

1st October 2012

## Proposal for a Regulation of the European Parliament and of the Council on insider dealing and market manipulation (Market Abuse)

EuropeanIssuers' position on compromise amendments in ECON (*based on draft 6/09/12*)

Topics	Amendments	European Issuers' position	Comments
Exemption for buy-back programme and stabilization	Compromise amendment <b>Article 3§ 2a and 2b</b>	+	<b>EuropeanIssuers supports</b> the compromise amendment which excludes that communication of inside information from the potential target to the potential bidder and the use of inside information regarding the purpose of launching a takeover represent <i>per se</i> insider dealing.
Accepted market practices	Compromise amendment <b>Article 4a</b>	+	<b>EuropeanIssuers supports</b> the compromise amendment which allows Member States to maintain accepted market practices when they have demonstrated their value for market efficiency without impairing market integrity.
Inside information definition	Compromise amendment <b>Article 6§1 e)</b>	-	<b>EuropeanIssuers rejects</b> the compromise amendment because it <b>introduces a grey area</b> and <b>raises uncertainty as to what has to be considered as inside information</b> . As this definition is also the basis for criminal sanctions, it cannot have this degree of uncertainty.

	169 (Klinz), 170 (Goulard), 171 (Feio) 172 (Schmidt)	+	<p>In fact, this definition would include a vast amount of information including information the issuer would not:</p> <p>(i) deem necessary to publish (because at this stage the issuer considers it is not price-sensitive) or,</p> <p>(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).</p> <p>This sub-paragraph should be deleted.</p>
<b>Delayed information</b>	Compromise amendment <b>Article 12§4 and 5</b>	-	<p><b>EuropeanIssuers rejects</b> this compromise because i) it increases the conditions for issuers to delay; ii) makes it quite impossible for the majority of issuers to use the delay because delaying would, in essence, only be possible if related to "information of systemic importance".</p> <p>EuropeanIssuers is of the opinion that Art. 12.4. should be kept as proposed by the EU Commission, and it should be unambiguously made clear that Art. 12.5. only relates to a very specific situation.</p>
<b>Insider lists</b>	Compromise amendment <b>Article 13</b>	+	<p><b>EuropeanIssuers supports</b> this compromise amendment because it identifies a clear role for ESMA (instead of the Commission) to develop draft standards on identities and reasons for persons to be included on an insider list, as well as conditions under which issuers have to draft such a list.</p>

	Compromise Amendment <b>Art. 11§2b</b>	-	<b>EuropeanIssuers opposes</b> the obligation for persons on insider lists to inform authorities on any potential insider dealing or market abuse. Such a duty would lead to severe tensions and a climate of mistrust in highly sensitive proceedings like M&A-transactions.
<b>Manager's transactions</b>	Compromise amendment <b>Article 14</b>	-	<b>EuropeanIssuers rejects</b> the compromise amendment because: <ul style="list-style-type: none"> <li>- a two-day time limit for disclosing information (paragraph 1) is unfeasible (5 or at least 4 days would be adequate). In most cases, the bank statement listing a transaction is only received two days after the transaction occurs;</li> <li>- the ban on manager's transaction "within" a trading window (new paragraph 4a) is not clear and appears inconsistent with the compromise amendment to Article 14 paragraph 6 which refers to "the possibility of banning trade <u>outside</u> the trading window".</li> </ul> <p>Usually, managers may conduct transactions except during certain periods so called "closed windows". These "closed windows" are set by the issuer in fully respecting and complying with the duties of the MAR/MAD, so that there is no need for an "official" trading window.</p>
	310 (Pittella); 311 (Mann)	----- ----- +	
<b>Sanctioning powers</b>	Compromise amendment <b>Article 26§1 k), l) and m)</b>	-	<b>EuropeanIssuers rejects</b> the compromise amendment that introduces an " <b>unlimited amount</b> " of pecuniary sanction, because a sanction should <b>always be known in advance and be proportionate</b> . Moreover, the <b>20%</b> of total annual turnover and " <b>ten times</b> " of the profits gained or losses

			avoided, seems excessive.
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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.

More information can be found at [www.europeanissuers.eu](http://www.europeanissuers.eu).