

**DG INTERNAL MARKET SERVICES' WORKING
DOCUMENT ON THE IMPLEMENTATION OF ARTICLE
8 OF THE EUROPEAN PARLIAMENT AND COUNCIL
DIRECTIVE 2003/6/EC ON INSIDER DEALING AND
MARKET MANIPULATION (MARKET ABUSE)**

WORKING DOCUMENT ESC 14/2003

- Invitation to comment -

This document from DG Internal Market services is a working document and is without prejudice to any final decision that might be taken by the Commission. **This document is therefore informal and not definitive. It does not have the status of a Commission official draft for implementing measures.** This document is addressed to the members of the European Securities Committee (ESC) and simultaneously to the European Parliament. **The three-month period provided for the ESC to vote upon such measures, and for the European Parliament to consider them, is therefore not triggered by this publication.**

Any technical drafting comments should be sent to the Commission via a dedicated e-mail address (Markt-ESC@cec.eu.int). Any comments received will also be made public and posted on the same Commission website. The Commission will begin drafting up its formal proposal at the end of April 2003.

- OVERVIEW OF POSSIBLE IMPLEMENTATION OF ARTICLE 8 OF THE EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE 2003/6/EC ON INSIDER DEALING AND MARKET MANIPULATION (MARKET ABUSE)-

INTRODUCTION:

This paper provides an overview of the possible implementation of Article 8 of the European Parliament and Council Directive 2003/6/EC on insider dealing and market manipulation (market abuse) as detailed in annex 1.

1. GENERAL COMMENTS

The Commission Communication of 11 May 1999 entitled “Implementing the framework for financial markets: action plan” identifies a series of actions that are intended to create a legislative framework to support a single market for financial services. The Lisbon European Council of April 2000 called for the implementation of that action plan by 2005. One of the identified initiatives in the action plan is the need to combat market abuse.

The Stockholm European Council of March 2001 endorsed the final report of the Committee of Wise Men chaired by Baron Lamfalussy on the regulation of European securities markets. This report proposed the introduction of a four-level approach for securities markets regulation: namely framework principles (Level 1), implementing measures (Level 2), co-operation among regulators (Level 3) and enforcement (Level 4). “Level 1” should be confined to broad general framework principles, while “Level 2” should consist of technical implementing measures to be adopted by the Commission with the assistance of the European Securities Committee.

The Stockholm Council also called for the legislative process to be speeded up and made more flexible in order to be able to respond to market developments and new regulatory standards, whilst respecting the requirements of openness, transparency, and legal certainty.

The European Parliament agreed to this new approach in a Resolution adopted on 5 February 2002 - subject to some additional conditions that were specified in President Prodi's Declaration to the EP Plenary of the same date and in Commissioner Bolkestein's letter of 2 October 2001 addressed to Mrs Randzio-Plath, Chairperson of Parliament's Committee on Economic and Monetary Affairs.

The European Parliament and Council Directive 2003/6/EC¹ on insider dealing and market manipulation (market abuse), adopted on 3 December 2002, follows this new approach and establishes framework principles for combating market abuse. In order to guarantee uniform application of its provisions throughout the Community and to take account of developments on financial markets, the Directive requires the necessary technical

¹ OJ L xxx

implementing measures to be adopted through the comitology procedure, following the agreements made between the three institutions.

In line with this new approach for regulating securities markets and in conformity with the above agreements, the European Commission provisionally requested the Committee of European Securities Regulators (CESR)² for technical advice on possible implementing measures regarding Article 8 of the future Directive on insider dealing and market manipulation (market abuse), after the first reading in the European Parliament. This provisional request by the Commission was formalised on 19 December 2002 after the adoption of the Market Abuse Directive (2003/6/EC) on 3 December 2002. The European Parliament has been informed of all mandates given to CESR, both provisional and final. These mandates have also been posted on Commission's Internal Market website. In addition, in order to guarantee the necessary transparency, CESR has consulted market participants and the broader public prior to finalising its advice. CESR delivered its finalised advice to the Commission on 31 December 2002.

This working document takes into account the measures proposed in CESR's high quality level 2 advice.

Article 8 of Directive 2003/6/EC provides for exemptions from the prohibitions of insider dealing and market manipulation in specific cases, provided the relevant activities are carried out in accordance with certain conditions. In order to benefit from these exemptions across Member States, legal certainty has to be guaranteed. Otherwise, issuers and market participants might be prosecuted in one Member State for market abuse but not in another. The risk of such a scenario could create a fundamental barrier to the free movement of capital and to the integration of European capital markets. Without legal clarity, there could be market distortion created by certain issuers and market participants who might weigh potential benefits of integrated European capital markets against such prosecution risks. In the consultations carried out by CESR, interested parties underlined this argument. Cross-border legal certainty for issuers and market participants is essential for an integrated European capital market. Therefore a Regulation establishing clear-cut conditions in order to benefit from the exemption provided by Article 8 of Directive 2003/6/EC is preferable to a Directive.

Finally, regarding the meaning of Article 8 of Directive 2003/6/EC, if an instance of trading in own shares in buy back programmes or stabilisation of a financial instrument does not follow the conditions laid down in this Regulation, that, in itself, does not mean that this trading or stabilisation should be deemed to constitute market abuse. It only means that this trading or stabilisation will be examined, as any other behaviour, under the general provisions of Directive 2003/6/EC.

2. DESCRIPTION OF ARTICLES

Article 1 - Definitions

Article 1 includes the definitions of the terms used for the purpose of this Regulation and guarantees consistency with other European legislation in the securities field.

²CESR was established by Decision 2001/527/EC of 6 June 2001, OJ L 191, 13 July 2001, p.43

Article 2 – Scope of application for trading in own shares in “buy-back” programmes

Article 8 of Directive 2003/6/EC establishes an exemption from the prohibitions of market abuse for trading in own shares in “buy-back” programmes, a so called “safe-harbour”, provided that such trading is carried out in accordance with specific conditions. Since the aim of the Directive is to ensure market integrity and investor protection, the conditions for the “safe-harbour” have to take account of this objective. In particular, trading in own shares in “buy-back” programmes shall only be allowed for specific purposes: reducing the capital of the issuer, meeting obligations arising from debt financial instruments exchangeable into equity instruments and meeting obligations arising from allocations of shares to employees.

Article 3 – Conditions for “buy-back” programmes and for disclosure

The conditions for trading in own shares in “buy-back” programmes have to respect the provisions of Directive 77/91/EEC, in particular Article 19 paragraph 1 thereof. In order to avoid confusion among market participants, “buy-back” programmes must be kept transparent and therefore be disclosed appropriately to the public.

Article 4 – Conditions for trading

The conditions for trading in own shares in “buy-back” programmes have to take account of the objectives of the prohibitions of Directive 2003/6/EC. Therefore, these conditions shall establish the limited circumstances for such trading, in order to benefit from the exemption provided by Article 8 of Directive 2003/6/EC.

Article 5 – Restrictions

Some market practices of trading in own shares in “buy-back” programmes might endanger market integrity and, consequently, can only be allowed to benefit from the “safe-harbour” under restrictive conditions.

Article 6 – Scope of application for stabilisation

Article 8 of Directive 2003/6/EC establishes an exemption (“safe harbour”) from the prohibitions of market abuse for stabilising a financial instrument, provided that such activity is carried out in accordance with specific conditions. Since the aim of this Directive is to ensure market integrity and investor protection, these conditions have to take account of this objective.

Article 7 – Time related conditions for stabilisation

In order to guarantee a high level of market integrity, stabilisation activity shall only be allowed for a limited period of time, taking into account the specific characteristics of the relevant securities and situations.

Article 8 – Disclosure and reporting conditions for stabilisation

This Article sets out the disclosure and reporting requirements in order to guarantee the high level of transparency necessary for preventing market abuse.

Article 9 – Price conditions for stabilisation

In order to avoid decreasing standards of market integrity, stabilisation activity shall respect certain price conditions. Therefore, any stabilisation profiting from the “safe harbour” has to be carried out in relation to the offering or market prices.

Article 10 – Conditions for ancillary stabilisation

The use of overallotment procedures or 'greenshoe' options as particular practices for stabilisation shall only benefit from the “safe harbour” if conditions guaranteeing high market integrity standards, additional to those applicable for any stabilisation, are met.

ANNEX 1

DRAFT REGULATION

- (1) The Stockholm European Council approved a new approach for regulating European financial markets in its Resolution of 23 March 2001. Thus, the European Council fully endorsed the recommendations of the Committee of Wise Men on the Regulation of European Securities Markets.
- (2) In its final report, the Committee of Wise Men proposed a new four-level approach, namely framework principles (Level 1), implementing measures (Level 2), co-operation (Level 3) and enforcement (Level 4). Level 1, the Directive (or Regulation), should confine itself to broad general "framework" principles while Level 2 should contain technical implementing measures to be adopted by the Commission with the assistance of a committee (the European Securities Committee).
- (3) The Resolution of the European Parliament of 5 February 2002 on the implementation of financial services legislation also endorsed the Committee of Wise Men's report, on the basis of the solemn declaration made before Parliament on the same day by the Commission and the letter of 2 October 2001 addressed by the Internal Market Commissioner to the chairman of Parliament's Committee on Economic and Monetary Affairs with regard to the safeguards for the European Parliament's role in this process.
- (4) Directive 2003/6/EC follows the new approach for regulation European financial markets. It lays down the broad general "framework" principles to ensure the integrity of European financial markets, to establish common standards against market abuse throughout Europe, and to enhance investor confidence in these markets.
- (5) Directive 2003/6/EC indicates where technical implementing measures are necessary to be adopted through the comitology procedure, in order to take account of developments on financial markets and to ensure uniform application of the Directive in the Community.
- (6) Directive 2003/6/EC, and in particular Article 17 thereof, establishes the regulatory function of the European Securities Committee instituted by Decision 2001/528/EC³.
- (7) In March 2002, the European Commission provisionally requested the Committee of European Securities Regulators (CESR)⁴ to deliver advice on possible implementing measures on Article 8 of the future Directive on insider dealing and

³ Decision of 6 June 2001, OJ L 191, 13 July 2001, p. 45

⁴ CESR was established by Decision 2001/527/EC of 6 June 2001, OJ L 191, 13 July 2001, p. 43

market manipulation (market abuse), after the first reading of the European Parliament. This provisional request by the Commission was formalised on 19 December 2002 after the adoption of this Directive on 3 December 2002. The European Parliament has been duly informed about these mandates which have been published on European Commission Internal Market's website.

- (8) In order to comply with article 5 of Commission Decision 2001/527/EC, CESR engaged in a broad consultation of market participants several times before establishing its final advice.
- (9) The European Commission has taken into account the technical advice transmitted by CESR on 31 December 2002.
- (10) The measures provided for in this Regulation are in accordance with the opinion of the European Securities Committee.
- (11) The European Parliament was given a period of three months from the first transmission of draft implementing measures to allow it to examine them and to give its opinion. In accordance with Article 8 of Council Decision 1999/468/EC⁵ of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission, the European Parliament also had a period of one month from the transmission of the final draft implementing measures to consider whether this would exceed the implementing powers given to the European Commission.
- (12) This Regulation lays down the necessary measures for implementing the provisions of Article 8 of Directive 2003/6/EC, exempting certain activities from the prohibition of market abuse.
- (13) This Regulation should establish harmonised standards for market participants undertaking legitimate trading in own shares in “buy-back” programmes or stabilising a financial instrument. These activities, therefore, should not in themselves be regarded as market abuse.
- (14) An integrated European financial market requires that issuers and market participants do not face different legal risks between Member States. For those who want to carry out certain legitimate activities on the basis of the exemption provided for by Article 8 of Directive 2003/6/EC, in particular for cross-border activities, legal certainty throughout the European Union is necessary, hence full harmonisation. A regulation will guarantee the achievement of this desired higher level of legal certainty.
- (15) Activities of trading in own shares in “buy-back” programmes and of stabilisation of a financial instrument which would not benefit from the exemption of the prohibitions of Directive 2003/6/EC as provided for by Article 8 thereof, should not in themselves be deemed to constitute market abuse.

⁵ OJ L 184, 17 July 1999, p.23.

- (16) Allowable activities in order to benefit from the exemption of the prohibitions of Directive 2003/6/EC include issuers needing the possibility to reduce their capital, to meet obligations arising from debt financial instruments exchangeable into equity instruments, and to meet obligations arising from allocations of shares to employees.
- (17) As regards trading in own shares in “buy-back” programmes, the rules provided for by this Regulation are without prejudice to the application of Directive 77/91/EEC⁶.
- (18) Transparency is a prerequisite for prevention of market abuse. In particular, issuers having adopted “buy-back” programmes shall inform adequately their competent authority and, wherever required, the public.
- (19) Trading in own shares in “buy-back” programmes may be carried out through derivative financial instruments.
- (20) In order to prevent from market abuse, the daily volume of trading in own shares in “buy-back” programmes shall be limited. However, some flexibility is necessary in order to respond to given market conditions such as a low level of transactions.
- (21) Particular attention has to be paid to the selling of own shares during the life of a “buy-back” programme, to the possible existence of closed periods within issuers during which transactions are prohibited and to the fact that an issuer may have legitimate reasons to delay public disclosure of inside information.
- (22) Stabilisation transactions mainly have the effect of providing support for the price of the new issue during a limited time period if it comes under selling pressure, thus alleviating sales pressure generated by short term investors. This is in the interest of those investors having subscribed or purchased those relevant securities in the context of a significant distribution. In this way, stabilisation can contribute to greater confidence of investors and issuers in the financial markets.
- (23) Stabilisation activity may be carried out off a regulated market by use of financial instruments other than those admitted to the regulated market which may influence the price of the instrument admitted to trading on a regulated market.
- (24) Relevant securities shall include financial instruments that become fungible after an initial period because they are substantially the same, although they have different initial dividend or interest payment rights.
- (25) In relation to stabilisation, block trades shall not be considered as a significant distribution of relevant securities as they are strictly private transactions.

⁶ "Directive 77/91/EEC on co-ordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent", OJ L 26, 31 January 1977, p. 1

- (26) When Member States permit, in the context of an initial public offer, trading prior to the beginning of the official trading on a regulated market, the permission covers “when issued trading”.
- (27) In order to maintain transparency as a prerequisite for preventing market abuse, adequate disclosure of the characteristics of the possible stabilisation is necessary.
- (28) There should be adequate co-ordination in place between all investment firms and credit institutions undertaking stabilisation. During stabilisation, one investment firm or credit institution shall act as a central point of inquiry for any regulatory intervention by the competent authority in each Member State concerned.
- (29) In order to avoid confusion of market participants, stabilisation activity should be carried out by taking into account the market conditions and the offering price of the relevant security.
- (30) Overallotment facilities and 'greenshoe options' are closely related to stabilisation, by providing resources and hedging for stabilisation activity.
- (31) Particular attention should be paid to the exercise of an overallotment facility by an investment firm or a credit institution for the purpose of stabilisation as it results in a selling position.

CHAPTER I (Definitions)

Article 1

For the purposes of this Regulation:

- (1) The definitions of Directive 2003/6/EC shall apply as such, if not specified in further detail below.
- (2) ‘Investment firm’ shall mean any legal person as defined in Article 1 paragraph 2 of Council Directive 93/22/EEC⁷.
- (3) ‘Credit institution’ shall mean a legal person as defined in Article 1 paragraph 3 of Council Directive 93/22/EEC.
- (4) ‘Trading in own shares in “buy-back” programmes’ shall mean trading in shares in accordance with Articles 19 to 24 of Council Directive 77/91 EEC.
- (5) ‘Time-scheduled “buy-back” programme’ shall mean a “buy-back” programme where the dates and quantities of securities to be traded during the time period of the programme are set out at the time of the public disclosure of the “buy-back” programme.

⁷ OJ L 141, 11 June 1993, p. 27

- (6) ‘Adequate public disclosure’ shall mean disclosure made according to the procedure laid down in Articles 102 paragraph 1 and 103 of Directive 2001/34/EC⁸.
- (7) ‘Relevant securities’ shall mean transferable securities as defined in Article 1 paragraph 3 first indent of Directive 2003/6/EC, which are admitted to trading on a regulated market or for which a request for admission to trading on such a market has been made.
- (8) ‘Stabilisation’ shall mean any purchase or offer to purchase relevant securities, or any transaction in associated instruments equivalent thereto, by investment firms or credit institutions, for a limited period of time, which is undertaken in the context of a significant distribution of relevant securities, for exclusively securing a market price for such securities, that would not otherwise prevail.
- (9) ‘Associated instruments’ shall mean the following financial instruments, including those which are not admitted to trading on a regulated market or for which a request for admission to trading on such a market has not been made, provided that competent authorities have agreed to adequate standards of transparency for transactions in such financial instruments:
- contracts or rights to subscribe for, acquire or dispose of relevant securities,
 - financial derivatives on relevant securities,
 - where the relevant securities are convertible or exchangeable debt instruments, the securities into which such convertible or exchangeable debt instruments may be converted or exchanged, and
 - instruments which are issued or guaranteed by the issuer or guarantor of the relevant securities and, because of the similarity of their terms, the market price of those instruments is likely to materially influence the price of the relevant securities.
- (10) ‘Significant distribution’ shall mean an initial or secondary public offer of relevant securities, in the latter case distinct from ordinary trading both in terms of the amount of the securities offered and the selling methods employed.
- (11) ‘Offeror’ shall mean the prior holders of, or the entity issuing, the relevant securities.
- (12) ‘Allotment’ shall mean the process or processes by which the number of relevant securities to be received by investors who have previously subscribed or applied for them is determined.
- (13) ‘Ancillary stabilisation’ shall mean the exercise of an overallotment facility and of a greenshoe option by investment firms or credit institutions, in the context of a significant distribution of relevant securities, solely to assist stabilisation activity.

⁸ OJ L 184, 6 July 2001, p. 1

- (14) ‘Overallotment facility’ shall mean a clause in the underwriting agreement or lead management agreement which permits acceptance of subscriptions or offers to purchase a greater number of relevant securities than originally offered.
- (15) ‘Greenshoe option’ shall mean an option granted by the offeror in favor of the investment firm(s) or credit institution(s) involved in the offer for the purpose of covering overallotments, providing that for a certain period of time after the offer of the relevant securities such firm(s) may purchase up to a certain amount of relevant securities at the offer price.

CHAPTER II (Trading in own shares in “buy-back” programmes)

Article 2 (Scope of application)

The prohibitions provided for in Directive 2003/6/EC shall not apply to trading in own shares in “buy-back” programmes provided such trading is carried out in accordance with the provisions set out in Articles 3 to 5 of this Regulation and exclusively for:

- reducing the capital of an issuer, or
- meeting obligations arising from debt financial instruments exchangeable into equity instruments, or
- meeting obligations arising from employee share option programmes and other allocations of shares to employees.

Article 3 (Conditions for “buy-back” programmes and disclosure)

- (1) The “buy-back” programme must comply with the conditions laid down by Article 19 paragraph 1 of Directive 77/91/EEC.
- (2) Prior to the start of trading, full details of the approved programme shall be adequately disclosed to the public in Member States in which an issuer has requested admission of its shares to trading on a regulated market. These details must include the scope of application of the programme as referred to in Article 2, the maximum consideration, the maximum number of shares to be acquired and the duration of the period for which the authorisation for the programme is given. Subsequent possible changes to the programme shall be adequately disclosed to the public.
- (3) The issuer must have in place the mechanisms necessary to ensure that it fulfils trade reporting obligations, at least to the competent authority of the regulated market on which the shares have been admitted to trading. These mechanisms must be capable of providing at least the information set out in article 20 paragraph 1 of Council Directive 93/22/EEC.

Article 4 (Conditions for trading)

When executing trades under the “buy-back” programme, an issuer:

- (1) shall not purchase shares at a price higher than either the price of the last independent trade or the current independent bid on the trading venues where the purchase is carried out. If the trading venue is not a regulated market, the price of the last independent trade or the current independent bid taken in reference shall be the one of the regulated market of the Member State where the purchase is carried out. In the case where the issuer carries out the purchase of own shares through derivative financial instruments, the exercise price of these derivative financial instruments shall not be above the price of either the last independent trade or the current independent bid, and,
- (2) shall not purchase more than 25% of the average daily volume of the shares in any one day on the regulated market the purchase is carried out. The average daily volume figure shall be based
 - either on the average daily volume traded in the month preceding the month of public disclosure of that programme and fixed on that basis for the authorised period of the programme,
 - or in case the programme makes no reference to this volume, the average daily volume traded in the 20 trading days preceding the date of purchase.

In case of extreme low liquidity on the relevant market, the issuer may exceed the above mentioned 25% limit, providing the issuer:

- informs in advance the competent authority of the relevant market of its intention to deviate from the 25% limit, and
- discloses adequately to the public the possibility of deviating from the 25% limit, and
- does not exceed 50% of the average daily volume.

Article 5 (Restrictions)

- (1) The following trading by the issuer shall not benefit from the exemption provided by Article 8 of Directive 2003/6/EC:
 - selling of own shares during the life of the programme, unless the issuer is an investment firm or credit institution and has in place policy and procedures to ensure that effective information barriers exist between those responsible for trading decisions under the “buy-back” programme and those responsible for any other decision relating to the trading of own shares, including the trading of own shares on behalf of clients;
 - trading during closed periods where Member States have introduced in their national law such closed periods;
 - trading when the issuer decides to delay the public disclosure of inside information as set out in article 6(2) of Directive 2003/6/EC.
- (2) The restrictions of paragraph 1 shall not apply if:

- the issuer has in place a time-scheduled “buy-back” programme, or
- the “buy-back” programme is lead managed by an investment firm or a credit institution which makes its trading decisions in relation to the issuer’s shares independently of, and without influence by, the issuer with regard to the timing of the purchases.

CHAPTER III (Stabilisation of a financial instrument)

Article 6 (Scope of application)

The prohibitions provided for in Directive 2003/6/EC shall not apply to stabilisation of a financial instrument provided it is carried out in accordance with the provisions set out in Articles 7 to 9.

Article 7 (Time related conditions)

Stabilisation shall be carried out only during a limited time period:

- (1) for shares in companies and other securities equivalent to shares in companies,
 - in the case of an initial public offer, beginning with the commencement of trading of the relevant securities on the regulated market and ending no later than 30 calendar days thereafter, and
 - where in an initial public offer, in a Member State that permits trading prior to the commencement of trading on a regulated market, beginning with the adequate public disclosure of the final price of the relevant securities and ending no later than 30 calendar days thereafter, provided that any such trading is carried out subject to the rules, including adequate public disclosure and trade reporting, of the regulated market on which the relevant securities are to be admitted to trading, or
 - in the case of a secondary public offer, beginning with the adequate public disclosure of the final price of the relevant securities and ending no later than 30 calendar days thereafter.
- (2) for bonds and other forms of securitised debt beginning with the adequate public disclosure of the final terms of the relevant securities, and ending no later than 30 calendar days after the date on which the issuer of the instruments received the proceeds of the issue, or if earlier than that, ending no later than 60 calendar days after the date of adequate public disclosure of the final terms of the relevant securities.

Article 8 (Disclosure and reporting conditions)

- (1) Without prejudice to Directive 2001/34/EC, the following information shall be publicly and adequately disclosed by issuers or entities acting on their behalf before the opening of the subscription period of the relevant securities to the public:

- the possibility of stabilisation, together with adequate disclosure of the risks and other aspects of stabilisation which could be material to an investor’s decision to subscribe for or purchase the relevant securities,
 - the fact that stabilisation transactions may result in a market price that is higher than would otherwise prevail,
 - the beginning and end of the period during which stabilisation may occur,
 - the identity of the stabilisation manager, unless this is not known at the time of publication in which case it shall be publicly disclosed before any stabilisation activity begins,
 - the existence and maximum size of any overallotment facility or greenshoe option, the exercise period of the greenshoe option and any conditions for the use of the overallotment facility or exercise of the greenshoe option.
- (2) Within one week after the end of the stabilisation period, the stabilisation transactions carried out shall be adequately disclosed to the public by issuers or entities acting on their behalf. This disclosure shall contain the following information:
- the dates at which the stabilisation period began and ended,
 - whether or not stabilisation was carried out,
 - the price range between which stabilisation was carried out,
 - the date at which stabilisation last occurred.
- (3) Systems shall be in place to record stabilisation orders and transactions. Such systems shall be capable of recording each stabilisation order or transaction together with, as a minimum, the information set forth in Article 20 paragraph 1 of Council Directive 93/22/EEC.
- (4) One investment firm or credit institution within the entities acting on behalf of the issuer shall act as central point of inquiry for any request by the competent authority of the regulated market on which the relevant securities have been admitted to trading.

Article 9 (Specific price conditions)

- (1) In case of shares and other securities equivalent to shares, stabilisation shall not be executed above the offering price.
- (2) In case of securitised debt convertible or exchangeable into instruments as referred to in paragraph 1, stabilisation shall not be executed above the market price of the underlying equity security at the time of the public disclosure of the final terms of the new issue.

Article 10 (Conditions for ancillary stabilisation)

The prohibitions provided for in Directive 2003/6/EC shall not apply to ancillary stabilisation, provided it is undertaken in accordance with the conditions set out in Article 8 and the following additional conditions:

- (1) Relevant securities may be overallocated only during the subscription period and at the offer price.
- (2) A selling position resulting from the exercise of an overallocation facility by an investment firm or credit institution which is not covered by the greenshoe option shall not exceed 5 percent of the original offer.
- (3) The greenshoe option may be exercised by the beneficiaries of such an option exclusively where relevant securities have been overallocated.
- (4) The greenshoe option shall not amount to more than 15 percent of the original offer.
- (5) The exercise period of the greenshoe option shall be the same as the stabilisation period required by Article 7. The exercise of the greenshoe option shall be disclosed to the public promptly and in suitable detail, including the date of exercise and the number and nature of relevant securities involved.