

**COMMISSION de SURVEILLANCE
du SECTEUR FINANCIER**

OUTDATED

In case of discrepancies between the French and the English text, the French text shall prevail

Luxembourg, 17 August 2006

To all the persons concerned

CIRCULAR CSSF 06/257

Re: Entry into force of the law of 9 May 2006 on market abuse

Ladies and Gentlemen,

We are pleased to draw your attention to the entry into force of the law on market abuse, published in *Mémorial A* – No. 83 of 16 May 2006 (the “Law”). The purpose of the Law is to combat insider dealing and market manipulation (“market abuse”) in order to ensure the integrity of financial markets, to enhance investor confidence in those markets and thereby to ensure a level playing field for all market participants. It establishes a new framework for the prevention, detection and efficient sanction of market abuse, imposes new requirements on market participants, entrusts the CSSF with new competences and duties and sets down new preventive measures.

1. **The European context: European standards as regards market abuse**

The Luxembourg framework regarding the prevention of, proceedings against and crackdown on illicit market practices has been enhanced through the transposition into Luxembourg legislation of Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (“Market Abuse Directive”). In addition to tightening the legislation punishing insider dealing, the Law introduces into Luxembourg law the definition of “market manipulation” which, under

the Market Abuse Directive, covers market distortions resulting from a price manipulation or the dissemination of false or misleading information. The following Commission Directives implementing the Market Abuse Directive have also been transposed:

- Commission Directive 2003/124/EC of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards the definition and public disclosure of inside information and the definition of market manipulation (which lays down detailed criteria for defining information deemed to be of a precise nature and likely to have an effect on prices);
- Commission Directive 2003/125/EC of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards the fair presentation of investment recommendations and the disclosure of conflicts of interest;
- Commission Directive 2004/72/EC of 29 April 2004 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.

The Law transposes the above Directives into a single text. However, the Law does not transpose Commission Regulation (EC) No 2273/2003 of 22 December 2003 implementing Directive 2003/6/EC as regards exemptions for buy-back programmes and stabilisation of financial instruments ("Regulation (EC) No 2273/2003"), considering that European Regulations are directly applicable.

2. Scope of the new framework regarding insider dealing and market manipulation

The Law brings together under a single legal framework the detection of, proceedings against and crackdown on insider dealing and market manipulation. The Law applies to any financial instrument admitted to trading on at least one regulated market, or for which a request for admission to trading on such a market has been made. Prohibitions of insider dealing and market manipulation also apply to any financial instrument admitted to trading on at least one multilateral trading system (MTF), or for which a request for admission to trading on an MTF has been made, whether the transaction was carried out on such a regulated market or such an MTF or not. Article 5 of the Law specifies that the prohibitions and requirements laid down in the Law apply, except as otherwise provided, to actions carried out in Luxembourg or abroad concerning financial instruments admitted to trading on a regulated market situated or operating in Luxembourg or for which a request for admission to trading on such a market has been made, and, as regards foreign regulated markets, to actions carried out in Luxembourg concerning financial instruments admitted to trading on such a foreign regulated market or for which a request for admission to trading on such a market has been made. The prohibitions in question do not

apply to actions concerning financial instruments that are admitted to trading on a foreign MTF or for which a request for admission to trading on such a market has been made. The foreign rules applicable to this foreign MTF should impose the prohibitions for this type of cases.

It must be noted that attempts of insider dealing are also punishable under the Law, which was not the case under previous legal rules. Furthermore, the Law recognises “accepted market practices”, i.e. those practices that are accepted by the CSSF and that are used for legitimate purposes, buy-back programmes and stabilisation of financial instruments, provided the latter are carried out in accordance with Regulation (EC) No 2273/2003, as exempting transactions that could otherwise be considered as market manipulation.

3. The new requirements for market participants

The Law lays down a set of new requirements for market participants whose principal purpose is the prevention of market abuse:

- Credit institutions and the other professionals of the financial sector established in Luxembourg are notably required to notify the CSSF without delay if they reasonably suspect that a transaction might constitute insider dealing or market manipulation. Notifications of suspicious transactions shall include the information required by the Law and the notifying person shall not inform any other person thereof (including the client concerned), except by virtue of provisions laid down by law.
- Regulated markets, credit institutions, investment firms and market operators operating an MTF are required to adopt structural provisions aimed at preventing and detecting market manipulation. They are moreover required to monitor all transactions carried out by their respective members in order to detect insider dealing and market manipulation. Any transaction for which there are reasonable grounds for suspecting insider dealing or market manipulation shall be notified to the CSSF without delay by the regulated markets established in Luxembourg, as well as by the credit institutions, investment firms and market operators operating an MTF in Luxembourg.
- Issuers of financial instruments are required to inform the public as soon as possible of inside information which directly concerns them. Issuers shall take reasonable care to ensure that the disclosure of inside information to the public is synchronised as closely as possible between all categories of investors in all countries in which their financial instruments are admitted to trading on a regulated market. Information, as well as any significant changes concerning already publicly disclosed inside information shall be publicly disclosed using distribution channels which may reasonably be relied upon for the effective dissemination of information to the public. Without prejudice to the specific obligations of the issuer with respect to the market operator, this requirement is currently met if the information is published either in one or several newspapers

distributed throughout or widely distributed in Luxembourg, or on the website of the operator of the regulated market concerned, or through agencies specialised in financial information. This requirement is also met if the information is available to the public in written form as set out above through notices to be included in one or several newspapers distributed throughout or widely distributed in Luxembourg, or on the website of the operator of the regulated market concerned, or through agencies specialised in financial information. The details of the means and terms of disclosure may be determined in a grand-ducal regulation and/or amended, where applicable, by the future transposition of European directives¹. Moreover, issuers shall post on their website all inside information that they are required to disclose publicly in the French, German or English language, at least, for a minimum period of three months. Where an issuer uses the option to delay the disclosure in order to protect his legitimate interests, he must ensure that such omission is not likely to mislead the public and must have in place the necessary measures to ensure the strictest confidentiality of that information. Every issuer or person acting on their behalf and for their account shall draw up a list of persons who have access to inside information. Moreover, the persons discharging managerial responsibilities within an issuer having its registered office in Luxembourg and persons closely associated with them, shall declare to the CSSF and to the issuer all transactions conducted on their own account related to the shares of the issuer, or to derivatives or other financial instruments linked to these shares and the issuer shall make these transactions public.

- The persons who produce or disseminate investment recommendations in Luxembourg or who, from abroad, specifically target the Luxembourg public shall notably ensure that the recommendations are fairly presented, that they clearly indicate conflicts of interest and that they include all the references provided for by the Law.

4. The new competences and duties of the CSSF

The CSSF has been designated as the Luxembourg competent authority to supervise the application of the provisions of the Law. The new legal framework entrusts the CSSF with new competences and extends its powers.

The CSSF is thus entrusted with all supervisory and investigatory powers that are necessary to detect and define insider dealing and market manipulation, to ensure the enforcement of the provisions set out in the Law and to sanction infringements of these provisions. In this context, the CSSF is given extended investigatory powers that it exercises directly. The CSSF may also transmit the file to the judicial authorities. The continuously increasing cross-border activities on financial markets require a closer cooperation between authorities.

¹ Please refer to question 10 of “[The Transparency Law and the Grand-ducal transparency regulation: FAQ](#)”.

The CSSF is also the competent authority to assess whether a practice can be considered as an accepted market practice, which, if executed for legitimate reasons, should not be qualified as market manipulation. As soon as a practice is accepted, it will be published on the CSSF website.

The CSSF may also review whether the provisions of Regulation (EC) No 2273/2003 are complied with, i.e. if trading in own shares in buy-back programmes by the issuer and stabilisation transactions carried out by credit institutions or investment firms fall within the scope of exemptions provided for in Regulation (EC) No 2273/2003 (“safe harbour exemptions”). The CSSF is also in charge of verifying that issuers have put in place the mechanisms ensuring that they fulfil trade reporting obligations on these transactions and that the limits in relation to price and volume are not exceeded. The CSSF may also verify that the stabilisation activities are only carried out during the defined period of time set out in Regulation (EC) No 2273/2003.

5. Control of preventive measures relating to insider dealing and market manipulation

The CSSF is also competent for verifying that sufficient preventive measures relating to insider dealing and market manipulation have been taken, such as:

- Issuers, or persons acting on their behalf or for their account, shall draw up a list of those persons working for them, under an employment contract or otherwise, who have access to inside information relating, directly or indirectly, to the issuer, whether on a regular or occasional basis, and shall inform the relevant persons of their inclusion in such list of insiders. The lists of insiders shall be kept for a period of at least five years and be transmitted by the issuer or a person acting on its behalf to the CSSF, whenever the latter requests it. The persons included in these lists must acknowledge and be aware of the applicable legal and regulatory duties.
- Similarly, persons discharging managerial responsibilities within an issuer having its registered office in Luxembourg and, where applicable, persons closely associated with them, shall declare to the CSSF and to the issuer all transactions conducted on their own account relating to the shares of the issuer admitted to trading on a Luxembourg or foreign regulated market, or to derivatives or other financial instruments linked to these shares. The notification shall be made within five working days of each transaction’s execution date. Issuers having their registered office in a third country shall declare to the CSSF all transactions relating to the shares of the issuer admitted to trading on a regulated market, or to derivatives or other financial instruments linked to these shares, conducted by persons discharging managerial responsibilities within the issuer or persons closely associated with them, provided the CSSF is considered as the competent authority within the meaning of article 10 of Directive 2003/71/EC. The issuer must ensure that the information on these transactions is made available to the public as soon as possible (by posting it, for example, on its website).

- The CSSF is in charge of ensuring that the provisions of the Law in relation to production and dissemination of investment recommendations are complied with. Journalists, publishers and broadcasters subject to a regulation or self-regulation, achieving equivalent effects as those of the provisions set out in the Law, are not subject to certain provisions set out in that Law. The CSSF must, where applicable, assess whether the effects of the regulations and self-regulations are equivalent to those of the Law.
- The CSSF is competent to verify that regulated markets, credit institutions, investment firms and market operators operating an MTF have adopted structural provisions aimed at preventing and detecting market manipulation practices and reporting to the CSSF any conduct potentially indicative of insider dealing or market manipulation.

6. Future implementing measures

The new regulatory framework as regards market abuse may be supplemented by:

- a. explanations and guidelines concerning (i) the elements that could be indications of market manipulation or insider dealing, (ii) the arrangements and format for suspicious transaction reports, (iii) the lists to be drawn up by issuers, or persons acting on their behalf or for their account, including those persons having regular or occasional access to inside information, and (iv) the notifications relating to transactions conducted by persons discharging managerial responsibilities within an issuer and persons closely associated with them, as well as the modalities for public disclosure of such transactions;
- b. rules related to accepted market practices, factors to consider as well as the consultation procedure with foreign competent authorities on the one hand, and, on the other hand, rules to comply with as regards buy-back and stabilisation transactions in order to fall within the scope of the safe harbour exemptions laid down in Regulation (EC) No 2273/2003.

The framework may also be completed by a grand-ducal regulation relating to the modalities for public disclosure of inside information.

Yours faithfully,

COMMISSION DE SURVEILLANCE DU SECTEUR FINANCIER

Arthur PHILIPPE
Director

Jean-Nicolas SCHAUS
Director General