



# AFEI-FBF Implementation Guide

Procedures for reporting  
suspicions of market abuse

# Introduction\*

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Enacted for the implementation of the Market Abuse Directive, Act 2005-811 of 20 July 2005, known as the DDAC Act, requires Investment Service Providers (ISPs) to report to the AMF any transaction they have reason to suspect may constitute insider dealing or price manipulation (Financial and Monetary Code, Art. L. 621-17-2). The AMF has specified in its General Regulation (abbreviated hereafter as "RG AMF") how these reports are to be made. Three new articles (321-142 to 321-144) of the RG AMF, grouped under the heading "Obligation to report suspicious transactions", came into force at the beginning of September 2005. They establish the principle that ISPs must put in place "an organisational structure and procedures" for the purpose of establishing and maintaining "a typology of suspicious transactions that makes it possible to identify those that must be reported" (RG AMF, Art. 321-144).

In response to concerns expressed by the French Association of Investment Firms (AFEI) regarding the magnitude of the internal changes ISPs would have to make in order to meet this new obligation, the AMF agreed to set the effective date for the aforementioned procedures at 1 July 2006 (RG AMF, Art. 321-144, 3rd paragraph).

AFEI and the French Banking Federation (FBF) then decided to conduct an industry-wide project to draw up guidelines for meeting these new requirements, with a view to providing their members with input for an assessment. To this end, a working group made up of compliance officers, legal specialists and trading room staff was formed in September 2005. The group wanted to complete its task sufficiently in advance of the 1 July 2006 deadline so that ISPs would have time to make the necessary internal changes.

The AFEI-FBF Implementation Guide outlines a possible organisational and procedural framework that members of the two associations can adopt to meet the best-efforts obligation imposed by Article 321-144 RG AMF. To help identify suspicious transactions, it provides a typology and a list of signals of potential cases of market abuse. In the appendices, it also includes a set of questions to and answers from the AMF (to be expanded in future editions) and excerpts from the applicable laws and regulations.

For a full appreciation of the AFEI-FBF Implementation Guide, two points in particular must be borne in mind:

- The proposed organisational and procedural model must be geared to the scale and nature of the activities of the ISP concerned.
- Effective detection of potential market abuse depends first and foremost on proper training and increased awareness. Because a firm's employees know their clients and markets, it is they who are best placed to identify cases that arouse suspicion and to pass them up for review to the function responsible for reporting suspicious transactions.

Naturally, the AFEI-FBF Implementation Guide is designed to evolve over time and incorporate changes both in the regulatory framework and in market techniques and practices. It will also reflect the experience gained through practical application. For this reason, developments occurring between the initial publication date and 1 July 2006 will be followed with particularly close attention. Thereafter, any occurrences that might entail an amendment to the guide will be monitored at regular intervals.

\* The use of the masculine gender in this Guide includes the feminine gender, and when the context requires, the use of the singular includes the plural.

# ORGANISATIONAL STRUCTURE INTERNAL PROCEDURES



The proposed internal organisation model must be geared to the scale and nature of the activities of the ISP concerned.

## A. WHAT KIND OF ORGANISATIONAL STRUCTURE?

To meet the requirements of the General Regulation of the AMF and ensure maximum effectiveness in detecting and escalating potential cases of market abuse, AFEI-FBF propose an organisational model that focuses on creating awareness of market abuse issues within the financial institution and on training staff in the requisite procedures.

"The persons referred to in Article L. 621-17-2 of the Financial and Monetary Code shall put in place an organisational structure and procedures allowing them to comply with Articles L. 621-17-2 to L. 621-17-7 of said Code and with Articles 321-142 and 321-143 [of this General Regulation]. The purpose of this organisational structure and these procedures is [...] to establish and update a typology of suspicious transactions that makes it possible to identify those that must be reported. The provisions of this article shall apply from 1 July 2006." (RG AMF, Art. 321-144)

The persons referred to in Article L. 621-17-2 of the Financial and Monetary Code, who are required to report to the AMF any transaction which they have reason to suspect might constitute insider dealing or price manipulation, are: "Credit institutions, investment firms and the persons referred to in Article L. 421-8 [of the Financial and Monetary Code]".

For the purposes of this Guide, the persons concerned are referred to as "investment service providers (ISPs)".

### A.1 Organisational model

#### Principle 1 Responsibility for the suspicious transaction reporting function<sup>1</sup>

- The suspicious transaction reporting function may be assigned to the ISP's compliance function (or equivalent) if the ISP has no specific organisation for this purpose. In small firms, this function could report to senior management, where the latter is also in charge of compliance.
- Depending on the size of the ISP, the suspicious transaction reporting function may be performed by one or more persons, one

of whom is in charge of this function and considered to be the ISP's "suspicious transaction reporting officer". The compliance officer or investment services supervisor may assume the responsibilities of suspicious transaction reporting officer.

- To fulfil his responsibilities, the suspicious transaction reporting officer must have the staff and other resources necessary to carry out his task.
- In deciding where the suspicious transaction reporting function is to be located, three considerations are essential:
  - Speed of detection and investigation of suspect cases. Reports must be filed "without delay" (cf. principle 9), and this implies:
    - Sufficient knowledge of the activities in question, and
    - Confidentiality in assembling all the items of information needed to investigate a case that might lead to a suspicious transaction report (cf. principle 6).
  - Persons assigned to the suspicious transaction reporting function are subject to a confidentiality requirement (Financial and Monetary Code, Art. L. 621-17-5).

### A.2 Staff<sup>2</sup> training

#### Principle 2 Awareness and training of relevant staff at the ISP

##### A. Implementation of staff training

- Responsibility for training may be assumed by the compliance function and/or the suspicious transaction reporting function and/or the ISP's Human Resources, Training or other department.
- Training of staff who might, because of their job function, be called upon to detect price manipulation and insider dealing (hereinafter "relevant staff") will vary in level of detail, depending on the extent to which their job function is exposed to market abuse issues.
- Training is provided to all new relevant staff as often as necessary in light of the scale and nature of the ISP's activity.
- The content of the training programme is updated whenever necessary, in particular upon any significant change in law or regulation that has an impact on the ISP's business.
- Attendance sheets or other evidence that staff training has been provided are kept on file by the ISP.

1. Definition: The person in charge of the suspicious transaction reporting function is the person who receives, analyses and, where necessary, reports transactions suspected of constituting market abuse. The function may be performed by a specifically designated person or by the compliance officer/investment services supervisor.

2. Definition: "Individuals acting under the authority or on behalf of the authorised provider in providing the services listed in Article 311-1. Such individuals are hereinafter called "staff". (Article 321-26, RG AMF)

## SAMPLE TRAINING REPORT SHEET

### Preliminary remark

*This report sheet is a specimen. AFEI and FBF members will need to adapt it so that it corresponds to their own situation (scale, activity) and concerns.*

- **A.** Definition of market abuse [cf. C. and Appendix 2]
- **B.** Explanation of the risks [cf. b]
- **C.** Review of the legal and regulatory requirements [cf. Appendix 2]
- **D.** Description of insider dealing and price manipulation / Accepted market practices applicable to the ISP's business. [cf. C]
- **E.** Information on suspicious transaction reporting
  - E.1. Confidentiality requirement (cf. III)
  - E.2. Information on organisational structure and procedures – *AFEI-FBF Implementation Guide: procedures for reporting suspicions of market abuse*
- **F.** Information on risks and penalties [cf. b]

## B. Information on risks and penalties

### 1. Reputational risk

Reputational risk is defined as the possibility of bad publicity, whether warranted or not, about practices that might cause a loss of confidence in the firm. ISPs are vulnerable to reputational risk. Given the nature of their business, retaining the confidence of investors and the market in general is a necessity. This risk is increased by the intense media coverage given to "affairs" involving insider dealing and other breaches of securities laws and regulations.

### 2. Risk of administrative and criminal penalties

Penalties can be imposed on both legal and natural persons, that is, the entities involved as well as the individuals – including ISP managers and staff – who are implicated.

It must be stressed that, besides any sanction imposed on the firm, each staff member involved can be individually subject not only to administrative sanctions (disciplinary action, fines) but also to criminal penalties (up to two years in prison and a fine of €1,500,000).

### Administrative sanctions (Article L. 621-15 III. of the Financial and Monetary Code)

	AGAINST THE FIRM	AGAINST SALARIED EMPLOYEES OF THE FIRM	AGAINST ANY OTHER PERSON
<b>Disciplinary sanctions</b>	<ul style="list-style-type: none"> <li>• warning</li> <li>• reprimand</li> <li>• temporary or permanent ban on doing business in some or all of the services provided</li> </ul>	<ul style="list-style-type: none"> <li>• warning</li> <li>• reprimand</li> <li>• temporary or permanent revocation of professional licence</li> <li>• temporary or permanent ban on being engaged in some or all parts of the business</li> </ul>	
<b>Fines</b>	<ul style="list-style-type: none"> <li>• €1,500,000</li> <li>• or ten times profits realised on the illicit transactions</li> </ul>	<ul style="list-style-type: none"> <li>• €1,500,000 – €300,000</li> <li>• or ten/five times profits realised</li> </ul>	<ul style="list-style-type: none"> <li>• €1,500,000 – €300,000</li> <li>• or ten/five times profits realised</li> </ul>

### Criminal penalties

OFFENCE	IMPRISONMENT (MAX)	FINES
<b>Article L. 465-1 of the Financial and Monetary Code</b>		
Insider dealing offence committed by officers, directors or other persons having knowledge of inside information by virtue of their profession or job functions	2 years	€1,500,000 or any amount between one and ten times the profit
Insider dealing offence knowingly committed by any other person	1 - 7 years (if the information at issue concerns a crime or offence)	€150,000 or any amount between one and ten times the profit - €1,500,000 (if crime or offence)
Use of inside information	1 year	€150,000
<b>Article L. 465-2 of the Financial and Monetary Code</b>		
Spreading false or misleading information	2 years	€1,500,000 or any amount between one and ten times the profit
Price manipulation: action intended to impair the functioning of a market in financial instruments by inducing other participants to act on erroneous information	2 years	€1,500,000 or any amount between one and ten times the profit

## B. WHAT KIND OF PROCEDURES?

**Once they have been made aware of and received training in market abuse issues, relevant ISP staff must be capable of detecting any anomalies and informing authorised persons when suspicious transactions are identified.**

*"The persons referred to in Article L. 621-17-2 of the Financial and Monetary Code shall put in place an organisational structure and procedures allowing them to comply with Articles L. 621-17-2 to L. 621-17-7 of said Code and with Articles 321-142 and 321-143. Having regard to the recommendations of the Committee of European Securities Regulators, the purpose of this organisational structure and these procedures is [...] to establish and update a typology of suspicious transactions that makes it possible to identify those that must be reported. The provisions of this article shall apply from 1 July 2006. (RG AMF, Art. 321-144)*

In addition to the training provided to relevant staff, the ISP may decide to introduce measures for detecting price manipulation and insider dealing that are suited to the scale and nature of its activities.

### B.1 Internal reporting

#### Principle 3 General duty of vigilance by relevant ISP staff and reporting up the chain of command to the suspicious transaction reporting officer

- All relevant staff have a general duty of vigilance and will be made aware of this requirement through a training session.
- This duty of vigilance is a best-efforts obligation as opposed to an absolute obligation. The ISP is therefore required to implement suitable procedures for detecting transactions that might constitute market abuse.
- Regarding transactions that might be found after the fact to constitute a case of insider dealing or price manipulation that the ISP has not detected or reported, the firm cannot be held liable if it can prove that it had taken all necessary measures to fulfil its obligation.
- Relevant ISP staff have an obligation to report such cases to the suspicious transaction reporting officer. Under no circumstances can they be held liable merely because they transmitted information.

#### Principle 4 Detection of anomalies

- The typology and list of signals of potential cases of insider dealing and price manipulation presented below (which is not ex-

haustive and may change over time, cf. C) will serve as a basis for detecting anomalies and as an aid for analysing cases reported as suspicious transactions.

- Anomalies can be detected in many ways: mainly thanks to vigilance on the part of relevant staff, but also through abuse detection mechanisms, audits, and the like.
- Once detected, anomalies must be reported to the suspicious transaction reporting officer as soon as possible. This means the staff member concerned must transmit objective, factual information. It is not his job to analyse the case, conduct an inquiry or prepare a formal report.
- For practical reasons and/or to harmonise their procedures, ISPs may nevertheless wish to formalise this internal reporting procedure by, for example, having the staff member fill out a standard form indicating their name, position, date, description of the transaction in question, etc.

### B.2 Assembling of evidence and examination of the case by the suspicious transaction reporting function

#### Principle 5 Confidential treatment of anomalies by the suspicious transaction reporting function

- To satisfy the confidentiality requirement, information on detected anomalies that reaches the ISP's suspicious transaction reporting function must be centralised.
- The confidential nature of the information involved (information on clients, for example) likewise necessitates that the data be handled by a person subject to a confidentiality obligation, that is, one or more of the persons in that reporting function.

#### Principle 6 Examination of individual cases by the suspicious transaction reporting function

- To enable the AMF to efficiently manage the suspicious transaction reports it receives, the procedure implemented by the ISP must not result in "systematic" reporting of all anomalous transactions, including those that are not necessarily suspect. To avoid "systematic" reporting, the suspicious transaction reporting function needs to filter the cases submitted to it.
- The suspicious transaction reporting function must therefore assemble and examine all the relevant data.
- Based on its examination, the function must then formalise the grounds on which it decides whether to report cases to the AMF.



**Principle 7****Decision to report a suspicion to the AMF depends on the ISP**

- Once a case has been analysed, the suspicious transaction reporting officer independently decides whether to make a report to the AMF or dismiss the case. As part of each ISP's internal procedures, a consultative committee may, for example, be set up to assist in this decision-making process.
- The suspicious transaction reporting officer may legitimately decide, in the light of the information that has been gathered, not to report the case to the AMF. In such cases, the ISP must keep relevant information on record so that it can explain why it did not file a suspicious transaction report.
- The ISP's senior management is to be informed, according to its internal procedures, of all suspicious transaction reports made to the AMF.

**Principle 8****The ISP reports suspicious transactions to the AMF "without delay" once its analysis is complete**

- The starting point for reporting to the AMF "without delay" (Financial and Monetary Code, Art. L. 621-17-2) begins when the examination phase is complete, that is, when the suspicious transaction reporting officer has been able to document the case to the point that he can formally state the grounds on which he decides whether or not to make a report to the AMF.
- The examination phase must in any event be kept as short as possible.
- Examination of cases referred in connection with the ISP's own-account dealing will necessarily entail a more extensive review.

**B.3 Record keeping****Principle 9****Data relating to each analysis by the suspicious transaction reporting function are kept on file by the ISP**

- Data relating to the analysis of each case referred must be kept on record, regardless of whether the case in question was reported to the AMF.
- Such data are retained for three years, unless administrative or criminal proceedings have been brought in the case.<sup>3</sup> (cf. AMF Q&A, Appendix 1 p. 12)

3. As provided in Article L. 621-15, "cases may not be referred to the [Enforcement Board] when the facts of the case date back more than three years, if during that time no action has been taken to investigate, issue findings or impose sanctions".

4. Under the general term "signals", this Guide presents a list of signals and "criteria" within the meaning of other documents on the subject (viz. CESR Level 3 working documents).

5. CESR, Examples of the various types of practice which would constitute market manipulation, Market Abuse Directive (MAD) Level 3 - preliminary guidance, 31 January 2005.

**C. TYPOLOGY OF SUSPICIOUS TRANSACTIONS AND POTENTIAL SIGNALS**

To meet the requirements imposed by the AMF GR, a proposed typology of suspicious transactions is presented here to help ISPs detect potential cases of price manipulation and insider dealing (C1). Along with this typology, examples of signals are given<sup>4</sup> (C2).

"[...] The purpose of this organisational structure and these procedures is, inter alia, to establish and update a typology of suspicious transactions that makes it possible to identify those that must be reported. The provisions of this article shall apply from 1 July 2006." (RG AMF, Art. 321-144)

**C.1 General typology of cases potentially constituting price manipulation on insider dealing**

Each ISP should customise this general typology to describe the kinds of price manipulation and insider dealing that might be encountered in its business. It must also make its personnel aware of its target list of cases that ought to arouse suspicion.

Source: This general typology has been based on descriptions of price manipulation and insider dealing issued by CESR<sup>5</sup>, definitions in the RG AMF, cases taken from AMF disciplinary decisions and examples provided by industry professionals.

For easier understanding, cases have been grouped according to whether they are likely to constitute price manipulation (I) or insider dealing (II).

There are also several transaction categories that, by exception, are "authorised under certain conditions" and do not have to be reported to the AMF. These exceptions and accepted market practices are also described (III).

**I. Price manipulation**

Article 631-1 of the RG AMF defines price manipulation, and Articles 631-2 and 631-3 indicate a number of signals by which it can be detected (cf. Appendix 1, p. 12 et seq.).

**Cases of price manipulation**

- **Marking the close.** Purchase or sale of securities or derivatives with the intent to alter the closing price, especially when that price serves as the basis for valuing another financial instrument.

- **Placing orders with no intention of executing them.** Placing orders solely for the purpose of giving a false impression of supply or demand at a given price and then withdrawing the orders before they are executed. To be distinguished from legitimate cases, such as when orders are placed and quickly withdrawn in connection with surveys of the order book.
- **Colluding in the after-market of a public offer of securities.** Trading intended to fix a price at an artificial level in connection with a public offer (IPO, demerger, rights issue, etc.), private placement, issue of convertible bonds, exercise of warrants, etc.. To be distinguished from trading in connection with a price stabilisation programme.
- **Abusive squeeze.** A participant holding a dominant position in an instrument exploits that position to intentionally change the price at which other participants must deliver, receive or roll over that or other instruments (for example, by fraudulently creating a shortage in the market for borrowing and lending a given security), except in legitimate cases.
- **Creation of a floor in the price pattern.** Transactions carried out to keep a price from falling below a certain level, usually made in the name of the issuer or a controlling entity thereof. To be distinguished from transactions in connection with a buy-back or price stabilisation programme.
- **Trading on one market to improperly position the price of a financial instrument on a related market.** This practice involves trading on one market with the intention of fraudulently influencing the price of the same instrument or a related instrument on another market. For example, trading in an underlying share to influence the price of a derivative on that share traded on another market, or trading in a commodity to alter the price of derivative contracts on that commodity.
- **Painting the tape, wash trade.** Making a transaction or series of transactions with no apparent economic justification in order to give the impression of brisk activity or a movement in the price; often done by buyers and sellers acting in concert (e.g. via wash trades; repos and stock loan transactions are not wash trades).
- **Concealing ownership.** Holding positions when the sole purpose is to evade an applicable rule (for example, disclosure when a holding threshold is crossed) or to make others believe in fictitious ownership. Excludes cases where there are legitimate reasons for financial instruments to be held in the name of a person other than the beneficial owner, such as nominee holdings.
- **Illicit transfer of funds.** Purchases of a security, usually in an illiquid market, resulting in successive movements in the price so that, via transactions between two parties, one of the parties can artificially realise gains or losses.
- **Boiler room tactics ("Pump and dump", "Trash and cash").** This kind of operation consists in buying (selling) shares of a company, spreading favourable (unfavourable) information about the shares in order to drive the price up (down), and then selling (buying back) shares at a profit.

6. Definition of "precise nature": cf. Appendix 2, in Article 621-1, par. 2 of the RG AMF

7. Definition of "significant effect": cf. Appendix 2, in Article 621-1, par. 3 of the RG AMF

8. Regarding commodity derivatives: cf. Appendix 2, Article 621-2 of the RG AMF

9. Regarding front-running: cf. Appendix 2, Article 621-3 of the RG AMF

10. Cf. Appendix 2, Article L. 465-1 of the Financial and Monetary Code and Article 622-1 of the RG AMF

## II. Insider dealing

Insider dealing is understood to occur when a person who possesses inside information uses "that information by acquiring or disposing of, or by trying to acquire or dispose of, for his own account or for the account of a third party, either directly or indirectly, financial instruments to which that information relates". (Market Abuse Directive, Art. 2)

Inside information is "information of a precise nature <sup>6</sup> that has not been made public, relating directly or indirectly to one or more issuers of financial instruments, or to one of more financial instruments, and which, if it were made public, would be likely to have a significant effect <sup>7</sup> on the prices of the relevant financial instruments or on the prices of related financial instruments". (RG AMF, Art. 621-1)

The definition is thus extended to commodity derivatives <sup>8</sup> and to inside information held by persons responsible for executing orders in financial instruments admitted to trading on a regulated market <sup>9</sup>.

The offence of insider dealing does not consist in holding inside information but in using or transmitting it <sup>10</sup>.

Whenever a person knows or should have known that he has inside information, he must refrain from:

- Using that information for his own or another person's account,
- Disclosing that information to another person otherwise than in the normal course of his employment, profession or duties,
- Advising another person to buy or sell the financial instruments to which such information pertains.

## III. Exemptions

As exceptions to the foregoing, a number of practices are allowed under certain conditions and do not give rise to a suspicious transaction report to the AMF.

### A. Share buy-back and price stabilisation programmes

Share buy-back and price stabilisation programmes that conform to the provisions of Articles 631-5 to 631-10 RG AMF (derived from Regulation 2273/2003 of the European Commission dated 22 December 2003) are presumed legitimate.

The share buy-back programmes that enjoy protection under Article 8 of the Market Abuse Directive (2003/6/CE) are those that entail transactions in the issuer's name in the issuer's own shares made solely for the purpose of reducing the number of shares outstanding or enabling the issuer to meet related obligations. In addition to conditions relating to public disclosure, such programmes must meet volume and price conditions and comply with "closed period" requirements.

Price stabilisation programmes are conducted in the context of a significant distribution of securities with a view to supporting their market price during a predetermined period, in order to offset selling pressure. Conditions relating to public disclosure, duration of the stabilisation programme and permissible prices for such transactions must also be met.

Share buy-back and price stabilisation programmes that meet the relevant conditions do not give rise to suspicious transaction reports to the AMF.

## B. Accepted market practices <sup>11</sup>

Accepted market practices (AMPs) are defined as practices that might appear similar to price manipulation but that are nevertheless allowed for legitimate reasons.

Each Member State of the Committee of European Securities Regulators (CESR) decides whether a given practice should be considered an AMP. Recognition of an AMP applies only to the market in which the regulatory authority has deemed it acceptable.

At 30 May 2005, the recognised AMPs for the French market were:

- Purchase by an issuer of its own shares for the purpose of holding them and later using them as consideration for mergers and acquisitions [AMF Decision of 22 March 2005 - Mergers and acquisitions]
- Liquidity contracts [AMF Decision of 22 March 2005 - AFEI liquidity contracts]

Outside France, CESR has recognised the following AMPs:

- Valuation transaction on the bond market on the Vienna Stock Exchange (Austria)
- Market aberrations on the London Metal Exchange (United Kingdom)

## C.2 Signals

To complement the general typology presented above (C.1) and to aid ISPs in their detection efforts, proposed lists of potential signals of price manipulation and insider dealing are presented below.

Although the signals presented here "*shall not constitute an exhaustive list or be deemed in themselves to constitute price manipulation*" (cf. RG AMF, Art. 631-2), they nevertheless provide some general lines of approach.

For greater effectiveness, ISPs should select and compile their own lists of signals having regard to their activity, any special market circumstances, and the particular financial instruments they deal. Sometimes, when a series of related characteristics is examined,\* some transactions may or may not turn out to be legitimate.

Furthermore, it should be noted that these signals are primarily relevant to transactions in equity securities traded on a regulated market or a multilateral trading system.\*\*

(\* More precisely, each ISP should take into account the degree of liquidity in the market or the security, atypical market circumstances (volatility, liquidity), particular market circumstances (option expiries, rollovers of index positions at maturity dates, changes in index composition that lead to rebalancing of index-tracking portfolios) and behaviours associated with certain strategies or activities (pre-hedging of OTC structured products).

Possible yardsticks for determining what constitutes a "significant price variation" include the average variation in the market (sector index or representative stock) over a given period or volatility (note that variations in rates are not the same as for equities, big caps, small caps, etc.).

Similarly, to assess what constitutes a significant proportion of daily trading volume, it is necessary to look at a normal trading context, so that the large volumes observed when index arbitrage positions are rolled over on index due dates are not construed as "abnormal".

(\*\*) Although these signals apply primarily to equity trading, they are also generally applicable to other kinds of trading on unregulated electronic platforms (cf. product table below). On the other hand, most of these signals are not usable for transactions on the pure OTC market. Lastly, while some of these signals correspond to cases of market abuse that can be encountered on OTC markets in instruments other than equities, they cannot be detected by automated means and, in any case, are highly improbable given the discontinuous nature of trading and market prices.

Source: This proposed list of signals has been based on the document prepared by CESR <sup>12</sup> and RG AMF (Art. 631-1 to 631-4). It also includes examples provided by industry professionals

11. Along with the "accepted market practices" described in this section, there are also practices considered "legitimate" by the regulator, such as valuation trades made by liquidity providers when carried out in accordance with the rules of the market operator.

12. CESR, 04-505: Examples of the various types of practice which would constitute market manipulation, MAD Level 3 - preliminary guidance, 31 January 2005



## Signals of possible insider dealing or price manipulation

Correspondence: In the numbered boxes to the left of the signals listed below on the right, key-word summaries are provided for each group of signals. The box numbers correspond to line numbers in the table of signals by product on page 9.

Signals of possible insider dealing and price manipulation	
<p>► 1 Unusual concentration of transactions and/or orders with only one client</p>	Unusual concentration of transactions in a particular security (for example, with one or more institutional investors known to be affiliated with the issuer) (CESR, 04-505, § 5.8 a) – NB: when such information is known
	Unusual concentration of transactions/orders with one client or with the different securities accounts of one client; or with a limited number of clients (especially if the clients are related to one another) (CESR, 04-505, § 5.8 c)
	Concentration of orders placed or transactions made within a short time span during the trading session, leading to a price change that is subsequently reversed (Art. 631-2, 5°, RG AMF)
<p>► 2 Unusual repetition of a transaction over a certain period of time</p>	Unusual repetition of a transaction among a small number of clients over a certain period of time (CESR, 04-505, § 5.8 b)

Signals of possible price manipulation	
<p>► 3 Orders/transactions representing a significant proportion of daily trading volume in a given financial instrument that lead to significant change in its price</p>	The proportionate share of daily trading volume represented by orders given or transactions undertaken in the financial instrument concerned, especially where such trading results in a significant change in the price of this instrument or the underlying instrument (Art. 631-2, 1°, RG AMF)
<p>► 4 Substantial change in the price of an instrument or its underlying due to orders or trades by persons with significant short or long positions</p>	The extent to which orders issued or trades undertaken by persons with significant short or long positions in a financial instrument lead to a significant change in the price of this instrument or corresponding underlying instrument or derivative admitted to trading on a regulated market (Art. 631-2, 2°, RG AMF)
<p>► 5 Best-price orders placed and then withdrawn before execution, especially on products that are illiquid</p>	The impact of orders given on the best bid or offer prices in the financial instrument, or more generally on the representation of the order book available to market participants, that are removed before they are executed (Art. 631-2, 6°, RG AMF)
<p>► 6 Reversals of positions over a short period, possibly associated with price variations</p>	Position reversals in a short period resulting from orders given or trades undertaken on the regulated market in the financial instrument concerned, together with any significant changes in prices of a financial instrument admitted to trading on a regulated market (Art. 631-2, 4°, RG AMF)
<p>► 7 Transactions resulting in no change in beneficial ownership of a financial instrument, or intended to secure a valuation of a position without changing its size; for example, cross trades <sup>13</sup></p>	Transactions that do not result in a change of beneficial ownership of a financial instrument admitted to trading on a regulated market (Art. 631-2, 3°, RG AMF)
	Transactions which appear to be seeking to modify the valuation of a position while not decreasing/increasing the size of that position (for example, cross trades on a regulated market made solely for the purpose of having a reference price) (CESR, 04-505, § 5.10, e)

13. Except those made for tax reasons.

Signals of possible price manipulation	
<p>▶ <b>8</b> Transactions made at or near a reference point during the trading day (e.g., close, call auction, calculation of margin calls, etc.) and having a significant impact (volume, price)</p>	Transactions with no other apparent justification than to increase/decrease the price of, or to increase the volume of trading in, a financial instrument, especially if it takes place near a reference point during the trading day (e.g., near the close) (CESR, 04-505, § 5.10, a)
	Transaction which, because of its size in relation to the market in that security, will clearly have a significant impact on the supply of or demand for or the price or value of the security, especially if it takes place near a reference point during the trading day (e.g., near the close) (CESR, 04-505, § 5.10, b)
	Price changes resulting from orders given or transactions undertaken at or around a specific time when reference prices, settlement prices and valuations are calculated. (Art. 631-2, 7°, RG AMF)
	Transactions which appear to be seeking to modify the settlement price of a financial instrument when this price is used as a reference/determinant in the calculation of margins requirements (CESR, 04-505, § 5.10, m)
<p>▶ <b>9</b> Transactions which appear to be seeking to affect the price of an instrument shortly before the issuance of a related product</p>	Transactions which appear to have the purpose of increasing the price of a financial instrument during the days preceding the issue of a related derivative/convertible (CESR, 04-505, § 5.10, c)
	Transactions which appear to have the purpose of maintaining the price of a financial instrument during the days preceding the issue of a related derivative/convertible when the market trend is downward (CESR, 04-505, § 5.10, d)
<p>▶ <b>10</b> Transactions which appear to be seeking to affect the price of an underlying relative to the exercise price of a related derivative at expiry</p>	Transactions which appear to be seeking to maintain the price of the underlying financial instrument below the strike price of a related derivative at the expiry date (CESR, 04-505, § 5.10, k)
	Transactions which appear to be aimed at modifying the price of the underlying financial instrument so that it crosses over the strike price of a related derivative at the expiry date (CESR, 04-505, § 5.10, l)

Signals of possible insider dealing	
▶ <b>4</b>	The client opens an account and immediately gives an order to conduct a significant transaction in a particular security – especially if the client is insistent that the order is carried out very urgently or must be conducted before a particular time specified by the client (CESR, 04-505, § 5.9, a)
▶ <b>5</b>	The client's requested transaction or investment behaviour is significantly out of character with the client's previous investment behaviour. (e.g. type of security; amount invested; size of order; duration of holding) (CESR, 04-505, § 5.9, b)
▶ <b>6</b>	The client specifically requests immediate execution of an order regardless of the price at which the order would be executed (this indicator pre-supposes more than the simple placing of a market order by the client) (CESR, 04-505, § 5.9, c)
▶ <b>7</b>	Significant trading by major shareholders or other insiders before the announcement of important corporate events (CESR, 04-505, § 5.9, d)
▶ <b>8</b>	Unusual trading in the shares of a company before the announcement of price sensitive information relating to the company (CESR, 04-505, § 5.9, e)
▶ <b>9</b>	Involvement of a client in transactions for a portfolio that he has put under discretionary management by another person (if the investment mandate allows for this possibility).
▶ <b>10</b>	Personal transactions by ISP staff on the basis of information obtained in the course of performing their duties

**This table assesses the relevance of each listed signal depending on the nature of the financial instruments concerned (recognising that the signals listed here relate primarily to the equity market and may not apply to all financial instruments) and on the method of execution of the trade (on a regulated market or an MTF). The proposed classification of markets, instruments and categories is indicated here in general terms. Each ISP should select from this (non-exhaustive) list the signals that it believes are relevant to its activities.**



Table of signals by product

SIGNALS	CASH MARKET		LISTED DERIVATIVE MARKET		DERIVATIVES AND FIXED INCOME SECURITIES TRADED OVER THE COUNTER
	Shares traded or admitted to trading on a regulated market or an MTF	Bonds traded on a regulated market or an MTF	Exchange-traded derivatives - futures	Exchange traded derivatives options <sup>14</sup>	
Price manipulation	▶ 1. Unusual concentration of transactions and/or orders with only one client.				
	▶ 2. Unusual repetition of a transaction over a certain period of time.				
	▶ 3. Orders/transactions representing a significant proportion of daily trading volume in a given financial instrument that lead to significant change in its price.				
	▶ 4. Substantial change in the price of an instrument or its underlying due to orders or trades by persons with significant short or long positions in a related instrument.				
	▶ 5. Best-price orders placed and then withdrawn before execution, especially on products that are illiquid or priced at the call auction.				
	▶ 6. Reversals of positions over a short period, possibly associated with price variations.				
	▶ 7. Transactions resulting in no change in beneficial ownership of a financial instrument, or intended to secure a valuation of a position without changing its size; for example, cross trades <sup>15</sup>				
	▶ 8. Transactions made at or near a reference point during the trading day (e.g., close, call auction, calculation of margin calls, etc.) and having a significant impact (volume, price).		▶ 8. Transactions made at or near a reference point during the trading day (e.g., close, call auction, calculation of margin calls, etc.) and having a significant impact (volume, price).		
	▶ 9. Transactions which appear to be seeking to affect the price of an instrument shortly before the issuance of a related product.				
	▶ 10. Transactions which appear to be seeking to affect the price of an underlying relative to the exercise price of a related derivative at expiry.				
Insider dealing	▶ 1. Unusual concentration of transactions in a given security or by given clients.				
	▶ 2. Unusual repetition of a transaction over a certain period of time.				
	▶ 3. The client opens an account and immediately places a large order.				
	▶ 4. Large or unexpected order in a given security, particularly if the client insists that the transaction is urgent and must be executed by a certain deadline.				
	▶ 5. Significant change in the type or profile of the investor.				
	▶ 6. Request for immediate execution of the order regardless of price.				
	▶ 7. Substantial trading on the part of majority shareholders or other insiders preceding important announcements.				
	▶ 8. Unusual trading in the securities of a company, or trading that results in a substantial change in volume or price, before public disclosure of significant information concerning the securities.				
	▶ 9. Involvement of a client in transactions for a portfolio that he has put under discretionary management by another person (if the investment mandate allows for this possibility).				
	▶ 10. Personal transactions by ISP staff on the basis of information obtained in the course of performing their duties.				

14. As regards the first six price manipulation criteria, it has emerged that manipulation is much less likely to take place with listed options than with listed futures or their underlying assets. Accordingly, ISPs should focus chiefly on futures and their underlyings.

15. Except those made for tax reasons

# REPORTING SUSPICIONS TO THE AMF

An ISP's internal process for detecting potential cases of price manipulation and insider dealing may lead to a decision, based on the evidence gathered, to file a suspicious transaction report with the AMF. These declarations must be formalised in accordance with Instruction 2006-01 of 24 January 2006.

## A. DECISION TO REPORT

### A.1 Independence of the reporter (cf. principle 8)

- Once the examination of a case is completed, the suspicious transaction reporting officer decides, based solely on his independent judgement<sup>16</sup>, whether to file a report with the AMF.

### A.2 Declaration "without delay" (cf. principle 9)

- The obligation to report "without delay" (Financial and Monetary Code, Art. L. 621-17-2) means the person responsible for reporting to the AMF must do so immediately after his analysis of the case has been completed, that is, once he has been able to form an opinion on whether the transaction in question is indeed suspect.

### A.3 Confidentiality of the report

- The reporter must not reveal to the persons, clients or parties related to the persons for whom the reported transactions were made that a suspicious transaction report has been filed; nor may he disclose any information about actions taken in response to such report (Financial and Monetary Code, Art. L. 621-17-5).
- Under Article L 621-17-6 of the Financial and Monetary Code, the AMF and its agents are bound by a confidentiality requirement: "the [...] Autorité des Marchés Financiers and all its members [...] are prohibited from disclosing information gathered pursuant to Article L. 621-17-2". Accordingly, the information gathered in connection with a report of suspected market abuse must not be revealed or used for any purpose other than investigating market abuse. As part of such investigation, the AMF must also strive to ensure confidentiality by giving priority to two-way exchanges with the person clearly identified on the suspicious transaction reporting form as the reporter.

Exceptionally, when reported suspicious transactions prove to be within the jurisdiction of an authority of another Member State of the European Union, the AMF will transmit the declaration to that authority, along with any additional information provided by the reporter (Financial and Monetary Code, Art. L. 621-17-6).

## B. CONTENT OF THE REPORT

- Format:** A suspicious transaction report "can be made by electronic mail, letter, facsimile or telephone. In the latter case, the report shall be confirmed in writing" (RG AMF, Art. 321-143).
- The Financial and Monetary Code specifies the information that must be provided in the report (Financial and Monetary Code, Art. L. 621-17-4).
- AMF Instruction 2006-01 of 24 January 2006 provides a detailed specimen of the report to be sent to the AMF.

## C. BONA FIDE REPORT

- Exclusion of liability in case of a bona fide report.** (Financial and Monetary Code, Art. L. 621-17-7)<sup>17</sup>. No prosecution on the grounds of violation of professional secrecy<sup>18</sup> may be brought against persons who have reported their suspicions to the AMF in good faith.
- Nor may any civil action be brought against persons who have made bona fide reports to the AMF.
- A bona fide reporter is relieved of all liability: no criminal prosecution may be brought against him for insider dealing or price manipulation, nor any prosecution brought for concealment of illicit proceeds<sup>19</sup>, and no administrative sanction proceeding may be initiated against the reporter for acts related to a transaction constituting insider dealing or price manipulation.

16. If the suspicious transaction reporting officer is also the compliance officer within the meaning of Article 321-26 of the General Regulation of the AMF, Article 321-27 provides that he must "operate independently of all business units that [he] monitor[s]". (Art. 321-27, RG AMF)

17. The provisions of this article shall apply even if the acts giving rise to the declaration are not proven to be tortious or unlawful, or if proceedings against those acts are dismissed and no sanction is imposed by the AMF.

18. Penal Code, Art. 226-13.

19. Against the person's officers and directors, pursuant to Article L. 465-1 and the first indent of Article L. 465-2 of the Financial and Monetary Code and Articles 321-1 to 321-3 of the Penal Code.

**INSTRUCTION 2006-01 OF 24 JANUARY 2006**  
**ON THE REPORTING OF SUSPICIOUS TRANSACTIONS**

*(posted online on 30 January 2006)*

Issued pursuant to Article 321-142, RG AMF

**Single article – Specimen report**

The report called for in Article 321-142 of the General Regulation of the AMF shall be sent to the Investigations and Market Surveillance Division and shall take the following form:

**REPORT OF SUSPECTED MARKET ABUSE**

▶ **1. IDENTITY OF THE REPORTER**

- a) Full name, telephone number, postal address and job title of the reporter;
- b) Full name and address of the employer. For legal persons, company name and registered office.

▶ **2. DESCRIPTION OF THE TRANSACTION**

- a) Description of the order:
  - ISIN code of the financial instrument
  - Number of financial instruments concerned
  - Date and time when order was (is to be) presented to the market
  - Characteristics of the order (side, price conditions, type of order)
  - Nature of the order: own-account or third-party account

**OR**

- b) Description of the transaction:
  - ISIN code of the financial instrument
  - Number of financial instruments concerned
  - Date and time of full or partial execution of the order
  - Side (buy or sell) and price of the transaction
  - Nature of the transaction: for own account or third-party account.

▶ **3. REASONS LEADING THE REPORTER TO SUSPECT THAT THE TRANSACTION MIGHT CONSTITUTE INSIDER DEALING OR PRICE MANIPULATION**

▶ **4. IDENTIFICATION OF THE PERSON(S) ON WHOSE BEHALF THE TRANSACTION WAS MADE AND ANY OTHER PERSON INVOLVED IN THE TRANSACTION**

- a) Natural person: full name, address, telephone number, account number, other relevant information (date of birth, occupation, relationship, etc.)
- b) Legal person: Company name, registered office, telephone number, account number, other relevant information (registration date, etc.)

▶ **5. OTHER RELEVANT INFORMATION**

**Date**

**Signature**



# APPENDIX 1 AMF QUESTIONS AND ANSWERS

**1. Will a "support" service be set up to answer specific questions on the subject from industry professionals?**

The Investigations and Market Surveillance Division will be responsible for answering questions from professionals.

**2. Has a special department been set up to receive suspicious transaction reports?**

Yes. Reports are to be sent to the Market Surveillance unit.

**3. Is the AMF working on a secure electronic transmission procedure for these reports?**

No, not at present.

**4. After a report has been made, will the ISP be kept informed of subsequent action on the case?**

AMF staff will carry out any investigation that is called for within six months of receiving the report. After six months, the reporting ISP can consider that no further action will be taken on the report.

**5. How long must data relating to suspicious transaction reports be kept?**

For three years.

**6. What are the consequences if a previously unreported case of insider dealing or price manipulation is uncovered?**

The ISP must show, if need be, that it had implemented an appropriate organisational structure and procedures as required by Article 321-144 of the General Regulation of the AMF. The obligation to detect suspicious transactions is in any case a best-efforts obligation.

**7. Does the AMF plan to issue a yearly report that would enable financial institutions to learn about the cases of suspicious transactions that have been (a) reported and (b) ultimately found to constitute insider dealing or price manipulation?**

The AMF is considering including a section relating to the suspicious transaction reports in its annual report .

**8. If an ISP observes suspect market movements in which it had no hand, what should it do?**

Strictly speaking, cases of this kind do not come under the scope of the suspicious transaction reporting process. An ISP may in any case signal movements of this kind to the AMF.

**9. In which cases of cross-border transactions is the AMF the competent authority? More generally, how are jurisdictional conflicts between regulators handled, and how should requests from the foreign markets where certain ISPs are members be dealt with?**

The AMF is currently addressing this issue.

Note: This part is to be expanded with additional questions that might be put to the AMF.

## FINANCIAL AND MONETARY CODE

### Article L. 621-17-2

Credit institutions, investment firms and the persons referred to in Article L. 421-8 shall report to the Autorité des Marchés Financiers without delay any transaction in financial instruments admitted to trading on a regulated market, or for which admission to such a market has been requested, that is made for own account or on behalf of a third party and that they have reason to suspect may constitute insider dealing or price manipulation, within the meaning of the General Regulation of the Autorité des Marchés Financiers.

### Article L. 621-17-3

Where the Autorité des Marchés Financiers, pursuant to Articles L. 621-15-1 and L. 621-20-1, sends certain facts or information to the Public Prosecutor with the Paris regional court, the report provided for in Article L. 621-17-2, of which the Public Prosecutor is informed, is not included in the case file.

### Article L. 621-17-4

The General Regulation of the Autorité des Marchés Financiers shall stipulate for the conditions for filing the report provided for in Article L. 621-17-2.

The report can be written or verbal. In the latter case, the Autorité des Marchés Financiers requests written confirmation of the declaration.

The report must contain:

- A description of the transactions, especially the type of order and the trading method that were used;
- 2° The reasons for suspecting that the reported transactions may constitute insider dealing or price manipulation;
- 3° The means of identifying the persons for whom the transaction was made and any other person involved in such transactions;
- 4° An indication as to whether the transactions were made for own account or on behalf of a third party;
- 5° Any other relevant information concerning the reported transactions.

Where these items are not available at the time of filing, the report shall at least indicate the reasons referred to in 2°. The additional information shall be sent to the Autorité des Marchés Financiers as soon as it is available.

### Article L. 621-17-5

The penalties provided for in Article 226-13 of the Penal Code shall apply to executives and employees of the persons or entities referred to in Article L. 621-17-2 herein who disclose to anybody, especially the persons or parties related to the persons for whom the reported transactions were made, the existence of the report referred to in said article or who give information about the action taken on that report.

### Article L. 621-17-6

Without prejudice to Article 40 of the Code of Criminal Procedure, Articles L. 621-15-1, L. 621-17-3 and L. 621-20-1 herein and the exercise by the Autorité des Marchés Financiers of its powers, the said Autorité des Marchés Financiers and all its members, the experts appointed to the consultative committees referred to in section III of Article L. 621-2, and members of its personnel and staff are prohibited from disclosing information gathered pursuant to Article L. 621-17-2. If the Autorité des Marchés Financiers uses the services of the persons referred to in Article L. 621-9-2, this prohibition shall also apply to such persons, as well as to their executives and employees.

Any member of the Autorité des Marchés Financiers, any expert appointed to the consultative committees referred to in section III of Article L. 621-2 or any member of its personnel or staff that discloses the contents of the report or the identities of the persons therein shall be subject to the penalties provided for in Article L. 642-1. If the Autorité des Marchés Financiers uses the services of the persons referred to in Article L. 621-9-2, these penalties shall also apply to such persons, as well as to their executives and employees.

Where reported transactions come within the jurisdiction of a competent authority of another European Community Member State or a European Economic Area Member State, the Autorité des Marchés Financiers shall transmit the report to that authority without delay, along with any additional information that may have been supplied by the reporting party at the request of such authority, as provided in Article L. 621-21.

### Article L. 621-17-7

Regarding the transactions that have been reported pursuant to Article L. 621-17-2, no proceedings based on Article 226-13 of the Penal Code may be brought against executives or employees of the persons referred to in Article L. 621-17-2 who have filed this report in good faith.

No action for civil damages may be brought against a person referred to in Article L. 621-17-2 or its executives or employees who have filed this report in good faith.

Barring fraudulent collusion with the initiator of the reported transaction, the reporting party is exempted from any liability, and no criminal proceedings may therefore be brought against its executives or employees pursuant to Article L. 465-1 and the first paragraph of Article L. 465-2 herein and Articles 321-1 to 321-3 of the Criminal Code, and no administrative sanctions may be taken against them in respect of acts relating to insider dealing or price manipulation.

The provisions of this article shall apply even if proof of the wrongful or criminal nature of the acts giving rise to the report is not produced or if those acts have resulted in a decision to nonsuit, acquit and discharge and have not been subject to sanctions from the Autorité des Marchés Financiers or the competent authority referred to in the third paragraph of Article L. 621-17-6.

# AMF GENERAL REGULATION

## BOOK III – SERVICE PROVIDERS

### *Title II - Investment service providers*

#### *Chapter I - Investment services provider providing investment services other than management for the account of third parties*

##### *Section 3 - Rules of conduct and other professional obligations*

##### *Sub-section 4 - Rules of conduct*

##### *Paragraph 8 - Obligation to report suspicious transactions (Order of 1 September 2005)*

#### **Article 321-142**

The report provided for in Articles L. 621-17-2 to L. 621-17-7 of the Financial and Monetary Code can be made by electronic mail, letter, facsimile or telephone. In the latter case, the report shall be confirmed in writing.

The written report can take the form of a standard letter defined in an AMF instruction.

#### **Article 321-143**

The transactions that are reportable pursuant to Article L. 621-17-2 hereabove also include stock market orders.

#### **Article 321-144**

The persons referred to in Article L. 621-17-2 of the Financial and Monetary Code shall put in place an organisational structure and procedures allowing them to comply with Articles L. 621-17-2 to L. 621-17-7 of the Financial and Monetary Code and with Articles 321-142 and 321-143.

Having regard to the recommendations of the Committee of European Securities Regulators, the purpose of this organisational structure and these procedures is, inter alia, to establish and update a typology of suspicious transactions that makes it possible to identify those that must be reported.

The provisions of this article shall apply as of 1 July 2006.

## BOOK VI – MARKET ABUSE, INSIDER DEALING AND MARKET MANIPULATION

### *Title I - General provisions*

#### *Chapter 1 - Scope*

#### **Article 611-1**

Unless otherwise specified, this Book shall apply to:

- 1° All natural and legal persons and other entities;
- 2° (Order of 15 April 2005) "The financial instruments referred to in Article L. 211-1 of the Financial and Monetary Code:
  - a) ) which have been admitted to trading on a regulated market within the meaning of Article L. 421-1 of the same Code or for which a request for admission to trading on such a market has been made; or
  - b) which have been admitted to trading on a multilateral trading facility referred to in Article 525-1; (Order of 30 December 2005) "or"
  - (Order of 30 December 2005) "c) which have been admitted to trading on a regulated market of another European Community Member State or a State party to the European Economic Area agreement or a request for admission to trading on such a market has been made in accordance with point d) of II of Article L. 621-15 of the Financial and Monetary Code;"
- 3° (Order of 15 April 2005) "Transactions in these instruments, whether or not they have been effectively executed on a regulated market of where they have take place on an organised multilateral trading facility."

Articles 622-1 and 622-2 shall also apply to financial instruments not admitted to trading on a regulated market (Order of 15 April 2005) "or an organised multilateral trading facility" but whose value depends on a financial instrument that has been admitted to trading (Order of 15 April 2005) "on such market or multilateral trading facility".

#### *Chapter 2 - Accepted market practices*

#### **Article 612-1**

"Accepted market practices" shall include practices that are reasonably expected on one or more financial markets and are accepted by the AMF.

#### **Article 612-2**

**I. When assessing whether a market practice is acceptable, the AMF shall take at least the following criteria into account:**

- the level of transparency of the relevant market practice to the whole market;
- 2° the need to safeguard the operation of market forces and the interplay of supply and demand;
- 3° the degree to which the relevant market practice has an impact on market liquidity and efficiency;
- 4° 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;
- 5° 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 European Community;
- 6° the outcome of any inspection or investigation of the relevant market practice by the AMF, by any other authority or market operator with which the AMF cooperates, by any other authority or market undertaking acting on behalf or on the authority of

the AMF, or by the courts acting on a referral from the AMF, 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 European Community;

- 7° the structural characteristics of the relevant market including whether it is regulated or not, the types of financial instruments traded and the type of market participants, including the extent of non-professional investor participation in the relevant market.

Having regard to point 2°, the AMF takes account in its assessment of how the relevant practice will affect market conditions, with particular reference to daily weighted average prices or daily closing prices.

## **II. The AMF periodically reviews accepted market practices, in particular taking into account significant changes to the relevant market environment, such as changes to trading rules or to market infrastructure.**

### **Article 612-3**

Where an organisation representing companies making public offers of securities, an investment service provider, an investor or a market operator seeks the AMF's acceptance of a market practice, the AMF shall consult the other organisations concerned before deciding whether to accept or reject such practice.

The AMF shall also consult other competent authorities in respect of existing practices, notably on markets that are comparable in terms of structures, volumes or types of transaction.

Where inspections or investigations of specific cases have already started, the consultation procedure referred to in the first and second paragraphs may be delayed until the end of such inspections or investigations and possible related sanctions.

A market practice that was accepted following the consultation procedure shall not be changed without using the same procedure.

Where appropriate, an AMF instruction shall specify the arrangements for implementing the market-practice acceptance procedure.

### **Article 612-4**

The AMF publishes its decision to accept or reject a market practice in the official gazette (Bulletin des Annonces Légales Obligatoires, BALO) and on its website, together with an appropriate description of such practice. It describes specifies the factors taken into account in determining whether the practice is regarded as acceptable, in particular where different conclusions have been reached regarding the acceptability of the same practice on comparable markets of other Member States of the European Community.

The Committee of European Securities Regulators shall be informed as quickly as possible of the AMF's decision.

## *Title II - Insider dealing*

### *Chapter 1 - Inside information: definitions*

#### **Article 621-1**

Inside information is any information of a precise nature that has not been made public, relating directly or indirectly to one or more issuers of financial instruments, or to one of more financial instruments, and which, if it were made public, could have a significant

effect on the prices of the relevant financial instruments or on the prices of related financial instruments.

Information is deemed to be precise if it indicates a set of circumstances that exists or may reasonably be expected to come into existence or an event that has occurred or may reasonably be expected to do so and if it is specific enough to enable a conclusion to be drawn as to the possible effect of such set of circumstances or event on the prices of financial instruments or related derivative financial instruments.

Information which, if it were made public, would be likely to have a significant effect on the prices of financial instruments or related derivative financial instruments is information that a reasonable investor would be likely to use as part of the basis of his investment decisions.

#### **Article 621-2**

For commodity derivatives, inside information shall mean precise information that has not been made public, that concerns, directly or indirectly, one or more such derivatives, and that users of markets on which the derivatives are traded would expect to receive, in accordance with accepted practices in such markets, where such information:

- 1° is periodically made available to their users; or
- 2° is made public, pursuant to law, market rules or regulations, contracts or customary practice on the market in the underlying commodity or on the market in the relevant commodity derivative.

#### **Article 621-3**

For persons charged with the execution of orders concerning financial instruments, inside information shall also mean information conveyed by a client and related to the client's pending orders, 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 or on the price of related derivative financial instruments.

## *Chapter 2 - Abstention requirements*

#### **Article 622-1**

The persons referred to in Article 622-2 shall refrain from using inside information when acquiring or selling, (Order of 30 December 2005) "or when attempting to acquire or sell," for their own account or on behalf of others, either directly or indirectly, the financial instruments to which that information pertains or related financial instruments.

Such persons shall also refrain from:

- 1° disclosing such information to another person otherwise than in the normal course of his employment, profession or duties, or for a purpose other than that for which the information was disclosed to him;
- 2° advising another person to buy or sell, or to have bought or sold by another person, on the basis of inside information the financial instruments to which such information pertains or related financial instruments.

The abstention requirements set forth in this article do not apply to transactions effected in order to fulfil a due obligation to acquire

or sell financial instruments, where such obligation stems from an agreement entered into before the person concerned held inside information.

### **Article 622-2**

The abstention requirements provided for in Article 622-1 apply to any person holding inside information by virtue of:

- 1° his membership of the administrative, management or supervisory bodies of the issuer;
- 2° his holding in the issuer's capital;
- 3° his access to such information by virtue of the exercise of his employment, profession or duties, as well as his participation in the preparation or execution of a corporate finance transaction;
- 4° his activities that might be classified as crimes or offences.

These abstention requirements apply also to any person who holds inside information and who knows, or should know, that it qualifies as inside information.

Where the person referred to herein is a legal person, these abstention requirements shall also apply to natural persons taking part in the decision to effect the transaction on behalf of said legal person.

## *Title III - Market manipulation*

### *Chapter 1 - Price manipulation*

#### *Section 1 - Abstention requirements*

### **Article 631-1**

All persons must refrain from manipulating prices. Price manipulation consists of:

- 1° transactions or orders to trade that:
  - a) give or are likely to give false or misleading signals as to the supply of, demand for, or price of financial instruments, or;
  - b) secure, by a person, or persons acting in collaboration, the price of one or several financial instruments at an abnormal or artificial level,

unless the person who entered into the transactions or issued the orders establishes that the reason for effecting such transactions or issuing such orders are legitimate and conform to accepted market practices on the regulated market concerned;

- 2° transactions or orders to trade that employ devices giving a fictitious picture of the state of the market, or any other form of deception or contrivance. The following, in particular, shall constitute price manipulations:
  - a) conduct by a person, or persons acting in collaboration, to secure a dominant position in the market for a financial instrument, which has the effect of fixing, directly or indirectly, purchase or sale prices or creating other unfair trading conditions;
  - b) the issuing, when the market opens or closes or, if such is the case, when a price auction is held, of orders to buy or sell financial instruments with the intention of hindering price formation on such market or of misleading investors acting on the basis of the prices concerned.

### **Article 631-2**

The AMF considers the following factors, which shall not constitute an exhaustive list or be deemed in themselves to constitute price manipulation, when assessing the practices referred to in point 1° of Article 631-1:

- 1° the proportionate share of daily trading volume evidenced by orders given or transactions undertaken in the financial instrument concerned, especially where such trading results in a significant change in the price of this instrument or the underlying instrument;
- 2° the extent to which orders issued or trades undertaken by persons with significant short or long positions in a financial instrument lead to a significant change in the price of this instrument or corresponding underlying instrument or derivative admitted to trading on a regulated market;
- 3° transactions that do not result in a change of beneficial ownership of a financial instrument admitted to trading on a regulated market;
- 4° position reversals in a short period resulting from orders given or trades undertaken on the regulated market in the financial instrument concerned, together with any significant changes in prices of a financial instrument admitted to trading on a regulated market;
- 5° the extent to which orders given or transactions undertaken are concentrated within a short time span in the trading session and lead to a price change that is subsequently reversed;
- 6° the impact of orders given on the best bid or offer prices in the financial instrument, or more generally on the representation of the order book available to market participants, that are removed before they are executed;
- 7° price changes resulting from orders given or transactions undertaken at or around a specific time when reference prices, settlement prices and valuations are calculated.

### **Article 631-3**

The AMF considers the following factors, which shall not constitute an exhaustive list or be deemed in themselves to constitute price manipulation, when assessing the practices referred to in point 2° of Article 631-1:

- 1° whether orders given or transactions undertaken by persons are preceded or followed by dissemination of false or misleading information by the same persons or persons linked to them;
- 2° whether orders are given or transactions are undertaken by persons before or after the same persons or persons linked to them produce or disseminate research or investment recommendations that are erroneous or biased or demonstrably influenced by material interest.

### **Article 631-4**

Any person that has transmitted orders to the market must be able to explain publicly, if the AMF so requests during an investigation or inspection, the reasons and arrangements for such transmission.



## Section 2 - Exemptions

### Sub-section 1: Trading by issuers in their own securities

#### Article 631-5

Section 1 of this chapter does not apply to transactions undertaken by an issuer in its own securities in connection with buy-back programmes, provided that such transactions:

- 1° comply with European Commission Regulation 2273/2003 of 22 December 2003;
- 2° conform to an accepted market practice and comply with the conditions of acquisition set forth in the aforementioned Regulation 2273/2003, except for those provisions that are not enforceable because of the decision to accept such practice, referred in Article 612-4.

The securities acquired under point 1 shall be allocated immediately on the basis of their objective and may not be reallocated to objectives other than those provided for in the aforementioned Regulation.

#### Article 631-6

Pursuant to Article 6 of European Commission Regulation 2273/2003 of 22 December 2003, an issuer shall refrain from trading in its own securities:

- 1° during the period between the date at which the company is cognisant of inside information and the date at which such information is made public;
- 2° during the fifteen-day period prior to the dates of publication of its annual consolidated financial statements or, failing this, its annual individual financial statements, as well as its interim financial statements (half-yearly and, where such is the case, quarterly).

Enforcement of these provisions can be waived if an accepted market practice is implemented, provided this is permissible in light of the decision to accept that practice, referred to in Article 612-4.

### Sub-section 2: Stabilisation of a financial instrument

#### Article 631-7

Section 1 of this chapter does not apply to transactions undertaken by investment service providers for the purpose of stabilising a financial instrument, as defined in indent 7 of Article 2 of European Commission Regulation 2273/2003 of 22 December 2003, on condition that such transactions comply with the provisions of the aforementioned Regulation.

#### Article 631-8

The issuer or offeror, as the case may be, or the entity undertaking the stabilisation, whether or not it is acting on behalf of these persons, must publicly disclose the information referred to in Article 9.1 of European Commission Regulation 2273/2003 of 22 December 2003 before the opening of the offer period of the financial instruments, through a news release that will be disseminated by said issuer, offeror or entity and be posted on the AMF website and on the website of the issuer, if it has one.

This requirement will be deemed to have been fulfilled once the issuer has included this information in the prospectus submitted to the AMF for review.

#### Article 631-9

The issuer or offeror, as the case may be, or the entity undertaking the stabilisation, whether or not it is acting on behalf of these persons, shall provide the AMF with details of all stabilisation transactions, as provided for in an AMF instruction, no later than the seventh business day after the execution date.

#### Article 631-10

The information referred to in Article 9.3 of European Commission Regulation 2273/2003 of 22 December 2003 concerning the existence of and arrangements for stabilisation must be made public during the week following the end of the stabilisation period, through a news release that will be posted on the AMF website and on the website of the issuer, if it has one.

The exercise of the greenshoe option referred to in Article 11 of the aforementioned Regulation 2273/2003 must be made public under the same conditions as in the first paragraph.



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