

REPORT COMPLIANCE EVALUATION

Commission Directive 2004/72/EC of 29 April 2004

Implementing Directive 2003/6/EC of the European Parliament and of the Council as regards accepted market practices, the definition of inside information in relation to derivatives on commodities, the drawing up of lists of insiders, the notification of managers' transactions and the notification of suspicious transactions

November 2008

This report is designed to evaluate compliance of the Armenian laws governing the securities market with the requirements of the Commission Directive 2004/72/EC of 29 April 2004 on implementing Directive 2003/6/EC of the European Parliament and of the Council as regards accepted market practices, the definition of inside information in relation to derivatives on commodities, the drawing up of lists of insiders, the notification of managers' transactions and the notification of suspicious transactions.

The report consists of 3 parts and an annex

- Description of the Directive
- Compliance evaluation
- Conclusion.

1. Description of the Directive

The **Commission Directive 2004/72/EC of 29 April 2004 on implementing Directive 2003/6/EC of the European Parliament and of the Council as regards accepted market practices, the definition of inside information in relation to derivatives on commodities, the drawing up of lists of insiders, the notification of managers' transactions and the notification of suspicious transactions** (hereinafter referred to as 'the Directive') is designed to govern the development of the subject matter area and to provide a uniform procedure. The Directive establishes criteria which should be taken into account in evaluating the accepted market practice. The experience of market participants should be in line with the requirements laid down in the fairness and efficiency rules in order to prevent market abuse.

The Directive contains provisions relating to aspects such as the use of accepted market practice and further has provisions about the supporting factors, as well as about the publication of consultations and decisions.

The Directive provides for the list of information included in the insider register. There are provisions relating to presentation of information on the management transactions, preparation of reports and information contained therein.

The Directive also provides for the list of mandatory notice of suspicious transactions and information of when and how such a notice should be given. The list should cover data and information which need to represent the content of the notice. The Directive contains provisions about binding to the confidentiality when giving the notice.

The provisions relating to the accepted market practice in Armenia, the inside information on the derivative instruments, the drawing up of lists of insiders, the notification of managers' transactions and the notification of suspicious transactions are governed under the Armenian Law¹ on the Securities Market (hereinafter referred to as 'the Law') and other prudential regulations adopted pursuant thereto.

2. Compliance evaluation

1. Does the Armenian Law establish criteria which the competent authority should take account of when evaluating existing market practice?

No. The Law does not provide for a provision like this. In contrast, the Directive has its Article 2 that establishes a non-exhaustive list of factors which should be taken into account when evaluating the accepted market practice.

Evaluation: this provision does not comply with the requirement of the Directive.

2. Does the Armenian Law establish that the competent authority should, when evaluating existing market practice, hold discussions (consultations) with other persons and should disclose the decision made?

No. This provision has not found its regulation under the Armenian legislation yet. According to Article 3 of the Directive, Member States shall ensure that competent authorities, before accepting or not the market practice concerned, consult as appropriate relevant bodies such as representatives of issuers, financial services providers, consumers, market operators and other parties. The same article further says that competent authorities should publicly disclose their decisions regarding the acceptability of the market practice concerned, including an appropriate mention of the time when the decision was made and, where necessary, the postponement of the decision.

Evaluation: this provision does not comply with the requirement of the Directive.

3. Does the Armenian Law provide for the existence of a list of insiders?

Yes. According to Article 168 of the Law, the issuer and the person acting on his behalf shall undertake to keep the list of persons who in the course of performing their duties or otherwise deal with inside information. The person who keeps the list shall clearly distinguish in the list of insiders the persons having permanent access to inside information from other persons dealing with such information.

Article 5 of the Directive establishes such a provision requiring the existence of a list of insiders.

Evaluation: this provision complies with the requirement of the Directive.

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

4. Does the Armenian Law provide for a list of information included in the insiders' register?

Article 168(5) of the Law says that the list of insiders shall contain information as stipulated by prudential regulations of the Central Bank. However, no appropriate arrangements have been provided for so far. The second point of the same article only provides that the list of insiders shall enable the issuer to check and control the flow of inside information by separate parts of the information.

Article 5(2) of the Directive sets out the main information which should be included in the list, as follows:

- (a) the identity of any person having access to inside information;
- (b) the reason why any such person is on the list;
- (c) the date at which the list of insiders was created and updated.

Evaluation: this provision only partially complies with the requirement of the Directive as the list of information included in the insiders' register is not established yet.

5. Does the Armenian Law specify conditions under which the insiders' register should be updated?

Article 168(3) of the Law provides that the person who keeps the list shall update the insiders' register on regular basis and add up in the list the persons who at the given time possess inside information.

Article 5(3) of the Directive sets out the cases of updating the insiders' list:

- (a) whenever there is a change in the reason why any person is already on the list;
- (b) whenever any new person has to be added to the list;
- (c) by mentioning whether and when any person already on the list has no longer access to inside information.

Evaluation: this provision of the Armenian Law only partially complies with the requirement of the Directive.

6. Does the Armenian Law specify a timeframe during which the information included in the insiders' register should be maintained?

Yes. Article 168(6) of the Law provides that the person who keeps the list shall ensure that the information contained in the list of insiders is maintained for at least 5 years from the date of incorporating such information in the list.

Evaluation: this provision complies with the requirement of the Directive.

7. Does the Armenian Law establish provisions related to presentation of information about managers' transactions?

Yes. Article 169(1) of the Law provides the manager of reporting issuer, as well as persons affiliated to him and to the issuer shall submit reports to the Central Bank on transactions executed on their account and in the issuer's shares, derivatives or other securities related to such derivatives within a period of 5 days from the date of execution.

Evaluation: this provision complies with the requirement of the Directive.

8. Does the Armenian Law provide for a list of information included in the report which is submitted to the Central Bank?

According to Article 169(2) of the Law, the content of information contained in the reports, as well as the form and procedure of submission of the reports shall be defined by prudential regulations of the Central Bank. However, no legal acts pertaining to the information included in the reports have been developed so far. Unlike the Law, the Directive has its Article 6(3) that sets out in detail the list of information in relation to the subject matter.

Evaluation: this provision of the Armenian Law only partially complies with the requirement of the Directive.

9. Does the Armenian Law establish a provision related to notification of suspicious transactions by the investment service providers?

Yes. Both Article 174 of the Law and Article 7 of the Directive establish that an investment service provider shall immediately undertake to notify the Central Bank of any substantiated doubt it has with regard to price manipulations.

Evaluation: this provision complies with the requirement of the Directive.

10. Does the Armenian Law specify about the information included in the notification of the doubt. If yes, what kind of information it should contain?

Yes. Article 174(4) of the Law establishes the list of information which should be included in the notification of doubt. It includes:

- Description of the suspicious transaction, including the type of security, transaction and order;
- Justification to the doubt;
- Identification of parties to the transaction;
- Information about activities of the person voicing the doubt;
- Other information which the person voicing the doubt considers appropriate.

The article further provides that where the information specified is not fully available to the person voicing the doubt, the notification of doubt shall at least include a justification thereto. The rest of the information required above shall be submitted to the Central Bank as soon as they become available.

Article 9 of the Directive also establishes a similar list of information included in the notification of doubt.

Evaluation: this provision complies with the requirement of the Directive.

11. Does the Armenian Law establish a provision about the way in which the notification of doubt be given?

Yes. Article 174(1) of the Law establishes that the investment service provider shall be obliged to immediately notify the Central Bank of any justified doubt in evidence of price manipulations

either in oral, written or electronic form. In the event of oral notification, the investment service provider shall, upon the request of the Central Bank, submit the orally notified information in writing not later than before the close of the day following the oral notification.

The Directive also provides for the ways of notification by establishing the same requirements.

Evaluation: this provision complies with the requirement of the Directive.

<p><i>12. Does the Armenian Law establish any provisions in relation to binding to confidentiality for notification?</i></p>
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Yes. Article 174(3) of the Law establishes that the investment service provider shall when notifying the Central Bank of its doubts for any person ensure the confidentiality of the fact that the Central Bank has been notified of such doubts.

Article 11 of the Directive also provides for an arrangement like this, and it further provides that the notification in good faith to the competent authority shall not constitute a breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision.

Evaluation: this provision of the Law only partially complies with the requirement of the Directive.

3. Conclusion

The review of the results of this compliance report shows that the Armenian legislation is almost fully compliant for the subject matter with the Commission Directive 2004/72/EC of 29 April 2004 on implementing Directive 2003/6/EC of the European Parliament and of the Council as regards accepted market practices, the definition of inside information in relation to derivatives on commodities, the drawing up of lists of insiders, the notification of managers' transactions and the notification of suspicious transactions.

The report reveals some provisions which are inconsistent or only partially consistent with the requirements of the Directive. These inconsistencies mainly relate to the use of accepted market practice, the consultation by competent authorities regarding using accepted market practices and the disclosure of the decisions. In particular, the above aspects are not yet regulated under the Armenian legislation. There are some provisions that partially comply with the requirements of the Directive, namely the existence of the list of information contained in the insiders' register. For this subject matter, no arrangement is yet available under the Armenian legislation.

Annex

	Question	Yes	Partially	No	Notes
1.	Does the Armenian Law establish criteria which the competent authority should take account of when evaluating existing market practice?			√	
2.	Does the Armenian Law establish that the competent authority should, when evaluating existing market practice, hold discussions (consultations) with other persons and should disclose the decision made?			√	
3.	Does the Armenian Law provide for the existence of a list of insiders?	√			Article 168 of the Law.
4.	Does the Armenian Law provide for a list of information included in the insiders' register?		√		Partially, Article 168(5) of the Law.
5.	Does the Armenian Law specify conditions under which the insiders' register should be updated?		√		Partially, Article 168(3) of the Law.
6.	Does the Armenian Law specify a timeframe during which the information included in the insiders' register should be maintained?	√			Article 168(6) of the Law.
7.	Does the Armenian Law establish provisions related to presentation of information about managers' transactions?	√			Article 169 of the Law.
8.	Does the Armenian Law provide for a list of information included in the report which is submitted to the Central Bank?	√			Article 169(2) of the Law.
9.	Does the Armenian Law establish a provision related to notification of suspicious transactions by the investment service providers?	√			Article 174 of the Law.
10.	Does the Armenian Law specify about the information included in the notification of the doubt. If yes, what kind of information it should contain?	√			Article 174(4) of the Law.
11.	Does the Armenian Law establish a provision about the way in which the notification of doubt be given?	√			Article 174(1) of the Law.
12.	Does the Armenian Law establish any provisions in relation to binding to confidentiality for notification?		√		Partially, Article 174(3) of the Law.
	Total 12	7	3	2	