures in relation to duties imposed on e.g. investment firms.

SSDA believes self-regulation in many cases is a more effective type of regulation than regulation imposed by authorities, because, it engages the institutes concerned in a more direct way. This makes them very familiar with the regulation and implies that they comply more easily. As self-regulation is based on in-depth know-how concerning market conditions, it is often more precise in its provisions and offers a more flexible and fast track solution, when preventative measures are needed than is the case with regulation by authorities.

SWEDISH SHAREHOLDERS' ASSOCIATION

All persons in contact with company information not yet made public should act with the highest standards of due diligence and integrity. SARF is very pleased to see that the report suggests that all such persons should be required to comply with special rules of conduct explaining how to act when coming in contact with inside information and other information that could affect the price of securities traded on the financial market. SARF is of the opinion that the suggestion that journalists and media should also comply with ethical rules and for example never publish anything when having a significant interest in the company concerned is appropriate.

GOODBODY STOCK BROKERS / Ireland

Section headed "Duties of Other Participants" – How are these to be enforced? In principle if market abuse provisions are enforceable only against members of a regulated market and issuers the regime will not be fully effective.

THE ASSOCIATION OF NORWEGIAN STOCKBROKING COMPANIES

In our opinion section F and the regulation of other market participants, we find the approach a little more difficult. It is difficult to regulate an undefined group of participants when these participants do not have any self regulatory bodies, i e participants with market power. It is also difficult to define what is meant by market power related to the different regulated markets in Europe.

ITALIAN NATIONAL CONSULTATION

Many participants believe that FESCO should distinguish between standards for institutional investors and standards for market participants with market power, otherwise it would be meaningless to require self-regulatory codes and compliance functions for individuals and to require for institutional investors self-regulatory codes instead of code of conduct, that are required for listed entities and investment firms.

ASSOFIDUCIARIA - ITALIAN ASSOCIATION OF PORTFOLIO MANAGEMENT AND TRUST COMPANIES

As to section F, a more appropriate definition of the category of Market Participants with market power should be introduced in order to define more precisely the range of application of the rules provided for in the same section.

Market participants with market power (113-118)

NASDAQ EUROPE

Paragraph 115.
Nasdaq Europe is of the opinion that the Paper should point out the reasons for discouraging short term reverse trades and aggressive short selling strategies in the circumstances referred to in this paragraph.

EURONEXT

Paragraph 114. Specifies that market participants with market power (including individuals and institutional investors) should establish measures to promote market integrity. This standard seems quite unclear. As the term « market participants » does not seem to be restricted to market members, should the reference to « individuals » be construed as meaning individual investors? In that case, is it realistic to ask individual investors to establish measures to promote market integrity? In our view, individual investors and large investors, such as institutional investors, cannot be addressed in the same way.

EURONEXT BRUSSELS (Market Authority)

Pt 115 : it is not clear to the market authority what is meant by "short-term reverse trades" as well as aggressive short-selling strategies and especially why there is a link with trades by market participants with market power.

SWEDISH SECURITIES DEALERS ASSOCIATION

Point 115. If aggressive short-selling strategies are to be avoided, SSDA raises the question why not aggressive buying strategies should be avoided as well, see also SSDA comments to p. 61.

GOODBODY STOCK BROKERS / Ireland

Para 115 – There need to be precise definitions of phrases like “short term reverse trades” and “aggressive short selling strategies”. Both of these can be legitimate trading strategies and illustrate the importance of intent as an element, together with extensive safe harbours.

LONDON STOCK EXCHANGE

CESR proposes that short-term reverse trades and “aggressive” short selling strategies should be avoided. Our position is that short selling plays an important role in financial markets, in that it enhances price discovery and liquidity. Short selling is therefore a legitimate business practice if it is conducted in a non-abusive manner. We do not believe that any specific mention needs to be made of short selling in the standards, as existing provisions against market abuse - such as spreading false rumours or giving a misleading impression of market activity - are sufficient.

ATHENS STOCK EXCHANGE MEMBERS ASSOCIATION

Referring to the obligations of other predominant market participants like major institutional and private investors, these participants should have the duty and moral responsibility in considering the possible adverse effects of their transactions on market integrity.

ASSOCIATION OF GREEK INSTITUTIONAL INVESTORS (AGII)

In contrary to the inability of competent authorities to enforce rules of conduct for the media, the rules proposed under the section “market participants with market power” (points 113-118) will be those that will essentially be implemented, since these participants do fall within the jurisdiction of competent authorities, therefore contributing to the continuance of differential treatment particularly in markets with low liquidity.

At this point we would like to refer to collective investment schemes and in particular to UCITS, which in order to act in the best interest of their unit holders or shareholders (as their obligation under the UCITS Directive), may proceed to trades which, in smaller less liquid markets, may affect prices of shares or of other financial instruments, without there being an intention to harm market integrity. Consequently, we propose that consideration

be given for this case in the meaning of "specific exemption" as mentioned in paragraph 49 in section "restrictions on relevant persons".

Finally, we believe that the promotion of self regulatory codes for all participants in regulated markets with regard to measures contained in this paper, would constitute one further element in achieving a developed mature market.

BRITISH BANKERS ASSOCIATION

The paragraphs relating to market participants with market power appear relatively vague and imprecise and are likely to lead to uncertainty. It is not obvious to us how you determine whether you have "market power" or what it means to say that "due care should be exercised in transactions by all who wield market power". We consider that this section of the paper needs to be reappraised with a view to tightening up definitions and more clarity about the regulators' objectives and how they expect to achieve them. It also needs to recognise that individuals can have market power – not just institutions. The provisions relating to "market power" appear to be premised on the assumption that they will apply only to institutions and would not work if applied to an individual.

The definition of "institutional investor" given in footnote 2 on p.18 will need to be reviewed against any changes in the most recent CESR paper.

The proposals on short term reverse trades (para.115) are overprescriptive. What is the regulatory risk which is sought to be addressed by banning short term reverse trades and aggressive short selling strategies which may move prices in a financial instrument? Short selling is a perfectly legitimate trading strategy provided it does not amount to market manipulation. We consider that para. 116 is drawn at an appropriate level of detail whereas para. 115 is an example of unnecessary detail.

We do not understand what is expected by stating that "due care should be exercised when trading in markets or financial instruments with low liquidity". We appreciate that in such instruments, or markets, price changes are more likely to be triggered by relatively small trades - but that can result from trading by almost anyone - not just large market participants. There needs to be more clarity about what is expected here.

The requirements in paras. 117 to 118 applying to market participants can be criticised in the same way as the provisions relating to issuers. If a market participant is authorised or licensed by a financial regulator then the proposed procedures can be imposed by the regulator. If they are not then the regulator has no power to require them to be adopted.

ITALIAN NATIONAL CONSULTATION

Paragraph 114.

ASSONIME

ASSONIME states that: "As far as the standard is concerned, it should be clearly specified who are the "market participants". Given that a "market participant with market power" has greater obligation than a "normal" market participant, it should be clearly determined why and when he will also possess "market power". The notion of institutional investor in the document refers to another Fesco document (the Fesco paper on the implementation of Article 11 of the ISD (00-Fesco-A)) where "large companies" are also included among the

institutional investors. The notion of "large" should be made more precise so as to eliminate any ambiguity in the application of the fore-mentioned standard to issuers".

ASSOGESTIONI

ASSOGESTIONI do not agree with the provisions about the *Market participants with market power* (paragraphs 113 to 118). General duties of fairness and honesty for any professional investor are already provided for, while the provisions as set out in the present version are unclear and lacking in any consistency.

First of all, a *market power* notion is scarcely conceivable and hard to be defined in a precise and unambiguous way (and the fact that the document does not contain a definition is really a proof of that). It is therefore risky to ground any prohibition on such an ambiguous element, which grants to the regulator a highly discretionary power in implementing such a provision.

The proposed discipline is vague from a subjective point of view as well: there is no clear definition of what a *market participant* is (paragraph 114), being only noted that in their number may be included – among the others – professional investors and individuals (although – it must be objected – it would be very difficult for an individual to gain such a strong and effective *power* to be considered as having an influence on the market). Beside that, neither the minimal criteria of identification for those players are provided, making it impossible to reach a precise idea of such category.

The notion of *due care*, to be observed by market participants in any negotiation capable of having an influence on prices, is also hard to understand. Every fiduciary in fact has to carry out his operations (having *market power* or not) with due care: therefore, should the requirement refer to such general duty, it would be just a mere repetition of a general principle. Should, on the other hand, it be something with a specific meaning, no clues are provided in the document to understand the elements differentiating it from the general notion of due care and to permit an exact implementation of the concept.

Moreover, the scope of the proposed rules appears to be heavily damaging for market operators whose investment policies necessarily request short selling and short time trading. This limiting provision appears to be inconsistent with market reality: it is in the inner nature of such operators to cause an alteration of the prices and the bigger the variation is, the more successful the investment process should be considered. Such provisions implies unjustifiable limits to market operators and should be rejected as absolutely inadequate in the context of market competition.

Media and financial journalists (119-124)

FINLAND

Media and Financial Journalists. The FJA sees it important that the regulating of journalism stays in its own hands.

EURONEXT BRUSSELS (Market Authority)

Pt 121 : relating to the media, it should also be stated that the media should check rumours on their validity before publishing them because they can be highly price sensitive.

Pt 124 : contacts with press should also indicate communication under embargo and in that case, impose limitations on contacts when press receives information under embargo to the issuers of the news. Never allow contacts with analysts, intermediaries, competitors or other people which are not involved in the issuing of the news.

NORTHERN GREECE INDUSTRIES ASSOCIATION

Point 122

Reference could be made to the information sources or alternatively the hypothesis retained. Moreover, within the same context, information or data from uncertain sources should not be publicized.

ASSOCIATION OF GREEK INSTITUTIONAL INVESTORS (AGII)

The existence of Codes of Conduct for the Media is of course very positive, since they can exercise considerable influence, as we all know, especially in markets with low liquidity. However, the implementation and monitoring of these rules is faced with great difficulties and therefore we can only express our concern as to the possibility of these rules being implemented and even more as to effective sanctioning.

BRITISH BANKERS ASSOCIATION

As for the paragraphs relating to the media and financial journalists - we agree with paras. 119 and 120 but do not comment further as this is a matter for the media to comment upon.

Analysts and other advisors (125-128)

FINLAND

As a technical comment HEX suggests that items 125-128 (analysts) should be attached to part D. dealing with investment firms at least in a situation where the analyst is employed by an investment firm. It should also be clarified what is meant by "analysts and other advisors".

EURONEXT

The paragraph on « analysts and investors » does not include any reference to rating agencies which play however an important role in such category of professionals. Is there a

specific reason for this? If not, they should be referred to in this paragraph and asked to operate with the highest standards of due diligence, integrity and accuracy.

AUSTRIAN CHAMBER OF COMMERCE, DIVISION FOR CREDIT INSTITUTIONS AND INSURANCE

Par. 126 and following: analysts and research departments have to operate with the highest standards of due diligence and fairness. The employment of such standards is generally supported, however, the limitation to those persons "not authorized by the competent authorities" should be dropped, so that a level playing field for all analysts and researchers can be achieved.

BRITISH BANKERS ASSOCIATION

We agree with the proposals for analysts who do not work for authorised firms (paras. 125 to 128).

DUTCH REPRESENTATIVE ORGANISATION OF ASSET MANAGERS (THE VERENIGING VAN VERMOGENSBEHEERDERS).

The Vereniging van Vermogensbeheerders has the opinion that asset managers are not really the target-group of this regulation and has only one comment regarding section 126. The Vereniging van Vermogensbeheerders has the opinion that researchers, advisors, and commentators who are not authorised should mention that they do not have a license distributed by the competent authority.

ITALIAN ASSOCIATION OF FINANCIAL ANALYSTS (AIAF)

AIAF claims that according to point 66, unauthorised analysts should not be allowed to issue reports and analyses.

Persons in Regulatory Authorities (129-133)

NASDAQ EUROPE

Paragraph 133. This paragraph does not describe the way that these standards will be enforced.

BRITISH BANKERS ASSOCIATION

We agree with the proposals for persons working for regulatory authorities (paras. 127 to 133).

CESR FEEDBACK STATEMENT:

Regarding market participants with market power there has been a need to clarify the measures regarding trading behaviour of the latter as well as to specify that self regulatory codes may only be implemented by legal persons.

There has been a request to make express reference to rating agencies as well as other analysts and other advisors.

More emphasis has been placed on self-regulation for the implementation of measures to be applied by the media.

ANNEXES

ANNEX 1 : PART D OF FESCO MARKET ABUSE PAPER

EURONEXT BRUSSELS (Market Authority)

In annex 1, pt 38 we should add in market abuse : "… competent authorities and disciplinary bodies must have …".

GERMAN ASSOCIATION OF ACCOUNTANTS (IDW)

Annex 1 Para. 37, refers to "the Directive", without specifying which one.
In view of the need to amend existing standards as little as possible while at the same time also ensuring that new standards are flexible enough to cope with future amendments and easy to apply in practice, the following reference system could be adopted:

- All definitions that are relevant to more than one Directive or standard (that is likely to be the case for most definitions) should be defined in one central text, to which reference can be made in a general fashion in every standard.

- If the definitions are definitions that have already been laid down in EU Directives, reference should be made to these in FESCO standards, with it being made clear that the references are either to the latest version of the Directive or, if a Directive is currently in the process of being revised, to the latest available draft.If, in the time between the adoption of a Directive and preparations to amend an existing Directive or the adoption of a new Directive, a need arises for FESCO to add or re-draft definitions, these definitions should also be drawn up centrally at the FESCO level, eg by means of a FESCO standard. These "FESCO definitions" should then be taken up as part of the next legislation preparations and then in turn be referred to virtually automatically, losing their independent "provisional" scope of application. This procedure could be recorded in a general text such as a "Note for guidance on using FESCO standards".

AUSTRIAN CHAMBER OF COMMERCE, DIVISION FOR CREDIT INSTITUTIONS AND INSURANCE

Annex 1 Par. 43: Not all employees of an Authorised Entity, which accepts orders from clients, can (with reasonable cost) be put in a position to detect orders which could possibly constitute market abuse. Moreover, bearing in mind the increase of order-routing systems it is not viable to check every single order whether it could constitute market abuse.