

OPINION OF THE EUROPEAN SECURITIES AND MARKETS AUTHORITY (ESMA)

Of 16 September 2019

Relating to the intended revision of the Accepted Market Practice on liquidity contracts notified by the Comisión Nacional del Mercado de Valores

1 Legal basis

1. Article 15 Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (MAR)¹ prohibits market manipulation, which includes “entering into a transaction, placing an order to trade or any other behaviour which gives or is likely to give, false or misleading signals as to the supply of, demand for, or price of, a financial instrument, a related spot commodity contract or an auctioned product based on emission allowances”.
2. However, Article 13 MAR also provides an exception to the general prohibition (“safe harbour”) where the transactions, orders or behaviour have been carried out for legitimate reasons and conform with an accepted market practice established by the relevant national competent authority (NCA).
3. Article 13 MAR is supplemented by the Commission Delegated Regulation (EU) 2016/908 of 26 February 2016² (CDR 2016/908) that further specifies the requirements listed in Article 13(2) of MAR that a NCA should take into account before deciding whether or not to establish an AMP.
4. Additionally, on 25 April 2017, ESMA published, in the form of an ESMA opinion (ESMA70-145-76), its points for convergence in relation to MAR AMPs on liquidity contracts. These points for convergence are aimed at ensuring a more consistent and convergent approach for the establishment of AMPs on liquidity contracts across Europe.

¹OJ 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.

2 Procedure

5. Before establishing an AMP, under Article 13(3) of MAR, a NCA intending to modify an AMP must notify ESMA and the other NCAs of its intention at least three months before the AMP is intended to take effect.
6. According to Article 13(4) of MAR, ESMA shall, within 2 months from the receipt of the notification made by an NCA, issue an opinion on the intended AMP revision 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 CDR 2016/908 and (b) whether the AMP would not threaten the market confidence in the Union's financial market.
7. Article 13(8) of MAR also foresees that NCAs shall review regularly, and at least every two years, the AMPs they have established. Article 12(5) of CDR 2016/908 determines that the issuance of an ESMA opinion regarding proposed modifications of established AMPs has to be made following the procedure for new AMPs.
8. The Board of Supervisors adopts this opinion in accordance with Article 13(4) of MAR and Article 29 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 Comisión Nacional del Mercado de Valores (CNMV).

3 Background

9. Following the notification received from CNMV of their proposed AMP on 19 September 2016, ESMA issued a positive opinion ([ESMA/2016/1663](#))⁴ on 16 December 2016, considering such proposal compatible with Article 13(2) MAR and with the CDR 2016/908, and noting that the proposal contained various mechanisms to limit the threat to market confidence.
10. In that opinion, ESMA invited CNMV to revise the AMP in its final decision or in a future revision of it, introducing a maximum monetary amount capping the resources to be allocated, distinguishing between the different categories of shares and including the expectation that the financial intermediary performing the liquidity contract be present on both sides of the order book in normal conditions.
11. The AMP was established by the CNMV on 11 November 2017, through "CNMV Circular 1/2017, of 19 December, on Liquidity Contracts for the purposes of their acceptance as a market practice"⁵ introducing maximum monetary amounts capping

³OJ L 331, 24.11.2010, p. 84.

⁴https://www.esma.europa.eu/sites/default/files/library/20161663_on_intended_accepted_market_practice_on_liquidity_contract_s_notified_by_the_cnmv.pdf

⁵ <http://www.cnmv.es/Portal/legislacion/legislacion/cronologico.aspx?id=2017&lang=en>

the resources to be allocated to the execution of the liquidity contract, as recommended in the ESMA opinion.

12. In the present case, on 25 July 2019 CNMV notified ESMA of its intention to modify their AMP on liquidity contracts, by setting a maximum monetary amount for the execution of liquidity contracts in very illiquid shares and enabling financial intermediaries performing these liquidity contracts to be present on both sides of the order book in case of auctions and the “fixing” trading system⁶.
13. The present opinion is based on the information provided by CNMV. Given that the scope of their proposed amendments is limited, ESMA will only analyse the new elements that CNMV proposes to modify. For the rest of the AMP, the ESMA opinion published on 16 December 2016 remains valid.

4 Opinion

On the notification received

14. The revision process by the CNMV was carried out in accordance with Article 13(8) MAR and CDR 2016/908. As a consequence, ESMA finds that the CNMV’s notification of 25 July 2019 provided the information required under Article 13(3) of MAR and Article 10 of the CDR 2016/908 (see annex). According to CNMV, the modification proposal has been made further to an extensive consultation with relevant domestic bodies and takes into account the framework introduced by MAR and the ESMA Opinion on liquidity contracts.
15. The other NCAs were duly notified of the proposed AMP by ESMA, in accordance with Article 13(3) of MAR.

Key issues arising from the proposed revision of the AMP

16. CNMV’s modification proposal contains two new elements:
 - a. In case of “very illiquid shares”, CNMV proposes to set an alternative “hard” limit of 20.000 euros per session. Such “hard” limit would permit exceeding the 25% threshold set out in the AMP for non-liquid shares in general.

The category of “very illiquid shares”, introduced by the ESMA points for convergence, does not exist under the regulatory framework set out by [MiFIR](#)⁷. However, the proposed amendment identifies these “very illiquid shares” as shares not considered to have a liquid market (non –liquid shares) according to Article 2(1)(17) MiFIR and Commission Delegated Regulation (EU) 2017/587

⁶ Auctions at fixed times each trading day.

⁷ 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. 84–148*

that, additionally, are: i) traded on a Spanish MTF, ii) traded through the “fixing” trading system of a Spanish regulated market, or iii) exceptionally, traded on a regulated market in the order driven continuous market system following a request from the issuer and a favourable report from the operator of the regulated market justifying that the stock is highly illiquid.

ESMA agrees that CNMV’s proposal to introduce an alternative limit of 20,000 per session for highly illiquid shares is in line with the ESMA points for convergence. As a consequence, ESMA considers that the proposed modification provides enough safeguards to the operation of market forces and the interplay of the forces of supply and demand, as requested by Article 13(2)(b) of MAR and Article 4 of the CDR 2016/908.

- b. CNMV’s final decision on 11 November 2017 did not allow financial intermediaries performing a liquidity contract to introduce simultaneously buy and sell orders *during auction periods* and for shares traded only through the “fixing” system.

CNMV now proposes to permit the financial intermediary to be present on both sides of the book during auctions and for shares traded only through the “fixing” system, requesting them to have arrangements in place to prevent self-execution.

ESMA agrees that this amendment allows greater convergence with its points for convergence, fulfilling the requirements of Article 13(2)(d) MAR and of Article 6(1)(a) and (b) of CDR 2016/908 on the price formation process.

5 Conclusion

17. Considering the above analysis, ESMA considers that the proposed amendments of CNMV’s AMP are compatible with Article 13(2) of MAR and with CDR 2016/908.
18. As a consequence, and in line with ESMA’s original opinion, ESMA considers that the revised CNMV’s AMP is compatible with Article 13(2) of MAR and with the CDR 2016/908 and contains various mechanisms to limit the threat to market confidence with respect to liquidity contracts and therefore maintains its positive opinion.
19. Furthermore, ESMA welcomes the further alignment of the Spanish AMP with the ESMA points for convergence by introducing a single hard threshold of 20,000 euros for very illiquid shares and the amendment to permit financial intermediaries to be present on both sides of the order book in auctions and for shares traded through the ‘fixing’ system.

Accepted Market Practice on *Liquidity Contracts*

Background

On 24/08/16, the CNMV notified ESMA, pursuant to Article 13(13) MAR, of its intention to establish an AMP relating to the Liquidity Contract. On 19/09/16, the CNMV submitted to ESMA the revised AMP under MAR. On 16/12/16, ESMA issued its opinion on the proposed AMP (ESMA/2016/1663). Specifically, ESMA considered such AMP to be compatible with Article 13(2) MAR and with the RTSs on AMPs, since it contained various mechanisms to limit the threat to market confidence.

On 25/04/2017, ESMA published, in the form of an ESMA opinion (ESMA70-145-76), points for convergence in relation to MAR AMPs on liquidity contracts. These points for convergence are aimed at ensuring a more consistent and convergent approach for the establishment of AMPs on liquidity contracts across Europe.

The AMP was established by the CNMV on 11/07/2017, through “CNMV Circular 1/2017, of 19 December, on Liquidity Contracts for the purposes of their acceptance as a market practice”.

This modified AMP on Liquidity Contracts, described in the template, is intended to replace the above-mentioned AMP.

Proposed date for establishment of the modified AMP:

Once ESMA issues an opinion with regard to the CNMV assessing the compatibility of this modified AMP with MAR and Supplementing Regulation thereof, the CNMV will take the necessary steps to approve the new Circular which will enter into force once it is published in the Spanish Official State Gazette (Boletín Oficial del Estado - BOE).

The modification of the AMP has been made in light of the experience gained from the existing AMP on Liquidity Contracts, the on-going supervisory activity of such contracts carried out by the CNMV and the comments obtained from the public consultation made pursuant to Article 2(1) (b) of CDR 2016/908.

The revision was already announced in ESMA’s report to the Commission on the application of accepted market practices (ESMA 70-145-1184).

Modifications of the former Accepted market practice (AMP) on Liquidity Contracts

The revision process is framed in accordance with Article 13(8) MAR and Article 12 CDR 2016/908 compelling Competent Authorities to review the AMPs that they have established at least every two years. As a result, the CNMV is introducing two modifications:

i) In the case of very illiquid shares, the change proposed is to contemplate an alternative limit, expressed in absolute terms in euros (20,000 euros) per session, such that the 25% threshold set by our AMP may be exceeded provided that the threshold of 20,000 euros is not exceeded. This possibility would only be applicable to non-liquid shares: i) traded on Spanish MTFs (MAB), or ii) traded through the “fixing”⁸ system (auctions at fixed times each trading day) of the Regulated market, or exceptionally iii) traded on a regulated market in the order-driven continuous market

⁸ The fixing system (segment) provides for a specific type of trading whereby the listed shares are auctioned through the session, and there are normally two periods for the allocation of the shares.

system provided that the CNMV authorizes it, following a request from the issuer and a favorable report from the operator of the regulated market that justifies that the stock is highly illiquid.

Most of the shares traded on the Spanish MTF do so through the fixing system.

It is important to highlight that this change is in line with one of the convergence points prepared by ESMA in relation to the conditions that liquidity contracts must meet to consider them as an AMP (Points for convergence in relation to MAR accepted market practices on liquidity contracts). Specifically, the volume limits section (Volume Limits) of the trading conditions indicates that *“a single threshold (20,000 euros) may be allowed, especially for very illiquid shares where even a percentage of 25% of the average daily volume on the market in a number of previous trading sessions may not allow the performer of the liquidity contract to effectively provide liquidity”*.

ii) Currently, our AMP indicates that the financial intermediary is not allowed to introduce purchase and sale orders simultaneously at any time in the case of shares quoted through the fixing system and in the case of auctions. The modification would consist in eliminating this reference, in order to facilitate the liquidity provision in some trading methods (like “fixing” auctions mentioned above).

In ESMA’s points of convergence mentioned above, the section on the *transmission of orders of supply and demand (Transmitting both bid and ask orders)* states that, *“in normal market conditions the financial intermediary should be present with orders on both sides of the book, though with no requirement to submit the best bid and best ask or to submit symmetrical bid and ask orders”*.

The CNMV understands that the introduction of these changes will allow greater alignment of our market practice with the convergence points prepared by ESMA.

Description of the AMP on “Liquidity Contract”:

i) General Description

The main characteristics of the modified AMP, the subject-matter of this notification, are the following:

- The sole purpose of the Liquidity Contracts is to enhance liquidity and the regular trading of shares of companies whose shares are listed on Spanish regulated markets and multilateral trading facilities.

- The performance of the Liquidity Contract shall be done by Investment Firms or Credit Institutions (Financial Intermediary) and the trades executed under a liquidity contract must be registered by the Financial Intermediary in two accounts: a securities account and the relevant cash account, both opened in the name of the Issuer and used solely for these transactions. Both accounts must be reconciled, maintain equilibrium, be proportional to the goals pursued by the contract and respect the limits on the resources of the contract indicated herein below. The Financial Intermediary must not be instructed by the issuer with regard to its activity on the issuer's shares.

- The Financial Intermediary shall, in no event, occupy a dominant position in the trading of the Issuer's shares. Since the need to enhance liquidity can be more pressing for "less liquid" issuers, the Liquidity contract will differentiate the issuers, based on their degree of liquidity. For these purposes, the financial intermediary shall not exceed in any trading session, 25% and 15%, for non-liquid and liquid shares, respectively, the average daily trading volume of the previous 30 sessions of the trading venue where the contract is executed. In the case of non-liquid shares traded on Spanish MTFs (MAB) or through the fixing system of the Regulated market, there is an alternative limit, expressed in absolute terms in euros (20,000 euros) per session, such that the 25% threshold set by our AMP may be surpassed provided that the threshold of 20,000 euros is not exceeded.

- The Liquidity Contract must be executed in such a way as to ensure its continuity, maintaining the necessary equilibrium between the volume of purchases and sales over the long term.

- Regarding the distinction between non-liquid and liquid issuers (shares), the CNMV proposes to use a transparent, simple and objective method, based on the concept of shares considered to have a liquid market ("liquid share") under MiFID II/MiFIR. Consequently, Liquidity contracts of issuers whose shares fall under the category of liquid shares shall respect the 15% threshold. For liquidity contracts affecting other issuers, the 25% threshold will apply.

- In this regard, in the case of volume restrictions, the 15% threshold is established at the same level as in the "Points for convergence in relation to MAR accepted market practices on liquidity contracts". On the other hand, the 25% threshold is established at the same level as in Article 3(3) of Commission Delegated Regulation (EU) 2016/1052 supplementing Regulation (EU) 596/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the conditions applicable to buy-back programmes and stabilisation measures, and the aforementioned Points for convergence in relation to MAR AMPs on liquidity contracts.

- In the case of very illiquid shares, defined as those that do not have a liquid market pursuant to Commission Delegated Regulation (EU) 2017/567 and, i) are traded on a multilateral trading facility, or ii) on a regulated market through the “fixing” system (segment), or iii) on a regulated market in the order-driven continuous market system, provided that the CNMV authorizes it, following a favorable report from the operator of the regulated market that justifies that the stock is highly illiquid, there will be an alternative limit, expressed in absolute terms in euros (20,000 euros) per session, such that the 25% threshold set by the AMP may be surpassed provided that the threshold of 20,000 is not exceeded.

- Activity during auction periods, and particularly during the closing auction, is permitted. Given the importance of the closing auction, as its price is often used as a reference for various transactions, and the need to provide as much liquidity as possible at any particular time where multiple interests are crossed, the Liquidity Contract allows the Financial Intermediary to introduce orders with certain price and volume limitations and with the obligation to act with exceptional care in order to avoid creating artificial changes in the price of the financial instrument. Specific provisions for the introduction of orders during auction periods are established. In this respect, when the Financial Intermediary places buy and sell orders for the shares during an auction, it must adopt the necessary measures to prevent them from being executed against each other.

- For those issuers whose shares are admitted to trading through the fixing segment the regime is as it follows: i) the calculation of 25% of the average daily trading volume of the trading venue where the liquidity contract is executed, that is, calculated with respect to the 30 previous sessions in which trading has taken place; and ii) the introduction and modification of orders during the auction, when these can be introduced with price and volume restrictions, provided that other market participants have sufficient time for reaction For shares admitted to trading through the fixing system, the order introduction rules are the ones stipulated for the closing auction.

- In any case, trades closed by a Financial Intermediary within the framework of a liquidity contract must not create artificial changes in the share’s price with respect to the market trend, or hamper the market's normal operation, or mislead third parties. To this end:

a) Buy orders must be made at a price not exceeding that of the last trade in the market between independent parties and the highest price of a buy order in the market order book, whichever is the highest.

b) Sell orders must be made at a price no lower than that of the last trade in the market between independent parties and the lowest price of a sell order in the market order book, whichever is the lowest.

- Additionally, limits will be defined in order to ensure that the balance of both accounts, the cash and the shares allocated to the contract respect the principle of proportionality with regard to the goals pursued by the contract, thus restricting the possibility of acquiring a dominant market position.

a) For liquidity contracts of issuers whose shares fall under the category of liquid shares under MiFID II/MiFIR, the maximum amount of cash and shares will, on aggregate, not exceed the amount of cash and shares that the Financial Intermediary would require if, for 13 trading sessions, it were to either only buy or only sell the maximum daily volume, subject, in any event, to a limit of 20 million euros.

b) For liquidity contracts of issuers whose shares do not fall under the above category, including those belonging to the very illiquid shares category (shares traded on Spanish MTFs (currently MAB), or through the “fixing” system (auctions at fixed times each trading day) of the Regulated market, or on a regulated market in the order-driven continuous market system authorized by the CNMV following the favorable report from the operator of the regulated market), the maximum amount of cash and shares will, on aggregate, not exceed at least one of the following limits:

-The amount of cash and shares that the Financial Intermediary would require if, for 20 stock market sessions, it engaged solely in purchasing or selling, concentrating the maximum daily volume; or

-The result of multiplying 1% of the Issuer's share capital by the share's closing price on the day prior to execution of the contract.

In any event, where a Liquidity Contract is signed by an Issuer whose shares do not have a liquid market in accordance with the provisions laid down in Commission Delegated Regulation (EU) 2017/567, including those traded on Spanish MTFs (currently MAB) or through the fixing system of the Regulated market, the cash and its equivalent in shares may not exceed 1 million euros.

- To ensure compliance with the principle of proportionality, the liquidity contract will also lay down the conditions under which the Financial Intermediary may, simultaneously or in succession:

a) Buy or sell the Issuer's shares in order to ensure equilibrium between the balance of the shares and cash, considering the expected performance of the liquidity contract.

b) Transfer a certain amount from the cash account to another account designated by the Issuer.

- With regard to the transparency conditions of the Liquidity Contract, any issuer (beneficiary) that enters into a Liquidity Contract must disclose to the public the following information:

a) Before it enters into force and is performed as an AMP, via the disclosure of the following information through the same means as those used for the dissemination of inside information:

i) the identity of the Financial Intermediary with which the performance has been arranged;

ii) the share to which the AMP will apply and the trading venues where the trades will be executed;

iii) the terms of the contract, and the number of shares and the amount of cash allocated to the securities and cash accounts, respectively.

b) On a quarterly basis, once the AMP has been performed, the daily aggregate figures of transactions executed under the contract, the aggregate amount of own shares purchased and sold, the amount of the cash paid and received, and the balance of the securities and cash accounts at the end of the reporting period and on the date of execution of the contract are disclosed to the public. This information, along with any change in the information referred to in subsections i), ii) and iii) above must be disclosed within the following five stock market sessions.

c) When a specific liquidity contract ceases to be performed, the issuer must disclose the fact that the contract is terminated and the transactions in own shares executed, detailing the number of own shares that were purchased and sold, the amount of cash paid and received, and the balance of the securities and cash accounts at the end of the reporting period and on the date of execution of the contract. Additionally, the issuer will report on the development of the execution of the contract and the reasons or grounds on which its conclusion is based.

- With regard to the restrictions, the AMP does not allow the issuer to engage, directly or indirectly, in any other trades with its own shares while the Liquidity Contract is in force, except for those trades closed in the cases referred to below, where the contract is suspended.

In this regard, the performance of transactions under the Liquidity Contract will be suspended in the following cases:

1. In the event of primary and secondary public offerings of the Issuer's shares, in which the stabilisation activity pursuant to Article 5 MAR is performed.

2. Between the disclosure to the market and settlement of a takeover bid for the Issuer's shares or of a takeover bid in which the Issuer is the bidder, and the consideration being offered consists of a swap or exchange of shares or a combination of cash and shares.

3. During the execution of a buy-back programme.

4. When the issuer purchases its own shares as a result of a compensation scheme for employees or directors, the maturity of a financial derivative instrument or a corporate action

20. ***ii) Types of person or group of persons who may perform the AMP***

Performance of the Liquidity Contract shall be done by Investment Firms or Credit Institutions (Financial Intermediary). The CNMV considers that these firms are subject to supervision by financial regulators, thereby promoting fairness, efficiency and market integrity while performing the practice. The CNMV also considers that from a prudential supervisory

perspective and to adequately protect market participants, in this particular AMP, it was considered necessary for persons who performed to be a specific type of “supervised persons”.

Additionally, market membership will become a condition to perform the liquidity contract, since it will enhance the appropriate supervision by the CNMV of those performing an AMP, and will facilitate the identification of trades, while reducing the risks of not complying with the relevant trading venue rulebooks.

The issuer is only allowed to sign a contract with one Financial Intermediary for each category of shares.

iii) Trading venues where the AMP will be performed

Transactions will be executed on Spanish regulated markets for shares and Spanish multilateral trading facilities.

iv) Types of person or groups of persons who may benefit from the performance of the AMP

23.

Any issuer in the Spanish markets - whose shares are traded on Spanish regulated markets and on Spanish multilateral trading facilities - may conclude a contract (Liquidity Contract) with a Financial Intermediary. The issuer (beneficiary) will benefit from the performance of the AMP through the appointment of the Financial Intermediary performing or executing it.

v) Description of the type of financial instrument to which the AMP relates

The Liquidity Contract relates to shares of companies traded on Spanish regulated markets and Spanish multilateral trading facilities.

vi) Indication of whether the AMP can be performed for a specific period of time and description of situations or conditions leading to a temporary interruption, suspension or termination

The AMP can be performed during the period of time that the CNMV deems appropriate provided that the behaviour engaged into is carried out for legitimate reasons, pursuant to Article 231 of the Spanish Securities Market Act. In this regard, the content of this provision mirrors the content of Article 12(1)(a)(ii) MAR.

Specific contracts between beneficiaries and persons performing the AMP will have a term of either 12 or 18 months after the signature date, as agreed by the parties, and will be tacitly extended for the same period of time, unless indicated otherwise by the same.

The issuer may not engage, directly or indirectly, in any other trades in its own shares while the liquidity contract is in force except for those trades closed in the cases referred to below, where the contract is suspended.

The performance of transactions under the Liquidity Contract will be suspended in the following cases:

1. In the event of primary and secondary public offerings of the Issuer's shares in which the stabilisation activity pursuant to Article 5 MAR is performed.
2. Between the disclosure to the market and settlement of a takeover bid for the Issuer's shares or of a takeover bid in which the Issuer is the bidder, and the consideration being offered consists of a swap or exchange of shares or a combination of cash and shares.
3. During the execution of a buy-back programme.
4. When the issuer purchases its own shares as a result of a compensation scheme for employees or directors, the maturity of a financial derivative instrument or a corporate action.

Rationale for which the practice could constitute market manipulation

The enhancement of liquidity, under the Liquidity Contracts, could give false or misleading signals, referred to in Article 12 MAR, as to the supply of, demand for, or price of a financial instrument, while lower price fluctuation due to enhanced liquidity could be construed as leading to an artificial price level that secures or is likely to secure the price of a financial instrument or is affecting or likely to affect the price of a financial instrument.

If transactions or other behaviour within the context of this market practice are not exempted from the prohibition under Article 15 MAR, this could mean that the implementation of such Liquidity Contracts may in some cases constitute market manipulation.

In order to ensure that transactions executed within the context of a Liquidity Contract are not considered as market manipulation, provisions are defined to determine the transparency requirements as well as the objectives, criteria, price and volume conditions and restrictions under which such Liquidity Contracts may be established as an Accepted Market Practice.

Transactions, orders or behaviour in conformity with an Accepted Market Practice shall also be carried out for legitimate reasons to benefit from the non-application of Article 15 MAR.

ASSESSMENT

The assessment is prepared on the basis of the current AMP as it was communicated to ESMA in September 2016, adapting such assessment to the proposed modifications and to the update of the regulatory provisions in the financial markets since that date.

List of criteria taken into account	Conclusion of the competent authority and rationale
(a) Level of transparency provided to the market	<p>In addition to the reporting and transparency obligations with regard to own shares to which listed companies are subject, any issuer (beneficiary) that enters into a Liquidity Contract must disclose to the public, through the same means as those used for the dissemination of the inside information, the following information;</p> <p>24. a) Before it enters into force and is performed as an AMP,</p> <p>25. i) the identity of the Financial Intermediary with which the performance has been arranged, the share to which the AMP will apply;</p> <p>26. ii) the trading venues where the trades will be executed, and the duration of the contract;</p> <p>27. iii) the number of shares and the amount of cash allocated to the securities and cash accounts, respectively.</p> <p>b) On a quarterly basis, once the AMP has been performed, the daily aggregate figures of transactions executed under the contract, the aggregate amount of own shares purchased and sold, the amount of cash paid and received, and the balance of the securities and cash accounts at the end of the reporting period and on the date of execution of the contract are disclosed to the public. This information, along with any change to the information referred to above in section a) i), ii) and iii) must be disclosed</p>

by the issuer within the following five stock market sessions.

c) When a specific liquidity contract ceases to be performed, the issuer must disclose the fact that the contract is terminated and the transactions in own shares executed, detailing the number of own shares that were purchased and sold, the amount of cash paid and received, and the balance of the securities and cash accounts at the end of the reporting period and on the date of execution of the contract. The issuer must also submit a report to the CNMV describing how the AMP has been performed and the reasons or grounds on which its conclusion is based.

The issuer must disclose information whenever the contract is suspended along with the reasons for this suspension, using the same means as those used for the dissemination of insider information. In addition to fulfilling the reporting requirements mentioned above, an issuer that enters into a liquidity contract must submit a copy of the contract to the CNMV when it has been concluded.

There is also a provision in the AMP which authorises the CNMV to access any information exchanged between the issuer and Financial Intermediary. The CNMV may also, under its general supervisory powers, request the issuer and/or the Financial Intermediary to submit information for any transaction executed.

	<p>Please note that the public disclosure of transactions under the Liquidity Contract is currently carried out through the same means as those used for the dissemination of inside information.</p>
<p>(b) Degree of safeguards to the operation of market forces and the proper interplay of the forces of supply and demand</p>	<p>After a careful assessment, the CNMV considered it important for the AMP to be performed by Investment Firms or Credit Institutions, in order to provide enhanced safeguards to the operation and to the market.</p> <p>The CNMV considers that from a prudential supervisory perspective and in order to adequately protect market participants and retail investors in this particular AMP, it was necessary for persons who performed to be “supervised persons”.</p> <p>Investment Firms and Credit Institutions are already obliged under the Spanish Securities Market Act and MiFID II/MiFIR provisions to fulfill obligations with regard to managing and executing clients’ orders as well as record-keeping rules that will allow an immediate identification of activities and trades.</p> <p>In addition, the Liquidity Contract stipulates that trades performed under it must be registered by the Financial Intermediary in two accounts: a securities account and the relevant cash account, both opened in the name of the Issuer and used solely for these transactions. Both accounts must be reconciled and the balances of the accounts associated with the Contract must maintain equilibrium and be proportional to the goals pursued by the contract.</p>

	<p>a) For liquidity contracts of issuers whose shares fall under the category of liquid shares pursuant to the provisions of Commission Delegated Regulation (EU) 2017/567, the maximum amount of cash and shares will, on aggregate, not exceed the amount of cash and shares that the Financial Intermediary would require if, for 13 trading sessions, it were to either only buy or only sell the maximum daily volume, subject in any event to a limit of 20 million euros.</p> <p>b) For liquidity contracts of issuers whose shares do not fall under the above category, including those traded on Spanish MTFs - currently MAB - or through the fixing system of the Regulated market, the maximum amount of cash and shares will, on aggregate, not exceed at least one of the following limits: (i) the amount of cash and shares that the Financial Intermediary would require if, for 20 trading sessions, it engaged solely in purchasing or selling, concentrating the maximum daily volume; or (ii) the result of multiplying 1% of the Issuer's share capital by the share's closing price on the day prior to execution of the contract.</p> <p>In any event, where a Liquidity Contract is signed by an Issuer whose shares do not have a liquid market in accordance with the provisions of Commission Delegated Regulation (EU) 2017/567, including those traded on Spanish MTFs - currently MAB - or through the fixing system of the Regulated market, the cash and its equivalent in shares may not exceed 1 million euros.</p>
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	<p>Financial Intermediaries must also keep the records of orders and transactions related to the Liquidity Contract for a minimum period of five years.</p> <p>Investment Firms and Credit Institutions can also be distinguished for having compliance departments in charge of duly assessing the risks of the AMP. They are also better positioned than other “non-MiFID” firms to determine and avoid conflicts of interest between the beneficiary and its clients and ensure compliance. In this regard, they are specifically required to have the necessary compliance and audit resources in order to monitor and ensure compliance at all times with the conditions set for the AMP. The contract also requires the Financial Intermediary and the issuer to assess and communicate to each other their potential conflict of interest existing when the contract is concluded or any conflict that might arise in the future, as well as to establish measures aimed at avoiding them.</p> <p>Market membership will also be required as an additional condition to perform the practice, as the CNMV considers that this is very helpful, since it enhances the relevant supervision by the CNMV of those persons performing an AMP, and facilitates the identification of the trades executed under the AMP, while reducing the risks of not complying with the corresponding trading venue rulebooks. In practice, all Financial Intermediaries who have executed a Liquidity Contract are currently market members.</p> <p>The AMP defines ex-ante a list of trading conditions for its performance, including</p>
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	<p>limits for both prices and volumes, and limits on positions.</p> <p>In this regard, the Financial Intermediary may, in no event, occupy a dominant position in the trading of the Issuer's shares. For these purposes, it may, in no case, exceed by 15% or 25%, respectively, the average daily trading volume on the main market of the trading venue where the liquidity contract is executed during the previous 30 sessions.</p> <p>In the case of non-liquid shares, that are traded, i) on Spanish MTFs (currently MAB), ii) or through the fixing system of the Regulated market, or iii) on a regulated market in the order-driven continuous market system provided that the CNMV has authorized it, following a favorable report from the governing company of the corresponding regulated market that justifies the rating of the stock as highly illiquid, there is an alternative limit, expressed in absolute terms in euros (20,000 euros) per session, such that the 25% threshold set by our AMP may be surpassed provided that the threshold of 20,000 euros is not exceeded.</p> <p>During auction periods, and particularly during the closing auction, the Financial Intermediary must act with exceptional care to avoid creating artificial changes in the price of the financial instrument. When the Financial Intermediary simultaneously places buy and sell orders for the shares during an auction, it must adopt the necessary measures to prevent them from being executed against each other.</p>
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In any case, trades closed by a Financial Intermediary within the framework of a liquidity contract must not create artificial changes in the share's price with respect to the market trend, or hamper the market's normal operation, or mislead third parties. To this end, the following rules on trading conditions apply:

a) Buy orders must be made at a price not exceeding that of the last trade executed on the market between independent parties and the highest price of a buy order in the market order book, whichever is the highest.

b) Sell orders must be made at a price no lower than that of the last trade performed on the market between independent parties and the lowest price of a sell order in the market order book, whichever is the lowest.

The AMP specifically provides for the possibility of carrying out block deals in a separate facility provided by the trading venue, only in exceptional circumstances; the person facilitating the trade shall be a third party and must respond to an offer to buy or sell generated outside the sphere of the Financial Intermediary.

Block deals will compute for the daily volume limit under the Liquidity contract but will not account for calculating the relevant 15% or 25% of the average daily trading volume of the trading venue where the liquidity contract is executed during the previous 30 sessions.

	<p>Finally, the Financial Intermediary must not be instructed by the issuer with regard to its activity on the issuer's shares and, therefore, it shall act independently.</p> <p>The provisions of the Liquidity Contract compels the Financial Intermediary to have an internal organisational structure that ensures that its employees who are entrusted with the decision-making regarding the trades under the contract are independent from other areas handling the proprietary account, portfolio management and processing third-party orders.</p>
<p>c) Impact on market liquidity and efficiency.</p>	<p>The objective of this practice is precisely to improve market liquidity and efficiency. Lack of liquidity in equities hampers the market's proper development and operation and may be detrimental to market participants and intermediaries. In line with the decisions adopted by other securities supervisors in the European Union, certain mechanisms aimed at increasing a security's liquidity may be appropriate if they minimise misleading signals and do not impair the orderly functioning of the market.</p> <p>In particular, Liquidity Contracts are designed to have a positive impact on some of the variables that affect liquidity.</p> <p>Experience has shown that the Liquidity Contract has increased the volume traded as it has helped and may even have been a key factor, at times, in the interaction of the supply and the demand of an issuer's shares. On the other hand, since it aims to ensure regular quotations for an otherwise illiquid share or</p>

	<p>for illiquid situations of a liquid share, it is expected that it will increase the number of orders in the order book with the capacity of increasing, to some extent, the speed of executing the transactions and the bid/offer spread.</p> <p>The CNMV would like to stress that price and volume restrictions under Liquidity Contracts are not intended to create artificial prices or an imbalance between supply and demand and, therefore, their impact on certain liquidity parameters, such as the volume weighted average price, should be somewhat limited.</p> <p>With regard to the impact on the daily closing price, as mentioned above there is a specific provision which requires the Financial Intermediary to take great care during the closing auction in order to ensure that its actions do not have a significant impact on share price performance. In addition, there are specific rules for the introduction of orders during the closing auction: a) the price of the buy order shall not exceed the higher of the theoretical equilibrium price of the auction at the time of introducing the order and the price of the last transaction executed on the market before the auction; b) the price of the sale order shall not be lower than the theoretical equilibrium price of the auction at the time of introducing the order and the price of the last transaction executed on the market before the auction.</p>
<p>d) The trading mechanism of the relevant market and the possibility for market participants to react properly and in a</p>	<p>The CNMV recognises the possibility of the practice affecting the price formation process.</p>

timely manner to the new market situation created by that practice.

Thus, the AMP compels the Financial Intermediary within the framework of a liquidity contract not to create artificial changes in the share's price with respect to the market trend, or hamper the market's normal operation, or mislead third parties.

On the other hand, Liquidity Contract provisions stipulate that trades must be executed on Spanish regulated markets or multilateral trading facilities through the order book in accordance with the trading rules, within the standard trading of these markets and using electronic trading systems.

The disclosure and the effective dissemination of the information are achieved by using the means stated above in section a) "Level of transparency provided to the market" using the same means as those used for the dissemination of inside information.

Moreover, the Liquidity Contract contains "ex ante" situations or conditions where it will be suspended; these are as follows: i) in the event of primary and secondary public offerings of the Issuer's shares, in which the stabilisation activity pursuant to Article 5 MAR is performed, ii) Between the disclosure to the market and settlement of a takeover bid for the Issuer's shares or of a takeover bid in which the Issuer is the bidder, and the consideration being offered consists of a swap or exchange of shares or a combination of cash and shares; iii) during share buyback programmes; iv) when the issuer purchases its own shares as a result of a compensation scheme for employees or directors, the maturity of a financial derivative instrument or a corporate action.

<p>(e) Risks for the integrity of, directly or indirectly, related markets, whether regulated or not, in the relevant financial instruments within the European Union.</p>	<p>In order to avoid risks for the integrity of related markets, the AMP includes different safeguards which are described below.</p> <p>Provisions included in the AMP ensure the principle of proportionality, encouraging the parties to maintain equilibrium between the balance of the cash and shares accounts associated with the contract.</p> <p>Additionally, the Financial Intermediary shall, in no event, occupy a dominant position in the trading of the Issuer's shares. Since the need to enhance liquidity can be more pressing for “illiquid” issuers, the Liquidity contract will differentiate the issuers, based on their degree of liquidity. For these purposes, the financial intermediary shall not exceed in any trading session, 25% and 15%, for illiquid and liquid shares, respectively, of the average daily trading volume of the previous 30 sessions of the trading venue where the contract is executed. A new alternative limit, expressed in absolute terms in euros (20,000 euros) per session is set for “very illiquid shares”, such that the 25% threshold set by the AMP may be surpassed provided that the threshold of 20,000 euros is not exceeded. This possibility would only be applicable to non-liquid shares traded, i) on Spanish MTFs (currently MAB), or ii) through the “fixing” system (auctions at fixed times each trading day) of the Regulated Market, or iii) on a regulated market in order-driven continuous market system provided that the CNMV authorizes it, following a favorable report from the operator of the regulated market that justifies that the stock is highly illiquid.</p>

The contract should determine the nature and level of the compensations. These must not undermine the principle of independence nor encourage the Financial Intermediary to artificially influence the price or trading volume by closing transactions. Compensation to be received by the financial intermediary shall consist of a fixed amount which shall not be linked to variables, such as the number of trades executed under the contract or the evolution of the price of the issuer's shares.

Trades performed under a liquidity contract must be registered by the Financial Intermediary in two accounts: a securities account and the relevant cash account, both opened in the name of the Issuer and used solely for these transactions. Both accounts must be reconciled and the balances of the accounts must be associated with the Contract.

The Liquidity Contract must define the conditions under which the Financial Intermediary will trade. Other duties and activities are contained in the contract, specifically in the section describing the market practice that is compulsory for every contract.

With regard to the organisational structure and internal arrangements of the persons performing the AMP, please refer to what is mentioned above in section b) *"Degree of safeguards to the operation of market forces and the proper interplay of the forces of supply and demand"*.

	<p>It is also important to highlight that an adequate reporting between the issuer (beneficiary) and the Financial Intermediary to fulfill their respective legal obligations, particularly the rules on insider information, is compulsory.</p> <p>Finally, reporting transactions to the CNMV is not specifically required under the AMP due to the following reasons: i) the CNMV may, under its general powers, request it at any time; ii) MiFID II/MiFIR requires European Investment Firms to send to the Competent Authorities the transaction reports through the TREM. The orders made under the contract are introduced by MiFID II/MiFIR authorised firms and are executed on the market under an agency basis, always on behalf of the issuer. This implies that in the Transaction Reporting regime under MiFID II/MiFIR, the client buyer or seller field will be filled with the name of the issuer. This enables the CNMV to track any transactions under the contract at any time; iii) transparency requirements explained in section a) are also used to analyse and verify any activity performed (issuers must disclose in the quarterly report the daily aggregate figures of its activity under the contract).</p>
<p>(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 European Union.</p>	<p>The Secondary Markets Department of the CNMV undertakes a supervisory exercise for every Liquidity Contract on a quarterly basis.</p> <p>The exercise assesses the fulfilment of the transparency requirements as well as the following conditions: limits on volumes, activity in closing auctions, compliance with restrictions and accuracy of the balance of the cash and securities accounts.</p>

	<p>When minor non-compliant issues are identified, a written explanation from the Financial Intermediary is required. A copy of the warning letter sent to the Financial Intermediary is also sent to the issuer. Meetings with beneficiaries and Financial Intermediaries are also held if any issues arise in relation to the performance of the contract.</p> <p>A written report for each periodic supervisory exercise is always prepared and submitted to the CNMV's management.</p> <p>From the CNMV's experience in its supervisory and investigation activities, to date no adverse result or outcome have been obtained that could cast doubt on the nature or purpose of the AMP.</p>
<p>(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.</p>	<p>Spanish regulated equity markets and Spanish multilateral trading facilities operate based on the SIBE electronic trading platform, developed entirely by Bolsas y Mercados Españoles, S.A.</p> <p>These markets are based on an order-led system, a single order book and an order-matching system that operates on the basis of a price-time priority.</p> <p>The fixing system provides for a specific type of trading whereby the listed shares are auctioned through the session normally with two periods for the allocation of the shares. This facilitates efficient price formation for</p>

shares with “reduced” liquidity. Apart from shares, warrants, certificates and exchange traded funds (ETFs) are also traded electronically.

With regard to the effects of the practice on market participants, it is important to highlight, that the Liquidity Contract, particularly with the modifications proposed, shall increase the probability of investors finding a counterparty, especially for low-liquidity shares or in an illiquid environment. The practice is therefore favorable for retail investors.

Secondly, the financial instruments within the scope of the Liquidity Contracts are shares of companies admitted to trading on Spanish regulated markets and multilateral trading facilities. Therefore, it is widely expected that retail investors’ participation will be very significant in most of the cases.

Finally, the AMP lays down conditions and restrictions on the performance of the practice, which are intended to guarantee the interest of retail investors.