ACCEPTED MAREKT PRACTICE ON LIQUIDITY AGREEMENTS

Acceptance by the Dutch Ministry of Finance – on 4 may 2011

Description of the practice:

Transactions and trade orders in shares and participation rights in closed-end collective investment schemes that are admitted to trading on a regulated market or multilateral trading facility in the context of a liquidity agreement should be considered as an accepted market practice and accordingly exempted from the prohibition on market manipulation.

Hereby, a liquidity agreement is defined as an agreement between an issuer and an investment firm whereby the investment firm will buy or sell shares or participation rights issued by the issuer for the issuer's account and risk up to a certain monetary amount or quantity for the purpose of promoting and supporting the normal trade in these shares or participation rights.

This regulation shall only apply to liquidity agreements relating to shares and participation rights in collective investment schemes that are admitted to trading on a regulated market or that are admitted to trading on a multilateral trading facility

This regulation shall not apply to liquidity agreements relating to participation rights in collective investment schemes which are, at the request of holders, repurchased or redeemed, directly or indirectly, out of those undertakings' assets.

Rationale for why the practice would constitute market manipulation

This method of providing liquidity could be construed as the giving of misleading signals, in particular with reference to the level of supply and demand, while the dampening effect of transactions executed in the implementation of the agreement on the price movements of the shares in question could be considered to be an attempt to maintain an artificial price level.

If this market practice is not exempted from the prohibition, this could mean that the implementation of such liquidity agreements would constitute market manipulation. In order to ensure that transactions executed in the context of a liquidity agreement are not designated as market manipulation, provisions are set with which an issuer and an investment firm in such a situation must comply. [refer to article 1(2) (a) of Directive 2003/6/EC]

Factors to be taken into account when considering market practice

Commission Directive 2004/72/EC Article 2

Non-exhaustive list of factors to be taken into account by Competent Authorities when assessing particular practices whether they occur on a regulated market or an OTC market:

- the level of transparency of the relevant market practice to the whole market(art 2(1) (a))

Transparency of market practices by market participants is crucial for considering whether a particular market practice can be accepted by competent authorities. The less transparent a practice is, the more likely it is not to be accepted. However, practices on non regulated markets might for structural reasons be less transparent than similar practices on regulated markets. Such practices should not be in themselves considered as unacceptable by competent authorities. (preamble 2)

<u>AFM conclusion:</u>

An issuer shall make the information about the liquidity agreement generally available. The obligations for the issuer are designed to increase the transparency of the exempted category of transactions or trade orders for the relevant regulated markets and multilateral trading facilities. The information must therefore be made public before trading under the liquidity agreement takes place.

It is a requirement that a website is available on which price-sensitive information can be made generally available without delay and the investment firm is obliged to retain the data for all transactions relating to a liquidity agreement for a period of five years.

- the need to safeguard the operation of market forces and the proper interplay of the forces of supply and demand; (art 2(1) (b))

Market practices inhibiting the interaction of supply and demand by limiting the opportunities for other market participants to respond to transactions can create higher risks for market integrity and are, therefore, less likely to be accepted by competent authorities. (preamble 1)

<u>AFM conclusion:</u>

By means of a liquidity agreement, the intention of an issuer is to promote and support regular trading (or liquidity) in its own shares or participation rights, whereby price fluctuations that are solely due to the lack of regular trading will be prevented. Moreover, a potential investor knows that as a result of the existence of this liquidity agreement, he can also sell the shares he has purchased to the investment firm concerned. He will thus be encouraged to purchase the shares.

Liquidity agreements support the interaction between supply and demand for shares of issuers in which trading is not sufficiently liquid to achieve a balanced price formation. They are intended to provide for regular trading of illiquid shares. If an investor knows that a share is regularly traded, he can be confident that his order once entered will be executed within a reasonable period of time and at a fair market price.

- the degree to which the relevant market practice has an impact on market liquidity and efficiency. (art 2(1) (c))

Market practices which enhance liquidity and efficiency are more likely to be accepted than those reducing them. (Preamble 1)

AFM conclusion:

Price fluctuations as a result of the lack of liquidity in supply and demand can be prevented by means of a liquidity agreement. This could involve a large price increase or decline in case of very limited supply or demand for the share at a particular moment because there is little or no trading in the share. Without transactions that are executed in the context of a liquidity agreement, it could be the case that in an otherwise positive market the price of shares in a small issuer could still fall because an investor places a sell order and there is no counterparty to his order at that time.

- 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(art 2(1) (d)).

AFM conclusion:

An issuer that enters into a liquidity agreement shall make information generally available regarding the undertaking of the agreement and any changes thereto without delay by means of a press release, stating the name of the investment firm, the quantity of shares or the monetary amount and the type of shares to which the agreement relates and the trading platform on which the investment firm will execute or effect transactions in its implementation of the agreement.

The issuer shall publish press releases quarterly or on termination of the liquidity agreement giving a public account of the implementation of the liquidity agreement. The press release shall state the number of purchase and sale transactions executed pursuant to the liquidity agreement and the average size of these transactions.

- 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 whole Community. (art 2(1) (e))

Particular market practices in a given market should not put at risk market integrity of other, directly or indirectly, related markets throughout the Community, whether those markets be regulated or not. Therefore, the higher the risk for market integrity on such a related market is within the Community, the less those practices are likely to be accepted by competent authorities. (Preamble 3)

AFM conclusion:

If the issuer is a closed-end collective investment scheme, the bid and offer prices quoted by the investment firm may not be respectively higher or lower than the net asset value of the participation rights. If the bid or offer price is higher or lower than the combination of market prices, this would mean that trading is taking place at an artificial price level and could therefore constitute market manipulation.

The determination of an acceptable price is based on the rules applying to liquidity providers. A liquidity provider or similar person can rapidly obtain a dominant position in a stock. To prevent abuse of such positions, the difference between the bid and the offer price may not exceed five percent. The service offered to the investing public may involve a compensation (the spread), but this must be reasonably proportionate to the service provided. The level of five percent is consistent with normal practice in the regulations applying to regulated markets and multilateral trading facilities and in mutual contracts.

- the outcome of any investigation of the relevant market practice by any competent authority or other authority mentioned in Article 12(1) of Directive 2003/6/EC, 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 Community; (art 2(1) (f))

AFM conclusion:

Other AMPs concerning liquidity contracts have been established by the competent authority in France, the AMF, the competent authority in Spain, the CNMV and the competent authority in Portugal, the CMVM.

Furthermore, the AFM (The Netherlands Authority for the Financial Markets) does not observe any adverse results of any investigation that might question this practice.

- the structural characteristics of the relevant market including whether it is regulated or not, the types of financial instrument traded and the type of market participants, including the extent of retail investors participation in the relevant market; (art 2(1) (g))

AFM conclusion:

The liquidity agreements between issuer and investment firm relate to shares and participation rights in collective investment schemes that are admitted to trading on a regulated market and on a multilateral trading facility. They do not relate to participation rights in collective investment schemes which are, at the request of holders, repurchased or redeemed, directly or indirectly, out of those undertakings' assets. This practice enables retail investors to buy and sell shares within reasonable conditions of liquidity and is therefore also favourable to retail investors.

Overriding Principles

Overriding principles to be observed by Competent Authorities to ensure that accepted market practices do not undermine market integrity, while fostering innovation and the continued dynamic development of financial markets:

- new or emerging accepted market practices should not be assumed to be unacceptable by the Competent Authority simply because they have not been previously accepted by it;

- Practising fairness and efficiency by market participants is required in order not to create prejudice to normal market activity and market integrity.

- Competent Authorities should analyse the impact of the relevant market practice against the main market parameters such as weighted average price of a single session, daily closing price, specific market conditions, before carrying out the relevant market practice.

Conditional elements

The AFM has taken into account the overriding principles when accepting the market practice described in this document and it shall supervise the transactions performed under the new accepted market practice to analyse its impact against the main market parameters.

TRANSLATION OF THE DUTCH AMP

Dutch Official Journal

Official journal of the Kingdom of the Netherlands since 1814.

No. 8349

Regulation by the Dutch Minister of Finance of 4 May 2011, no. FM/2011/8728M, designating categories, transactions or trade orders to which the prohibitions referred to in Section 5:58 (1), preamble and (a) and (b) of the Financial Supervision Act [Wet op het financieel toezicht, or Wft] do not apply (Regulation on Accepted Market Practices Wft).

The Minister of Finance,

having regard to Section 4 (4) of the Market Abuse (Financial Supervision Act) Decree, hereby decrees:

Article 1

1. In this regulation, a liquidity agreement is defined as follows: an agreement between an issuer and an investment firm whereby the investment firm will buy or sell shares or participation rights issued by the issuer for the issuer's account and risk up to a certain monetary amount or quantity for the purpose of promoting and supporting the normal trade in these shares or participation rights.

2. This regulation shall only apply to liquidity agreements relating to shares and participation rights in collective investment schemes:

    a. that are admitted to trading on a regulated market for which a licence has been granted as referred to in Section 5:26 (1) of the Wft; or

    b. that are admitted to trading on a multilateral trading facility for which a licence has been granted as referred to in Section 2:96 of the Wft.

3. This regulation shall not apply to liquidity agreements relating to participation rights in collective investment schemes which are, at the request of holders, repurchased or redeemed, directly or indirectly, out of those undertakings' assets.

Article 2

Section 5:58 (1), preamble and (a) and (b) Wft shall not apply with regard to transactions or trade orders performed or effected in the execution of a liquidity agreement, insofar as the provisions of Articles 3 to 5 are met. Articles 4 (1) and (3), and 5 (1), of Regulation (EC) no. 2273/2003 of the European Commission of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards exemptions for buy-back programmes and the stabilisation of financial instruments (PbEU L

336) shall apply to the transactions or trade orders referred to in the preceding sentence *mutatis mutandis*.

Article 3

1. An issuer that enters into a liquidity agreement shall make information generally available regarding the undertaking of the agreement and any changes thereto without delay by means of a press release, stating the name of the investment firm, the quantity of shares or the monetary amount and the type of shares to which the agreement relates and the trading platform on which the investment firm will execute or effect transactions in its implementation of the agreement. Regarding the method of making the information generally available, Section 5:25m (2) and (3) Wft shall apply *mutatis mutandis*.

2. The issuer shall publish press releases quarterly or on termination of the liquidity agreement giving a public account of the implementation of the liquidity agreement. The press release shall state the number of purchase and sale transactions executed pursuant to the liquidity agreement and the average size of these transactions.

Article 4

1. An investment firm entering into a liquidity agreement shall execute the transactions by means of an account specifically designated for that purpose.

2. The investment firm shall make decisions with regard to the implementation of the liquidity agreement independently of the issuer.

3. The investment firm shall ensure that its employees involved in the execution of the liquidity agreement remain independent with regard to the issuer.

Article 5

1. The bid and offer prices quoted by an investment firm in the execution of a liquidity agreement with a collective investment scheme for which the net asset value of the participation rights is largely determined by other financial instruments admitted to trading on a regulated market or multilateral trading facility, shall not be higher or lower respectively than the net asset value of the participation rights.

2. The difference between the bid and offer price shall not exceed the maximum spread permitted for liquidity providers or similar persons under the rules of the regulated market or multilateral trading facility concerned, and in any case shall not exceed five percent.

Article 6

This regulation takes effect from the date following the date of publication of the Dutch Official Journal in which it is announced.

Article 7

This regulation will be known as: Regeling gebruikelijke marktpraktijken Wft, or Regulation on Accepted Market Practices Wft.

This regulation will be announced in the Dutch Official Journal with the following explanatory note.

The Minister of Finance,

J.C. de Jager.

EXPLANATORY NOTE

General

Section 5:58 (1) (a) and (b) of the Financial Supervision Act [Wet op het financieel toezicht, hereinafter "Wft"] prohibits the conducting or effecting of transactions or trade orders in financial instruments that involve market manipulation. Subsection 3 of Section 5:58 states that categories of transactions or trade orders to which the prohibitions do not apply may be designated by Decree and that regulations may be set which specify the manner in which this designation is achieved in further detail.

The Market Abuse (Financial Supervision Act) Decree [Besluit marktmisbruik Wft, hereinafter, "the Decree"] is established on this basis. Section 4 (1) of the Decree states that the Netherlands Authority for the Financial Markets (hereinafter, "the AFM") shall investigate at regular intervals whether certain categories of trade orders or transactions should be exempt from the prohibitions regarding market manipulation referred to above and that it shall advise the Minister of Finance accordingly, who shall, after considering this advice, designate the categories of trade orders or transactions to be exempted by ministerial regulation.

The AFM has advised me that transactions and trade orders in shares and participation rights in closed-end collective investment schemes that are admitted to trading on a regulated market or multilateral trading facility in the context of a liquidity agreement should be considered as an accepted market practice and accordingly exempted from the prohibition on market manipulation. A liquidity agreement as referred to here enables an issuer to trade in its own shares through a third party in order to promote regular trading in its own shares and thereby to prevent price fluctuations that are solely due to the lack of regular trading.

This method of providing liquidity could be construed as the giving of misleading signals, in particular with reference to the level of supply and demand, while the dampening effect of transactions executed in the implementation of the agreement on the price movements of the shares in question could be considered to be an attempt to maintain an artificial price level.

If this market practice is not exempted from the prohibition, this could mean that the implementation of such liquidity agreements would constitute market manipulation. In order to ensure that transactions executed in the context of a liquidity agreement are not designated as market manipulation, provisions are set in Articles 3 to 5 of this Regulation with which an issuer and an investment firm in such a situation must comply.

In addition, Article 2 states that certain Articles of Regulation no. 2273/2003 of the European Commission of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards exemptions for buy-back programmes and the stabilisation of financial instruments (PbEU L 336) (hereinafter, "Regulation 2273/2003") shall apply *mutatis mutandis*. Regulation 2273/2003 contains the conditions which must be met so that the prohibitions in Article 8 of Directive no. 2003/6/EC of the European Parliament and the Council of the European Union of 28 January 2003 on insider dealing and market manipulation (market abuse) (PbEU L 96) do not apply to trading in own shares in the context of buy-back programmes or the stabilisation of a financial instrument. The situation described in Regulation 2273/2003 is not the same as that provided for in this Regulation. A buy-back programme as described in Regulation 2273/2003 may *only* have the objective of reducing the capital of an issuer or meeting the obligations arising from the conversion of loan capital into equity, or resulting from employee options or share allocation schemes. Although comparable, this is not the same as executing transactions in order to promote liquidity, which is the subject of this Regulation. The provisions in Articles 4 (1) and (3), and 5 (1), of Regulation 2273/2003 are equally suitable as provisions for liquidity agreements, and have accordingly been declared applicable *mutatis mutandis*.

The market practice exempted in this Regulation will make the Dutch capital market more attractive for smaller enterprises and closed-end collective investment schemes and for investors in these schemes.

NOTES BY ARTICLE

Article 1

By means of a liquidity agreement, the intention of an issuer is to promote and support regular trading (or liquidity) in its own shares or participation rights, whereby price fluctuations that are solely due to the lack of regular trading will be prevented. Moreover, a potential investor knows that as a result of the existence of this liquidity agreement, he can also sell the shares he has purchased to the investment firm concerned. He will thus be encouraged to purchase the shares. To qualify as a liquidity agreement in the sense of this Regulation, the agreement must relate to shares or participation rights in closed-end collective investment schemes that are traded on a regulated market for which a licence has been granted by the market operator as referred to in Section 5:26 (1) Wft or a multilateral trading facility for which a licence has been granted as referred to in Section 2:96 Wft. This Regulation does not apply to participation rights in open-end collective investment schemes. The liquidity agreement may be compared to a standard liquidity provider contract. The difference is that liquidity providers trading on the basis of a liquidity provider contract do so for their own account and risk, while under a liquidity agreement any gains or losses are for the account of the issuer.

Liquidity agreements support the interaction between supply and demand for shares of issuers in which trading is not sufficiently liquid to achieve a balanced price formation. They are intended to provide for regular trading of illiquid shares. If an investor knows that a share is regularly traded, he can be confident that his order once entered will be executed within a reasonable period of time and at a fair market price.

By means of a liquidity agreement, price fluctuations as a result of the lack of liquidity in supply and demand can be prevented. This could involve a large price increase or decline in case of very limited supply or demand for the share at a particular moment because there is little or no trading in the share. Without transactions that are executed in the context of a liquidity agreement, it could be the case that in an otherwise positive market the price of shares in a small issuer could still fall because an investor places a sell order and there is no counterparty to his order at that time.

Article 2

The prohibition of market manipulation in Section 5:58 (1), preamble and (a) and (b), Wft shall not apply with regard to transactions or trade orders performed or effected in the execution of a liquidity agreement, insofar as the provisions of Articles 3 to 5 of this Regulation are met. Please refer to the general section of this explanatory note.

The liquidity agreement may not be solely used for the purpose of the purchase of shares or participation rights in closed-end collective investment schemes. Since the intention of the agreement must be to provide greater liquidity, it must also entail active participation by the investment firm as a seller in the market.

Article 3

The obligations for the issuer in this Article are designed to increase the transparency of the exempted category of transactions or trade orders for the relevant regulated markets and multilateral trading facilities (see also Article 4 (1) (a) of the Decree). The information specified in the first paragraph of this Article must therefore be made public before trading under the liquidity agreement takes place.

The way in which this information must be made generally available is stipulated in Section 5:25m (2) Wft. Under Section 5:25m (3) Wft, it is a requirement that a website is available on which price-sensitive information can be made generally available without delay.

Under Section 21 (5) of the Market Conduct Supervision (Financial Institutions) Decree [Besluit Gedragstoezicht financiële ondernemingen Wft, or "Bgfo"], the investment firm is obliged to retain the data for all transactions relating to a liquidity agreement for a period of five years.

Article 4

The obligations for an investment firm in this Article are intended to safeguard the fair and transparent operation of the relevant regulated markets and multilateral trading facilities by limiting the risks arising from the execution or effecting of the exempted transactions or trade orders. See also Section 4 (1) (e) of the Decree.

The investment firm must ensure an adequate separation of assets. This requirement shall be met if the investment firm manages the shares via a specific account designated especially for that purpose.

The investment firm must remain independent in order to prevent trading with inside information.

Article 5

If the issuer is a closed-end collective investment scheme, the bid and offer prices quoted by the investment firm may not be respectively higher or lower than the net asset value of the participation rights (paragraph 1). If the bid or offer price is higher or lower than the combination of market prices, this would mean that trading is taking place at an artificial price level and could therefore constitute market manipulation.

The determination of an acceptable price is based on the rules applying to liquidity providers. Liquidity providers are members of a regulated market that enter into a specific agreement with the market operator whereby they undertake to quote bid and offer prices for the purchase and sale of shares in a minimum volume and at a maximum spread. A liquidity provider or similar person can rapidly obtain a dominant position in a stock. To prevent abuse of such positions, the difference between the bid and the offer price (the spread, second paragraph of the Article) may not exceed five percent. The service offered to the investing public may involve a compensation (the spread), but this must be reasonably proportionate to the service provided. The level of five percent is consistent with normal practice in the regulations applying to regulated markets and multilateral trading facilities and in mutual contracts.

The Minister of Finance,

J.C. de Jager.