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25th January 2013

PROPOSAL FOR A REGULATION ON MARKET ABUSE (COM (2011)651)

EuropeanIssuers' position in the context of trilogues

In the context of trilogues concerning the proposal for a Regulation on insider dealing and market manipulation (COM (2011) 651), EuropeanIssuers would like to draw the attention of the Commission, the European Parliament and the Council on the following remaining concerns:

- **maintaining the accepted market practices** (pg. 2),
- **providing a clear definition of inside information** (pg. 7),
- **providing more clarity and flexibility as regards delayed information** (pg. 11),
- **exemption of issuers on SME Growth Markets from the obligation to maintain insider lists** (pg. 15),
- **maintaining the original purpose of insider lists** introduced to ease investigation, as opposed to an obligation for persons on insider lists to report on suspicious transactions to competent authorities. (pg. 15),
- **avoiding unnecessary burdens as regards managers' transactions** (pg. 17).

*Note: in the 4-column tables below, the text highlighted in green is supported by EuropeanIssuers, the text highlighted in red is rejected. Concerning the proposed compromise (4th column), modifications to the Council and/or the Parliament text are indicated in **italic bold**.*

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1. MAINTAINING THE ACCEPTED MARKET PRACTICES (ARTICLE 4A OR 8A)

Market practices should be maintained when they have demonstrated their value for the market efficiency without impairing market integrity[1].

- **EuropeanIssuers fully support the ECON committee and Council proposals to maintain accepted market practices, however they would have a slight preference for the Council general approach.**

EC Proposal	ECON Report	Council's General Approach[2]	Proposed Compromise
Removed	***Article 4a*** ***Accepted market practices*** ***1. Competent authorities may establish an accepted market practice on the basis of the following criteria:*** ***(a) the level of transparency of the relevant market practice to the whole market;*** ***(b) the need to safeguard the operation of market forces and the proper interplay of the forces of supply and demand;***	Article 8a Accepted Market Practices 1. The prohibition in Article 10 of this Regulation shall not apply to the activities indicated in Article 8(1)(a) provided that they are carried out for legitimate reasons and have been accepted by the competent authority in accordance with this article. A practice that is accepted in a particular market cannot be considered applicable to other markets unless the competent authorities of such other markets have officially accepted that practice.	Article 8a Accepted Market Practices 1. The prohibition in Article 10 of this Regulation shall not apply to the activities indicated in Article 8(1)(a) provided that they are carried out for legitimate reasons and have been accepted by the competent authority in accordance with this article. A practice that is accepted in a particular market cannot be considered applicable to other markets unless the competent authorities of such other markets have officially accepted that practice.

[1] For example, in France there are two Accepted Market Practices:
- Possibility to buy-back shares for future use as means of payment for acquiring another company. The issuer can hold the shares without any time limit.
- Liquidity contracts on Euronext in order to ensure liquidity of the shares. An issuer can conclude a commercial agreement (liquidity contract) with an Investment Services Provider (ISP) by means of which the issuer has allowed an amount of money and/or a number of shares to the ISP in order to purchase and sell shares. The objectives are to foster the liquidity of trades, to enable regular quotations and to avoid price fluctuations not warranted by market trades.
These two market practices have been considered useful by the Committee of European Securities Regulators (CESR).
Similar Accepted Market Practices exist in Italy.
They should be maintained under conditions set up by ESMA.

[2] Text changes are not visible in the Council's General Approach

	(c) the degree to which the relevant market practice has an impact on market liquidity and efficiency; ***(d) the degree to which the relevant practice takes into account the trading mechanism of the relevant market and enables market participants to react properly and in a timely manner to the new market situation created by that practice;*** ***(e) the risk inherent in the relevant practice for the integrity of directly or indirectly related markets, whether regulated or not, in the relevant financial instrument within the Union;*** ***(f) the outcome of any investigation of the relevant market practice by a competent authority or by another authority, in particular whether the relevant market practice breached rules or regulations designed to prevent market abuse, or codes of conduct, whether on the market in question or on directly or indirectly related markets within the Union;*** ***(g) the structural characteristics of the relevant market, whether regulated or not, including the types of financial instruments traded and the type of market participants, including the extent of retail investors participation in the relevant market.*** ***2. Before establishing an accepted market practice, a competent authority shall notify ESMA and the other competent authorities of the intended accepted market practice and***	2. Competent authorities shall be able to establish an accepted market practice taking into account the following criteria: (a) the specific market practice has a substantial level of transparency to the market; (b) the specific market practice shall ensure a high degree of safeguards to the operation of market forces and the proper interplay of the forces of supply and demand; (c) the specific market practice shall have a positive impact on market liquidity and efficiency; (d) the specific market practice shall take into account the trading mechanism of the relevant market and enable market participants to react properly and in a timely manner to the new market situation created by that practice; (e) the specific market practice shall not create risks for the integrity of, directly or indirectly, related markets, whether regulated or not, in the relevant financial instrument within the whole Union; (f) the outcome of any investigation of the relevant market practice by any competent authority or other authority, in particular whether the relevant market practice breached rules or regulations designed to prevent market abuse, or codes of conduct, be it on the market in question or on directly or indirectly related markets within the Union; (g) the structural characteristics of the relevant market including whether it is regulated or not, the types of financial	2. Competent authorities shall be able to establish an accepted market practice taking into account the following criteria: (a) the specific market practice has a substantial level of transparency to the market; (b) the specific market practice shall ensure a high degree of safeguards to the operation of market forces and the proper interplay of the forces of supply and demand; (c) the specific market practice shall have a positive impact on market liquidity and efficiency; (d) the specific market practice shall take into account the trading mechanism of the relevant market and enable market participants to react properly and in a timely manner to the new market situation created by that practice; (e) the specific market practice shall not create risks for the integrity of, directly or indirectly, related markets, whether regulated or not, in the relevant financial instrument within the whole Union; (f) the outcome of any investigation of the relevant market practice by any competent authority or other authority, in particular whether the relevant market practice breached rules or regulations designed to prevent market abuse, or codes of conduct, be it on the market in question or on directly or indirectly related markets within the Union; (g) the structural characteristics of the relevant market including whether it is regulated or not, the types of financial

	provide details of the assessment made according to the criteria laid down in paragraph 1. Such notification shall be made not less than six months before the accepted market practice is intended to take effect.	instruments traded and the type of market participants, including the extent of retail investors participation in the relevant market.	instruments traded and the type of market participants, including the extent of retail investors participation in the relevant market.
	3. Within three months following receipt of the notification, ESMA shall issue an opinion to the competent authority in question assessing the compatibility of each accepted market practice with the requirements established in paragraph 1 and specified in the regulatory technical standards adopted pursuant to paragraph 5 and considering whether the establishment of the accepted market practice would not threaten the market confidence in the Union's financial market. The opinion shall be published on ESMA's website.	3. When considering to accept a market practice, competent authorities shall notify ESMA and other competent authorities of the intention to recognise a market practice and provide details of the assessment made according to the criteria laid down in paragraph 2. Notification of the intention to establish an accepted market practice shall be made not less than 3 months before the accepted market practice is intended to take effect. Within 2 months following receipt of the notification, ESMA shall issue an opinion to the competent authority in question assessing the compatibility of each market practice with the requirements established in paragraph 2 and specified in the regulatory technical standards adopted pursuant to paragraph 5. The opinion shall be published on ESMA's website.	3. When considering to accept a market practice, competent authorities shall notify ESMA and other competent authorities of the intention to recognise a market practice and provide details of the assessment made according to the criteria laid down in paragraph 2. Notification of the intention to establish an accepted market practice shall be made not less than 3 months before the accepted market practice is intended to take effect. Within 2 months following receipt of the notification, ESMA shall issue an opinion to the competent authority in question assessing the compatibility of each market practice with the requirements established in paragraph 2 and specified in the regulatory technical standards adopted pursuant to paragraph 5. The opinion shall be published on ESMA's website.
	4. Where a competent authority establishes an accepted market practice contrary to an ESMA opinion issued according to paragraph 3, it shall publish on its website within 24 hours of establishing the accepted market practice a notice setting out in full its reasons for doing so, including why the accepted market practice does not threaten market confidence.	4. Where a competent authority establishes an accepted market practice contrary to an ESMA opinion issued according to paragraph 3, it shall publish on its website within 24 hours of establishing the accepted market practice, a notice fully explaining its reasons for doing so.	4. Where a competent authority establishes an accepted market practice contrary to an ESMA opinion issued according to paragraph 3, it shall publish on its website within 24 hours of establishing the accepted market practice, a notice fully explaining its reasons for doing so.
	5. In order to ensure consistent application of this Article, ESMA shall develop draft regulatory technical standards specifying the detailed procedure for establishing an accepted market price under paragraphs 2 and 3.	4.a If a competent authority considers that another competent authority has not met the requirements of paragraph 2 in establishing an accepted market practice, ESMA shall assist those authorities in reaching an agreement in accordance with its powers under Article 19 of	4.a If a competent authority considers that another competent authority has not met the requirements of paragraph 2 in establishing an accepted market practice, ESMA shall assist those authorities in reaching an agreement in accordance with its powers under Article 19 of

	ESMA shall submit those draft regulatory technical standards to the Commission by [....](19)* ***Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.*** ***6. Competent authorities shall review regularly the market practices they have accepted, in particular taking into account significant changes to the relevant market environment, such as changes to trading rules or to market infrastructures.*** ***7. ESMA shall publish on its website a list of accepted market practices and in which Member States they are applicable.*** ***8. ESMA shall monitor the application of the accepted market practices and shall submit an annual report to the Commission on how they are applied in the markets concerned.*** ***9. An accepted market practice established by a competent authority before the entry into force of this Regulation continues to apply in the Member State concerned until it has been submitted to ESMA in accordance with paragraph 2. Competent authorities shall submit such accepted market practices to ESMA within three months of the adoption by the Commission of the regulatory***	Regulation (EU) No 1095/2010. If the competent authorities concerned fail to reach an agreement, ESMA may take a decision in accordance with Article 19(3) of Regulation (EU) No 1095/2010. 5. In order to ensure consistent application of this Article, ESMA shall develop draft regulatory technical standards specifying the criteria, the process and the requirements conceived under paragraphs 2 and 3. ESMA shall submit those draft regulatory technical standards to the Commission by XXX. Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010. 6. Taking into account significant changes to the relevant market environment, such as changes to trading rules or to market infrastructures, competent authorities shall review every two years each accepted market practice, with a view to decide whether or not to maintain it or to modify the conditions for its acceptance. 7. ESMA shall publish on its website a list of accepted market practices and in which Member States they are applicable. 8. ESMA shall monitor the application of the accepted market practices and shall submit an	Regulation (EU) No 1095/2010. If the competent authorities concerned fail to reach an agreement, ESMA may take a decision in accordance with Article 19(3) of Regulation (EU) No 1095/2010. 5. In order to ensure consistent application of this Article, ESMA shall develop draft regulatory technical standards specifying the criteria, the process and the requirements conceived under paragraphs 2 and 3. ESMA shall submit those draft regulatory technical standards to the Commission by XXX. Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010. 6. Taking into account significant changes to the relevant market environment, such as changes to trading rules or to market infrastructures, competent authorities shall review every two years each accepted market practice, with a view to decide whether or not to maintain it or to modify the conditions for its acceptance. 7. ESMA shall publish on its website a list of accepted market practices and in which Member States they are applicable. 8. ESMA shall monitor the application of the accepted market practices and shall submit an

	technical standards under paragraph 5.	annual report to the Commission on how they're applied in the markets concerned. 9. Accepted market practice established by competent authorities before the entry into force of this regulation can continue to apply in respective Member States concerned until competent authorities made a decision regarding the continuation of this practice following ESMA's opinion according to paragraph 3. Competent authorities shall submit the accepted market practices to ESMA within 3 months after the regulatory technical standards under paragraph 5 are adopted by the Commission.	annual report to the Commission on how they're applied in the markets concerned. 9. Accepted market practice established by competent authorities before the entry into force of this regulation can continue to apply in respective Member States concerned until competent authorities made a decision regarding the continuation of this practice following ESMA's opinion according to paragraph 3. Competent authorities shall submit the accepted market practices to ESMA within 3 months after the regulatory technical standards under paragraph 5 are adopted by the Commission.

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2. PROVIDING A CLEAR DEFINITION OF INSIDE INFORMATION (ARTICLE 6)

The definition of 'inside information' must be clear, precise and avoid any legal uncertainty for issuers.

However, the Commission and the European Parliament have proposed to extend the definition introducing Article 6, paragraph 1, sub-paragraph e. This **catch-all' definition** would introduce a grey area and would raise uncertainty and massive compliance problems as to what has to be considered as inside information. **It would include a vast amount of information** including information the issuer would not:
(i) deem necessary to publish (because as this stage the issuer considers it is not price-sensitive) or,
(ii) deem necessary to publish immediately (because the information is not precise enough: for instance, negotiations in order to prepare a contract when the outcome of the negotiation remains uncertain).

- **This sub-paragraph should be deleted, as proposed in the Council's General Approach.**

EC Proposal	ECON Report	Council's General Approach[3]	Proposed Compromise
Article 6 Inside information	Article 6 Inside information	Article 6 Inside information	Article 6 Inside information
1. For the purposes of this Regulation, inside information shall comprise the following types of information:	1. For the purposes of this Regulation, inside information shall comprise the following types of information:	1. For the purposes of this Regulation, inside information shall comprise the following types of information:	1. For the purposes of this Regulation, inside information shall comprise the following types of information:
(a) information of a precise nature, which has not been made public, relating, directly or indirectly, to one or more issuers of financial instruments or to one or more financial instruments, and which if it were made public, would be likely to have a significant effect on the prices of those financial instruments or on the	(a) information of a precise nature, which has not been made public, relating, directly or indirectly, to one or more issuers of financial instruments or to one or more financial instruments, and which if it were made public, would be likely to have a significant effect on the prices of those financial instruments or on the	(a) information of a precise nature, which has not been made public, relating, directly or indirectly, to one or more issuers of financial instruments or to one or more financial instruments, and which if it were made public, would be likely to have a significant effect on the prices of those financial instruments or on the	(a) information of a precise nature, which has not been made public, relating, directly or indirectly, to one or more issuers of financial instruments or to one or more financial instruments, and which if it were made public, would be likely to have a significant effect on the prices of those financial instruments or on the

[3] Text changes are not visible in the Council's General Approach

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EC Proposal	ECON Report	Council's General Approach[3]	Proposed Compromise
price of related derivative financial instruments. (b) in relation to derivatives on commodities, information of a precise nature, which has not been made public, relating, directly or indirectly, to one or more such derivatives or to the related spot commodity contract, and which, if it were made public, would be likely to have a significant effect on the prices of such derivatives or related spot commodity contracts; notably information which is required to be disclosed in accordance with legal or regulatory provisions at the Union or national level, market rules, contracts or customs, on the relevant commodity derivatives or spot markets. (c) in relation to emission allowances or auctioned products based thereon, information of a precise nature, which has not been made public, relating, directly or indirectly, to one or more such instruments, and which, if it were made public, would be likely to have a significant effect on the prices of such instruments or on the prices of related derivative financial instruments. (d) for persons charged with the execution of orders concerning financial instruments, it also means information conveyed by a client and related to the client's pending orders in financial instruments, which is of a precise nature, which relates, directly or indirectly, to one or more issuers of financial instruments or to one or more financial instruments, and which, if it were made public, would be likely to have a significant effect	price of related derivative financial instruments; (b) in relation to commodity derivatives, information of a precise nature, which has not been made public, relating, directly or indirectly, to one or more such derivatives or to the related spot commodity contract, and which, if it were made public, would be likely to have a significant effect on the prices of such derivatives or related spot commodity contracts ***or to have a distortive effect on the functioning of the commodity derivatives markets or to hinder supervision of the market concerned***; ***and*** information which is required to be disclosed in accordance with legal or regulatory provisions at the Union or national level, market rules, contracts or customs, on the relevant commodity derivatives or spot markets. (c) in relation to emission allowances or auctioned products based thereon, information of a precise nature, which has not been made public, relating, directly or indirectly, to one or more such instruments, and which, if it were made public, would be likely to have a significant effect on the prices of such instruments or on the prices of related derivative financial instruments ***and which is required to be disclosed in accordance with legal or regulatory provisions at the Union or national level, market rules, contracts or customs, on the relevant commodity derivatives or spot markets***;	price of related derivative financial instruments. (b) in relation to derivatives on commodities, information of a precise nature, which has not been made public, relating, directly or indirectly to one or more such derivatives or relating directly to the related spot commodity contract, and which, if it were made public, would be likely to have a significant effect on the prices of such derivatives or related spot commodity contracts and where this is information which is reasonably expected to be disclosed or required to be disclosed in accordance with legal or regulatory provisions at the Union or national level, market rules, contracts, practices or customs, on the relevant commodity derivatives or spot markets. (c) in relation to emission allowances or auctioned products based thereon, information of a precise nature, which has not been made public, relating, directly [or indirectly], to one or more such instruments, and which, if it were made public, would be likely to have a significant effect on the prices of such instruments or on the prices of related derivative financial instruments. (d) for persons charged with the execution of orders concerning financial instruments, it also means information conveyed by a client and related to the client's pending orders in financial instruments, which is of a precise nature, which relates, directly or indirectly, to one or more issuers of financial instruments or to one or more	price of related derivative financial instruments. (b) in relation to derivatives on commodities, information of a precise nature, which has not been made public, relating, directly or indirectly to one or more such derivatives or relating directly to the related spot commodity contract, and which, if it were made public, would be likely to have a significant effect on the prices of such derivatives or related spot commodity contracts and where this is information which is reasonably expected to be disclosed or required to be disclosed in accordance with legal or regulatory provisions at the Union or national level, market rules, contracts, practices or customs, on the relevant commodity derivatives or spot markets. (c) in relation to emission allowances or auctioned products based thereon, information of a precise nature, which has not been made public, relating, directly [or indirectly], to one or more such instruments, and which, if it were made public, would be likely to have a significant effect on the prices of such instruments or on the prices of related derivative financial instruments. (d) for persons charged with the execution of orders concerning financial instruments, it also means information conveyed by a client and related to the client's pending orders in financial instruments, which is of a precise nature, which relates, directly or indirectly, to one or more issuers of financial instruments or to one or more

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on the prices of those financial instruments, the price of related spot commodity contracts, or on the price of related derivative financial instruments. (e) information not falling within paragraphs (a), (b), (c) or (d) relating to one or more issuers of financial instruments or to one or more financial instruments, which is not generally available to the public, but which, if it were available to a reasonable investor, who regularly deals on the market and in the financial instrument or a related spot commodity contract concerned, would be regarded by that person as relevant when deciding the terms on which transactions in the financial instrument or a related spot commodity contract should be effected.	(d) for persons charged with the execution of orders concerning financial instruments, it also means information conveyed by a client and related to the client's pending orders in financial instruments, which is of a precise nature, which relates, directly or indirectly, to one or more issuers of financial instruments or to one or more financial instruments, and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments, the price of related spot commodity contracts, or on the price of related derivative financial instruments; (e) information not falling within points (a), (b), (c) or (d) relating to one or more issuers of financial instruments or to one or more financial instruments, which ***although*** is not generally available to the public, ***is of a type that is reasonably considered to require subsequent disclosure and*** which, if it were available to a reasonable investor, who regularly deals on the market and in the financial instrument or a related spot commodity contract concerned, would be regarded ***as relevant*** by that person ▌ when deciding the terms on which transactions in the financial instrument or a related spot commodity contract should be effected ***and where any type of conduct upon such information is likely to be regarded by a reasonable investor who regularly deals on the market as a failure on the part of the person concerned to observe the standard of behaviour reasonably expected of a person***	financial instruments, and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments, the price of related spot commodity contracts, or on the price of related derivative financial instruments. (e) Deleted	financial instruments, and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments, the price of related spot commodity contracts, or on the price of related derivative financial instruments. (e) Deleted

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EC Proposal	ECON Report	Council's General Approach[3]	Proposed Compromise
	in such position in relation to that market.		

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3. PROVIDING MORE CLARITY AND FLEXIBILITY AS REGARDS DELAYED INFORMATION (ARTICLE 12)

EuropeanIssuers strongly believes that the issuer should remain fully responsible for the decision to delay inside information.

The **Commission proposal**, which lays down an **ex-post information obligation**, is likely to create additional burdens for issuers and regulators alike.

The **ECON report**, which introduces an **ex-ante control by the competent authority of the "intention" to delay information**, would dramatically change the current regime and prevent in practice issuers from delaying the publication of inside information. In fact, the intention to delay must be justified according to **criteria set out in paragraph 5**: the information is of **systemic importance**; it is in the public interest to delay its publication; the confidentiality of that information can be ensured. However, the first criterion mainly applies to **banking activities** and occurs infrequently. Then, the competent authority could be allowed to demand the publication of information without any delay. What seems to be a technical mistake **should thus be deleted**.

The **Council General approach** maintains the issuers' obligation to inform without delay the competent authority and provide in writing an explanation on how the conditions were met, immediately after the information is disclosed to the public. **However,** the text gives **more flexibility**, allowing that, alternatively, a record of explanation may be submitted only upon request of the competent authority, if provided so by national law.

Moreover, the **Council General approach puts forward a framework for the delay of disclosure obligations which, in the case of protracted process, may be impossible to be exploited by issuers.** Any delay of inside information, which by definition is e.g. information that an investor would use as a basis for his investment decision, cannot but potentially mislead the public.

In addition, the Council's amendment to Art. 12.4a could force issuers to publish inside information in reaction to market rumours. This would be a clear break to the current practice in many Member States, which rightly allows a "no comment" policy on such occasions. The no-comment option limits the incentive to spread rumours without any concrete indication in order to force listed companies to make public part of inside information earlier. This option should therefore remain in place, in order to prevent abuse by investors.

- **As a consequence, EuropeanIssuers believes that the Council's General Approach, if slightly modified, would provide a good option for compromise.**

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EC Proposal	ECON Report	Council's General Approach[4]	Proposed Compromise
Article 12 Public disclosure of inside information	Article 12 Public disclosure of inside information	Article 12 Public disclosure of inside information	Article 12 Public disclosure of inside information
(…)	(…)	(…)	(…)
3. Paragraphs 1 and 2 shall not apply to information which is only inside information within the meaning of point (e) of paragraph 1 of Article 6.	4. Without prejudice to paragraph 5, an issuer of a financial instrument or an emission allowance market participant, not exempted pursuant to the second subparagraph of Article 12(2), may under his own responsibility delay the public disclosure of inside information, as referred to in paragraph 1, such as not to prejudice his legitimate interests provided that both of the following conditions are met: (a) the omission would not be likely to mislead the public; (b) the issuer of a financial instrument or emission allowance market participant is able to ensure the confidentiality of that information.	3. An issuer of a financial instrument or an emission allowance market participant, not exempted pursuant to the second subparagraph of paragraph 2 of this Article, may under his own responsibility delay the public disclosure of inside information, as referred to in paragraph 1, provided that all of the following conditions are met: – the immediate disclosure would likely prejudice his legitimate interests; – the omission would not be likely to mislead the public; – the issuer of a financial instrument or emission allowance market participant is able to ensure the confidentiality of that information.	3. An issuer of a financial instrument or an emission allowance market participant, not exempted pursuant to the second subparagraph of paragraph 2 of this Article, may under his own responsibility delay the public disclosure of inside information, as referred to in paragraph 1, provided that all of the following conditions are met: – the immediate disclosure would likely prejudice his legitimate interests; – the omission would not be likely to mislead the public; – the issuer of a financial instrument or emission allowance market participant is able to ensure the confidentiality of that information.
4. Without prejudice to paragraph 5, an issuer of a financial instrument or an emission allowance market participant, not exempted pursuant to the second subparagraph of paragraph 2 of Article 12, may under his own responsibility delay the public disclosure of inside information, as referred to in paragraph 1, such as not to prejudice his legitimate interests provided that both of the following conditions are met: – the omission would not be likely to mislead the public; – the issuer of a financial instrument or emission allowance market participant is able to ensure the confidentiality of that information. Where an issuer of a financial instrument or emission allowance market participant has delayed the disclosure of inside information under this paragraph it shall inform the competent authority that disclosure of the	Where an issuer of a financial instrument or emission allowance market participant ***intends to delay*** the disclosure of inside information under this paragraph it shall inform the competent authority ***of*** that ***intention and provide sufficient information to justify the necessity*** of the ***delay according to the criteria set out in paragraph 5. In the event that the competent authority does not permit***	Subject to the conditions referred to above, in the case of a protracted process which occurs in stages, intended to bring about or which results in a particular circumstance or a particular event, an issuer may under his own responsibility delay the public disclosure of inside information relating to this process. Where an issuer of a financial instrument or	***3 a.*** In the case of a protracted process which occurs in stages, intended to bring about or which results in a particular circumstance or a particular event, an issuer may under his own responsibility delay the public disclosure of inside information relating to this process, ***provided that issuer is able to ensure the confidentiality of the information and that the delay is necessary to protect the issuer's***

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information was delayed immediately after the information is disclosed to the public. 5. A competent authority may permit the delay by an issuer of a financial instrument of the public disclosure of inside information provided that the following conditions are satisfied: – the information is of systemic importance; – it is in the public interest to delay its publication; – the confidentiality of that information can be ensured. That permission shall be in writing. The competent authority shall ensure that the delay is only for such period as is necessary in the public interest. The competent authority shall at least once every week review whether the delay continues to be appropriate and shall revoke the authorisation immediately if any of the conditions in points (a), (b) or (c) are no longer satisfied.	***the delay in accordance with paragraph 5, the*** information ***shall be disclosed*** immediately after the ***refusal has been communicated. Such information to competent authorities shall not preclude in any way the power of competent authorities to sanction a breach of this Regulation***. 5. A competent authority may permit the delay by an issuer of a financial instrument ***or an emission allowance market participant*** of the public disclosure of inside information provided that the following conditions are satisfied**:** (a) the information is of systemic importance; (b) it is in the public interest to delay its publication; (c) the confidentiality of that information can be ensured. ***The competent authority shall, where appropriate, keep ESMA informed of developments in accordance with Article 18(1) of Regulation (EU) No 1095/2010.*** ***The decision to grant or withhold*** permission shall be ***communicated*** in writing. The competent authority shall ensure that the delay is only for such period as is necessary in the public interest. The competent authority shall at least once every week review whether the delay continues to be appropriate and shall revoke the authorisation immediately if any of the conditions	emission allowance market participant has delayed the disclosure of inside information under this paragraph it shall inform the competent authority that disclosure of the information was delayed and provide in writing an explanation on how the conditions were met, immediately after the information is disclosed to the public. National law may alternatively provide that a record of such explanation may be submitted only upon request of the competent authority. (,,,) 4a, If the confidentiality of inside information not disclosed under the conditions of paragraphs 3 or 4, is no longer ensured, the issuer has to inform the public of this inside information as soon as possible. This includes situations where a rumour explicitly relates to a piece of inside information which is not disclosed under paragraphs 3 or 4 when that rumour is sufficiently accurate to indicate that the confidentiality of that information is no longer ensured	***legitimate interests.*** ***3 b.*** Where an issuer of a financial instrument or emission allowance market participant has delayed the disclosure of inside information under paragraph***s 3 and 3 a***, it shall inform the competent authority that disclosure of the information was delayed and provide in writing an explanation on how the conditions were met, immediately after the information is disclosed to the public. National law may alternatively provide that a record of such explanation may be submitted only upon request of the competent authority. (…) 4a. If the confidentiality of inside information not disclosed under the conditions of paragraphs 3 or 4, is no longer ensured, the issuer has to inform the public of this inside information as soon as possible.

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EC Proposal	ECON Report	Council's General Approach[4]	Proposed Compromise
	in point (a), (b) or (c) are no longer satisfied.		

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4. MAINTAINING THE ORIGINAL PURPOSE OF INSIDER LISTS (ARTICLE 13 IN CONJUNCTION WITH ART. 11.2B OF THE ECON REPORT)

The purpose of insider lists should not be altered.

According to the **ECON's proposal (Art. 11.2b) persons on insider list will be forced to report on suspicious transactions** to competent authorities. Such an amendment would go much further than what was the historic justification of the duty to prepare insider lists. The duty has been introduced to ease investigations of potential insider dealings once authorities have come to an initial suspicion. It has definitely not been introduced to create suspicions. Also, such a duty would lead to severe tensions and a climate of mistrust in highly sensitive proceedings like M&A-transactions.

- **The amendment should, thus, be deleted.**

EC Proposal	ECON Report	Council's General Approach[5]	Proposed Compromise
Article 11	Article 11 Prevention and detection of market abuse 2b. Any person included on an insider list that becomes aware of activities that might constitute insider dealing, market manipulation or an attempt to engage in market manipulation or insider dealing shall report such information through the channels referred to in paragraphs 2 and 2a.		Deleted

Moreover, it is important to note that **requiring smaller issuers on multilateral trading facilities (or 'SME Growth Markets')** to produce insider lists would be an additional regulatory burden. In order to make this more proportionate and appropriate for growing companies, **we support the Council's general approach in Article 13, paragraph 5**, which will exempt issuers on SME Growth Markets from having to maintain an insider list, while still placing the responsibility on the

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issuer to take all reasonable steps to prevent the dissemination of insider information and allowing the competent authority to request an insider list if needed. This approach would ensure that companies remain responsible for inside information and therefore, investor protection would be maintained.

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5. AVOIDING UNNECESSARY BURDENS AS REGARDS MANAGERS' TRANSACTIONS (ARTICLE 14)

a. Extending the time limit for disclosing information (Article 14, paragraph 1)

The **Commission and the ECON committee** have proposed a **two-day time limit for disclosing information** to the public by "*Persons discharging managerial responsibilities within an issuer*" "*as well as persons closely associated with them*". However, this deadline cannot be met in practice because, in most cases, the bank statement listing a transaction is only received two days after the transaction occurs.

The **Council General approach**, which has proposed a **more flexible three-day time limit** for disclosing information, is heading in the right direction. However, it still appears insufficient. A four-day limit would be more suitable in practice.

- **EuropeanIssuers supports the Council General approach as regards Article 14 paragraph 1 but with time limit of – *at least* – 4 days.**

b. Maintaining the possibility for competent authorities to make information public? (Article 14, paragraph 1)

For the **Commission and the ECON committee**, the manager ensures that information is made public.

For the **Council**, the information is disclosed by: (i) the manager and (ii) the issuer or, alternatively, by the competent authority.

- **In certain Member States, it is the Financial Authority, which discloses transactions on its website. This possibility should be preserved as it allows centralising transactions. Subsequently, there is also no need to search various issuers' corporate websites. This system grants more transparency to market participants.**

c. Maintaining a 20 000 EUR threshold (Article 14 paragraph 3 of the Commission proposal and the ECON report, paragraph 6 of Council's General approach)

Application of Article 14 to: all managers' (and persons closely associated with them) transactions, whatever the amount per year (as proposed by the **ECON committee**), or to

- transactions exceeding 5 000 EUR, with a possibility for the competent authority to increase this threshold up to 20 000 EUR (as proposed by the **Council**) would be burdensome, complex and would flood the market with unnecessary information, making it more difficult to find the few relevant disclosures.

- **A possible compromise could be a threshold of 10.000 EUR but the information should be made public every time the threshold (aggregate amount) is reached again.**

d. Avoiding additional bureaucratic burden with respect to information duties of the issuer (Art. 14 paragraph 2 of the Council's General Approach)

It would create massive additional compliance duties, data protection issues and last but not least difficult interpersonal or intercultural situations in listed companies, if issuers were forced to compile a list of closely associated persons of managers. Normally, the relatives of persons discharging managerial responsibilities are not known to the issuer and will rightly be regarded as a private issue.

- **The amendment should, thus, be deleted.**

e. No implementation of uniform trading windows (Art. 14 paragraph 4a and 6(c) of the ECON report)

To allow manager's transactions only within trading windows harmonised on EU level is not appropriate, because specifics of individual listed companies and firm-specific situation cannot be taken into account anymore.

- **The amendments should, thus, be deleted.**

EC Proposal	ECON Report	Council's General Approach[6]	Proposed Compromise
Article 14 Manager's transactions 1. Persons discharging managerial responsibilities within an issuer of a financial	Article 14 Manager's transactions 1. Persons discharging managerial responsibilities within an issuer of a financial	Article 14 Manager's transactions 1. Persons discharging managerial responsibilities within an issuer of a financial	Article 14 Manager's transactions 1. Persons discharging managerial

[6] Text changes are not visible in the Council's General Approach

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EC Proposal	ECON Report	Council's General Approach[6]	Proposed Compromise
instrument or an emission allowance market participant, not exempted pursuant to the second subparagraph of paragraph 2 of Article 12, as well as persons closely associated with them, shall ensure that information is made public about the existence of transactions conducted on their own account relating to the shares of that issuer, or to derivatives or other financial instruments linked to them, or in emission allowances. Such persons shall ensure that the information is made public within two business days after the day on which the transaction occurred.	instrument or an emission allowance market participant, not exempted pursuant to the second subparagraph of paragraph 2 of Article 12, as well as persons closely associated with them, shall ensure that information is made public about the existence of transactions conducted on their own account relating to the shares of that issuer, or to derivatives or other financial instruments linked to them, or in emission allowances. Such persons shall ensure that the information is made public within two business days after the day on which the transaction occurred.	instrument, as well as persons closely associated with them, shall as soon as possible and in any event within 3 business days of the transaction notify the issuer and the competent authority about the existence of every transaction conducted on their own account relating to the shares or debt instruments of that issuer, or to derivatives or other financial instruments linked to them, or in emission allowances or related derivatives, once the total amount of the transactions has reached the threshold set in paragraph 6 within a calendar year. The issuer shall ensure that the information is made public in a manner, as specified in Article 12.7, ensuring fast access to this information on a non-discriminatory basis and makes it available to the competent authority and, where applicable in the officially appointed mechanism referred to in [transparency directive] as soon as possible, and in any event within 3 business days after the day on which the transaction occurred. The issuer shall use such media as may reasonably be relied upon for the effective dissemination of information to the public throughout the Community. National law may alternatively provide that a competent authority may itself make public the information. This Article shall apply to issuers who have requested or approved admission of their financial instruments to trading on a regulated market in a Member State or, in the case of an instrument only traded on a MTF or an OTF,	responsibilities within an issuer of a financial instrument or an emission allowance market participant, not exempted pursuant to the second subparagraph of paragraph 2 of Article 12, as well as persons closely associated with them, shall ensure that information is made public about the existence of transactions conducted on their own account relating to the shares of that issuer, or to derivatives or other financial instruments linked to them, or in emission allowances. Such persons shall ensure that the information is made public within ***four*** business days after the day on which the transaction occurred. National law may alternatively provide that a competent authority may itself make public the information.

EC Proposal	ECON Report	Council's General Approach[6]	Proposed Compromise
		have approved trading of their financial instruments on a MTF or an OTF or have requested admission to trading of their financial instruments on a MTF in a Member State.	
		2. The Issuer shall notify the persons discharging managerial responsibilities of their obligations under this article in writing. The issuer shall draw up a list of all persons discharging managerial responsibilities and their closely associated persons. Persons discharging managerial responsibilities within an issuer shall notify the persons closely associated with them of their obligations under this article in writing. The manager shall keep a copy of this notification.	2. The Issuer shall notify the persons discharging managerial responsibilities of their obligations under this article in writing. The issuer shall draw up a list of all persons discharging managerial responsibilities. Persons discharging managerial responsibilities within an issuer shall notify the persons closely associated with them of their obligations under this article.
(…) 3. Paragraph 1 shall not apply to transactions totalling under EUR 20,000 over the period of a calendar year.	(…) ***Deleted***	(…) 6. Paragraph 1 shall apply to any subsequent transaction once a total amount of EUR 5,000 has been reached within a calendar year. The threshold of EUR 5,000 shall be computed by summing up without netting all transactions mentioned in paragraph 1. 6a. A competent authority may decide to increase the threshold set in paragraph 6 to EUR 20000 and shall inform ESMA of its decision and the justification of its decision with specific reference to market conditions, to adopt the higher threshold prior to its application. ESMA shall publish on its website the list of thresholds that apply in accordance with this	3. Paragraph 1 shall not apply to transactions totalling under EUR 10,000 over the period of a calendar year. ***Every time the threshold is reached, the calculation of the threshold should restart from zero until the limit has been reached again.***

EC Proposal	ECON Report	Council's General Approach[6]	Proposed Compromise
		article.	
	4a. A person discharging managerial responsibilities within an issuer of a financial instrument shall not conduct any transactions on his or her own account relating to the shares of that issuer or to derivatives or other financial instruments linked to them outside a trading window.		Deleted
	6. (…) (c) the arrangements and the conditions for the application of trading windows in accordance with paragraph 4a and, in particular, the start and the end point of such trading windows, as well as the conditions related to possession of price sensitive information attached to the ban on trading outside a trading window.		Deleted

EuropeanIssuers *was set up to represent the interests of quoted companies across Europe. Our members include both national associations and companies from all sectors in 14 European countries.*

We aim to ensure that EU policy creates an environment in which companies can raise capital through the public markets and can deliver growth over the longer-term. We seek capital markets that serve the interests of their end users, including issuers.

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