

REPORT COMPLIANCE EVALUATION

**Commission Directive 2003/124/EC of the European Parliament and of the Council
of 22 December 2003**

**Implementing Directive 2003/6/EC of the European Parliament and of the Council as
regards the definition and public disclosure of inside information and the definition of
market manipulation**

November 2008

This report is designed to evaluate compliance of the Armenian laws governing the securities market with the requirements of the Directive 2003/124/EC of the European Parliament and of the Council for implementing the Directive 2003/6/EC regarding the definition and public disclosure of inside information and the definition of market manipulation (hereinafter referred to as ‘the Directive’).

The report consists of 3 parts and an annex

- Description of the Directive
- Compliance evaluation
- Conclusion.

1. Description of the Directive

The main purpose of the Directive 2003/124/EC of the European Parliament and of the Council is to establish the definition and public disclosure of inside information and the definition of market manipulation as provided for under the **Directive 2003/6/EC of the European Parliament and of the Council**.

The Directive establishes provisions pertaining to the issuer, namely it stresses the importance and timeframes for public disclosure of inside information. The Directive specifies those situations in which the issuer is empowered to postpone public disclosure of information in order to protect the investor interests.

The Directive also provides a non-exhaustive list of impulses taken into account in evaluating the market manipulation, which makes the powers of the competent authority more effective in this area.

The inside information and aspects of market manipulation are governed under the Armenian Law on the Securities Market¹ (hereinafter referred to as ‘the Law’) and other prudential regulations adopted pursuant thereto.

2. Compliance evaluation

¹ AL-195-N, adopted on 11.10.2007, (Official Bulletin 2007/53 (577), 31.10.2007).

1. Does the Law establish as what information is deemed to be of precise nature?

Yes. Article 160(3) of the Law provides that the information is deemed to be precise when it contains certain indication past, current or truly possible facts or events, sufficient to draw justified conclusion about possible impact of the above facts or events on prices of securities and/or derivatives related thereto.

The information which, when made publicly disclosed, would considerably affect the price of securities or derivatives related thereto is that material information which a reasonable investor would seriously consider in making his decision to purchase or sell the given security.

Evaluation: the Law complies with the requirement of Article 1 of the Directive.

2. Does the Law provide for provisions about the ways and time for disclosure of inside information?

Yes. Article 163 of the Law contains provisions about disclosure of inside information. In particular, these provisions specify the disclosure of information, material changes made thereto and the timeframes.

Article 2 of the Directive sets out the conditions for disclosure of inside information.

Evaluation: the Law complies with the requirement of the Directive.

3. Does the Law provide for situations when disclosure of inside information is delayed, which jeopardizes interests of the issuer?

No. Article 164(1) of the Law establishes that where disclosure of inside information may cause material harm to lawful interests of the issuer, that issuer may delay disclosure of inside information on condition that such delay will not result in disorientation of the public and that he will ensure confidentiality of inside information. However, the Law falls short to specify a list of such situations but instead it says in Article 164 that the Central Bank **may** define under its prudential regulations a non-exhaustive list of situations in which case the disclosure of inside information may jeopardize lawful interests of the issuer and the requirements to confidentiality of inside information.

Article 3(1) of the Directive provides a non-exhaustive list of situations which lawful interest could pertain to:

- negotiations in course, or related elements, where the outcome or normal pattern of those negotiations would be likely to be affected by public disclosure. In particular, in the event that the financial viability of the issuer is in grave and imminent danger, although not within the scope of the applicable insolvency law, public disclosure of information may be delayed for a limited period where such a public disclosure would seriously jeopardise the interest of existing and potential shareholders by undermining the conclusion of specific negotiations designed to ensure the long-term financial recovery of the issuer;
- decisions taken or contracts made by the management body of an issuer which need the approval of another body of the issuer in order to become effective, where the organization of such an issuer requires the separation between these bodies, provided that a public disclosure of the information before such approval together with the

simultaneous announcement that this approval is still pending would jeopardise the correct assessment of the information by the public.

Evaluation: this provision of the Law only partially complies with the requirements of the Directive as it provides that the Central Bank may specify a non-exhaustive list of delays of disclosure of inside information, yet these have not been specified.

4. Does the Law establish obligations for the issuer to bind to confidentiality of inside information?

Yes. Article 167 of the Law establishes such obligations for the issuer. In particular, it states that where the issuer fails to disclose inside information in an accepted manner, he shall undertake to ensure the confidentiality of inside information and control persons for the access to such information. The issuer shall block the access of inside information to persons, who do not need to be in the possession of such information for performance of their obligations with respect to the issuer's activities.

Further, the issuer shall make sure that insiders are aware of their obligations with respect to inside information and responsibilities for careless use of inside information.

Evaluation: the Law complies with the requirement of Article 3(2) of the Directive.

5. Does the Law provide for a list of manipulative behavior relating to false or misleading signals?

No. Article 171(3)1 provides that the Central Bank sets out criteria in its prudential regulations that define the evidence of price manipulation and detailed description of the circumstances which serve a ground for such evidence be entered into records. This provision however has fallen short for proper interpretation.

Unlike the Law, Article 4 of the Directive establishes a non-exhaustive list of signals which should not necessarily be deemed in themselves to constitute market manipulation but are taken into account when transactions or orders to trade are examined by market participants and competent authorities. The article further provides that those signals may represent a significant proportion of the daily volume of transactions in the relevant financial instrument on the regulated market concerned, in particular when these activities lead to a significant change in the price of the financial instrument; or when the persons who have entered into a transaction or who have been given order to execute trade in financial instruments circulate false or misleading information, and etc.

Evaluation: the Law partially complies with the requirement of the Directive.

3. Conclusion

After having reviewed both documents – the Commission Directive 2003/124/EC of the European Parliament and of the Council of 22 December 2003 on implementing Directive 2003/6/EC of the European Parliament and of the Council as regards the definition and public disclosure of inside information and the definition of market manipulation and the Armenian Law on the Securities Market – we would say that the Law generally complies with the requirements of the Directive. The identified inconsistencies mainly relate to the aspects which the Law leaves to be governed by prudential regulations of the Central Bank of Armenia. An example is the

provisions related to the requirements for delaying disclosure of inside information. Here, an inconsistency arises as a proper arrangement of this aspect is missing.

Annex

	Question	Yes	Partially	No	Notes
1.	Does the Law establish as what information is deemed to be of precise nature?	√			Article 160(3) of the Law.
2.	Does the Law provide for provisions about the ways and time for disclosure of inside information?	√			Article 163 of the Law.
3.	Does the Law provide for situations when disclosure of inside information is delayed, which jeopardizes interests of the issuer?		√		Requirements for delaying the disclosure of inside information are not defined. (Partially, Article 164 of the Law).
4.	Does the Law establish obligations for the issuer to bind to confidentiality of inside information?	√			Article 167 of the Law.
5.	Does the Law provide for a list of manipulative behavior relating to false or misleading signals?			√	No such a list of signals has been provided for. (Partially, Article 171(3)1 of the Law).
	Total 5	3	1	1	