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European Securities and Markets Authority

POLICY ORIENTATIONS ON POSSIBLE IMPLEMENTING MEASURESUNDER THE MARKET ABUSE REGULATION

The Federation of Finnish Financial Services (FFI) supports regulation preventing market abuse, thus enhancing the functioning of the markets and guaranteeing equal information for investors. While we support the objectives or the regulation and the discussion paper, the measures restricting the operations of the market participants should be weighed up thoroughly. It should be considered, whether market abuse could be prevented with lighter rules than the heavy procedures proposed in the discussion paper. Detailed rules on conduct of business and implementation of new IT systems significantly increase the administrative burden and costs for the market participants.

The FFI has chosen to reply only the questions that have special relevance to the Finnish market. On other questions we support the views of the European Banking Federation.

Q6: Do you agree that with multi-listed shares the price should not be higher than the last traded price or last current bid on the most liquid market?

How would the most liquid market be defined? What if the liquidity varies from one market to another? Will this work in practice or will it only result in adding the administrative burden of the market participant with defining and adjusting the requirements for the most liquid market.

Q7: Do you agree that during the last third of the regular (fixed) time of an auction the issuer must not enter any orders to purchase shares?

The time restriction (1/3) is long. Is this long a restriction necessary?

Q8: Do you agree with the above mentioned cumulative criteria for extreme low liquidity? If not, please explain and, if possible, provide alternative criteria to consider.

The criteria for extreme low liquidity are very strict. What does ‘trading session’ mean in this context? The definition of the criteria needs to be clear.

Q9: Do you think that the volume-limitation for liquid shares should be lowered and three different thresholds regarding liquid, illiquid and shares with extreme low liquidity should be introduced?

We do not deem the three different thresholds necessary.

Q23: Do you agree with ESMA’s proposals for the standards that should apply prior to conducting a market sounding?

In general, the FFI agrees on the proposed standards. However, The FFI encourages ES-

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MA to provide further guidance on criteria to determine the type and number of investors the disclosing market participant intends to question (paragraph 74). This clarification is very important as failing to fulfill this requirement will lead to sanction if disclosure is considered inadequate. Will the requirement be applied to, e.g. senior bonds on which there has already been an announcement on Bloomberg? In hybrid loans, an in investor needs to commit to non-disclosure before any information is given. What is the eventual difference between senior bonds and private placement loans from sounding point of view?

Q25: Which of the 3 options described above in paragraph 82 do you think should apply? Should any other options be considered?

The FFI believes Option 1 should apply. The more restrictions are put upon the market participants, the more it adds the administrative costs. Increasing costs do not benefit the investors either, as they will eventually pay the costs of the broadened administration. Strict requirements lead to wider spreads and worse price for the issuer. Benefits from the additional administrative requirements are questionable.

Q26: Do you agree with these proposals for scripts? Are there any other elements that you think should be included?

If sounding scripts on investors are required before soundings, amendments to the scripts during the sounding will be necessary if additional investors get involved. When the soundings are made in telephone, the information will be recorded in any case. Making and updating the scripts cause additional administrative work.

Q30: Are you in favour of an ex post confirmation procedure? If so, do you agree with its proposed form and contents?

A combination of an ex ante confirmation over telephone and an ex post written confirmation seems unnecessary and unworkable. What if an ex post written confirmation cannot be obtained? Conversation on telephone has been recorded nevertheless.

Q39: What are your views on these options?

We deem both options problematic. Option 2, in particular, seems difficult to execute in practice, because the end time of a project providing insider information may be difficult, and, in some cases, even impossible, to estimate beforehand.

Q58: What kind of records of orders, transactions etc. should a person that performs an AMP have?

We agree that investment firms and credit institutions conducting trading under AMP (accepted Market Practices) should have appropriate internal procedures ensuring correct application of AMPs. However, there should not be an obligation stated in paragraph 182 according to recording of specific transactions or orders and concerning a requirement of separate accounts without aggregation orders. These requirements are both unclear and not based on MAR 8 a.

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Q61: Do you agree that the above approach to timing of STR reporting strikes the right balance in practice?

Looking into a suspected market abuse takes time. The market participant preparing to make a report needs a sufficient time to prepare the report, because the cases usually involve investigations. Should the reports be made in a format ESMA proposes, obtaining all the required information takes time. From this perspective, the two week maximum time from the time of the suspected breach set for the report is too short.

Q64: Do you have a view on whether entities subject to the reporting obligation of Article 11 should or shouldn't be subject to a requirement to establish automated surveillance systems and, if so, which firms? What features as a minimum should such systems cover?

The FFI disagrees with the statement in section 206. Acquiring and implementing an automated system covering the full range of trading activities of the firm would require significant investment and especially for small firms be disproportionate to the inherent risks of receiving suspicious transactions. The obligation to monitor order flows must be possible to meet by implementing manual processes. In some cases, a clearer definition on when a report on suspicious unexecuted orders should be made. We also deem it a flaw that the supervisory authorities do not report back on how the reports on suspicions have been handled in the authority.

Q67: Do you agree with the proposed information to be included in, and the overall layout of the STRs?

We would prefer to remain existing STR templates as far as possible for with the necessary exemption of inclusion of MAR's extended scope. The name of the person who has made the report should not be included on the STR in order to protect personal data.

Q98: Do you think that there should be a threshold for what constitute "large number of persons" for the purpose of determining that an investment recommendation is intended for the public?Q

'Large number of persons' does not need to be defined in this context. More important than the number of people is the manner the recommendation is disclosed.

Q99: Do you agree that the existing requirements on the identity of producers of recommendations should be maintained?

Yes. Further requirements would only lead to disclaimers added to the recommendations and investors are rarely interested in the contents of disclaimers.

Q 100, Q 101, Q 103 – Q 108, **Q 110 and Q111.**

We deem that the current regulatory regime suffices.

Federation of Finnish Financial Services

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