European Securities and Markets Authority

27 September 2017
ESMA70-145-171

OPINION

OPINION OF THE EUROPEAN SECURITIES AND MARKETS AUTHORITY (ESMA)

Of 27 September 2017

Relating to the intended Accepted Market Practice on liquidity contracts notified by the Comissão do mercado de valores mobiliários

1 Legal basis

1. Article 13 of Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (MAR)[1] provides that a competent authority may establish an accepted market practice (AMP). The relevant provision of MAR is supplemented by the Commission Delegated Regulation (EU) 2016/908 of 26 February 2016[2] (RTS on AMPs) that specifies the non-exhaustive factors listed in Article 13(2) of MAR that a national competent authority should take into account before deciding whether or not to establish an AMP.

2. As required under Article 13(3) of MAR, a competent authority intending to establish an AMP must notify ESMA and other competent authorities of its intention at least three months before the AMP is intended to take effect.

3. According to Article 13(4) of MAR, ESMA shall, within 2 months from the receipt of the notification made by a competent authority, issue a non-binding opinion on the intended AMP and publish it on its website. This opinion shall assess (a) the compatibility of the intended AMP with Article 13(2) of MAR and the RTS on AMPs and (b) whether the establishment of the AMP would not threaten the market confidence in the Union's financial market.

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[1] OJ L 173, 12.6.2014, p. 1

[2] Commission Delegated Regulation (EU) 2016/908 of 26 February 2016 supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council laying down regulatory technical standards on the criteria, the procedure and the requirements for establishing an accepted market practice and the requirements for maintaining it, terminating it or modifying the conditions for its acceptance; OJ L 153, 10.6.2016, p. 3–12

4. In accordance with Article 13(5) of MAR, where the opinion issued by ESMA is negative, the notifying competent authority is required to publish on its website a notice setting out in full its reasons for establishing the AMP, within 24 hours of establishing that AMP.

5. The Board of Supervisors adopts this opinion in accordance with Article 44(1) of the Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority)[3]. This opinion is addressed to the Comissão do mercado de valores mobiliários (CMVM).

2 Background and Procedure

6. MAR determines a harmonised framework prohibiting market manipulation. This encompasses a prohibition on entering into a transaction, placing an order to trade or engaging in behaviour which gives, or is likely to give, a false or misleading signal as to the supply of, demand for, or price of, an instrument falling within the scope of MAR, or which secures, or is likely to secure, the price of such an instrument. However, MAR also provides an exception to the general prohibition of market manipulation. To benefit from that exception, the concerned person needs to establish that the transaction conducted, the order placed or the behaviour engaged in has been carried out for legitimate reasons and in accordance with a market practice formally accepted by a national competent authority, referred to as AMP.

7. The protections and safeguards foreseen in MAR by the co-legislators with respect to activities falling within an AMP have been envisaged precisely because those activities (placing orders or conducting transactions) could, in themselves, constitute market manipulation. The mechanisms for doing so could be either by affecting the price formation process by giving false or misleading signals as to the supply of, demand for, or price of the financial instrument or by securing the price at an abnormal or artificial level. Furthermore, market manipulation is one of the most serious types of misconduct in financial markets and one of the two types (together with insider trading) for which a criminal regime has been established in the EU through the Directive 2014/57/EU of the European Parliament and of the Council on criminal sanctions for market abuse Directive[4].

8. This is the reason why it is particularly important to have a scrutiny at EU level on these intended AMPs. Such a scrutiny is exercised by ESMA through the issuance of the relevant opinions on practices that could be potentially manipulative but that are accepted and authorised to pursue a benefit they bring to market structure, operation or robustness.

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[3] OJ L 331, 24.11.2010, p. 84.
[4] OJL 173, 12.6.2014, p. 179-189

9. During summer 2016, five competent authorities, including the CMVM notified ESMA of their intention to maintain or replace their AMPs relating to a practice known as liquidity contracts established under the regime stemming from Directive 2003/6/EC[5] (MAD) in accordance with the new regime set out in MAR. Globally, such practices consist in an issuer entering into an agreement with a financial intermediary that is entrusted with the task of enhancing the liquidity of the issuer's shares. The notified AMPs presented though some differences and peculiarities.

10. In this context, ESMA has developed a common approach in establishing AMPs on liquidity contracts and the safeguards to be provided by those AMPs with respect to market integrity and confidence. The outcome of this convergence activity has been to identify a number of criteria, setting out conditions and limits when establishing AMPs on liquidity contracts that national competent authorities should take into account when assessing a proposed AMP. These agreed points of convergence were eventually made public on 25 April 2017 in the form of an ESMA opinion (ESMA70-145-76) hereinafter referred to as the "ESMA Opinion on liquidity contracts".

11. In the present case, the Portuguese CMVM notified ESMA on 8 August 2017 of its intention to establish an AMP relating to liquidity contracts, which aims at replacing the existing AMP on liquidity contracts previously established by the CMVM in August 2008 under MAD. As indicated above, the pre-existing MAD AMP was notified on 8 September 2016 in accordance with Article 13(11) of MAR and subsequently followed by a notification from the CMVM made on 7 November 2016 under Article 11(2) of the RTS on AMPs that some significant amendments would be introduced into it.

12. The CMVM's notification of 8 August 2017 provided the information required under Article 13(3) of MAR and Article 10 of the RTS on AMPs. According to the CMVM, this proposal has been made further to a consultation with relevant domestic bodies and should be taking into account the framework introduced by MAR and the ESMA Opinion on liquidity contracts.

13. The risks for market integrity with the notified practice are recognised by the CMVM in its submission as the practice could affect the price formation process and potentially lead to misleading signals. Hence, it is important for ESMA to analyse the proposed AMP with a view to avoid, to the extent possible, that the distortions referred to above take place.

14. The present opinion is based on the information provided by the CMVM and national competent authorities have been consulted.

[5] Directive 2014/57/EU of the European Parliament and of the Council of 16 April 2014 on criminal sanctions for market abuse (market abuse directive); OJ L 173, 12.6.2014, p. 179–189.

3 Opinion

3.1 Rationale of the ESMA Opinion

15. The AMP notified by the CMVM refers to liquidity contracts by which an investment firm or a credit institution (financial intermediary) quotes in the equity market on behalf of the issuer. The practice would be available for all issuers who have requested admission to trading or approved the trading of their shares on a Portuguese trading venue, regulated market (RM) or multilateral trading facility (MTF). The practice would have to be performed by the financial intermediary on the Portuguese trading venue of which it is a member and where the concerned share is admitted to trading or traded with the issuer’s consent.

16. The sole objective declared by CMVM of the proposed practice is to enhance the liquidity of a particular share and its regular trading. In that respect, the goal would ultimately benefit investors, including retail investors active on these trading venues as the likelihood of finding a counterparty for entering or exiting a position in that share would increase. These liquidity contracts would probably have an effect on the price available in the order book and therefore reduce the transaction costs for market participants as a whole. In that respect, when correctly applied, the provision of liquidity can be understood as a legitimate reason to benefit from the exception under MAR and a way to improve the confidence in the market of the concerned shares.

17. As already explained in detail in the opinion issued by ESMA on 16 December 2016 on the intended AMP on liquidity contracts notified by the Spanish Comisión Nacional del Mercado de Valores (ESMA/2016/1663), other mechanisms exist in EU markets to enhance the liquidity of financial instruments (e.g. market making or liquidity provision under a contract with a venue). The main difference between such classical mechanisms and an AMP on liquidity contracts is that the issuer of the shares initiates the practice, determines when and for how long to put it in place, defines the size of the resources that will be devoted to it and, more importantly, provides those funds and shares on its own account. ESMA considers that, since those liquidity contracts are prompted and fully funded by the issuer of the share, the interests of the issuer may collide with the interests of the market as a whole and particularly the investors’ interests. Therefore, such practices require the maximum extent of precautions to ensure that the risks to market integrity that they could pose, notably in terms of effects on the price formation process and the perception of the liquidity of the issuer’s share, are as contained as possible.

18. In light of the above, the main risks in ESMA’s view are the following:

    a. the possibility of the issuer instructing the financial intermediary to act in sensitive periods for the issuer (around publication of results, in the wake of key announcements or secondary offerings, during buy back or stabilisation periods, while a takeover is pending acceptance, etc.);

b. the possibility of the issuer or the financial intermediary favouring one-side quoting (for instance, buying only or buying in bigger quantities than selling), ultimately creating an imbalance and moving (typically up) the price of the share;

c. the possibility of quoting practices that would have a distortion effect on prices (by placing orders at a better price than what would result from independent parties);

d. the possibility of acquiring a dominant position in the market, with the associated distortive results that it would create;

e. the possibility of a lack of transparency of the contract, in a manner that would prevent the overall market to assess how much liquidity is being "added" by the contract compared to the one that would be "naturally" present in the market;

f. the possibility of a wrong-way incentive for the financial intermediary to increase trading in order to increase its remuneration under the contract.

19. In the assessment of the compatibility of the proposed AMP with the criteria of Article 13(2) of MAR, ESMA has also considered the mechanisms described by CMVM to mitigate the above-mentioned risks.

3.2 Assessment of the criteria and requirements laid down in MAR and the RTS on AMPs

On the notification received

20. ESMA acknowledges that the CMVM's notification of the intended AMP on liquidity contracts has been made in accordance with Article 13(3) of MAR and Article 10(2) of the RTS. In this respect, the template set out in the annex to the RTS on AMPs is used to present the information requested and the details of the assessment of all the criteria of Article 13(2) of MAR and further specified in the RTS on AMPs (See annex).

21. Furthermore, ESMA appreciates that the CMVM has incorporated to the proposed AMP all the conditions and limits set out in the ESMA Opinion on liquidity contracts: the financial instruments in scope of the AMP and the need to take into account their liquidity in light of the objective of enhancing liquidity, the written form of the contract, the trading venues where the liquidity contracts can be performed, the trading conditions for the performance of the AMP (presence in the order book, price and volume limits, trading during auctions and possibility to use block trades) and the limits to the resources that can be allocated to its performance.

22. ESMA notes in particular that, even though all issuers on Portuguese trading venues may benefit from the proposed AMP, the practice makes a distinction between liquid and less liquid shares with stricter requirements for the former. The proposed AMP

contains the differentiated requirements specified in the above-mentioned Opinion in terms of volume limits and allocated resources for highly liquid shares, liquid shares and other shares.

Article 13(2)(a) of MAR (further specified by Article 3 of the RTS on AMPs): the market practice provides for a substantial level of transparency to the market

23. The proposed AMP imposes transparency requirements to the public relating to the liquidity contract prior and periodically during its performance as well as when it ceases to be performed. Disclosure is ensured by the issuer entering into the liquidity contract through the web-based system established by the CMVM and on its own website. As to the content of the information required to be publicly disclosed under the proposed AMP, ESMA notes that it is not only in line with the contents specified in Article 3(1) of the RTS on AMPs but also includes specific information required under Portuguese law, notably with regards to issuers trading in their own shares. ESMA therefore is of the view that market participants will obtain sufficient information at the various stages of the life cycle of a liquidity contract and particularly during its performance with the monthly disclosure of the daily aggregated figures detailing the transactions carried out under the liquidity contract.

24. With respect to the information to be provided to the CMVM, the proposed AMP requires the issuer entering into a liquidity contract to provide the written contract entered into with the financial intermediary three working days before the liquidity contract starts.

25. Furthermore, the proposed AMP does not explicitly require specific reports to be provided to the CMVM to ensure that, pursuant to Article 3(2)(b) of the RTS on AMPs, it has periodic information regarding the details of the transactions executed under the AMP and the operations of any arrangement or contract between the beneficiary and the persons performing the AMP.

26. However, ESMA notes that the above-mentioned monthly public disclosures of trading activity are also made available to the CMVM. In addition, ESMA also understands that the CMVM can extract more detailed information about the transactions under the liquidity contract from the daily transaction reports of the financial intermediary under the transaction reporting regime under MiFID (and in due course, under MiFIR). Therefore, ESMA is of the opinion that the proposed practice provides a sufficient transparency to the CMVM, noting also that the CMVM has the powers to request, at any time, from the issuer and the financial intermediary information for monitoring purposes.

Article 13(2)(b) of MAR (further specified by Article 4 of the RTS on AMPs): the market practice ensures a high degree the safeguards to the operations of the market forces and the proper interplay of the forces of supply and demand

27. In ESMA's opinion, the need for the performance of the liquidity contract to appoint a single financial intermediary which is a supervised person under letters (a) or (b) of Article 1 of the RTS on AMPs, namely an investment firm or a credit institution, is an important requirement for the proper performance of the contract as well as for its monitoring by the CMVM. ESMA understands that the supervised person is subject to strict compliance requirements under MiFID (and in due course, under MiFID II and MiFIR) and national law. In particular, the requirements relating to record keeping rules notably of orders and transactions, internal organisation and procedures, control systems, management of conflict of interests, internal audit and human and technical resources are relevant in light of Article 4(1)(c) to (f) and 4(3)(b) of the RTS on AMPs. Furthermore, these elements are supplemented in the proposed AMP with the requirement for the financial intermediary to open specific accounts in the name of the issuer. The securities account and the corresponding cash account must be used only for the purpose of the performance of the liquidity contract and register all the transactions carried out.

28. The need for the financial intermediary performing the AMP to be a member of the trading venue on which the transactions under the liquidity contract will be carried out is considered as a relevant safeguard to protect the market.

29. In line with Article 4(2) of the RTS on AMPs, the proposed AMP is imposing an ex ante list of trading conditions and restrictions for the performance of liquidity contracts, including price and volume limits and limits on positions. ESMA notes that these conditions are aligned with those specified in the ESMA opinion on liquidity contracts. Among them, ESMA views the limits to the daily volumes for the transactions carried out under the contract, the limits on positions resulting from the maximum amount of cash and securities that can be allocated to the liquidity contract and the prohibition of block trades as important measures to limit the possibility to acquire a dominant position.

30. The proposed AMP also prohibits the issuer to instruct the financial intermediary in its activity under the liquidity contract. This is supplemented by the prohibition for the financial intermediary and the issuer to be within the same group. ESMA considers these measures as favouring the independence of the financial intermediary performing the liquidity contract from the issuer benefiting from it.

Article 13(2)(c) of MAR (further specified by Article 5 of the RTS on AMPs): the market practice has a positive impact on market liquidity and efficiency

31. In its notification, the CMVM considers that the performance of a liquidity contract under the proposed AMP can increase the traded volumes and the number of trades while decreasing the observed bid-offer spread or the daily price volatility and thus have a positive impact on the market liquidity and efficiency of the concerned shares

32. ESMA has no evidence to the contrary and notes that enhancing liquidity and regularity of trading is the very purpose of the proposed AMP. Furthermore, if properly

implemented, namely in accordance with the trading conditions and restrictions enshrined in the proposed AMP (volume and price limits, trading at closing auction in a way as not to impact the final closing price, and the limits to the resources allocated), it could be considered that such a liquidity contract would facilitate the interaction between the demand and the supply, potentially improving the depth of the order book and increasing the speed of execution of transactions with a limited impact on parameters like volume weighted average price or daily closing price.

Article 13(2)(d) of MAR (further specified by Article 6 of the RTS on AMPs): the market 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

33. Under the proposed AMP, a liquidity contract on the shares of an issuer can only be performed on the Portuguese trading venue where the shares are traded by a financial intermediary member of that trading venue and during the normal trading period established for that venue. Therefore, the orders to be introduced and transactions to be carried out for the performance of the liquidity contract will have to comply with the trading rules of the venue and be subject to the trading venue monitoring. That requirement, together with the pre- and post-trade transparency requirements set out by MiFID (and in due course by MiFIR) determine that market participants can adequately evaluate prices and orders entered into the order book, as required by Article 6(1)(b) of the RTS on AMPs.

34. The proposed AMP imposes specific trading conditions and restrictions on the performance of the liquidity contract in relation to the submission of the orders in the order book (presence on both sides of the order book in normal market conditions) and the order price, both during the session as well as during auction periods. In ESMA's opinion, these requirements, which reflect the relevant conditions and limits set out in the ESMA Opinion on liquidity contracts, should reduce or eliminate the risks of distortive price effects of the AMP. Furthermore, the above mentioned conditions and restrictions taken together with the requirement for the financial intermediary to assess the market price at all times and accordingly adjust the liquidity contract performance so as to maintain a certain balance between the buying and selling activity in light of the market trends are considered as mitigating the risk of creating imbalance through one-side quoting, and overall, in line with Article 6(1)(a) of the RTS on AMPs, reduce the effect of the practice on the price formation process in the concerned trading venue.

35. ESMA considers that the determination of the ex-ante list of situations when the execution of the liquidity contract must be suspended (execution of share buy-back programme, when stabilisation activity is conducted, when a public offer is announced, or as a result of employee compensation scheme for employees or directors, of an expiry of derivative financial instrument or of a corporate action) is an important feature of the proposed AMP as it avoids to coincide with sensitive processes and periods for the issuer and fulfils the criteria in Article 6(1)(d) and 6(2) of the RTS on AMPs. Furthermore, the proposed AMP requires the issuer to, as soon as possible, disclose

publicly when a liquidity contract is interrupted or suspended thus allowing market participants to be informed about the changes in its performance.

36. All the measures above should allow the market participants to react properly and in a timely manner to the performance of the proposed AMP.

Article 13(2)(e) of MAR (further specified by Article 7 of the RTS on AMPs): the market practice does not create risks for the integrity of, directly or indirectly, related markets, whether regulated or not, in the relevant financial instrument within the Union

37. As already mentioned, the proposed AMP covers only shares admitted or traded on a Portuguese trading venue and requires the liquidity contract to be only performed on the Portuguese trading venue where the concerned shares are traded. These are considered as measures that are greatly reducing the risks for the integrity of other related markets in the EU.

38. With respect to the integrity of the Portuguese markets, the proposed AMP contains measures and mechanisms to address the risks for market integrity as required in Article 7(a), (d) and (f) which have been described and analysed in other sections of this Opinion.

39. There is no specific analysis neither of the description of the respective duties of the parties involved in the liquidity contract (Article 7(e)) nor of the reporting process between them (Article 7(g)). However, ESMA notes that those requirements have to be reflected in the written contract to be analysed by CMVM three working days prior to its entry into force. In that context, ESMA notes that the requirement under Article 7 is to check whether, to benefit from the AMP, those requirements are contemplated in the liquidity contracts. Consequently, ESMA considers that for the purpose of this Opinion, the requirement is fulfilled.

40. In this regard, a very important element is in ESMA's view that, in line with Article 7(b) of the RTS on AMPs, the proposed AMP establishes an ex-ante safeguard to ensure that the resources allocated to the proposed AMP are proportionate and commensurate to its objectives while taking into account the liquidity of the shares covered by the intended AMP. ESMA notes that the maximum amounts of cash and shares to be allocated for the performance of liquidity contracts depending of the categories of shares (highly liquid, liquid and less liquid) are the limits specified in the ESMA opinion on liquidity contracts.

41. ESMA notes that, in line with in Article 7(c) of the RTS, the proposed AMP allows the financial intermediary to be remunerated through a fixed-amount, a variable amount or a combination of both. It also requires this remuneration to be designed in such a way so as to not prejudice the integrity or the orderly functioning of the market or to give rise to conflict of interest while ensuring the independence from the issuer.

42. The remuneration mechanism and its level must be described in the written contract that must be provided to the CMVM at least 3 working days before the performance of the contract starts. ESMA observes that the CMVM will proceed with an ex-ante assessment of the nature and level of the remuneration envisaged for each liquidity contract entered into. The CMVM notification specifies that in case the remuneration includes any variable component related to the number of trades carried out, the volumes traded or the price, those components shall be specifically addressed in the ex-ante assessment of the contract.

43. ESMA considers that these requirements provide safeguards to the creation of incentives leading to behaviours prejudicial to market integrity or orderly functioning of the market.

44. The proposed AMP also specifically requires, in line with points (d) and (f) of Article 7 of the RTS on AMPs, the financial intermediary performing a liquidity contract to have an internal organisation and internal arrangements ensuring the separation of both the activity related and the assets dedicated to the performance of the liquidity contract from the other activities of the firms (management of proprietary account, portfolio management and processing of third party orders) and related assets. This additional condition together with the already mentioned requirements for the financial intermediary to be a supervised entity and to act independently from the issuer as well as the prohibitions for the issuer to instruct the financial intermediary in the execution of the contract except in the situations leading to the suspension of its performance and to transmit inside information are elements considered as relevant to limit the risk of improper performance of the proposed AMP.

45. ESMA observes that the elements described in the proposed AMP, including the content of the written contract to be entered into by the financial intermediary and the issuer, ensure a clear definition of their respective responsibilities as required under Article 7(e) of the RTS on AMPs.

46. As to the reporting processes between the financial intermediary and the issuer specified in Article 7(g) of the RTS on AMPs, ESMA appreciates that the AMP requires that they must be reflected in the above mentioned written contract to be provided to the CMVM three working days prior to its entry into force.

47. Finally, ESMA notes that the CMVM will have regular access to transactions carried out under the liquidity contract as described above in the section on the level of transparency to the market and considers it in line with Article 7(a) of the RTS on AMPs. That access taken together with the CMVM's power to suspend the performance of a liquidity contract in case of irregularities or suspicion of abuse are seen as an additional safeguard with regard to market integrity.

Article 13(2)(f) of MAR (further specified by Article 8 of the RTS on AMPs): the outcome of any investigation of the relevant market practice by any competent authority or by another authority, in particular whether the relevant market practice infringed rules or

regulations designed to prevent market abuse, or codes of conduct, irrespective of whether it concerns the relevant market or directly or indirectly related markets within the Union

48. ESMA has no evidence, information or indication on the outcome of any investigation that may question the AMP to be established.

Article 13(2)(g) of MAR (further specified by Article 9 of the RTS on AMPs): the structural characteristics of the relevant market, inter alia, whether it is regulated or not, the types of financial instruments traded and the type of market participants, including the extent of retail-investor participation in the relevant market

49. The Portuguese trading venues where the proposed AMP could be performed are markets with a significant participation of retail investors according to the CMVM. ESMA agrees that the proposed AMP could have a positive impact on retail investors' interests by increasing the probability of these retails investors to find a counterparty in low liquidity shares and notes that block trades are not permitted under the AMP. In ESMA's view, the safeguards and conditions imposed by the proposed AMP, including the differentiation introduced based on the liquidity of the shares in scope of the intended AMP, are measures that, if properly implemented, should avoid increasing the risks borne by the investors.

3.3 Conclusion

50. In conclusion, ESMA is of the opinion that the proposed AMP on liquidity contracts is compatible with Article 13(2) of MAR and with the RTS on AMPs, and contains sufficient mechanisms to reduce the risks of market manipulation and limit the threat to market confidence.

Annex I

Notification of the CMVM received by ESMA on 8 August 2017

Accepted market practice (AMP) on *Liquidity Contracts*

The Portuguese CMVM notifies ESMA of the Accepted Market Practice (AMP) on Liquidity Contracts, in accordance with article 13 (3) of Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (MAR) and with article 2 (2) of Commission Delegated Regulation (EU) 2016/908 of 26 February 2016 supplementing MAR laying down regulatory technical standards on the criteria, the procedure and the requirements for establishing an accepted market practice and the requirements for maintaining it, terminating it or modifying the conditions for its acceptance (Supplementing Regulation).

This AMP is intended to replace the AMP notified to ESMA on September 8, 2016 under article 13(11) of MAR.

Proposed date of establishment of the AMP

Once ESMA issues an opinion to the CMVM assessing the compatibility of this AMP with MAR and Supplementing Regulation, the CMVM will take the necessary steps to put the AMP in place.

Description of the AMP

Purpose, financial instruments in scope and trading venues on which the AMP will be performed

The purpose of the liquidity contracts is to enhance liquidity and regular trading in shares that are listed on a Portuguese regulated market (RM) or that are listed or traded on a Portuguese multilateral trading facility (MTF), provided that the issuer has requested the admission to trading of its shares on the RM or MTF or has approved their trading on the MTF. Transactions under the liquidity contract shall be carried out only on those Portuguese trading venues (regulated markets or MTF).

The liquidity contract may improve the regularity of the trading by the increasing in the traded volumes, the increasing of the number of trades, the decrease of the observed bid-offer spreads or the decrease of the daily price volatility.

Types of persons who may perform the AMP and who may benefit from the performance of the AMP

The liquidity contract shall be performed by a financial intermediary (investment firm or credit institution), member of the trading venue where the contract is to be performed.

Any issuer in the Portuguese markets whose shares are listed on a Portuguese regulated market (RM) or that are listed or traded on a Portuguese multilateral trading facility (MTF), provided that the issuer has requested the admission to trading of its shares on the RM or MTF or has approved their trading on the MTF, might enter into a liquidity contract with a financial intermediary and benefit from the performance of the AMP.

The financial intermediary shall register the trades carried out under the contract – on the issuer's behalf – in two separate accounts opened in the name of the issuer and used solely for the purpose of such contract: a securities account and a corresponding cash account.

The principle of exclusiveness must be observed thus allowing solely for a single active liquidity contract per share category and for each financial intermediary. Furthermore, a new contract may not be entered into with same or another financial intermediary unless the previous contract is terminated.

The issuer shall not instruct the financial intermediary concerning the activity under the contract. The financial intermediary has to ensure an internal organization structure that ensures the independency of the employees responsible for the decision making regarding orders and trades under the liquidity contract from other areas such as the management of the proprietary account, portfolio management and processing third party orders. Besides that, the financial intermediary performing the liquidity contract has to be independent from the issuer, meaning that the parties cannot be within the same group.

The issuer is not allowed to transmit to the financial intermediary, directly or indirectly, any other decision to trade own shares, except in the situations identified as leading to a suspension of the contract.

The financial intermediaries that execute liquidity contracts shall keep individual records of the orders placed under the contract and of the transactions that have been carried out for, at least, five years. On a daily basis, the financial intermediary informs the issuer on the movements and balance of the securities and cash accounts.

Written form of the contract

The liquidity contract must be entered into in a written form between the issuer and the financial intermediary.

The issuers shall submit to the CMVM, a copy of the liquidity contract, for assessment of its the conditions, three working days before the intended date for the beginning of its performance. Besides that, CMVM may further request from the issuer and financial intermediary, all the information that it may require for monitoring the execution of the liquidity contract. The liquidity contract must contain the following information:

a) identification of the security in the scope of the contract, namely identifying its nature, type, ISIN code, the par unit value, amount issued and the amount admitted to trading;

b) identification of the contracting parties;

c) indication of the duties taken on by the contracting parties, i.e. the information that the financial intermediary shall periodically transmit to the issuer for the purposes of following-up on the execution of the contract and that allows the issuer to fulfil its legal duties for complying with the market practice and the prohibition of transmitting inside information to the financial intermediary by the issuer;

d) the expected date for the beginning of the trades and the deadline for the execution of the trades;

e) the amount of securities and the amount of cash allocated to the execution of the contract, as well as the maximum and minimum limits (where applicable) in the market, both daily and accumulated until the end of the contract;

f) the securities and cash accounts held by the issuer for the execution of the contract;

g) the liability statement from the financial intermediary that ensures that the intermediary will execute the liquidity contract independently from any other activity linked to its own portfolio activity, trading for the account of a third-party and of clients' portfolios under management;

h) the financial intermediary's remuneration (fixed, variable or a combination of the two) which shall not reduce its independency from the issuer and which shall be designed in order not to prejudice the integrity of the market.

The accepted market practice statement is written out under the market abuse and the market protection duty framework (articles 311 and 379 of the Portuguese Securities Code and MAR) and without prejudice to the application of inside information rules and the imposition of the inherent legal consequences.

Limits to the resources to be allocated to the performance of the liquidity contract

The maximum amount of cash and the maximum number of shares to be allocated to the performance of the liquidity contract shall not exceed:

- For high liquid shares (in accordance with article 22 of Commission Regulation (EC) No 1287/2006 – implementing MiFID): 75% of the average daily trading volume with a maximum of € 50 million.

- For liquid shares (those ones included in the PSI20 index, but not liquid under MiFID framework): 200% of the average daily trading volume with a maximum of € 20 million.

- For other shares: 500% of the average daily trading volume or 1% of the outstanding issued shares with a maximum of € 1 million.

The average daily trading volumes should be determined in relation to the 20 trading sessions before the liquidity contract is entered into on the trading venue where the liquidity contract is to be performed. Where the liquidity contract is to be performed on more than one trading venue it should be considered the highest average daily trading volume. Such limits apply to all transactions (buys and sales) carried out under the liquidity contract, and should not be considered in relation to each trading venue when the liquidity is to be performed on more than one trading venue.

Trading conditions

The improvement in liquidity allowed through the performance of liquidity contracts potentially lead to misleading signals in the trading of financial instruments that in some instances could constitute market manipulation. In order to ensure that the performance of liquidity contracts, when carried out for legitimate reasons, shall not constitute market manipulation or the breach of market protection duty, financial intermediaries must comply with transparency requirements and trading conditions concerning prices, volumes and the placing of the orders.

The financial intermediary may only trade for the execution of a liquidity contract during the normal trading period established by the market operator/financial intermediary of the regulated market/MTF. Trading after the close of the market is not allowed and operating in auctions is allowed provided that the financial intermediary takes the necessary steps in order not to introduce artificial trends in the regular functioning of the market. The financial intermediary shall not secure a dominant position over the shares' trading.

Placing both buy and ask orders

In normal market conditions, the financial intermediary shall place buy and sell orders simultaneously. It is up to the financial intermediary to establish its performance strategy and the issuer shall sustain the inherent market risks. However, the financial intermediary is obliged to assess at all times, the market price levels and shall adjust its performance taking into account the market trend. An incorrect perception on the value that the market has given to the shares, may originate a disparity between the cash available for the purchase and the number of shares available for sale.

Price restrictions

In order to limit the price impact of the placed orders under the liquidity contract, the following conditions must be complied with:

i) Buy orders must be placed at a price not higher than the higher between the price of the last independent trade and the highest independent bid in the order book;

ii) Sell orders must be placed at a price not lower than the lower between the price of the last independent trade and the lowest independent ask in the order book;

Independent trade means a trade in the market between parties not related with the financial intermediary.

Independent orders are all orders that are not executed under the liquidity contract and that do not represent decisions to trade for the financial intermediary's own portfolio, are not placed by the financial intermediary as decisions to trade for third-party portfolios under management or placed as orders for the account of a third-party.

Volume restrictions

In each trading session, the financial intermediary shall comply with the following volume constraints:

i) For high liquid shares (those ones classified as liquid shares in accordance with article 22 of Commission Regulation (EC) No 1287/2006 – implementing MiFID), transactions under the contract should not exceed 5% of the average daily volume on the market in the previous 20 trading sessions.

ii) In relation to liquid shares (those ones included in the PSI20 index, but not liquid under MiFID framework), transactions under the contract should not exceed 15% of the average daily volume on the market in the previous 20 trading sessions.

iii) For other shares, transactions should not exceed the minimum between 25% of the daily volume on the market in the previous 20 trading sessions or € 20.000.

Each of the thresholds should be calculated by taking into account all the trades carried out under the liquidity contract, cumulating buys and sales, without netting.

Auctions

The performance of the activity during auction periods, namely during the opening and the closing auction is allowed. However, during such periods, the financial intermediary shall act with exceptional care not to create artificial price changes and should give the other market participants sufficient time to react, i.e. the orders should be placed at a price that will not impact the final price of the auction.

Block trades

Block trades in shares within the execution of a liquidity contract are not allowed.

Situations or conditions leading to a temporary interruption, suspension or termination of the contract

The execution of the liquidity contract must be suspended in the following cases:

i. during the execution of a share buyback programme;

ii. as a result of a compensation scheme to employees or directors, of an expiry of a derivative financial instrument or of a corporate action;

iii. when a public offer for shares is carried out, namely when stabilisation activity is performed or when a public offer for the acquisition of the issuer's shares is announced.

Liquidity contracts are not intended to increase the amount of issuers' own-shares and CMVM may suspend the performance of the contract, should it detect any irregularities concerning the compliance of its performance to the conditions impose or in cases of suspicion of market abuse.

Transparency and disclosure to the public

Prior to beginning into force of the liquidity contract and prior to be performed as an AMP, the issuer shall publicly disclose details of the contract entered into with the financial intermediary, concerning the following information:

i. the identification of the issuer and of the financial intermediary through which the liquidity contract will be performed;

ii. the trading venue and shares concerned;

iii. the cash and securities placed at the disposal of the financial intermediary;

iv. the maximum amount of shares that may be accumulated in the portfolio for the execution of the contract;

v. the period during which the AMP will be performed and situations that lead to the temporary interruption, suspension or termination of its performance and

vi. the duration of the contract.

During the performance of the AMP, the issuer shall publicly disclose:

i. on a monthly basis, daily aggregated information, detailing the transactions carried out under the liquidity contract, namely the date of the transactions, the number of transactions carried out, the number of shares bought and sold, the amount of cash paid and received, the price of the transactions, the average size of the transactions, the average spreads quoted and the amount of shares held under the liquidity contract at the end of each day.

ii. As soon as possible, any changes to previously disclosed information on the

AMP, namely changes relating to available resources in terms of cash and financial instruments, changes to the identity of persons performing the AMP, changes in the allocation of cash or financial instruments in the accounts of the issuer and any interruption, suspension or termination of the contract.

When the liquidity contract is terminated, the issuer shall publicly disclose, as soon as possible**:**

i. the expiry of the contract and the reasoning behind it;

ii. the transactions made under the contract, detailing the number of shares purchased and sold, the amount of cash paid and received and the balance of the securities account and of the cash account at the termination date.

All the disclosures concerning the liquidity contract shall be made by the issuer (the beneficiary of the contract) through the Information Disclosure System on the CMVM's website under the section concerning 'Transactions of own shares' and on the issuer's website.

Rationale for why the practice would constitute market manipulation

The improvement of liquidity under liquidity contracts involves entering transactions and placing orders to trade which potentially (i) gives, or is likely to give, false or misleading signals as to the supply of, demand for, or price of a share or potentially (ii) secures, or is likely to secure, the price of the same and so potentially may constitute market manipulation.

In order to ensure that transactions carried out under the liquidity contract and orders placed or any other behavior established have been carried out for legitimate reasons, conditions and requirements are set up under which liquidity contracts may be established as an AMP.

Non-compliance with the conditions and restrictions presented above could potentially lead to misleading signals concerning the supply of and demand for or the price of the share and be seen as market manipulation (article 379 of the Portuguese Securities Code and MAR) or if the case, a breach of the market protection duty (article 311 of the Portuguese Securities Code).

ASSESSMENT	
List of criteria taken into account	**Conclusion of the competent authority and rationale**
a) Level of transparency provided to the market	Apart from the compliance with the Commercial Law on trading in own shares and public companies, and in addition to the reporting and transparency obligations with regards to own shares, the issuer that enters into a Liquidity Contract must disclose to the public, through the Information Disclosure System on CMVM's website – under the section 'Transactions on own account' – and on the issuer's website, the following information: 1) Prior to beginning into force of the liquidity contract and prior to be performed as an AMP, the issuer shall publicly disclose details of the contract entered into with the financial intermediary, concerning the following information: i. the identification of the issuer and of the financial intermediary through which the liquidity contract will be performed; ii. the trading venue and shares concerned; iii. the cash and securities placed at the disposal of the financial intermediary; iv. the maximum amount of shares that may be accumulated in the portfolio for the execution of the contract; v. the period during which the AMP will be performed and situations that lead to the temporary interruption, suspension or termination of its performance and vi. the duration of the contract. During the performance of the AMP, the issuer shall publicly disclose: i. on a monthly basis, daily

	aggregated information, detailing the transactions carried out under the liquidity contract, namely the date of the transactions, the number of transactions carried out, the number of shares bought and sold, the amount of cash paid and received, the price of the transactions, the average size of the transactions, the average spreads quoted and the amount of shares held under the liquidity contract at the end of each day. ii. As soon as possible, any changes to previously disclosed information on the AMP, namely changes relating to available resources in terms of cash and financial instruments, changes to the identity of persons performing the AMP, changes in the allocation of cash or financial instruments in the accounts of the issuer and any interruption, suspension or termination of the contract. When the liquidity contract is terminated, the issuer shall publicly disclose, as soon as possible**:** i. the expiry of the contract and the reasoning behind it; ii. the transactions made under the contract, detailing the number of shares purchased and sold, the amount of cash paid and received and the balance of the securities account and of the cash account at the termination date. The issuers shall submit to the CMVM, a copy of the liquidity contract, three working days before the intended date for the beginning of its performance, for the assessment of its conditions. Besides that, CMVM may further request from the issuer and financial

	intermediary, all the information that it may require for monitoring the execution of the liquidity contract.
b) Degree of safeguards to the operation of market forces and the proper interplay of the forces of supply and demand	In order to provide enhanced safeguards to the market, the liquidity contracts must be performed by a financial intermediary – investment firm or credit institution – that is member/user of a trading venue and that shall act independently. Such requirement enhances the duty to protect the market as such entities are subject to obligations that allow for the supervision of the activities performed. The financial intermediary and the issuer are not allowed to be within the same group. The principle of exclusiveness must be observed thus allowing solely for a single active liquidity contract per share category and for each financial intermediary. Furthermore, a new contract may not be entered into with same or another financial intermediary unless the previous contract is terminated. The transactions performed under the liquidity contract are registered on the securities and cash accounts opened in the name of the issuer and used solely for the purpose of such contract. Financial intermediaries must also keep the records of orders and transactions for, at least, five years. The liquidity contract is subject to trading conditions that includes price and volume limits and limits to the resources to be allocated to the performance of the contract (see above). Liquidity contracts may have an impact in the interplay between the legitimate supply and demand in the market and thus enhance the liquidity of shares that would otherwise be

	considered non-liquid, improving the regular functioning of the market for such shares.
c) Impact on market liquidity and efficiency	The purpose of the practice is to improve market liquidity and efficiency. Such purpose can be achieved by the increasing in the traded volumes, the increase of the number of trades, the decrease of the observed bid-offer spreads or the decrease of the daily price volatility.
d) The trading mechanism of the relevant market and the possibility for market participants to react properly and in a timely manner to the new market situation created by that practice	The transactions under the liquidity contract have to be executed in a trading venue through the order book and through a financial intermediary member of such trading venue. Besides that, the activity under the contract is subject to trading limits: ▪ For high liquid shares (those ones classified as liquid shares in accordance with article 22 of Commission Regulation (EC) No 1287/2006 – implementing MiFID), trades under the contract should not exceed 5% of the average daily volume on the market in the previous 20 trading sessions. ▪ In relation to liquid shares (those ones included in the PSI20 index, but not liquid under MiFID framework), trades under the contract should not exceed 15% of the average daily volume on the market in the previous 20 trading sessions. ▪ For other shares, trades should not exceed the minimum between 25% of the daily volume on the market in the previous 20 trading sessions or € 20.000. Each of the thresholds should be calculated by taking into account all the trades carried out under the liquidity contract, cumulating buys and sales, without netting. The performance of the activity during auction periods, namely during the opening and the

	closing auction is allowed. However, during such periods, the financial intermediary shall act with exceptional care not to create artificial price changes and should give the other market participants sufficient time to react to them, i.e. the price orders should not impact the final price of the auction. The financial intermediary must place orders with a limited price impact. Orders should fulfill the following conditions: ▪ Buy orders must be placed at a price not higher than the higher between the last independent trade and the highest independent bid in the order book; ▪ Sell orders must be placed at a price not lower than the lower between the last independent trade and the lowest independent ask in the order book. Block trades are not allowed under the liquidity contract.
(e) Risks for the integrity of, directly or indirectly, related markets, whether regulated or not, in the relevant financial instruments within the Union	CMVM may request from each issuer and financial intermediary, all the information required for monitoring the execution of the liquidity contract. Liquidity contracts are not intended to increase the amount of own-shares and the CMVM may suspend if any irregularities concerning its compliance are detected or if there is suggestive market abuse. Financial intermediaries that perform contracts are obliged to maintain individual records of all the orders placed and transactions carried out for, at least, five years. The issuer shall not instruct the financial intermediary concerning the activity under the contract. The financial intermediary has to ensure an internal organization structure that ensures the independency of the employees responsible for the decision making regarding

	orders and trades under the liquidity contract from other areas such as the management of the proprietary account, portfolio management and processing third party orders. Besides that the financial intermediary performing the liquidity contract has to be independent from the issuer, meaning that not only the parties cannot be within the same group but also that the remuneration for the services provided shall not undermine the independence of the financial intermediary. The nature and the level of the remuneration – which may be fixed, variable or a combination of the two – shall be designed in order not to prejudice the integrity of the market or the orderly functioning of the market or to give rise to the conflicts of interest. Notably, a variable remuneration or a variable component of the remuneration based on indicators relating to the performance of the liquidity contract, such as the number of trades carried out, the volumes traded or the price movement, should not be allowed as they potentially compromise the integrity of the market or may give rise a conflict of interest, unless it is assessed otherwise by the CMVM. The issuer is not allowed to transmit to the financial intermediary, directly or indirectly, any other decision to trade own shares, except in the situations identified as leading to a suspension of the contract. The issuer should not transmit any other instruction to the financial intermediary concerning purchase and sale decisions. It is up to the financial intermediary to establish its performance strategy and the issuer shall sustain the inherent market risks. However, the financial intermediary is obliged to assess at all times, the market price levels and shall adjust its performance as per the market tendency. An incorrect perception on the value that the market has given to the shares, may originate a disparity between the cash

	available for the purchase and the number of own shares available for sale. The financial intermediary informs the issuer on a daily basis on the movements and balance of the accounts. The financial intermediary may only trade for the execution of a liquidity contract during the normal trading period established by the market operator of the regulated market or the MTF. Trading after the close of the market is not allowed and operating in opening and closing session auctions is allowed provided that the financial intermediary takes the necessary steps in order not to introduce artificial trends in the regular functioning of the market. The financial intermediary shall not secure a dominant position over the shares' trading. The execution of the liquidity contract must be suspended in the following cases: during the execution of a share buyback programme; as a result of a compensation scheme to employees or directors, of an expiry of a derivative financial instrument or of a corporate action; when a public offer for shares is carried out, namely when stabilisation activity is performed or when a public offer for the acquisition of the issuer's shares is announced. Liquidity contracts are not intended to increase the amount of issuers' own-shares and CMVM may suspend the performance of the contract, should it detect any irregularities concerning the compliance of its performance to the conditions imposed or in cases of suspicion of market abuse. The accepted market practice statement is written out under the market abuse and the market protection duty framework (articles 311 and 379 of the Portuguese Securities Code and MAR) and without prejudice to the

	application of inside information rules and the imposition of the inherent legal consequences.
(f) Outcome of any investigation of the relevant market practice by any competent authority or other authority, in particular whether the relevant market practice infringed rules or regulations designed to prevent market abuse or codes of conduct, irrespective of whether – it concerns, directly or indirectly, - the relevant market or related markets within the Union	Presently, and within the scope of CMVM's powers, no conclusion was put forward that opposes the liquidity contract as an accepted market practice.
(g) Structural characteristics of the relevant market, inter alia, whether it is regulated or not, the types of financial instruments traded and the type of market participants, including the extent of retail investors' participation in the relevant market	The financial instruments in the scope of the liquidity contracts are shares of listed companies in Portuguese regulated markets or listed/traded in Portuguese MTF. Retail investors' participation on such trading venues are significant. The conditions and limits to the performance of the practice are aimed to guarantee the interest of retail investors. The liquidity contract shall increase the probability of investors finding a counterparty to trade with, especially in non-liquid shares.