

Financial markets: insider dealing and market abuse (repeal. Directive 89/592/EEC)

2001/0118(COD) - 29/04/2004 - Implementing legislative act

LEGISLATIVE ACT : Commission Directive 2004/72/EC implementing Directive 2003/6/EC of the European Parliament and of the Council as regards accepted market practices, the definition of inside information in relation to derivatives on commodities, the drawing up of lists of insiders, the notification of managers' transactions and the notification of suspicious transactions. CONTENT : This Directive sets out the factors to be taken into account when considering whether competent authorities can accept a particular market practice. These factors include the level of transparency of the relevant market practice to the whole market, and the need to safeguard the operation of market forces and the proper interplay of the forces of supply and demand. Member States must ensure that practices, in particular new or emerging market practices are not assumed to be unacceptable by the competent authority simply because they have not been previously accepted by it. Furthermore, the Regulation makes the following points: - competent authorities, while considering the acceptance of a particular market practice, should consult other competent authorities, particularly for cases where there exist comparable markets to the one under scrutiny; - guidance is set out so that market participants on derivative markets the underlying of which is not a financial instrument, may have greater legal certainty on what constitutes inside information; - with regard to lists of insiders, Member States must ensure that lists of insiders include all persons covered by Article 6(3) of Directive 2003/6/EC who have access to inside information relating, directly or indirectly, to the issuer, whether on a regular or occasional basis. These lists may serve issuers or such persons to control the flow of such inside information and thereby manage their confidentiality duties. Moreover, these lists may also constitute a useful tool for competent authorities when monitoring the application of market abuse legislation. Identifying inside information to which any insider has access and the date on which it gained access thereto is necessary for issuers and competent authorities. Access to inside information relating, directly or indirectly, to the issuer by persons included on such a list is without prejudice to their duty to refrain from insider dealing on the basis of any inside information as defined in Directive 2003/6/EC; - the notification of transactions conducted by persons discharging managerial responsibilities within an issuer on their own account, or by persons closely associated with them, is not only a valuable information for market participants, but also constitutes an additional means for competent authorities to supervise markets. The directive sets out the rules on notification and the information which must be contained in the notification. In addition, Member States may decide that, until the total amount of transactions has reached five thousand Euros at the end of a calendar year, no notification is required or notification may be delayed until the 31 January of the following year; - notification of suspicious transactions by persons professionally arranging transactions in financial instruments to the competent authority requires sufficient indications that the transactions might constitute market abuse, i.e. transactions which give reasonable ground for suspecting that insider dealing or market manipulation is involved. Certain transactions by themselves may seem completely void of anything suspicious, but might deliver such indications of possible market abuse, when seen in perspective with other transactions, certain behaviour or other information. A "person professionally arranging transactions" as defined in this directive will decide on a case-by-case basis whether there are reasonable grounds for suspecting that a transaction involves insider dealing or market manipulation, taking into account the elements constituting insider dealing or market manipulation, referred to in the relevant Community instruments; - finally, the Directive sets out the Timeframe for notification, the content of the notification, the acceptable means of notification and the principles on liability and professional secrecy. ENTRY INTO FORCE : 30 April 2004. DATE OF TRANSPOSITION : 12 October 2004.