

# Financial Services Consultative Consumer Panel

Chairman: Raymond O'Rourke

Secretary: Colette Clancy

Email: [consumerpanel@financialregulator.ie](mailto:consumerpanel@financialregulator.ie)

c/o Financial Regulator

PO Box 9138

College Green

Dublin 2

:

Ph : 01 410 4195

20 May 2009

Mr. Martin Moloney,  
Head of Markets Supervision Department.

## **Re: Disclosure of Grants of Security over Shares**

The Consumer Panel would make the following points in relation to the Consultation on the Disclosure of Grants of Security over Shares.

Directive 2003/6 on Market Abuse referred to in the Consultation is in actual fact entitled the **Directive on insider dealing and market manipulation (market abuse)**. The Panel believes having read the Recitals to this Directive that the 'raison d'être' for the legislation was to outlaw situations like the Carphone Warehouse case in the UK, which is mentioned, as in that example information on share activity was not made available to the market which then had an incorrect estimation on the actual economic situation pertaining in that company. Indeed, the Consultation refers to Article 6(4) of Directive 2003/6 as possibly covering cases like PDMRs but that it is not clear. The Panel notes that later in Article 6 (9) it states:

*With a view to ensuring compliance with paragraphs 1 to 5, the competent authority may take all necessary measures to ensure that the public is correctly informed.*

The disclosure of PDMRs gains further weight in Directive 2004/72 **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** where Recital 7 where it states that the disclosure of PDMR transactions '*is not only a valuable information for market participants, but also constitutes an additional means for competent authorities to supervise markets*'. In our estimation if the competent authority [Financial Regulator] in Ireland believes that the publication of such information is necessary in the public interest & in the interest of providing a level-

playing field for investors, then they have the power to demand this information is declared by company directors.

The Panel therefore does not agree with the view put forward in the Consultation that the Financial Regulator needs new powers from the Department of Enterprise, Trade & Employment to do so.

The Regulator may respond by saying that the Consultation is part of a process to inform the EU & CESR on an EU-wide basis on the ‘detail of the Directive’s requirements’. Such an approach points to the requirement stated in Article 6(10) of Directive 2003/6 which states:

*(10). In order to take account of technical developments on financial markets and to ensure uniform application of this Directive, the Commission shall adopt..... implementing measures concerning:*

*the categories of persons who are subject to a duty of disclosure as referred to in paragraph 4 and the characteristics of a transaction, including its size, which trigger that duty, and the technical arrangements for disclosure to the competent authority,*

Article 6(4) refers to ‘persons discharging managerial responsibilities’ and ‘where applicable persons closely associated with them’ The Panel would like to know is the ‘detail of the Directive’s requirements’ connected with Article 6(10) – if so, we believe there is no ambiguity regarding Directors of Companies share holdings, the issue is rather to decide as to who should be classified as being ‘closely associated with them’. This further confirms our view that the issue of disclosure is sufficiently clear in the law if the Irish competent authority believes that such disclosure would be in the public interest and more importantly in the interest of investors.

The Consumer Panel concludes therefore that Option 3 is the correct approach to this particular issue. Disclosure should be mandatory as provided for under the law and the Financial Regulator should move now to enforce that obligation.

In conclusion, the Consumer Panel believes that such disclosure represents a useful discipline on the Directors of publicly quoted companies. It will help reduce any dilution of Directors’ commitment to the wellbeing of publicly quoted companies, their duty of care to investors and to the market as a whole. In that case it will contribute to upholding the goal of financial regulation to provide for safe and fair markets.

Best Regards

Raymond O’Rourke

