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Additional Information

Level 1 Regulation
Market Abuse Regulation (MAR) Regulation (EU) No 596/2014 - Market Intergrity

Level 2 Regulation
Regulation 2016/1052-RTS on conditions applicable to buy-back programmes and stabilisation measures

Topic
Market manipulation, including buy-back programmes and stabilisations

Subject Matter
MAR Q&A on the application of the trading volume limit in the context of buy-back programmes

Question

In the context of buy-back programmes under Article 5(1) of MAR, which transactions should be included in the average daily volume for the purpose of the calculation of the 25% limit foreseen in Article 3(3) of CDR 2016/1052? Should that include the total volume traded on-venue or should transactions executed under a pre-trade transparency waiver be excluded?

ESMA Answer

12-09-2024

Original language

Answer provided by the European Commission in accordance with Article 16b(5) of the ESMA Regulation

Recital 4 of Commission Delegated Regulation (CDR) 2016/1052 clarifies that negotiated transactions that do not contribute to price formation, can be used for the purpose of a buy-back programme and should benefit from the exemption subject to compliance with the relevant conditions, notably the conditions regarding the purchase price and the permissible daily volume limit.

However, the CDR 2016/1052 does not provide clarification whether negotiated transactions should be included in the calculation of the average daily volume of the shares on the trading venue indicated in Article 3(3) CDR. Including transactions executed under a pre-trade transparency waiver, such as Large-in-Scale trades might represent a significant proportion of the trading activity and would lead to high average daily volumes. Therefore, their inclusion could dilute the effectiveness of the 25% limit, which could weaken the objective of the provision which is to prevent market abuse.

Considering the exceptional nature of exemption, the calculation of the average daily volume should be strictly interpreted (i.e. the denominator of the ratio) and include only the volumes which are not executed under a pre-trade transparency waiver. Such approach is also consistent with the spirit of the condition relating to the purchase price, which according to Article 3(2), only takes into account independent trades and purchases and which disregards

negotiated transactions.

In line with the overall MAR objectives “to preserve market integrity” (recital 4 MAR) and therefore to prevent that the price is manipulated through a high volume of buy-back transactions in the order book, it is thus appropriate to exclude in the average daily volume those transactions that are executed under a pre-trade transparency waiver.

Disclaimer:

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