



European Securities and  
Markets Authority

# Opinion

**On the European Commission's proposed amendments to ESMA's draft Regulatory Technical Standards on liquidity contracts for SME Growth Market Issuers adopted under MAR**



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# 1 Executive Summary

## Reasons for publication

ESMA is issuing this opinion in response to the European Commission's (EC) proposed amendments to the regulatory technical standards (RTS) regarding the template of a liquidity contract to be used by SME growth market (GM) issuers to support the trading of their shares.

The EC's proposed amendments suggest the introduction of clauses in the contractual template that i) further specify the price limits in the performance of the liquidity contract and ii) specify the circumstances under which the liquidity provider is not obliged to place orders on both sides of the order book.

ESMA's view is that the proposed amendments clarify the obligations deriving from the RTS on liquidity contracts without diverging from ESMA's objectives. Therefore the draft RTS on liquidity contracts have been amended by ESMA as proposed by the EC.

## Contents

Section 2 provides the background of this Opinion and summarises the content of the EC letter to ESMA. Section 3 contains the legal basis applicable in this case. Section 4 includes the detailed assessment of the proposed amendments and the reasons why ESMA agrees with them. Annex I includes the amendments of the draft RTS on liquidity contract on which ESMA is issuing an opinion and Annex II includes a copy of the EC's letter to ESMA.

## Next Steps

Following the adoption of this opinion in response to the letter received on 21 March 2022, within the six-weeks time period provided for in the ESMA Regulation, this opinion is being duly communicated by ESMA to the EC by the legal deadline of [2 May] 2022, with copies to the European Parliament and the Council. The EC may adopt the RTS with the amendments it considers relevant or reject it. The European Parliament and the Council may object to an RTS adopted by the EC within a period of three-months.

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## 2 Background

1. On 27 October 2020, ESMA submitted to the EC the draft RTS concerning the contractual template to be used for the purposes of entering into a liquidity contract (the Draft RTS), pursuant to Article 13(13) of Regulation (EU) 596/2014 of the European Parliament and the Council on market abuse<sup>1</sup> (MAR).
2. In a letter of 21 March 2022, the EC notified ESMA of its intention “*to endorse the proposed RTS [...] once changes are introduced as set out in the annex*”, in accordance with Article 10(1) of the ESMA Regulation<sup>2</sup>.
3. In particular, the EC letter requested the introduction of two specific clauses in the contractual template that:
  - a. further specify the price limits according to which the liquidity provider has to place orders under the liquidity contract; and
  - b. determine the circumstances under which the liquidity provider is not obliged to place orders on both sides of the order book.
4. In addition, the EC proposed a number of other technical amendments to the RTS submitted by ESMA.
5. The letter from the EC with the proposed amendments to the RTS on liquidity contracts submitted by ESMA are included in Annex II.

## 3 Legal basis

6. Pursuant to Article 10(1), fifth subparagraph, of the ESMA Regulation, “*Where the Commission intends not to adopt a draft regulatory technical standard or to adopt it in part or with amendments, it shall send the draft regulatory technical standard back to the Authority, explaining why it does not adopt it, or explaining the reasons for its amendments. The Commission shall send a copy of its letter to the European Parliament and to the Council. Within a period of 6 weeks, the Authority may amend the draft regulatory technical standard on the basis of the Commission’s proposed amendments and resubmit it in the form of a formal opinion to the Commission. The Authority shall send a copy of its formal opinion to the European Parliament and to the Council.*”
7. In accordance with Article 44(1) of the ESMA Regulation, with regard to, among others, the acts specified in Article 10 to 16 of the same Regulation, the Board of Supervisors “*shall take decisions on the basis of a qualified majority of its members, as defined in Article 16(4) TEU and in Article 3 of the Protocol No 36 on transitional provisions.*”

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<sup>1</sup> OJ L 173 12.6.2014, p. 1.

<sup>2</sup> The letter from the Commission is in Annex II.

8. With reference to the Draft RTS, Article 13(12) of MAR provides that “*Without prejudice to accepted market practices as established in accordance with paragraphs 1 to 11 of this Article, an issuer of financial instruments admitted to trading on an SME growth market may enter into a liquidity contract for its shares where all of the following conditions are met:*
- (a) the terms and conditions of the liquidity contract comply with the criteria set out in paragraph 2 of this Article and in Commission Delegated Regulation (EU) 2016/908 ( 8 );*
  - (b) the liquidity contract is drawn up in accordance with the Union template referred to in paragraph 13 of this Article;*
  - (c) the liquidity provider is duly authorised by the competent authority in accordance with Directive 2014/65/EU and is registered as a market member with the market operator or the investment firm operating the SME growth market;*
  - (d) the market operator or the investment firm operating the SME growth market acknowledges in writing to the issuer that it has received a copy of the liquidity contract and agrees to that contract’s terms and conditions.*

*The issuer referred to in the first subparagraph of this paragraph shall be able to demonstrate at any time that the conditions under which the contract was concluded are met on an ongoing basis. That issuer and the market operator or the investment firm operating the SME growth market shall provide the relevant competent authorities with a copy of the liquidity contract upon their request.”*

9. Article 13(13) of MAR provides that: “*ESMA shall develop draft regulatory technical standards to draw up a contractual template to be used for the purposes of entering into a liquidity contract in accordance with paragraph 12, in order to ensure compliance with the criteria set out in paragraph 2, including as regards transparency to the market and performance of the liquidity provision.*

*ESMA shall submit those draft regulatory technical standards to the Commission by 1 September 2020.*

*Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010”.*

## 4 ESMA Opinion

### 4.1 Introduction of a clause in the contractual template regarding price limits

#### 4.1.1 Summary of amendments

10. The EC intends to introduce an additional provision in the contractual template that specifies price limits for liquidity providers when carrying out their activity<sup>3</sup>.
11. In particular, pursuant to the proposed added provision, *“for buy orders, the liquidity provider undertake s to place orders relating to the shares that are at a price that does not exceed the highest independent bid order in the book or the last independent trade, whichever is higher. For sell orders, the liquidity provider undertakes to place orders relating to the shares that are at a price that is not lower than the lowest independent ask order in the book or the last independent trade, whichever is lower”*.

#### 4.1.2 Assessment of amendments

12. Firstly, ESMA understands that the proposed change is aimed at avoiding that the prices at which the liquidity provider undertakes to place orders create unjustifiable spreads considering the market trends.
13. ESMA notes that the same objective was pursued in its Draft RTS through the obligation to include price conditions and volume limits in the liquidity contract<sup>4</sup>. In particular, the provision on price conditions stated that *“the liquidity provider does not alter the prices in the market where there is independent trading interest available”*<sup>5</sup>.
14. Furthermore, the Draft RTS required the liquidity provider to avoid price swings not justified by the current market trend<sup>6</sup>, and prohibited issuing orders which may create an unjustifiable spread considering the current market trend<sup>7</sup>.
15. Secondly, ESMA recognises that the price limits proposed by the EC replicate those included in the ESMA Opinion on points for convergence in relation to MAR accepted market practices on liquidity contracts<sup>8</sup> (Ref. ESMA70-145-76).
16. Thirdly, ESMA acknowledges that the introduction of explicit price limits may reduce the room for interpretation of the RTS on liquidity contracts, and therefore enhances its clarity.

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<sup>3</sup> Clause 2.5.3 of the Annex to the amended draft of the RTS.

<sup>4</sup> Article 7.1 of the Draft RTS.

<sup>5</sup> Article 7.2 of the Draft RTS.

<sup>6</sup> Clause 3.1 of the Annex to the RTS.

<sup>7</sup> Clause 6.1 of the Annex to the RTS.

<sup>8</sup> ESMA70-145-76 available at <https://www.esma.europa.eu/document/points-convergence-in-relation-mar-accepted-market-practices-liquidity-contracts>.

### 4.1.3 Conclusion

17. ESMA agrees with the introduction of an additional clause in the contractual template that specifies price limits for liquidity providers in line with ESMA's Opinion on points for convergence, as this amendment will effectively contribute to ESMA's objective to avoid creating unjustifiable spreads considering the market trends and would enhance the clarity of the RTS. The draft RTS on liquidity contracts attached to this Opinion have been amended accordingly.

## **4.2 Introduction of a clause that specifies the circumstances under which the liquidity provider is not obliged to enter orders to trade on both sides of the order book**

### 4.2.1 Summary of amendments

18. The second amendment that the EC intends to introduce is an additional clause waiving the obligation of the liquidity provider to enter orders to trade on both sides of the order book in a pre-determined set of exceptional circumstances<sup>9</sup>.

### 4.2.2 Assessment of amendments

19. ESMA firstly notes that the circumstances listed in the clause proposed by the EC refer to emergency situations where on-venue trading is likely to be interrupted, pursuant to the rules of trading venues on abnormal market circumstances<sup>10</sup>.

20. ESMA considers that the Draft RTS indirectly permitted the interruption of liquidity provision through the obligation to perform the contract in accordance with market rules<sup>11</sup> and the obligation to purchase and sell the shares under normal market circumstances<sup>12</sup>.

21. In addition, ESMA notes that the conditions listed in such clause are consistent with most of the exceptional circumstances contained in Article 3 of the Commission Delegated Regulation (EU) 2017/578<sup>13</sup>, that concern market making agreements and schemes and describes the cases where the obligation to provide liquidity under the market making agreements set out under Articles 17(3)(a) of Directive 2014/65/EU<sup>14</sup> (MiFID II) does not apply.

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<sup>9</sup> Clause 2.5.4 of the Annex. The clause provides an exemption to enter orders on both sides of the order book in any of the following circumstances: a situation of volatility triggering volatility mechanisms for the share subject to the liquidity contract or a situation of extreme volatility triggering volatility mechanisms for the majority of financial instruments traded on the market; war, industrial action, civil unrest or cyber sabotage or other disorderly trading conditions where the maintenance of a fair, orderly and transparent execution of trades is compromised. In the latter case the liquidity provider will have to provide evidence of certain circumstances detailed in the same clause.

<sup>10</sup> See Article 47 and 48(5) of MiFID II.

<sup>11</sup> Clause 3.1 of the Annex to the RTS.

<sup>12</sup> Clause 6.1 of the Annex to the RTS.

<sup>13</sup> OJ L 87, 31.3.2017, p. 183.

<sup>14</sup> OJ L 173, 12.6.2014, p. 349.

22. Considering the above ESMA recognises that the introduction of a specific clause setting out emergency situations under which liquidity providers would not be obliged to enter orders on both sides of the order book is in line with the Draft RTS and contributes to ESMA's objective to ensure that the provision of liquidity is not being considered as compulsory in abnormal market circumstances. By defining cases in which the liquidity provider is not obliged to enter orders on both sides of the book, liquidity providers should also benefit from greater clarity as regards their obligations.

#### 4.2.3 Conclusion

23. ESMA agrees with the introduction of a clause that waives the obligation of the liquidity provider to enter orders on both sides of the order book in certain exceptional circumstances, as this amendment is in line with the Draft RTS and contributes to ESMA's initial objectives and provides more clarity as regards the obligations of liquidity providers. The draft RTS attached to this Opinion have been amended accordingly.

### 4.3 Other amendments to the RTS

24. ESMA considers that all other changes to the Draft RTS proposed by the EC are of a technical nature and would not change the substance of the Draft RTS.

25. Since ESMA agrees with the RTS as proposed by the EC, a clean version of the RTS is annexed to the Opinion.



## 5 Annex I: Revised draft regulatory technical standard in line with the amendments proposed by the EC

COMMISSION DELEGATED REGULATION (EU) .../...

of **21X**

**supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council with regard to regulatory technical standards setting out a contractual template for liquidity contracts for the shares of issuers whose financial instruments are admitted to trading on an SME growth market**

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC<sup>15</sup> and in particular Article 13(13), third subparagraph, thereof,

Whereas:

- (1) Article 13(12) of Regulation (EU) No 596/2014 provides that issuers of financial instruments admitted to trading on an SME growth market may enter into a liquidity contract for their shares where such contracts comply with, *inter alia*, the conditions for establishing accepted market practices laid down in Article 13(2) of that Regulation. These conditions ensure that liquidity contracts set a high degree of safeguards to the operation of market forces and the proper interplay of the forces of supply and demand, have a positive impact on market liquidity and efficiency and do not create risks for the integrity of related markets. The contractual template for liquidity contracts provided therein which aims at ensuring compliance with these conditions, lays down the minimum elements that a liquidity contract should contain, including as regards transparency to the market and performance of the liquidity provisions. Parties are free to insert additional clauses to reflect the specificities of the individual case, in accordance with their freedom to contract.
- (2) The resources of an issuer of financial instruments that are admitted to trading on an SME growth market and that are allocated for the performance of a liquidity contract for the shares of that issuer should be immediately identifiable. The liquidity contract should therefore provide for the opening of a dedicated liquidity account. Such dedicated liquidity account is needed to monitor the performance of the liquidity

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<sup>15</sup> OJ L 173, 12.6.2014, p. 1.

contract and to ensure that the trading conducted for the purposes of the liquidity contract is separated from other trading activities carried out by the liquidity provider, thus minimising the risks of conflicts of interests. Such liquidity account should be endowed with an amount of resources in cash and shares that should be specified in the liquidity contract. Such resources should be used for the sole purpose of the performance of the liquidity contract.

- (3) The resources allocated to the liquidity contract ('resource limits') should be proportionate to the objectives laid down in Article 13(2) of Regulation (EU) No 596/2014. For the same reason, trading by the liquidity provider should be subject to price and volume limits, which would, together with resource limits, minimise the risk that the liquidity provision results in artificial changes in the share price and would, at the same time, promote regular trading of illiquid shares.
- (4) Under previous accepted market practices on liquidity contracts, competent authorities have analysed the average trading turnover of shares listed on SME growth markets. That analysis has shown that resource limits should depend on the liquidity profile of the shares concerned (liquid vs illiquid) and take into account the trading activity occurring on the market concerned. Based on that analysis, it is appropriate that the liquidity contract provides for resource limits that are set as a percentage of the average daily turnover for the share concerned, with such percentage being calibrated on the basis of the liquidity profile of the share and being capped to avoid any negative impact of the liquidity contract on market integrity and on the orderly functioning of the market. To allow for an effective liquidity provision where the average daily turnover is low, a single threshold for the resources of the liquidity contract should apply.
- (5) Price limits should ensure that the trading activity of the liquidity provider performed in the framework of the liquidity contract does not lead to artificial changes in the share prices when there is independent trading interest available.
- (6) Volume limits should ensure that trades performed by the liquidity provider do not exceed a maximum percentage of the average daily turnover for illiquid and liquid shares. It is appropriate that the calculation of such average daily turnover is based on the 20 trading days preceding the trading day. Such calculation appropriately represents trading in the share concerned, because it provides for a medium-term picture, absorbing the effect of trading peaks over a single or few trading sessions.
- (7) To diminish the risks of market abuse, in normal market circumstances, the liquidity contract should provide that the liquidity provider enter orders to trade on both sides of the order book, except in the exceptional cases impeding the normal functioning of the market. For the same reason, orders that are large in scale and negotiated transactions should be within the scope of the liquidity contract, provided that certain conditions concerning the execution of such orders are met and that those trades take place in exceptional situations. Such exceptional situations may occur where, at a specific point in time, the proportion between the resources in cash and shares available to the liquidity provider does not allow the latter to provide liquidity under the contract.
- (8) The liquidity contract should require the liquidity provider to perform its liquidity contract independently from the issuer of the share concerned and from the trading decisions of other trading desks, groups or units within the liquidity provider, engaging in trading activities on that share or on financial instruments the price or value of which

depends or has an effect on the price or value of the share concerned. Such independence of the liquidity provider is necessary to avoid risks to market integrity.

- (9) To avoid any risks for the integrity and orderly functioning of the SME growth market concerned, the variable remuneration of the liquidity provider should be limited. In addition, to ensure a level playing field, such limits should apply in a consistent manner to all liquidity contracts entered into by issuers whose financial instruments are admitted to trading on an SME growth market. The maximum limits for the variable part of the remuneration should however be fixed at a reasonable percentage of the total remuneration to allow for an incentive for the liquidity provider to properly perform the contract, without being so substantial as to incentivise behaviours which may pose a risk to the integrity and orderly functioning of the market concerned.
- (10) Transparency in respect of the liquidity contracts ensures market integrity and investor protection. To enable other market participants to make an informed decision about the shares subject to the liquidity contract, the liquidity contract should provide for transparency obligations covering the various stages of the provision of liquidity, namely before entry into force of the liquidity contract, during its duration and after its termination. In this respect, it is necessary to identify one party that will be in charge of the transparency obligations. To make it easier for the public to gather information on the shares concerned, that party should be the issuer, which should publish the relevant information on its website.
- (11) This Regulation is based on the draft regulatory technical standards submitted to the Commission by the European Securities and Markets Authority.
- (12) The European Securities and Markets Authority has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the advice of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council<sup>16</sup>,

HAS ADOPTED THIS REGULATION:

#### *Article 1*

### **Template for a liquidity contract**

For the purposes of entering into a liquidity contract as referred to in Article 13(12) of Regulation (EU) No 596/2014, issuers of financial instruments admitted to trading on one or more SME growth markets shall use the template set out in the Annex to this Regulation.

#### *Article 2*

### **Entry into force**

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

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<sup>16</sup> 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), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).



ESMA PUBLIC USE

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the Commission*  
*The President*  
*Ursula VON DER LEYEN*

**ANNEX**  
**Template for a liquidity contract**

**LIQUIDITY CONTRACT**

The present liquidity contract (the “**contract**”) is entered into on [date]

**between**

[company name],

a company with a share capital of [.....] [EUR/national currency], having its registered office at [address], enrolled in the company register of [city/country] under the number [ ..... ], represented by [ ..... ],

(“**issuer**”)

**and**

[company name], a company with a share capital of [.....] [EUR/national currency], having its registered office at [address], authorised by the [national competent authority], reference number [ ..... ] and enrolled in the company register of [city/country] under the number [ ..... ], represented by [ ..... ],

(“**liquidity provider**”)

(hereinafter collectively referred to as “**parties**”)

**The Parties hereby agree as follows:**

**1. DEFINITIONS**

In this contract [and in all amendments hereto], the following words and expressions shall have the following meanings:

- (a) ‘market’ means the SME Growth Market on which the issuer’s shares are admitted to listing and trading and on which the contract is performed, i.e. [name of the SME Growth Market(s)];
- (a) ‘shares’ means the issuer’s share capital of [EUR/national currency], [.....], admitted to listing and trading on the market and divided into [....] shares with a par value of [....] with the following ISIN(s): [.....];
- (b) “liquidity account”: a dedicated account [number .....] opened by the liquidity provider in the name of the issuer;
- (c) ‘average daily turnover’ means the total turnover for the relevant shares divided by 20 where the total turnover for the shares concerned shall be calculated by summing the results of multiplying, for each transaction executed during the 20 preceding trading days in the SME growth market concerned, the number of shares exchanged between the buyers and sellers by the unit price applicable to such transaction;

- (d) 'liquid shares' mean shares that have a liquid market as referred to in Article 1 of Delegated Regulation (EU) 2017/567<sup>17</sup>.
- (e) 'illiquid shares' means shares not having a liquid market under Articles 1 and 5 of Delegated Regulation (EU) 2017/567;

## 2. OBLIGATIONS OF THE LIQUIDITY PROVIDER

### 2.1. Authorisation

The liquidity provider hereby represents and warrants to the issuer that it is duly authorised by the [*national competent authority*] to carry out the activity of [*financial service*] and that it is a registered member of the market. The liquidity provider undertakes to maintain the authorisation issued by the competent authority and the membership to/of the market for the whole duration of the contract.

#### [Additional obligations]

### 2.2. Independence of the liquidity provider

2.2.1. The liquidity provider shall, in performing this contract, act independently from the issuer.

2.2.2. The liquidity provider shall have in place measures to ensure that the trading decisions related to this contract remain independent from the trading decisions of other trading desks, groups or units within the liquidity provider, engaged in trading activities on the shares or on financial instruments the price or value of which depends or has an effect on the price or value of the shares within the liquidity provider's mandate under this contract, including orders to trade received from clients, portfolio management or orders placed on its own account.

2.2.3. The liquidity provider shall maintain an appropriate internal structure and controls that ensure the independence of its staff in charge of trading under this contract from other trading desks, groups or units engaged in trading activities carried out by the liquidity provider.

### 2.3. Conflicts of interest

The liquidity provider shall have in place appropriate measures to prevent and manage conflicts of interests arising from the performance of this contract.

### 2.4. The liquidity account

2.4.1. The liquidity provider shall open a liquidity account with resources in cash and/or shares allocated by the issuer for the performance of the liquidity contract.

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<sup>17</sup> Commission Delegated Regulation (EU) 2017/567 of 18 May 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to definitions, transparency, portfolio compression and supervisory measures on product intervention and positions (OJ L 87, 31.3.2017, p. 90).

- 2.4.2. The liquidity provider shall record all transactions undertaken under this contract, and only those transactions, on the liquidity account.
  - 2.4.3. The liquidity provider shall use the resources allocated to the liquidity account exclusively for the purpose of performing its obligations under this liquidity contract.
  - 2.4.4. The liquidity provider shall not overdraw the liquidity account either in relation to cash or shares and shall ensure that those resources are in line with the thresholds referred to in point 3.3, second paragraph.
  - 2.4.5. The liquidity provider shall close the liquidity account when the contract has expired or terminated, having immediately transferred any cash or shares held on the liquidity account to the account(s) designated by the issuer.
- 2.5. Orders to buy and sell
- 2.5.1. The liquidity provider undertakes to enter orders to buy and sell the shares on the market with the sole purpose of enhancing their liquidity and improving the regularity of trading in those shares or avoiding price swings that are not justified by the current market trend. The liquidity provider shall enter orders to trade on both sides of the order book.
  - 2.5.2. The liquidity provider undertakes not to enter orders which may result in misleading third parties.
  - 2.5.3. The liquidity provider undertakes not to alter the prices in the market where there is a trading interest by independent trading desks, groups or units engaged in other trading activities within the liquidity provider or by independent third parties. For buy orders, the liquidity provider undertakes to place orders relating to the shares that are at a price that does not exceed the highest independent bid order in the book or the last independent trade, whichever is higher. For sell orders, the liquidity provider undertakes to place orders relating to the shares that are at a price that is not lower than the lowest independent ask order in the book or the last independent trade, whichever is lower.
  - 2.5.4. The obligation to enter orders to trade on both sides of the order book referred to in point 2.5.1 shall not apply in any of the following circumstances:
    - (a) a situation of volatility triggering volatility mechanisms for the share subject to the liquidity contract or a situation of extreme volatility triggering volatility mechanisms for the majority of financial instruments traded on the market;
    - (b) war, industrial action, civil unrest or cyber sabotage;
    - (c) disorderly trading conditions where the maintenance of a fair, orderly and transparent execution of trades is compromised and where the liquidity provider is able to provide evidence of any of the following:

- (i) the performance of the market's system has been significantly affected by delays and interruptions;
- (ii) multiple erroneous orders or transactions have occurred;
- (iii) the capacity of the market to provide services has become insufficient.

## 2.6. Daily trading activity

### 2.6.1. The liquidity provider, when trading, shall not exceed the following daily volumes:

- (a) for illiquid shares: 25 % of the average daily turnover;
- (b) for liquid shares: 15% of the average daily turnover.

Where the volume set out in point (a) would not allow the liquidity provider to effectively provide liquidity, the liquidity provider may apply a single hard threshold of EUR 20,000 or, in the Member States whose currency is not the euro, the corresponding value in the national currency determined by applying the European Central Bank euro foreign exchange reference rate as of 31 December of the preceding year.

### 2.6.2. Large orders and negotiated transactions as referred to in Article 4(1), points (b) and (c), of Regulation (EU) No 600/2014 of the European Parliament and of the Council<sup>18</sup> and in Article 7 of Commission Delegated Regulation (EU) 2017/587<sup>19</sup> shall be within the scope of this liquidity contract, provided that those meet all of the following conditions:

- (a) they are executed on venue;
- (b) they comply with the rules of the market;
- (c) they take place in exceptional situations.

Under the conditions laid down in points (a), (b) and (c), the liquidity provider may exceed the limits set out in point 2.6.1 for that trading day.

## 2.7. Record keeping

### 2.7.1. The liquidity provider undertakes to keep adequate records of orders and transactions relating to the contract for five years.

### 2.7.2. The liquidity provider undertakes to keep for five years the documentation demonstrating that orders introduced are entered separately and individually without aggregating orders from other clients or from its own proprietary trading

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<sup>18</sup> Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173, 12.6.2014, p. 84).

<sup>19</sup> Commission Delegated Regulation (EU) 2017/587 of 14 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments and on transaction execution obligations in respect of certain shares on a trading venue or by a systematic internaliser (OJ L 87, 31.3.2017, p. 387).



activity, and to verify such documentation by means of compliance or other internal control function.

## 2.8. Audit and compliance

The liquidity provider warrants to have compliance and audit resources to monitor and ensure at all times compliance with the applicable legislative framework and with the conditions laid down in this contract.

## 2.9. Transparency

The liquidity provider undertakes to provide the issuer with all the necessary information to enable the issuer to comply with its transparency obligations towards the public and the [national competent authority].

# 3. OBLIGATIONS OF THE ISSUER

## 1.1. Independence of the liquidity provider

The issuer shall not exercise any influence on the liquidity provider as regards the performance of the liquidity contract.

## 1.2. Transparency

The issuer shall provide the relevant [national competent authority] promptly with a copy of this contract upon its request.

2.5.1. The issuer undertakes to disclose, and to update regularly on its website all of the following information. [*The information will also be disclosed on the liquidity provider' website and/or the market's website or by other means*].

- (a) before this contract starts to apply:
  - (i) the identity of the issuer and the liquidity provider;
  - (ii) the identification of the shares which are the subject of this contract;
  - (iii) the starting date and the duration of this contract, and situations or conditions leading to the temporary interruption, suspension or termination;
  - (iv) the identification of the market on which the obligations set out in this contract will be carried out, and, where applicable, an indication of the possibility to execute transactions in accordance with point 2.6.2 of this contract;
  - (v) resources in cash and shares allocated to this contract in the liquidity account;
- (b) during the performance of this contract:
  - (i) on a semi-annual basis, aggregated figures per day of the trading activity performed under this contract, including:
    - (2) the number of transactions executed;
    - the volume traded;

- the average size of the transactions and average spreads quoted;
  - the prices of executed transactions;
  - (ii) any changes to previously disclosed information on the liquidity contract, changes relating to the amount of cash and the number of shares allocated by the issuer;
- (a) after the termination of this contract:
- (i) the fact that the performance of this contract has ceased;
  - (ii) the description on how the contract has been performed;
  - (iii) the reasons for that termination;
  - (iv) where the contract expires, the information relating to its expiration.

### **1.3. Limits to the resources allocated to the performance of the contract**

The issuer shall allocate resources in cash or shares to the liquidity account that are proportionate and commensurate to the objective of enhancing liquidity. That amount shall be [21X and 21X, respectively in cash and shares],

The issuer shall ensure that the allocation of such resources does not exceed the following thresholds:

for illiquid shares: 500 % of the average daily turnover of the share, capped at 1 million euro;

for liquid shares: 200 % of the average daily turnover of the share, capped at 20 million euro.

Where the threshold of 500% set out in point (a) does not enable the liquidity provider to effectively provide liquidity, a single threshold of EUR 500 000 may be applied.

For issuers located in Member States the currency of which is not the euro, the corresponding value in the national currency shall be determined by applying the European Central Bank euro foreign exchange reference rate as of 31 December of the year preceding the date of this contract.

### **1.4. Remuneration of the liquidity provider**

As consideration for the services provided under this contract, the issuer undertakes to pay to the liquidity provider [*specify amount*] and [*specify percentage*] of [*specify the remuneration, the criteria to determine the variable remuneration, which cannot exceed 15 % of the total remuneration, as well as fees and frequency of payment*].

**2. TEMPORARY SUSPENSION OR RESTRICTION OF THIS CONTRACT [situations in which, or conditions under which, the performance of the contract may be temporarily suspended or restricted]**

**3. OTHER CONTRACTUAL TERMS AND CONDITIONS [Parties are free to insert additional clauses to the contractual template to reflect the specificities of the individual case, in accordance with the parties' freedom to contract (e.g. law governing the contract,**

**confidentiality, duration, termination, renewal, jurisdiction and any other additional provisions to cater for the specificities of the individual case)]**

#### **4. SUBMISSION OF THE DRAFT CONTRACT**

The issuer submitted a draft of this contract to [*market operator*], who agreed to the draft contract's terms and conditions. The issuer hereby confirms that the terms and conditions contained in this contract are identical to those of the draft contract to which the [*market operator*] agreed.

**In witness whereof**, this contract has been entered into the [*day*], [*month*] and [*year*].

SIGNED BY

The **issuer**

[*name*]

for and on behalf of

[*name*]

The **liquidity provider**

[*name*]

for and on behalf of

[*name*]

## 6 Annex II: Letter from the Commission



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL FOR FINANCIAL STABILITY, FINANCIAL SERVICES AND CAPITAL  
MARKETS UNION

The Director-General

Brussels,

Ms Verena Ross  
Chair  
European Securities and Markets  
Authority - ESMA  
201-203 rue de Bercy  
75012 Paris –France

Dear Ms Ross,

On 27 October 2020, ESMA published the Final Report on the amendments to the Market Abuse Regulation (MAR) for the promotion of the use of SME Growth Markets. That Final Report fulfilled the mandates in Article 1 of Regulation (EU) 2019/2115 (the SMEs GM Regulation) by providing the draft RTS for the contractual template to be used to enter into a liquidity contract for issuers admitted to trading on a SME Growth market and the draft ITS for insider lists to be used by issuers in jurisdictions that decided to ‘opt out’ the general insider list regime for SME issuers.

With this letter I would like to inform ESMA that the Commission intends to endorse the proposed RTS and ITS once changes are introduced as set out in the annex. The reasons for these changes can be summarised as follows:

- In the RTS, the Commission considers that price limits for liquidity providers when carrying out their activity should be specified, whereas the original text only contained indirect references on how to limit the prices during the performance of the liquidity contract. Moreover, the Commission considers that the exemption of liquidity providers from the obligation to be present on both sides of the order book in extraordinary situations should be introduced.
- In the ITS, the Commission considers that SME issuers only have to include the details of the persons having regular access to inside information in their insider lists, whereas the original text obliged SME issuers to identify each specific piece of inside information in their insider lists. In the ITS, the Commission considers that SME issuers only have to include the details of the persons having regular access to inside information in their insider lists, whereas the original text obliged SME issuers to identify each specific piece of inside information in their insider lists. Moreover, when by way of derogation of this specific regime, Member States require SME growth market issuers to include in their insider lists all the

persons included in the regular insider lists (and not only persons having regular access), the Commission considers that the content of the lists, including that of permanent insiders, shall not comprise the same level of personal information as in the regime applicable to regular issuers.

In light of the above, I inform you that the Commission, acting in accordance with the procedure set out in the fifth and sixth subparagraphs of Article 10(1) and Article 15(1) of Regulation (EU) No 1095/2010, intends to endorse the RTS and ITS submitted by ESMA once the above-mentioned concerns are taken into account and the necessary modifications are made.

Let me express my appreciation for the work undertaken by ESMA to deliver the proposed RTS and ITS. Should ESMA agree to the reformulations set out in the annex to this letter, my services would propose that the Commission adopts the amended RTS and ITS as a matter of urgency.

I am looking forward to continuing our good cooperation on these acts.

Yours sincerely,

Electronically signed

John BERRIGAN

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Enclosures: Amended drafts of the delegated regulation supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council with regard to regulatory technical standards setting out a contractual template for liquidity contracts for the shares of issuers whose financial instruments are admitted to trading on an SME growth market and of the implementing regulation laying down implementing technical standards for the application of Regulation (EU) No 596/2014 of the European Parliament and of the Council with regard to the format of insider lists and their updates

c.c.: Irene Tinagli MEP, Chair of the Committee on Economic and Monetary Affairs, European Parliament; Jeppe Tranholm-Mikkelsen, Secretary-General of the Council of the European Union