



European Securities and  
Markets Authority

# Consultation Paper

**On the functioning of the regime for SME Growth Markets under the Markets in Financial Instruments Directive and on the amendments to the Market Abuse Regulation for the promotion of the use of SME Growth Markets.**



## Responding to this paper

ESMA invites comments on all matters in this paper and in particular on the specific questions summarised in Annex 1. Comments are most helpful if they:

1. respond to the question stated;
2. indicate the specific question to which the comment relates;
3. contain a clear rationale; and
4. describe any alternatives ESMA should consider.

ESMA will consider all comments received by 15 July 2020.

All contributions should be submitted online at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading 'Your input - Consultations'.

### Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA's rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA's Board of Appeal and the European Ombudsman.

### Data protection

Information on data protection can be found at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading '[Data protection](#)'.

### Who should read this paper

This document will be of interest to all stakeholders involved in the securities markets, with a particular focus on SME shares trading and SME growth markets. It is primarily of interest to competent authorities, SMEs, SME issuers, investment firms and trading venues. This paper is also important for trade associations and industry bodies, institutional and retail investors and their advisers, and consumer groups, because the MiFID II requirements and MAR amendments seek to promote access to capital markets for small and medium-sized

enterprises (SMEs) and to facilitate the further development of specialist markets that aim to cater for the needs of small and medium-sized issuers.

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## Acronyms and definitions used

CDR 2016/347	Commission Implementing Regulation (EU) 2016/347 of 10 March 2016 laying down implementing technical standards with regard to the precise format of insider lists and for updating insider lists in accordance with Regulation (EU) No 596/2014 of the European Parliament and of the Council
CDR 2016/908	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
CDR 2017/565	Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.
CDR 2019/1011	Commission Delegated Regulation (EU) 2019/1011 of 13 December 2018 amending Commission Delegated Regulation (EU) 2017/565 as regards certain registration conditions to promote the use of SME growth markets for the purposes of Directive 2014/65/EU of the European Parliament and of the Council
CP	Consultation Paper
EC	European Commission
EU	European Union
ESMA	European Securities and Markets Authority
ITS	Implementing Technical Standards
MAR	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
MiFID II	Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU



MiFIR	Markets in Financial Instruments Regulation – Regulation 600/2014 of the European Parliament and of the Council
MTF	Multilateral Trading Facility
NCA	National Competent Authority
Prospectus Regulation	Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market and repealing Directive 2003/71/EC Text with EEA relevance.
Q&A	Question and Answer
SME GMs Regulation	Regulation (EU) 2019/2115 of the European Parliament and of the Council of 27 November 2019 amending Directive 2014/65/EU and Regulations (EU) No 596/2014 and (EU) 2017/1129 as regards the promotion of the use of SME growth markets
RTS	Regulatory Technical Standards
SME	smaller and medium-sized enterprise
SME GM	SME growth market

# 1. Executive Summary

## Reasons for publication

Article 90(1)(b) of Directive 2014/65/EU<sup>1</sup> (MiFID II) mandates ESMA to submit a report to the European Commission (EC) to discuss the functioning of the SME Growth Markets (SME GMs) regime in the EU. Furthermore Regulation (EU) 2019/2115<sup>2</sup> on the promotion of the use of SME growth markets, mandates ESMA to submit to the EC draft Regulatory Technical Standards (RTS) to draw up a contractual template for a liquidity contract available to issuers of financial instruments admitted to trading on an SME GM and their liquidity providers and draft Implementing Technical Standards (ITS) specifying the format of the insider list that issuers admitted to trading on SME GMs are required to provide to Competent Authorities (CAs) upon request.

This Consultation Paper (CP) provides an assessment of the state of play of the SME GMs regime in the EU and seeks stakeholders' views on the amendments proposed by ESMA to the existing regime. The CP additionally seeks stakeholders' input and proposals on suggested initiatives to improve the attractiveness of the SME GMs regime from issuers', investors' and venues' perspectives. Furthermore, this CP presents ESMA's proposal for the draft RTS on liquidity contracts and the draft ITS specifying the format of the insider list.

Stakeholders are invited to provide feedback on the proposals presented in this CP. The input from stakeholders will help ESMA to finalise the report on the functioning of the SME GMs regime and the proposed draft technical standards.

## Contents

In the first part of the CP, section 2 details the relevant mandates. Section 3 presents a general overview of the current functioning of the SME GMs regime in the EU. Section 3.1 describes the initiatives undertaken up to now to promote the development of SME GMs in the EU and section 3.2 presents the results of a factual and data-based analysis undertaken by ESMA on the SME GM state of play. Section 4 presents ESMA's review and proposals to promote the functioning of the SME GM market regime in the context of MiFID II provisions. Section 5 and Section 6 focus on the amendments recently introduced by Regulation (EU) 2019/2115 to the MAR regulation. More in details, section 5.1 provides the legislative background on liquidity contracts, section 5.2 presents some preliminary consideration on the draft RTS on liquidity contracts and section 5.3 motivates the approach ESMA has chosen in the draft RTS. Section 6.1 describes the revised requirements in relation to the insider list for issuers whose financial instruments are admitted to an SME GM and section 6.2 motivates the approach ESMA has chosen in the draft ITS. The

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Annexes detail the relevant mandates, a summary of questions to stakeholders, the draft RTS and ITS and a preliminary cost benefit analysis (CBA).

### **Next Steps**

ESMA will consider the feedback it receives to this CP and will deliver the draft RTS on liquidity contracts and draft ITS on the format of the insider list and a final report on the functioning of the SME GMs regime in the EU as early as possible taking into account the impact of the COVID-19 crisis.

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<sup>1</sup> Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349–49).

<sup>2</sup> Regulation (EU) 2019/2115 of the European Parliament and of the Council of 27 November 2019 amending Directive 2014/65/EU and Regulations (EU) No 596/2014 and (EU) 2017/1129 as regards the promotion of the use of SME growth markets (OJ L 320, 11.12.2019, p. 1–10).

## 2. Introduction

1. With the application start date of MiFID II in January 2018, a new category of MTFs labelled SME Growth Markets had been created. The creation of SME GMs under MiFID II envisaged to promote access to capital markets for small and medium-sized enterprises (SMEs) and to facilitate the further development of specialist markets that aim to cater for the needs of small and medium-sized issuers. Since the creation of the SME GM label several initiatives have been undertaken to promote the development of such MTFs, with the ultimate goal of contributing to the development of an improved capital market for SMEs in the EU, acknowledging their key role in the economic growth of the Union.
2. It is a key objective of the Capital Markets Union (CMU) to facilitate access to diversified sources of financing for smaller businesses in the EU, making it cheaper and simpler for them to access public markets and ultimately reducing the dependence on bank funding and allowing a broader investor base and easier access to additional equity capital and debt finance.
3. In this CP ESMA is undertaking a review of the current state of play of the SME GMs regime in the EU, as prescribed by Article 90(1)(b) of MiFID II, in order to understand whether any changes or additional initiatives should be proposed to achieve those objectives and what those initiatives could be.
4. Additionally, ESMA is presenting a draft RTS on Liquidity Contracts and draft ITS on the Insider List, as envisaged in the recent initiative under Regulation (EU) 2019/2115 the 'SME Regulation') which amends the Market Abuse Regulation (MAR).
5. As the MiFID II report and the MAR amendments both focus on SME GMs and SME issuers, ESMA is looking at both mandates together, seeking stakeholders' views both on the current state of play of the MiFID II SME GMs regime and on ESMA's proposed technical standards.

### **MiFID II review report**

6. Article 90(1)(b) of MiFID II, mandates the EC, after consulting ESMA, to present a report providing an overview of the functioning of the SME GMs regime in the Union and in particular assess whether the threshold in point (a) of Article 33(3) remains appropriate.

#### **Article 90 (1)(b) of MiFID II:**

*Before 3 March 2020 the Commission shall, after consulting ESMA, present a report to the European Parliament and the Council on:*

(a) [...]

- (b) The functioning of the regime for SME growth markets, taking into account the number of MTFs registered as SME growth markets, numbers of issuers present thereon, and relevant trading volumes;

*In particular, the report shall assess whether the threshold in point (a) of Article 33(3) remains an appropriate minimum to pursue the objectives for SME growth markets as stated in this Directive;*

[...]

7. The SME GMs regime is specified notably under Article 33 of MiFID II which sets out the minimum requirements an MTF should comply with to be registered as an SME GM. Those requirements have been further specified under Articles 77 to 79 of Commission Delegated Regulation (EU) 2017/565. Considering their strong interconnection, it appears appropriate to review in this report predominantly the Level 1 provisions but to also consider whether any changes to Level 2 would appear appropriate.

### **MAR Technical Standards**

8. Since the creation of the SME GM category the EC has further reviewed the regulatory barriers to SME admission on public markets. In the CMU mid-term review published in June 2017, the EC announced its intention to take further action with respect to the regulatory package relating to SMEs and flagged the necessity to focus on simplifying capital-raising for these enterprises.
9. In addition to other initiatives targeted at fostering the growth of SME GMs, the SME Regulation provides for targeted amendments to two key pieces of financial services legislation, namely MAR and the Prospectus Regulation.
10. Overall, the proposed changes to MAR aim to strike a balance between alleviating the administrative burdens of trading on public markets for SMEs while at the same time safeguarding market integrity. The proposed changes to the Prospectus Regulation provide for a 'transfer prospectus', which intends to lead to cost savings for SMEs wishing to graduate to regulated markets.
11. With the amendments to MAR ESMA has been mandated to draft RTS on Liquidity Contracts and ITS on Insider Lists for SME GM issuers.
12. As regards the RTS on liquidity contracts, the amendments to Article 13 of MAR seek to develop the conditions for issuers to enter into liquidity contracts that would not be considered as market manipulation, even in the absence of a MAR accepted market practice (confer Article 13(1) of MAR).
13. ESMA is mandated to set out a contractual template to be used by issuers and financial intermediaries.

14. More specifically, Recital 8 of the SME Regulation states that “the Commission should adopt regulatory technical standards, setting out a template to be used for the purposes of such contracts, developed by the European Supervisory Authority”.
15. Accordingly, Article 13 of MAR now includes an empowerment for ESMA to draft an RTS which develops a contractual template to be used for the purpose of entering in liquidity contracts.

**Article 13(13) of MAR:**

*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.*

16. As regards the ITS on insider lists, the amendments to Article 18 of MAR establish a new regime which imposes the obligation to draw up and maintain a slightly lighter insider list on issuers whose financial instruments are traded on an SME GM. This insider list should only include those persons which have a contractual working relationship with the issuer and have regular access to inside information.
17. When justified by specific national market integrity concerns, Member States can decide that issuers admitted to an SME GM should include in the insider list the same individuals as any other issuer (i.e. including in the list any other person performing tasks through which they have access to inside information and not just those persons who have regular access to inside information).
18. In the latter circumstances though, the insider list should nonetheless imply a lesser administrative burden than the standard format of insider lists applying to non-SME GM issuers.
19. Article 18(6) of MAR includes an empowerment for ESMA to draft an ITS specifying the less burdensome format of the insider list to be used in this latter case.

**Article 18(6) of MAR:**

*ESMA shall develop draft implementing technical standards to determine the precise format of the insider lists referred to in the second subparagraph of this paragraph. The format of the insider lists shall be proportionate and represent a lighter administrative burden compared to the format of insider lists referred to in paragraph 9.*

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

20. Based on the responses received to this consultation, ESMA will prepare a final review report on the MiFID II SME GMs regime and the MAR draft RTS and ITS and submit them to the EC later this year and as early as possible. Respondents to the consultation are encouraged to provide relevant information, including quantitative data where needed, to support their arguments or proposals.

### **3. The SME GMs regime**

#### **3.1 Legislative background on the SME GMs regime**

21. Article 33 of MiFID II introduced the new category of MTFs labelled SME GM. The creation of the SME GM category responded to the difficulties SMEs were facing in raising capital from public markets compared to larger issuers. Before the creation of the SME GM category, market operators had created trading venues specialised on targeting SMEs, mostly falling under the MiFID MTF category, but despite such venues, difficulties for SMEs issuers materialised both from the demand and the supply side<sup>3</sup>.
22. Article 33(3) of MiFID II establishes the conditions which an MTF shall satisfy when applying to its NCA to be registered as an SME GM. Such conditions encompass several requirements, including a 50% threshold on the minimum number of SMEs issuers traded on the SME GM, appropriate criteria for initial and ongoing admission to trading, sufficient information published and appropriate ongoing financial reporting of issuers, dissemination of information to the public and compliance with systems and controls under MAR. An MTF seeking registration as an SME GM should meet such conditions additionally to those already applicable to any MTF under MiFID II.
23. Articles 77 to 79 of CDR (EU) 2017/565 further specify the criteria to be used by MTFs to (i) identify companies that qualify as SMEs for the purpose of the SME GM label, and (ii) register/deregister as an SME GM. In particular, Article 77 of CDR 2017/565 defines, for the purpose of MiFID II, an SME issuer as an issuer whose shares have been admitted to trading for less than three years with a market capitalisation below EUR 200 million. Further Article 77 specifies that for issuers that have no equity instrument traded on any trading venue to qualify as SMEs, the nominal value of debt issuances over the previous calendar year, on all trading venues across the Union, shall not exceed EUR 50 million.

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<sup>3</sup> Recital 132: “It is desirable to facilitate access to capital for smaller and medium-sized enterprises (SMEs) and to facilitate the further development of specialist markets that aim to cater for the needs of smaller and medium-sized issuers. Those markets which are usually operated under this Directive as MTFs are commonly known as SME growth markets, growth markets or junior markets. The creation within the MTF category of a new sub-category of SME growth market and the registration of those markets should raise their visibility and profile and aid the development of common regulatory standards in the Union for those markets. Attention should be focused on how future regulation should further foster and promote the use of that market so as to make it attractive for investors and provide a lessening of administrative burdens and further incentives for SMEs to access capital markets through SME growth markets.”

24. Specific provisions creating tailored requirements or incentives for SME issuers trading on SME GMs have been included in several regulations. As described above, recent amendments to MAR provide alleviations for the publication of insider lists for issuers on SME GMs and aim at facilitating the provision of liquidity for such issuers through the creation of an EU framework for liquidity contracts.
25. The Prospectus Regulation entering into application on 21 July 2019 also offers some alleviation in terms of requirements for SME issuers. That regulation establishes a proportionate EU growth prospectus tailored for SMEs and mid-cap companies and a simplified prospectus for use in case of secondary issuance for issuers whose securities are admitted to trading on a Regulated Market (RM) or an SME GM for at least 18 months. ESMA provided its technical advice on the format and content of the EU Growth prospectus to the Commission. The EU Growth prospectus aims to drive down the costs of preparing a prospectus by smaller issuers, while at the same time providing investors with all the information that is material to assessing the offer and taking an investment decision. The Prospectus Regulation has recently been amended so that this simplified prospectus can be used by issuers listed on an SME GM to 'graduate' to trade on a regulated market.
26. The CSDR and related Level 2 Regulations provide for less stringent settlement discipline measures regarding SME GMs securities transactions (i.e. lower cash penalty rates for settlement fails, and flexibility not to apply the buy-in process to settlement fails until up to 15 days after the intended settlement date). These are meant to provide incentives for timely settlement, without affecting the smooth and orderly functioning of such trading venues.

### **3.2 Overview of the current state of play of the SME GMs regime**

27. Currently in the EU27 and the UK 20 MTFs have applied and been granted the SME GM<sup>4</sup> status. ESMA is also aware of fourteen additional MTFs which target trading of SME issuers' financial instruments but preferred not to register as an SME GM. The list of trading venues targeting SMEs is presented in Tables 1 and 2.

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<sup>4</sup> The number of registered SME GM currently reported in ESMA register is fifteen due to some technical issues that materialised at time of attempted registration from the NCAs.

**TABLE 1 LIST OF MTFs REGISTERED AS SME GM**

Trading venue name	MIC	Country	Number of SME issuers - shares	% of SME issuers - shares	Number of SME issuers - bonds	% of SME issuers - bonds	Date of registration as SME GM
Euronext Growth Brussels	ALXB	BE	8	89%	20	63%	15 October 2019
BEAM - SME GM (Bulgarian Stock Exchange)	GBUL	BG	-	-	-	-	20 December 2018
Xetra - Scale - Off Book	XETW	DE	39	85%	-	-	16 December 2019
Xetra - Scale	XETS	DE	40	83%	-	-	16 December 2019
Boerse Frankfurt - Scale	FRAS	DE	41	84%	7	70%	16 December 2019
First North Denmark - SME GM (Nasdaq)	DSME	DK	21	100%	-	-	16 June 2019
First North Finland - SME GM (Nasdaq)	FSME	FI	29	97%	-	-	08 July 2019
Euronext Growth Paris	ALXP	FR	199	94%	38	93%	09 October 2019
AIM (London Stock Exchange)	AIMX	GB	755	75%	-	-	03 January 2018
NEX Exchange Growth Market (non-equity)	NEXF	GB	-	-	4	100%	14 May 2018
NEX Exchange Growth Market (equity)	NEXG	GB	74	88%	-	-	14 May 2018
Progress (Zagreb Stock Exchange)	XZAP	HR	1	100%	-	-	27 January 2019
Xtend (Budapest Stock Exchange)	XTND	HU	1	100%	-	-	01 July 2019
Euronext Growth Dublin	XESM	IE	16	62%	-	-	11 October 2019
AIM Italia (Borsa Italiana LSEG)	XAIM	IT	138	95%	14	100%	03 January 2018
Catalyst MTF (GPW)	WMTF	PL	NA	NA	NA	NA	26 July 2019
New Connect (GPW)	XNCO	PL	NA	NA	NA	NA	26 July 2019
Euronext Growth Lisbon	ALXL	PT	3	100%	-	-	11 October 2019
First North Sweden - SME GM (Nasdaq)	SSME	SE	282	95%	-	-	26 June 2019
Nordic Growth Market (NGM)	NMTF	SE	68	97%	4	67%	26 June 2019
			<b>1,715</b>		<b>87</b>		

Source: ESMA register and NCAs. The number of issuers was calculated based on data submitted to ESMA FIRDS/FITRS systems and through a survey to NCAs. NA – data not available.

**TABLE 2 LIST OF MTFs NOT REGISTERED AS SME GM BUT TARGETING SMEs**

Trading venue name	MIC	Country	Number of SME issuers - shares	% of SME issuers - shares	Number of SME issuers - bonds	% of SME issuers - bonds
Prague Stock Exchange - MTF	XPRM	CZ	5	14%	1	100%
M:access (Boerse Muenchen Gettex)	MUND	DE	15	71%	1	0%
M:access (Boerse Muenchen)	MUNB	DE	50	81%	1	0%
MAB SMN (BME)	MABX	ES	105	89%	-	-
MARF (BME)	MARF	ES	-	-	76	97%
Property Partner Exchange	PPEX	GB	1	100%	-	-
Athens Exchange Alternative Market EN.A.	ENAX	GR	12	100%	2	100%
ExtraMOT Pro3 (Borsa Italiana)	XMOT	IT	-	-	147	34%
Prospects (Malta Stock Exchange)	PROS	MT	1	100%	22	100%
Captin B.V.	CPTX	NL	1	100%	1	100%
NPEX B.V.	NPEX	NL	-	-	-	-
Merkur Market (Oslo Stock Exchange)	MERK	NO	32	89%	-	-
CAN ATS (Bucharest Stock Exchange)	XCAN	RO	287	95%	10	100%
Spotlight Stock Market	XSAT	SE	195	99%	-	-
			<b>704</b>		<b>261</b>	

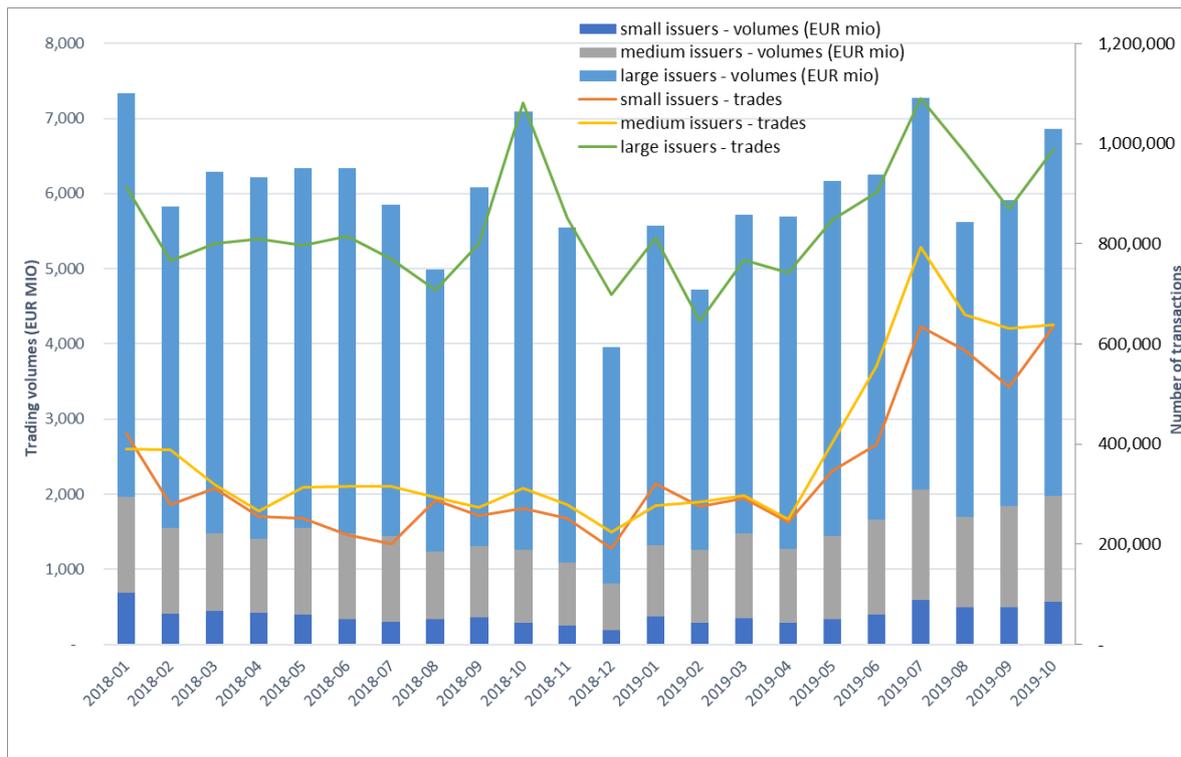
Source: Survey conducted among the Secondary Markets Standing Committee at ESMA. The number of issuers was calculated based on data submitted to ESMA FIRDS/FITRS systems

28. While SME issuance of shares appears to be fairly developed, that does not appear to be the case for the issuance of bonds across the EU27 and UK. Since SME issuance and trading activity in bonds is very limited at this stage, the analysis presented in this section focuses on trading of SME shares.

**Q1: Do you have any views on why the SME activity in bonds is limited? If so, do you see any potential improvements in the regime which could create an incentive to develop those markets?**

29. The total trading volumes on MTFs offering SME shares have been stable during the observation period, which runs from January 2018 to October 2019, and amounted approximately to EUR 2,000 Mio as of late 2019 (cf. Figure 1). In terms of frequency of trading, there has been a significant increase in number of trades of SME shares in 2019. This finding is possibly due to the registration of three new Nordic SME GMs in the second half of 2019.

**FIGURE 1 TOTAL VOLUMES AND NUMBER OF TRADES IN SHARES ON MTFs FINANCING SMEs**

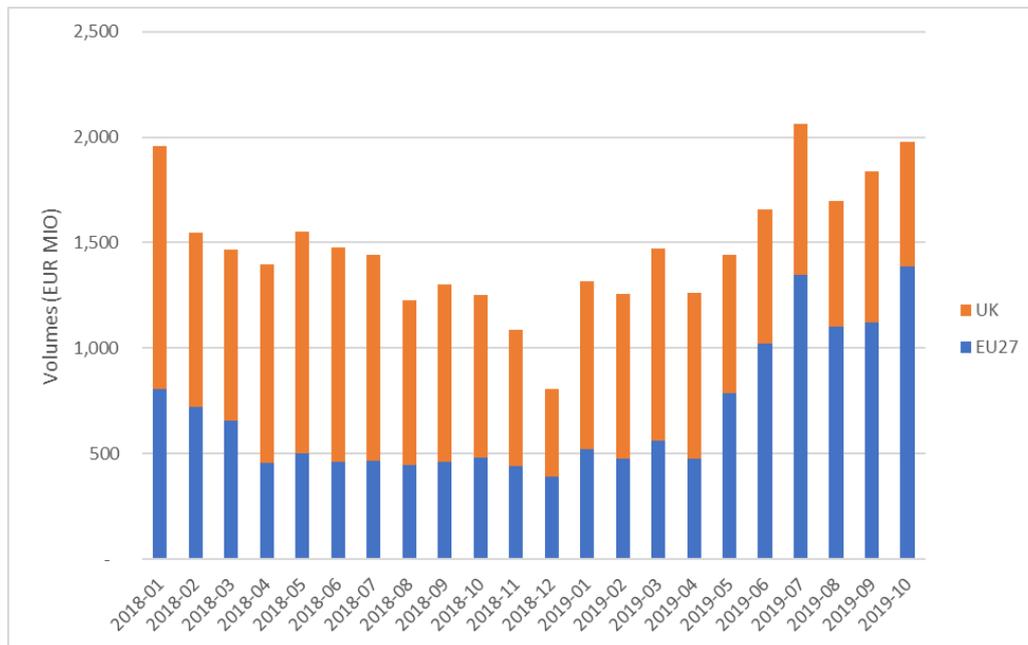


Source: ESMA. SME issuers have been identified based on the capitalisation of the issuer. Small issuers have been defined as not exceeding EUR 20 Mio and medium issuers as not exceeding EUR 200 mio. The volumes are calculated on the basis of trading activity reported to FITRS by all MTFs registered as SME GM as well as those MTFs which are targeting SMEs.

30. According to the data analysis, the vast majority of trading volume is concentrated on MTFs registered as SME GMs, with only about 2.74% of the total volume traded on those MTFs which are targeting SMEs without applying for the formal SME GM registration.

31. Given the withdrawal of the UK from the EU, it is of interest to compare trading volumes in SME shares in the UK and the EU27, as per Figure 2.

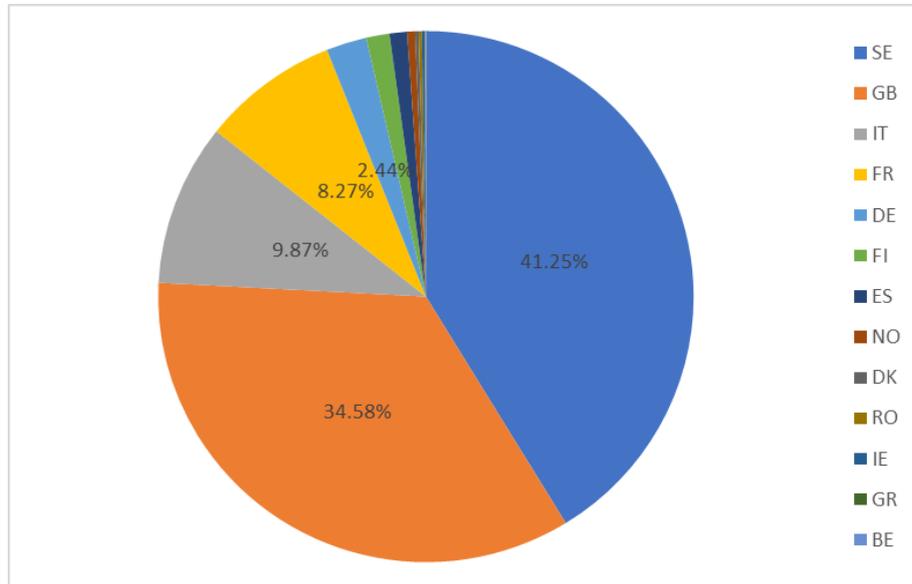
**FIGURE 2 TOTAL VOLUMES OF SME TRADING ON MTFs TARGETING SHARES OF SMALL AND MEDIUM ISSUERS – EU VS UK**



Source: ESMA. SME issuers have been identified based on the capitalisation of the issuer. Small issuers have been defined as not exceeding EUR 20 Mio and medium issuers as not exceeding EUR 200 mio. The volumes are calculated on the basis of trading activity reported to FITRS by all MTFs registered as SME GM as well as those MTFs which are targeting SMEs

32. As displayed in Figure 2, at the early stage of the SME GMs regime in 2018, the UK accounted for the majority of SME issuers trading. Despite this, in the course of the second half of 2019, with the registration of new SME GMs in the EU27, the trading in shares of SME issuers increased significantly on EU27 markets.
33. Figure 3 provides details about the geographical breakdown of trading volumes in EU27 member states and the UK. This analysis is based on data ranging from July to October 2019, hence reflecting the state of SME markets in most recent months. Sweden is the largest SME market, followed by the UK, Italy and France.

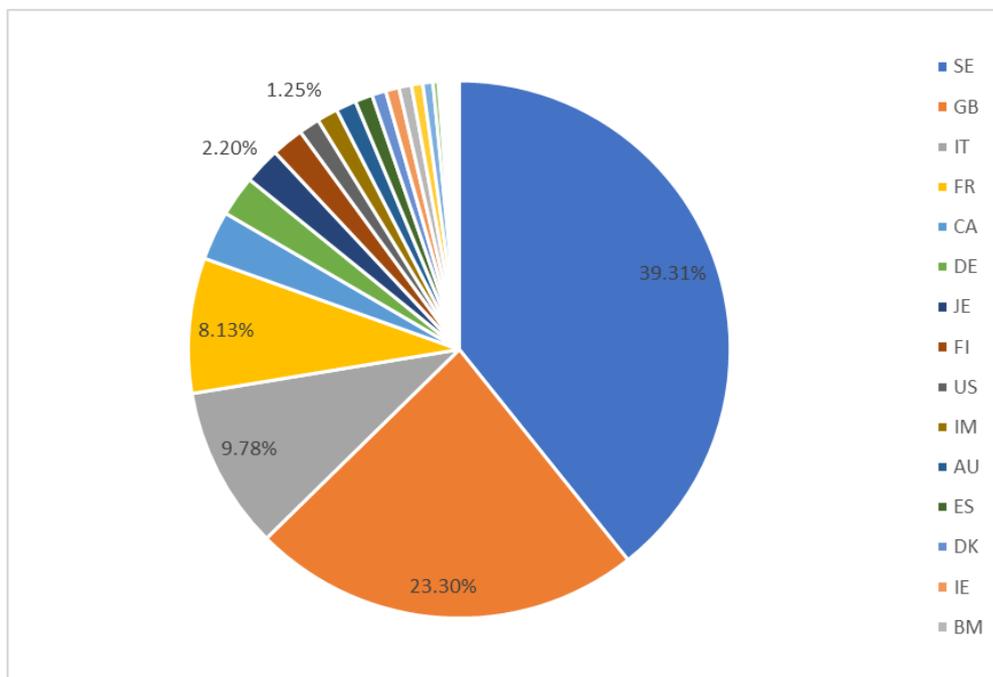
**FIGURE 3 DISTRIBUTION OF SME TRADING VOLUMES BASED ON TV'S LOCATION (JUL-OCT 2019)**



Source: ESMA. SME issuers have been identified based on the capitalisation of the issuer. Small issuers have been defined as not exceeding EUR 20 Mio and medium issuers as not exceeding EUR 200 mio. The volumes are calculated on the basis of trading activity reported to FITRS by all MTFs registered as SME GM as well as those MTFs which are targeting SMEs.

34. A similar geographical breakdown displaying trading volumes of issuers based in a specific member state is presented in Figure 4. It can be observed that the largest trading volume in SME shares is concentrated on Swedish issuers, followed by UK, Italian and French issuers.
35. From further analysis it appears that while most trading venues located in the EU27 report trading of issuers from the same country as the trading venue, the UK reports the activity of foreign issuers as well, including issuers from Canada, the US or Australia. EU27 markets report mostly national issuers' activity: 95% of activity in Sweden concerns Swedish issuers whereas 99% and 98% in case of Italy and France respectively concern national issuers. In comparison UK venues reported 67% of activity concerning UK issuers and the rest as international.

**FIGURE 4 DISTRIBUTION OF TRADING VOLUMES BASED ON ISSUER'S LOCATION (JUL-OCT 2019)**



Source: ESMA. SME issuers have been identified based on the capitalisation of the issuer. Small issuers have been defined as not exceeding EUR 20 Mio and medium issuers as not exceeding EUR 200 mio. The volumes are calculated on the basis of trading activity reported to FITRS by all MTFs registered as SME GM as well as those MTFs which are targeting SMEs.

**Q2: In your view, how could the visibility of SME GMs be further developed, e.g. to attract the issuers from other members states than the country of the trading venue?**

#### **4. ESMA's review of the SME GMs regime under MiFID II**

36. The provisions under Article 33(3) of MiFID II establish a number of requirements for MTFs who wish to register as SME GMs relating to (i) the minimum proportion of issuers admitted to trading that qualify as SMEs, (ii) the criteria established for the initial and ongoing admission to trading, (iii) the provision of appropriate information, and, (iv) the systems and controls to be set in place to detect and prevent market abuse.

37. Following ESMA's technical advice (Final Report ESMA/2014/1569, December 2014), the Commission has specified those requirements in Article 78 of CDR (EU) 2017/565. Those Level 2 provisions try to strike a balance between the importance of leaving sufficient flexibility to MTFs registered as SME GMs and the necessity to ensure appropriate and harmonised investor protection. This approach is

reflected in Recital 112 of CDR (EU) 2017/565: “Given the diversity in operating models of existing MTFs with a focus on SMEs in the Union, and to ensure the success of the new category of SME growth market, it is appropriate to grant SME growth markets an appropriate degree of flexibility in evaluating the appropriateness of issuers for admission on their venue. In any case, an SME growth market should not have rules that impose greater burdens on issuers than those applicable to issuers on regulated markets.”

38. While ESMA still considers this approach to be appropriate, it deems it useful to undertake a review of the applicable provisions to see whether adjustments should be introduced either in Level 1 or Level 2 to further incentivise the emergence of MTFs registered as SME GMs, to further increase investors’ confidence in those markets and to, more generally, build a more harmonised framework and stronger identity. Hence, this section analyses the current Level 1 and Level 2 provisions and offers proposals on which stakeholders are invited to comment. In addition, this section analyses possible medium-term measures that could possibly be undertaken in the future to foster the growth and success of the SME GMs regime.

#### **4.1 Criteria for the percentage of issuers that should qualify as SMEs at the time of MTF registration as SME GM (Article 33(3)(a) of MiFID II)**

##### **Analysis**

39. Article 33(3)(a) of MiFID II specifies that for an MTF to apply to be registered as an SME GM at least 50% of the issuers whose financial instruments are admitted to trading on the MTF shall be SMEs at the time when the MTF is registered as an SME GM and in any calendar year thereafter.
40. This provision has been specified in Articles 77, 78 and 79 of CDR (EU) 2017/565:
- Article 77 clarifies the definition of SMEs setting in particular a EUR 200 million market capitalisation threshold for issuers with shares trading on the MTF;
  - Article 78 specifies the methodology to determine whether the market complies with the 50% threshold which should be assessed on the basis of the number of issuers only, disregarding other factors (e.g. the turnover of SME shares vs non-SME shares);
  - Article 79 sets out the conditions under which an MTF that does not comply any longer is required to be deregistered as an SME GM; deregistration is imposed if the proportion of SME issuers falls below 50% for three consecutive years.
41. ESMA understands that the Article 33(3)(a) threshold (and the related Level 2 provisions) have been calibrated to (i) facilitate the registration of existing MTFs with an SME focus as SME GMs during the first years of application of the new

regime, and, (ii) ensure that a temporary failure to meet this criterion does not lead to an immediate deregistration.

42. As it can be seen in Table 1 above, all MTFs registered as SME GMs are well above the MiFID II 50% threshold, the vast majority being above 90% of SME issuers. The less specialised SME GMs still have more than 75% SME shares admitted to trading on its venue. Similarly, with respect to MTFs not registered as SME GMs but targeting SMEs, the percentage of SME issuers is above 70% in most cases. The requirement established under Article 33(3)(a) of MiFID II is therefore almost always exceeded by a substantial margin.
43. Regarding trading volumes, Figure 1 shows that the majority of executed volumes remain in shares of large issuers (i.e. issuers with a market capitalisation above 200 Mio). Using a methodology based on volumes to determine whether an MTF can be registered as an SME GM would therefore lead to deregistering most of the current SME GMs.
44. Regarding MTFs that have sought registration as SME GMs, ESMA registers' entries show that three MTFs were registered as SME GM at the end of 2018 and a further eight were added in 2019. It can also be noted that most of them have been granted the SME GM label in the second quarter of 2019 suggesting that the on-boarding of MTFs with an SME focus is still an ongoing process.
45. Furthermore, ESMA has clarified in a Q&A (Q&A 8 of section 5 of the ESMA MiFID Q&As on market structure topics<sup>5</sup>) that "the operator of an MTF can apply for a segment of the MTF to be registered as an SME growth market when the requirements and criteria set out in Article 33 of MiFID II and Articles 77 and 78 of the Commission Delegated Regulation 2017/565 are met in respect of that segment".
46. This clarification has been useful for market participants and has incentivised some MTFs to seek for registration as SME GMs. Nevertheless, in order to increase the legal certainty, ESMA would consider it useful to include this clarification directly in Level 1 text.

## **Proposal**

47. In ESMA's view, considering that the SME GMs regime in the EU is not yet mature but rather still growing and settling-in, the 50% threshold remains appropriate at the current stage. It could be counterproductive to increase the threshold, potentially preventing new MTFs from seeking registration and hampering the future growth of specialised SME capital markets in the EU.
48. Nevertheless, ESMA would welcome views regarding a possible review of such threshold in the medium term. In ESMA's view a way forward to foster the growth of the SME GMs regime could be to create more targeted markets which have a

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<sup>5</sup> ESMA Q&As on MiFID II and market structure topics, ref. ESMA70-872942901-38, [https://www.esma.europa.eu/sites/default/files/library/esma70-872942901-38\\_qas\\_markets\\_structures\\_issues.pdf](https://www.esma.europa.eu/sites/default/files/library/esma70-872942901-38_qas_markets_structures_issues.pdf).

higher percentage of SMEs listed. ESMA contemplates a threshold of 75-80% of SME issuers listing.

49. ESMA agrees that setting a higher threshold and forcing SME GMs to become more specialised could reduce the liquidity available on those markets since the majority of the volume seems to be in shares of issuers not qualifying as SMEs. However, statistics show that existing and potential SME GMs could easily comply with an increased threshold without changing the shares admitted to trading on their venue and such an increase should therefore not reduce the liquidity available on those markets or, more generally, create disruptive effects.
50. Finally, the methodology to determine whether MTFs comply with the 50% threshold (assessed only based on the number of issuers admitted to trading) and the rules framing the mandatory deregistration of MTFs as SME GMs also bring a high degree of flexibility. ESMA does not intend to propose a change regarding those provisions.
51. Lastly, the definition for SME are not always harmonised in the different pieces of legislation applicable in the EU. The market capitalisation threshold defined under Article 77 of CDR (EU) 2017/565 (EUR 200 Million) is not aligned with the definition or the criteria used in other EU acts and regulations, such as the European Long-Term Investment Fund (ELTIF). ESMA would like to receive feedback from market participants on the foreseen advantages and disadvantages of aligning further the SME definition across the different pieces of EU legislation.

**Q3: In your view does the 50% threshold set in Article 33(3)(a) of MIFID II remain appropriate for the time being as a criterion for an MTF to qualify as an SME GM? Do you think that a medium-term increase of the threshold and the creation of a more specialised SME GMs regime would be appropriate?**

**Q4: Do you consider that a further alignment of the definitions of an SME in different pieces of regulation with the MiFID II definition of SME would be helpful? Can you provide specifics of where alignment would be needed?**

## **4.2 Criteria for initial and ongoing admission to trading of financial instruments of issuers on the market (Article 33(3)(b) of MiFID II)**

### **Analysis**

52. Article 33(3)(b) of MiFID II requires SME GMs to have in place “appropriate criteria [...] for initial and ongoing admission to trading of financial instruments of issuers on the markets”. This provision has been specified under Article 78 of CDR (EU) 2017/565. Following ESMA’s advice, the Commission has adopted a more principle-based standard that was meant to better fit the broad spectrum of approaches that co-existed, prior to the entry into application of MiFID II, in relation

to the setting and application of issuer admission amongst markets with a focus on SMEs.

53. For instance, ESMA had identified that SME markets can have different models, some undertaking their own assessment to check issuers' appropriateness while others are relying on independent certified advisers to perform the necessary review. ESMA advised the Commission not to set too stringent requirements in this respect to preserve the existing diversity of models. The Commission under Article 78(2)(a) of CRD (EU) 2017/565 has only required SME GMs to have "an operating model which is appropriate for the performance of its functions and ensures the maintenance of fair and orderly trading in the financial instruments admitted to trading on its venue".
54. Similarly, ESMA did not advise to establish prescriptive requirements regarding what should be considered acceptable financial reporting standards. Article 78(2)(g) of CDR (EU) 2017/565 therefore remains open regarding the exact financial reporting standard to be used by SME issuers. This has been explained under recital 114 of CDR (EU) 2017/565 which clarifies that "as to the content of financial reports, the operator of an SME growth market should be free to prescribe the use of International Financial Reporting Standards or financial reporting standards permitted by local laws and regulations, or both, by issuers whose financial instruments are traded on its venue".
55. As pointed out above, during its review of the SME GMs regime, the Commission took a similar approach introducing for instance flexibility to SME GMs regarding the minimum free float imposed on issuers requesting admission to trading on their venue.

### **Proposal**

56. ESMA does not consider it necessary at this stage to fundamentally change the approach regarding the criteria to be used by MTFs registered as SME GMs for initial and ongoing admission to trading of financial instruments of issuers on the market. ESMA considers that the flexibility offered to SME GMs remains useful and still creates incentives for more MTFs to be registered under this label.
57. Nevertheless, ESMA would welcome views from market participants regarding whether it could be appropriate to set out more stringent criteria in this respect and to push for a more harmonised approach amongst SME GMs in the EU regarding their admission to trading conditions. ESMA notes that admission to trading criteria could potentially include requirements regarding (i) minimum free float, (ii) minimum capitalisation of the issuer, (iii) specific features regarding corporate and governance code, (iv) accountings standards, and, (v) disclosure of information to the public. ESMA would welcome views from market participant regarding whether the regime should be amended in respect of these criteria.
58. ESMA would also welcome feedback on the possible harmonisation of accounting standards used by issuers listed on SME GMs. While ESMA understands that this

could represent a burden for smaller issuers, this would at the same time facilitate those issuers to be listed cross-border and, similarly, facilitate investors not familiar with the issuer's country of origin's accounting standard to invest on those markets.

**Q5: Which are your views on the regime applicable to SME GMs regarding the initial and ongoing admission to trading of financial instruments? Are there requirements which should be specified?**

**Q6: Do you think it could be beneficial to harmonise accounting standards used by issuers listed on SME GMs with the aim of increasing cross-border investment?**

### **4.3 Criteria for the disclosure of appropriate information to the public (Article 33(3)(c), (d) and (f) of MiFID II)**

59. The provisions under Article 33(3)(c), (d) and (f) of MiFID II establish a number of requirements for an SME GM with regards to disclosure of appropriate information.
60. In particular, Article 33(3)(c) of MiFID II establishes that an SME GM has to ensure that, on admission to trading, "there is sufficient information published to enable investors to make an informed judgement on whether or not to invest in the financial instrument" where the requirements to publish a prospectus under the Prospectus Regulation are not applicable. This requirement goes further to that applicable to an MTF where an MTF operator has the responsibility to "provide or [be] satisfied that there is access to, sufficient publicly available information to enable its users to form an investment judgement". Although issuers traded on an MTFs are not required to produce an admission document, ESMA understands that a majority of primary market MTFs typically require an "appropriate admission document". CDR (EU) 2017/565 further specifies a number of requirements applicable to SME GMs in this context.
61. In particular, Article 78(d) of that regulation requires the admission document to include sufficient information to be provided to enable investors to make an informed assessment of the issuer's financial position and the rights attached to its securities. ESMA notes that such minimum information is not detailed in the legislative text which may end up in diverse approaches between different issuers.
62. In addition, as stated under Article 33(3)(d) of MiFID II SME GMs are required to ensure there is "appropriate ongoing periodic financial reporting" by issuers. The requirements concerning appropriate ongoing reporting on regulated markets are established in the Transparency Directive. Under its rules, issuers on RMs are required to publish annual and half-yearly financial reports. The requirements in the Transparency Directive do not apply to issuers whose instruments are traded on an MTF only, unless the relevant NCA has decided to extend such requirements to MTFs. However, disclosure requirements as per Article 33(3)(d) of MiFID II apply to issuers traded on SME GMs. Despite this creating more stringent requirements

for an MTF registered as an SME GM, ESMA is of the view that, in order to foster investors' confidence in SMEs GMs such requirements remain appropriate.

63. Finally, Article 33(f) of MiFID II requires that SME GMs store and disseminate to the public regulatory information concerning the issuers trading on the MTF. Following ESMA's advice, Article 78(2)(h) and (i) of CDR (EU) 2017/565 require that information to be made available on the website of the trading venue. Instead of storing the information directly on the website, trading venues can instead provide a direct link to the page of the issuer's website where that information is available. Furthermore, all regulatory information should be available for a period of at least five years.

### **Proposal**

64. ESMA notes that the requirement in Article 33(3)(c) stating that sufficient information should be published on initial admission to trading "to enable investors to make an informed judgement about whether or not to invest in the financial instruments" aims to foster investor confidence.
65. ESMA would welcome views on the establishment of minimum homogeneous requirement on the information to be disclosed which could be stated in Level 1 and detailed in a Delegated Act. In this context, ESMA notes that some minimum homogeneous requirements for the admission document in Article 33(3)(c) of MiFID II could be envisaged, tailoring the sophistication of such requirements to the size of the issuers.
66. Such harmonisation of requirements on the information to be disclosed, could foster cross border investment and cross-border listing, as investors would not face barriers related to diverse types of information disclosed among SME GMs when securities are initially admitted to trading.

### **Q7: Should ESMA propose to create homogeneous admission requirements for issuers admitted to trading on SME GMs and to be disclosed to investors? Should such requirements be tailored depending on the size of the issuer (e.g. providing less burdensome requirements for Micro-SMEs)?**

67. Furthermore, in ESMA's view Article 78(2)(i), requiring that the information in Article 78 (2)(h) should be available for at least 5 years, aims at ensuring that investors have enough relevant information to make an informed judgement about whether or not to invest in the financial instrument. ESMA notes that in addition when an MTF decides to register as an SME GM, it could be appropriate to require the disclosure of backward looking information in the form of financial reports for new issuers admitted to trading on the SME GM. Those issuers could be required to publish financial reports covering the year preceding admission to trading on the SME GM.

**Q8: Should ESMA suggest an amendment requiring an MTF registering as SME GM to make publicly available financial reports concerning the issuers admitted to trading on the SME GM up to one year before registration?**

68. ESMA further understands that the requirements in Article 33(3)(c) and (d) are more stringent for SME GMs than for MTFs as there is a need to foster investors' confidence in order to attract sufficient liquidity on such market segments. At the same time ESMA acknowledges that such increased requirements might impose a further cost burden on SMEs seeking admission to trading on an SME GM.

**Q9: Is there any other aspect of the SME GMs regime as envisaged under MiFID II that you think should be revisited? Would you consider it useful to make the periodic financial information under Article 33(3)(d) available in a more standardised format?**

#### **4.4 MAR provisions and system and controls to detect market abuse (Article 33(3)(e), (g) of MiFID II)**

69. Article 33(3)(e) of MiFID II requires that issuers on an SME GM, persons discharging managerial responsibilities and persons closely associated with them as defined in MAR shall comply with the relevant requirements applicable to them under MAR. Article 33(g) of MiFID II requires an MTF seeking registration an SME GM to have in place effective systems and controls aiming to prevent and detect market abuse as required under MAR.

70. ESMA believes that such requirements shall not be subject to review in this CP as the European Commission has undertaken a review of MAR requirements for SME GM in the context of the amendments to MAR as per the SME GMs Regulation.

#### **4.5 Other measures to promote the growth of the SME GMs regime in the EU.**

71. ESMA considers the current developments in the SME GMs regime as positive, considering the increased number of MTFs opting for registration under this label. If, as explained above, ESMA does not recommend a fundamental review of the existing provisions, there might be merit in reflecting whether further regulatory amendments could be introduced to facilitate the access of SME issuers to SME GMs, incentivise investors to invest in those markets and promote the registration as SME GMs of MTFs focusing on SMEs. ESMA therefore seeks views from stakeholders on some possible measures that are described below.

##### **Creating a two-tier regime for Small and Medium SME**

72. The current SME GMs regime does not necessarily fit the needs of the smallest SMEs currently active in the EU. Some requirements currently imposed on SME

issuers could potentially be too burdensome for such players, and alternative funding (e.g. crowdfunding) could offer a more attractive alternative.

73. ESMA seeks views on the possible benefits of creating a two-tier regime for SME GMs in Europe, with further alleviations for micro SMEs and where the threshold to define a micro SME should be set.

**Q10: Do you think that in the medium term a two-tier SME regime with additional alleviations for micro-SMEs could incentivise such issuers to seek funding from capital markets? If so, which type of alleviations could be envisaged for micro-SMEs?**

#### **Other possible amendments to the SME GMs regime**

74. ESMA acknowledges that trading of SME shares on SME GM can be subject to a lack of liquidity. In this context ESMA is considering the possible benefits and risks of creating an obligation for SME GMs to ensure effective provision of liquidity through the mandatory presence of market makers on their markets.
75. Under such proposal SME GMs would be required to ensure the presence of at least one investment firm pursuing a market making strategy in the SME GM. Such relation would be subject to the requirements of Article 48(2) and (3) of MiFID II, which could alleviate problems for illiquid markets and lower the costs of engaging in liquidity contracts for issuer.
76. ESMA also acknowledges that such proposal could increase the costs for MTFs wishing to register as SME GM, lowering the attractiveness of such category. Despite this, the cost could be partly offset by more SMEs deciding to be listed, potentially attracting more capital from investors.

**Q11: Do you think that requiring SME GMs to have in place mandatory liquidity provision schemes, designed in the spirit of what is envisaged in Article 48(2) and (3) of MiFID II, could alleviate costs for SMEs issuers and provide them an incentive to go public? Do you think that on balance such provision would increase costs for MTFs in a way which exceeds potential benefits, resulting in reducing the incentive to register as an SME GM?**

77. ESMA notes that Article 33(7) of MiFID II requires that instruments admitted to trading on SME Growth Markets may be traded on another SME growth market only if the issuer has been informed and has not objected. This requirement currently does not apply if a trading venue other than an SME Growth Market wishes to start trading the same financial instruments.
78. In ESMA's view Article 33(7) of MiFID II aims at ensuring that the issuer of financial instruments admitted to trading on SME GMs maintains some control on new admissions to trading to avoid nascent liquidity being split between too many venues. In line with this objective, ESMA would see a rationale on requiring that any trading venue wishing to offer for trading an instrument already admitted to

trading on an SME GMs could do so only where the issuer has been informed and has not objected.

**Q12: Do you think the requirement in Article 33(7) of MiFID II regarding the issuer non objection in case of instruments already admitted to trading on SME Growth Markets to be admitted to trading on another SME growth market should be extended to any trading venue? Should a specific time frame for non-objection be specified? If so which one?**

79. ESMA furthermore notes that Article 33(7) specifies that where the issuer does not object to admission of his financial instruments to trading on another SME GM, he shall not be subject to any obligation relating to corporate governance or initial, ongoing or ad hoc disclosure with regard to the latter SME growth market.

80. With respect to such provision ESMA seeks feedback on the implications of cases where the latter trading venue is in a different jurisdiction of the SME GM where there has been initial admission to trading. In this scenario, it could be challenging for investors to retrieve the information which is necessary to make informed investment decisions for example due to language barriers.

**Q13: Do you think that it should be specified that obligations relating to corporate governance or initial, ongoing or ad hoc disclosure should still hold in case of admission to trading in multiple jurisdiction?**

81. Some market participants state that the availability of research on SMEs is an issue. More research might foster investors' confidence and may help increasing liquidity on SME GM. Insufficient research coverage, on the other hand, might be especially detrimental for SMEs due to the lack of publicly available information on such companies which in turn affects the possibility for investors to form their investment decisions. For this reason, ESMA is open to receive suggestions on possible ways to increase research coverage for SMEs.

**Q14: How do you think the availability of research on SMEs could be increased?**

## **5. RTS on liquidity contracts**

### **5.1 Legislative background**

82. MAR provides a harmonised framework for the prohibition of market manipulation. This encompasses a prohibition on entering into a transaction, placing an order to trade or engaging in behaviour which gives, or is likely to give, a false or misleading signal as to the supply of, demand for, or price of, an instrument within the scope of MAR, or which secures, or is likely to secure, the price of such an instrument at an abnormal or artificial level (Article 15 of MAR).

83. Article 13 of MAR provides an exception to the general prohibition of market manipulation. To benefit from that exception, the concerned person needs to

establish that the transaction conducted, the order placed or the behaviour engaged in was carried out for legitimate reasons and in accordance with a market practice formally established by a national competent authority, referred to as an accepted market practice (AMP).

84. According to Article 13 of MAR, when an NCA intends to establish an AMP, it must notify ESMA and other competent authorities of such intention and ESMA has to issue an opinion on the intended AMP within 2 months from the receipt of the notification. The key requirements for AMPs are set out in Article 13(2) of MAR and are further regulated by CDR 2016/908 which specifies common criteria, procedures and requirements to contribute to the development of uniform arrangements in the sphere of AMPs.
85. As of the date of this Consultation Paper, AMPs were adopted in the following four jurisdictions: Spain, Portugal, France and Italy. The existing AMPs concern liquidity contracts, that consist of an agreement between an issuer and a financial intermediary, where the latter is entrusted with the task of enhancing the liquidity of the issuer's financial instruments. With a specific focus on AMPs concerning liquidity contracts, ESMA issued an opinion ("Points for convergence in relation to MAR accepted market practices on liquidity contracts") setting out additional conditions and limits to be taken into account by NCAs when establishing AMPs on liquidity contracts.

## **5.2 ESMA's preliminary considerations and proposal for the RTS on liquidity contracts**

86. In ESMA's view it is relevant to clarify the following elements in relation to the revised text of Article 13(12) and (13) of MAR.
87. The legislative intent behind the EU framework for liquidity contracts is to establish a template that issuers can use in all Member States, regardless of whether that member state has an established AMP on liquidity contracts that would permit these contracts to operate under a 'safe harbour'. Hence, the Union framework on liquidity contracts will coexist with existing or future national AMPs on liquidity contracts.
88. In line with Recital 7 of the SME GMs Regulation, ESMA understands that these liquidity contracts under the SME GMs Regulation should benefit from an equivalent degree of protection as AMPs, i.e. that the performance of these liquidity contracts shall not be deemed to be market manipulation, as long as the transactions, orders or behaviours have been carried out for legitimate reasons.
89. ESMA also understands that the liquidity contracts foreseen in the SME GMs Regulation should only concern shares. This is specified in the first paragraph of the new Article 13(12) of MAR and further reinforced in recital 7 of the SME GMs Regulation which specifies that a liquidity contract comprises a contract between an issuer and a third party who commits to providing liquidity in the shares of the

issuer, and on its behalf. The new Article 13(12) of MAR also leaves the possibility to NCAs to establish AMPs to extend such agreements to illiquid securities other than shares.

90. ESMA is mandated in the SME GMs Regulation to set out a contractual template that can be used by issuers and financial intermediaries directly across the EU without the support of an AMP<sup>6</sup>.
91. ESMA notes that the Union framework on liquidity provision that it is mandated to establish needs to strike a balance between three different parameters:
- ensuring compliance with the requirements in Article 13(2) of MAR;
  - establishing a pan-European set of standards on liquidity contracts that are directly applicable across the Union; and
  - leaving room for manoeuvre to investment firms and issuers to determine the terms and conditions of their contractual relationship beyond the elements that directly affect MAR.
92. The requirements in Article 13(2) of MAR prescribe, among other things, that a competent authority may establish an accepted market practice, taking into account whether it ensures a high degree of safeguards to the operation of market forces and the proper interplay of the forces of supply and demand, whether it has a positive impact on market liquidity and efficiency and whether it does not create risks for the integrity of the relevant market.
93. Since the liquidity provision carried out under the contractual template should meet the conditions in Article 13(2) of MAR, ESMA deems it necessary to include in the contractual template criteria to ensure that the resources allocated to the liquidity contract are proportionate and that the trading by the liquidity provider is subject to price and volume limits.
94. Furthermore, in ESMA's view, it is necessary to include specific parameters in the contractual template to achieve a pan-European set of standards on liquidity contracts which is directly applicable and ensures a level-playing field among SME GM issuers across the Union. As a matter of fact, the provision of precise parameters and thresholds directly applicable to liquidity contracts on shares traded on SME growth markets across the Union is also functional at making sure that all such contracts abide by the abovementioned Article 13(2) of MAR. This does not preclude the possible customization of such contracts beyond the elements that ensure compliance with MAR.

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<sup>6</sup> Recital (7) of the SME Regulation clarifies that the proposed Union framework on liquidity contracts for SME growth markets will not replace, but rather complement, existing or future accepted national market practices.

## 5.3 Proposal

95. In order to fulfil the legislative mandate, ESMA drafted the contractual template in line with the criteria established in Article 13(2) of MAR and set out the requirements relevant for the template in the body of the RTS. The parties to a liquidity contract concerning shares of an issuer listed on an SME GM should comply with such requirements.
96. In ESMA's view, this set of common minimum requirements should ensure a level-playing field among issuers and investment firms while safeguarding market integrity. The minimum requirements include in certain cases pre-requisites that should be established before signing the contract.
97. ESMA has enclosed the contractual template requested by Article 13(13) of MAR in the Annex to the RTS. The template, consistently with the abovementioned minimum requirements, identifies the essential clauses that a liquidity contract should have. The template should be completed and, in some parts, adjusted by market participants according to the circumstances of the individual case. The following is a description of the main areas covered by the proposed RTS.

### The liquidity account

98. ESMA deems it appropriate that the contractual template foresees the opening of a dedicated liquidity account for the performance of the liquidity contract. The liquidity account should be endowed by the issuer with an initially specified amount of resources, in terms of cash and shares, to be used by the liquidity provider to carry out his activity.
99. The purpose of the liquidity account is twofold. Firstly, it allows ensuring a clear separation of the resources allocated to the liquidity provision under the liquidity contract. This is necessary to ensure that the resources used to perform the liquidity provision are easily identified, are proportionate and abide by the relevant limits (see below). Furthermore, the liquidity account facilitates the recording of the transactions carried out by the liquidity provider under the contract, which (coupled with the separation) is necessary to monitor the performance of the liquidity provision under the contract.

### Limits on resources

100. ESMA deems it necessary, in order to ensure the proper interplay of the forces of supply and demand, that the contractual template sets limits on the maximum amount of resources which can be allocated to the liquidity account under the liquidity contract. Such limits on resources have the objective of ensuring that resources are proportionate to enhance liquidity without leading to artificial changes in the share prices.
101. ESMA suggests that limits to resources should be calibrated depending on the specific characteristics of the shares, taking into account the trading activity

occurring on the relevant market, thereby distinguishing between illiquid and liquid shares. In light of this, the limits to resources are defined as a percentage of the average trading volume for the relevant shares. The percentage is calibrated on the basis of the liquidity status of the share (illiquid vs liquid) and a cap is specified.

102. In order to identify the resources limits, ESMA referred to the opinion on Points for convergence, which had set the resources limits and trading conditions for liquidity contracts executed under AMPs. In light of the application of national AMPs, that follow the Points for convergence, ESMA believes that the limits identified in the latter would be appropriate for the SME GMs. Such limits consist of 500% of the average daily turnover for illiquid shares, with a cap at EUR 1,000,000, and 200% of the average daily turnover for liquid shares, with a cap at EUR 20,000,000. The category of highly liquid shares, which is contemplated in the opinion on Points for convergence, was not considered as relevant, on the basis of data gathered on liquidity, for shares of SME GMs (see the next subsection for further information).

103. In addition to the above, ESMA considered also a further parameter for illiquid shares. Namely, ESMA deems it appropriate to provide for a single hard threshold which could operate if the limit to the resources calculated on the basis of the average daily turnover does not allow the liquidity provider to effectively provide liquidity. This could happen if the average daily turnover is particularly low. On the basis of the data on liquidity observed in SME GMs, ESMA is proposing a single hard threshold of 500,000 Euros. Overall, ESMA considers that these thresholds provide for an appropriate balance between the various goals pursued by the creation of the liquidity contracts in the SME GM context. ESMA is however open to any proposals for a different calibration based on a demonstrated need by market participants and specifically encourages responses to this point. Based on the consultation results, ESMA may in the future reconsider the Points for Convergence with a view to possibly adapt them to the framework established under the RTS here to ensure more alignment of practices across the Union.

104. In ESMA's view where liquidity provision is to be performed on more than one SME GM for shares of the same issuer, an independent contract shall be signed for each SME GM<sup>7</sup>.

**Q15: Do you agree with the proposed limits on resources – which are mainly based on the Points for Convergence – or would you propose different ones? If so, please provide a justification.**

### **Independence of the liquidity provider**

105. ESMA deems relevant that the principle of independence of the liquidity provider is ensured by the clauses of the liquidity contract template. The independence of the liquidity provider is essential to ensure that the trading activity

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<sup>7</sup> In such a case, each liquidity contract shall be submitted to the relevant market operator or the investment firm operating the SME GM.

linked to the liquidity provision has the sole purpose of enhancing the liquidity of the relevant share and is not influenced by the issuer. In order to fulfil this objective ESMA proposes that the liquidity contract specifies two aspects: (i) the independence of the liquidity provider from the issuer and (ii) the need for the liquidity provider to have in place mechanisms to ensure that trading decisions related to the liquidity contract are independent from those taken from other trading desks, groups or units engaged in trading activities within the liquidity provider.

106. The independence of the liquidity provider from the issuer is necessary to enable the former to exercise independent judgement in evaluating whether his trading activity is needed to enhance the liquidity of the share or whether it would affect relevant trends in the market.

107. The need for the liquidity provider to have in place an appropriate internal structure to achieve independence of trading decisions is essential to avoid conflict of interests among the units, trading desk or groups within the liquidity provider as those could lead to trading decisions not in line with the purpose of the agreement.

### **Trading of the liquidity provider**

108. In addition to the limits to the resources, the contractual template should contain provisions to make sure that the daily trading activity of the liquidity provider performed in the framework of the liquidity contract does not lead to artificial changes in the share prices but rather has a positive impact on market liquidity and efficiency as contemplated in Article 13(2) of MAR.

109. In light of this, ESMA considers it necessary to propose limits to the daily trading volumes for the activity of the liquidity provider. Such limits were defined on the basis of the analysis of the shares traded on SME GMs identified in Table 1 and Table 2. More specifically, the sample includes 1,415 SME shares and 4,476 non-SME shares. The average daily turnover (ADT) used is the one calculated for the month of October 2019 using the data reported to the Financial Instruments Transparency System (FITRS) and corresponding to the maximum value for the instrument (ISIN) across all venues (identified by the segment MIC).

110. Table 3 below provides basic statistics on the monthly ADT for SME and non-SME shares distinguished between illiquid, liquid<sup>8</sup> and highly liquid defined as those liquid shares with an annual 2019 ADT greater or equal to EUR 10,000,000 for SME shares and EUR 100,000,000 for non-SME shares.

111. It is evident that the number of liquid and highly liquid SME shares is relatively limited. At the same time, the number of liquid and highly liquid shares for non-SME shares is relevant. However, their trading profile in terms of monthly ADT is very similar.

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<sup>8</sup> As per Articles 1 to 5 of Commission Delegated Regulation (EU) 2017/567 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

**TABLE 3 STATISTICS ON THE DATA SAMPLE**

	SME shares on SME-GMs (2019-10)			Non-SME shares on SME-GMs (2019-10)		
	Monthly ADT FOR ILLIQUID	Monthly ADT FOR LIQUID	Monthly ADT FOR HIGHLY LIQUID	Monthly ADT FOR ILLIQUID	Monthly ADT FOR LIQUID	Monthly ADT FOR HIGHLY LIQUID
<b>AVERAGE</b>	22,460	530	12	25,353	134,322	90,472
<b>MIN</b>	-	-	12	-	-	-
<b>MAX</b>	7,842,516	2,887	12	4,188,827	10,830,041	21,602,182
<b>NUM ISINs</b>	4,233	10	1	3,258	971	247

112. Therefore, it is proposed to define the volume limit for the liquidity contract distinguishing between illiquid and liquid shares. In order to identify the volume limits, ESMA referred to the opinion on Points for convergence, which had set the trading conditions for liquidity contracts executed under AMPs. In light of the application of national AMPs, that follow the Points for convergence, ESMA considers that the limits identified in the latter would be appropriate for the SME GMs. Also, here ESMA is open to any proposals for a different calibration based on a demonstrated need by market participants and specifically encourages responses to this point.

113. In particular, on the basis of the Points for convergence, the volume limit would be based as a percentage of the ADT calculated over 20 days which would be equal to 25% for illiquid shares and 15% for liquid shares.

**ON THE BASIS OF THESE PARAMETERS, AS SHOWN IN**

114. Table 4, the average volume limit for illiquid shares would be approximately EUR 6,000 and for liquid shares approximately EUR 16,000.

115. However, due to the high number of shares having a zero ADT and taking into account that the liquidity provider might need to use more resources to effectively provide liquidity, ESMA considers that, for illiquid shares, the volume limit might be set to a maximum of EUR 20,000 .

**TABLE 4 STATISTICS ON THE VOLUME LIMIT FOR LIQUIDITY CONTRACTS**

	Volume limit - liquidity contract FOR ILLIQUID	Volume limit - liquidity contract FOR LIQUID
<b>AVERAGE</b>	5,934	15,956
<b>MIN (non zero)</b>	1	1
<b>MAX</b>	1,960,629	3,240,327
<b>NUM ISINs</b>	7,491	1,231
<b>NUM ISINs with zero ADT</b>	3,597	253

116. In addition to the volume limits, ESMA considers it necessary to also provide criteria concerning the price conditions. Namely, absent any limits, the liquidity provider could, especially in the case of illiquid shares, unduly influence the market price. In light of this, ESMA set the criterion that price conditions shall ensure that the liquidity provider does not alter the prices in the market where there is independent trading interest available.
117. In addition to the volume and price limits, ESMA is evaluating whether certain conditions should be specified as regards the trading during periodic auctions, to make sure that the final price of such auction is not impacted by liquidity provision activity. In this respect, ESMA would like to consult market participants and in particular SME GMs, to understand if any criteria, safeguards or specific requirements need to be adopted to make sure that the application of the liquidity contract in their markets does not result in a manipulative impact on the price. Based on the replies, ESMA may add further specifications in the contractual template on auctions or other relevant trading protocols.
118. Finally, ESMA would like to consult market participants in how far large trades should be able to benefit from the safe harbour provided by the liquidity contract. ESMA considers that large trades can only benefit to the extent that they are executed on venue and in compliance with the rules established for large orders in MiFID II (Commission Delegated Regulation (EU) 2017/587<sup>9</sup>) and under the rules of a trading venue.

**Q16: Do you agree with the proposed limits on volumes – which are based on the Points for Convergence – or would you propose different ones? If so, please provide a justification of the alternative proposed parameters.**

**Q17: Do you think that specific conditions should be added as regards trading during periodic auctions? For SME GMs following different trading protocols, are there criteria or safeguards which should be considered in order to make sure that the liquidity contract does not result in a manipulative impact on the shares' price?**

**Q18: Do you agree with ESMA's view that the liquidity contract may cover large orders only in limited circumstances as described in paragraph 118?**

### **Obligations of the liquidity provider**

119. ESMA understands that to monitor compliance with the clauses specified by the liquidity contract it is necessary that the template includes the duty for the liquidity provider to keep records of the transaction undertaken under the liquidity

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<sup>9</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. 387–410.

contract. Such transactions should be easily identifiable, and the related records should be kept for five years.

### **Fees structures and remuneration**

120. ESMA deems it necessary that the contractual template sets the remuneration of the liquidity provider, in a way that does not affect its independence. The remuneration will typically be composed of a fixed and a variable part, and the latter could pose risks as regards the liquidity provider's independence. For this reason, it is appropriate to set a maximum threshold of remuneration based on performance.
121. ESMA considers that a 15% threshold would strike the right balance between providing an incentive to the liquidity provider and avoiding that his independence is impaired. The remaining (85% or more) remuneration should hence be a fixed amount.

### **Transparency**

122. ESMA understands that the contractual template should also identify the obligation to provide transparency on the liquidity contract towards the public before the contract enters into force, while the contract is performed and once it expires.
123. To that end, the contract should specify the means for publication of the relevant information. ESMA believes that it is necessary to identify one responsible party, in charge of the transparency obligations. To facilitate the public to look for information on liquidity contracts, ESMA believes that it is appropriate that the transparency obligations are imposed on the issuer, i.e. the relevant information is published on the issuers' website. ESMA, in addition, deems it helpful to the public that an aggregate publication on the website of the SME GMs operator' websites is provided.

## **6. ITS on insider lists**

### **6.1 Legislative background**

124. Article 18 of MAR requires issuers and any person acting on their behalf or on their account, to draw up a list of all persons who have access to inside information. Such list shall be updated as per Article 18(4) and provided to the relevant NCA upon request. Commission Delegated Regulation (EU) 2016/347 [CDR 2016/347] specifies the precise format of the insider list, facilitating the uniform application of the requirement to draw up and update such list.
125. Article 18(6) of MAR introduced an alleviation in the requirements for issuers admitted to trading on an SME GM, exempting them from drawing up an insider list. Such issuers were nevertheless expected to take all reasonable steps to

ensure that any person with access to inside information acknowledges the legal and regulatory duties entailed and is aware of the sanctions applicable to insider dealing and unlawful disclosure of inside information. Such issuers shall be able to provide the NCA, upon request, with an insider list.

126. This less stringent requirement to which SME GM issuers are subject, has been considered of limited practical effect as those issuers remain subject to requirements concerning ongoing monitoring of the persons who qualify as insiders.
127. In order to further reduce the administrative obligations on SME GM issuers, the SME GMs Regulation has introduced the possibility to maintain only a list of persons who, in the normal exercise of their duties, have regular access to inside information.
128. ESMA understands that the reference to ‘regular access’ specifies a narrow set of individuals and not all those that may have gained access with respect to one piece of inside information, as clarified in recital (10) of Regulation 2019/2115. The recital clarifies that those persons could be directors, members of the management bodies or in-house counsel.
129. At the same time, the revised Article 18(6) of MAR entitles Member States, when justified by specific national market integrity concerns, to require SME GM issuers to include in their insider lists not only the persons who have regular access to inside information, but all persons who have access to inside information. If Member States exercise this option, the full insider list should nonetheless still impose a lesser administrative burden than an “ordinary” insider list
130. To ensure that the requirement to produce a full insider list is proportionate and entails a lighter administrative burden for SME GM issuers, ESMA has been mandated to develop a draft ITS to determine the precise format of the insider lists in the Member States that opted for insider lists incorporating all insiders.
131. ESMA notes that this consultation specifically addresses the mandate contained in the SME GMs Regulation independently from any other possible amendments in CDR 2016/347 that ESMA might consider in the future.
132. Therefore, the other points raised by the respondents to the MAR Review CP shall be addressed in the future in a different context. ESMA notes that due to the legislative process foreseen in Article 38 of MAR, any additional changes following the MAR Review CP that imply revising Article 18 of MAR itself would come at a later time.
133. Additionally, and given the requirement in the mandate contained in Article 18(6)<sup>10</sup>, ESMA might have to revise its own ITS to ensure that it remains aligned with MAR.

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<sup>10</sup> “The format of the insider lists shall be proportionate and *represent a lighter administrative burden* compared to the format of insider lists referred to in paragraph 9” (emphasis added)

## 6.2 Proposal

134. ESMA notes that Article 18(3) of MAR remained unchanged, establishing that insider lists shall include at least the identity of any person having access to inside information, the reason for including that person in the insider list, the date and time at which that person obtained access to inside information and the date on which the insider list was drawn up.
135. ESMA also notes that the CP on the MAR Review report<sup>11</sup> requested the views of market participants about possible ways to reduce the administrative burden of all issuers (and not only issuers whose financial instruments are admitted to trading on an SME growth market) and persons acting on their behalf or on their account.
136. In preparing its proposal here, ESMA has taken advantage of the replies provided to that question in the MAR Review CP where there was almost unanimous support for eliminating from the requirements the references to “date of birth”, “personal telephone numbers”, “personal full home address”, “national identification number”.
137. Whereas ESMA acknowledges that eliminating all these fields might reduce the administrative burden for issuers, it also notes that:
138. First, the absence of phone numbers, addresses and identification number would undermine severely the usefulness of this tool. In particular, the absence of identification numbers would impede the automatization of this data, impacting directly the capacity of NCAs to carry out adequate investigations;
139. Secondly, this data remains necessary in the course of market abuse investigations. Therefore, their absence in the insider lists of SME GM issuers would delay and increasing the administrative burden both for issuers and NCAs.
140. Thirdly, despite the current Annex II of CIR 2016/347 not foreseeing the identification of the deal or event that made necessary the identification of the insiders, ESMA’s preliminary view is that such information is also necessary.
141. On that basis, and given that Article 18(3) of MAR establishes the minimum fields for insider lists and taking into account as well the responses provided to the MAR Review CP, ESMA proposes to require only the fields listed below for the purpose of the draft ITS:
- the deal or event that generates the obligation to prepare the insider list;
  - the name and surname of the relevant person;
  - the time of gaining (and losing) access to inside information;
  - professional and personal phone numbers;

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<sup>11</sup> Available following this link: [https://www.esma.europa.eu/sites/default/files/library/mar\\_review\\_-\\_cp.pdf](https://www.esma.europa.eu/sites/default/files/library/mar_review_-_cp.pdf). See specifically question 45.

- identification number; and
  - the grounds for being included in the list.
142. Whereas the reduction in terms of fields would be limited (since only the fields 'birth surname', 'company name and address', and 'personal full home address' would be eliminated), ESMA considers that the proposal would still lead to a simplification of creating and maintaining insider lists.
143. From the supervisory perspective the proposal would not be considered problematic. The fields that ESMA proposes not to include could still be obtained by NCAs under the powers granted by Article 23 of MAR.
144. The proposal does not introduce any change with respect to the format to be used for saving the insider lists: SME GM issuers may still save their insider lists in electronic format or any other format that they consider appropriate, as long as it ensures the completeness, confidentiality and integrity of the information.
145. ESMA considers it appropriate to respond to the mandate contained in the SME GMs Regulation by amending the already existing Level 2 measure in order to keep the implementing measures on insider lists consolidated in a single piece of legislation. In other words, the new rules deriving from the SME GMs Regulation will be integrated into an existing piece of legislation.
146. ESMA proposes amending CDR 2016/347 as indicated in the annex and, more specifically, by adding the below template for an SME GM insider list:

**Insider list: section related to (name of the deal-specific or event-based inside information)**

**Date and time (creation):** [yyyy-mm-dd, hh:mm UTC (Coordinated Universal Time)]

**Date of transmission to the competent authority:** [yyyy-mm-dd]

First name(s) of the insider	Surname(s) of the insider	Professional telephone number(s) (work direct telephone line and work mobile numbers)	Personal telephone numbers (home and personal mobile telephone numbers)  (If available at the time of the request by the competent authority)	Function and reason for being insider	Obtained (the date and time at which a person obtained access to inside information)	Ceased (the date and time at which a person ceased to have access to inside information)	National Identification Number (if applicable)  Or otherwise date of birth
[Text]	[Text]	[Numbers (no space)]	[Numbers (no space)]	[Text describing role, function and reason for being on this list]	[yyyy-mm-dd, hh:mm UTC]	[yyyy-mm-dd, hh:mm UTC]	[Number and/or text or yyyy-mm-dd for the date of birth]

**Q19: Do you agree with the proposal described above regarding the template for the insider list to be submitted by issuers on SME GMs? If not, please elaborate.**

## **7. Annexes**

### **7.1 Annex I-Summary of questions**

**Q1: Do you have any views on why the SME activity in bonds is limited? If so, do you see any potential improvements in the regime which could create an incentive to develop those markets?**

**Q2: In your view, how could the visibility of SME GMs be further developed, e.g. to attract the issuers from other members states than the country of the trading venue?**

**Q3: In your view does the 50% threshold set in Article 33(3)(a) of MIFID II remain appropriate for the time being as a criterion for an MTF to qualify as an SME GM? Do you think that a medium-term increase of the threshold and the creation of a more specialised SME GMs regime would be appropriate?**

**Q4: Do you consider that a further alignment of the definitions of an SME in different pieces of regulation with the MiFID II definition of SME would be helpful? Can you provide specifics of where alignment would be needed?**

**Q5: Which are your views on the regime applicable to SME GMs regarding the initial and ongoing admission to trading of financial instruments? Are there requirements which should be specified?**

**Q6: Do you think it could be beneficial to harmonise accounting standards used by issuers listed on SME GMs with the aim of increasing cross-border investment?**

**Q7: Should ESMA propose to create homogeneous admission requirements for issuers admitted to trading on SME GMs? Should such requirements be tailored depending on the size of the issuer (e.g. providing less burdensome requirements for Micro-SMEs)?**

**Q8: Should ESMA suggest an amendment requiring an MTF registering as SME GM to make publicly available financial reports concerning the issuers admitted to trading on the SME GM up to one year before registration?**

**Q9: Is there any other aspect of the SME GMs regime as envisaged under MiFID II that you think should be revisited? Would you consider it useful to make the periodic financial information under Article 33(3)(d) available in a more standardised format?**

**Q10: Do you think that in the medium term a two-tier SME regime with additional alleviations for micro-SMEs could incentivise such issuers to seek funding from capital markets? If so, which type of alleviations could be envisaged for micro-SMEs?**

**Q11: Do you think that requiring SME GMs to have in place mandatory liquidity provision schemes, designed in the spirit of what is envisaged in Article 48(2) and (3) of MiFID II, could alleviate costs for SMEs issuers and provide them an incentive to go public? Do you think that on balance such provision would increase costs for MTFs in a way which encompasses potential benefits, resulting in reducing the incentive to register as an SME GM?**

**Q12: Do you think the requirement in Article 33(7) of MiFID II regarding the issuer non objection in case of instruments already admitted to trading on SME Growth Markets to be admitted to trading on another SME growth market should be extended to any trading venue? Should a specific time frame for non-objection be specified? If so which one?**

**Q13: Do you think that it should be specified that obligations relating to corporate governance or initial, ongoing or ad hoc disclosure should still hold in case of admission to trading in multiple jurisdiction?**

**Q14: How do you think the availability of research on SMEs could be increased?**

**Q15: Do you agree with the proposed limits on resources or would you propose different ones? If so, please provide a justification.**

**Q16: Do you agree with the proposed limits on volumes or would you propose different ones? If so, please provide a justification of the alternative proposed parameters.**

**Q17: Do you think that specific conditions should be added as regards trading during periodic auctions? For SME GMs following different trading protocols, are there criteria or safeguards which should be considered in order to make sure that the liquidity contract does not result in a manipulative impact on the shares' price?**

**Q18: Do you agree with ESMA's view that the liquidity contract may cover large orders only in limited circumstances as described in paragraph 118?**

**Q19: Do you agree with the proposal described above regarding the template for the insider list to be submitted by issuers on SME GMs? If not, please elaborate.**

**CBA Q1: Can you identify any other costs and benefits? Please elaborate.**

## 7.2 Annex II-Legislative mandates

### **Article 90 (1)(b) of MiFID II:**

*Before 3 March 2020 the Commission shall, after consulting ESMA, present a report to the European Parliament and the Council on:*

(a) [...]

(b) The functioning of the regime for SME growth markets, taking into account the number of MTFs registered as SME growth markets, numbers of issuers present thereon, and relevant trading volumes;

*In particular, the report shall assess whether the threshold in point (a) of Article 33(3) remains an appropriate minimum to pursue the objectives for SME growth markets as stated in this Directive;*

[...]

### **Article 13(13) of MAR:**

*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.*

### **Article 18(6) of MAR:**

*ESMA shall develop draft implementing technical standards to determine the precise format of the insider lists referred to in the second subparagraph of this paragraph. The format of the insider lists shall be proportionate and represent a lighter administrative burden compared to the format of insider lists referred to in paragraph 9.*

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

### 7.3 Annex III -Draft RTS on Liquidity contracts

COMMISSION DELEGATED REGULATION (EU) No .../..

of [date]

**laying down regulatory technical standards setting out a contractual template to be used for the purposes of entering into liquidity contracts for issuers whose financial instruments are admitted to trading on an SME growth market, supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council**

(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>12</sup> and in particular Article 13(13) thereof,

Whereas:

- (1) The contractual template should establish minimum conditions only, in order to enable market participants to cater for the specificities of each case, provided that any additions do not contradict the provisions set out in the contractual template, in Article 13(2) of Regulation (EU) No 596/2014 and in the Commission Delegated Regulation (EU) 2016/908.
- (2) The contractual template should require the opening of a dedicated liquidity account, to ensure that the resources that the liquidity provider allocates for the performance of the liquidity contract can be immediately identified. Such separation is needed to monitor the performance of the liquidity contract and ensure that the trading conducted for the purposes of the liquidity contract is separated from other trading activities carried out by the liquidity provider, and thereby minimises the risks of conflicts of interests. The liquidity account should be endowed with an amount of resources in cash and shares that is initially specified in the contract. Such resources should be used for the sole purpose of the performance of the liquidity contract.

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<sup>12</sup> OJ L 173, 12.6.2014, p. 1.

- (3) The contractual template should ensure a high degree of safeguards to the operation of market forces and the proper interplay of the forces of supply and demand, should have a positive impact on market liquidity and efficiency and should not create risks for the integrity of the relevant market. In order to meet such objectives, it is necessary that the contractual template provides for parameters ensuring that the resources allocated to the liquidity contract are proportionate and that the trading by the liquidity provider is subject to price and volume limits. Namely, proportionality of the resources and price and volume limits aim at minimizing the risk that the liquidity provision results in artificial changes in the share price, while, at the same time, promoting regular trading of illiquid shares.
- (4) To guarantee that such objective is consistently achieved throughout the Union it is necessary to provide for thresholds applicable to the resources and trading conditions for liquidity contracts on shares listed in SME growth markets. Such thresholds should concern the maximum of resources to allocate to the liquidity provision, as well as limits to the daily volumes which may be traded in the performance of the liquidity provision and to the price of such trades. The thresholds should consider the degree of liquidity of the shares concerned by the liquidity contract.
- (5) On the basis of the experience gathered by national competent authorities in the framework of pre-existing accepted market practices on liquidity contracts, having analysed the average trading turnover of shares listed on SME growth markets, it is reasonable to set resource and volume limits. Resource limits should be calibrated in accordance with the liquidity profile of a share and should be capped to avoid any negative impact of the liquidity contract. In order to allow an effective liquidity provision where the average daily turnover is low, a single threshold for the resources of the liquidity contract is appropriate. As regards the volume limits, it is reasonable that trades do not exceed a maximum percentage of the average daily turnover for illiquid and liquid shares. As regards the average trading turnover, it is considered that the average on 20 preceding trading days provides an appropriate representation of the trades in a specific share, as it allows to obtain a medium-term picture which may absorb the effect of trading peaks over a single or few trading sessions.
- (6) The contractual template should also ensure that the liquidity provider performs the liquidity contract by taking its trading decisions independently from the issuer and from other internal trading desks, groups or units engaged in trading activities. Such independence is necessary to ensure that the liquidity provider intervenes on the market without any influence from the issuer, which may pose a risk to the bona fide fulfilment of the liquidity provision and hence result in risks to market integrity.
- (7) The contractual template should also ensure that the nature and level of compensation for the services of the liquidity provider do not create incentives for prejudicial conduct

for the integrity and orderly functioning of the market, in particular, where the contract provides for variable remuneration. Limits should therefore be set for the variable remuneration. Such limits should be consistent throughout all liquidity contracts concerning shares of issuers listed on SME growth markets, to ensure a level playing field, and they should therefore be specified in the contractual template. In this respect, in order to ensure the balance between the abovementioned interests, the maximum threshold for the variable remuneration should be fixed at a reasonable percentage of the overall remuneration, to allow granting an incentive for good performance by the liquidity provider, and at the same time not being so substantial to incentivise behaviours which may pose a risk to the integrity and orderly functioning of the market.

- (8) Transparency around the liquidity contract contributes to conducting the liquidity provision in a manner that ensures market integrity and investor protection without creating risks for other market participants. In order to enable other market participants to make an informed decision about the shares subject to the liquidity contract, the contractual template should include transparency obligations covering the various stages of the liquidity provision, namely before the contract is performed, during its performance and after such performance ceases. In this respect, it is necessary to identify one responsible party, in charge of the transparency obligations. To facilitate the public in its information gathering on the relevant shares, it is appropriate that the transparency obligations are fulfilled by the issuer and that the relevant information is available at least on the issuer's website.
- (9) This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority ("ESMA") to the European Commission.
- (10) ESMA 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 has requested the opinion 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.

HAS ADOPTED THIS REGULATION

## CHAPTER I

### GENERAL PROVISIONS

#### *Article 1*

#### **Definitions**

1. For the purposes of this Regulation the following definitions apply:

(a) ‘liquidity provider’ means an investment firm registered as a market member with the market operator or the investment firm operating an SME growth market who has signed a liquidity contract with an issuer whose shares are traded on an SME growth market;

(b) ‘liquidity contract’ means a contract between an issuer and a liquidity provider who commits to providing liquidity in the shares of the issuer, and on its behalf;

(c) ‘average daily turnover’ means the total turnover for the relevant shares divided by [20]; the total turnover for the relevant shares shall be calculated by summing the results of multiplying, for each transaction executed during the [20] preceding trading days in the relevant SME growth market, the number of units of the shares exchanged between the buyers and sellers by the unit price applicable to such transaction;

(d) ‘liquid shares’ means shares having a liquid market under Articles 1 and 5 of Commission Delegated Regulation (EU) 2017/567<sup>13</sup>;

(e) ‘illiquid shares’ means shares not having a liquid market under Articles 1 and 5 of Commission Delegated Regulation (EU) 2017/567;

(f) ‘independent trading interest’ means trading interest by independent trading desks, groups or units engaged in trading activities within the liquidity provider pursuant to Article 6 of this Regulation or by independent parties.

## CHAPTER II

### LIQUIDITY CONTRACTS

#### SECTION I

##### Establishing a liquidity contract

###### *Article 2*

###### **General provisions**

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<sup>13</sup> Commission Delegated Regulation (EU) 2017/567 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

1. A liquidity contract entered into by a liquidity provider and an issuer with financial instruments admitted to trading on one or more SME growth markets according to Article 13(12) shall comply with the requirements laid down in Chapter II of this Regulation and shall be in accordance with the template set out in the Annex.

2. Where relevant, the liquidity provider and the issuer with financial instruments admitted to trading on one or more SME growth markets shall adjust the liquidity contract to cater for the specificities of the individual case.

## SECTION II

### Elements of the liquidity contract

#### *Article 3*

#### **Elements of the liquidity contract**

The liquidity contract shall identify:

- a) the issuer and the liquidity provider that are the parties to the liquidity contract;
- b) the SME growth market on which the liquidity contract will be performed;
- c) the ISIN of the share to which the liquidity contract applies;
- d) the limits to the resources allocated to the performance of the liquidity contract;
- e) the measures to ensure the independence of the liquidity provider;
- f) the conditions governing the trading activity carried out by the liquidity provider;
- g) the obligations of the liquidity provider;
- h) the fees structure and the remuneration of the liquidity provider;
- i) information on the liquidity contract to be disclosed to the public.

#### *Article 4*

### **Liquidity account**

1. The liquidity contract shall provide for the opening of a liquidity account for the shares and the cash allocated by the issuer to the performance of the liquidity contract.
2. The liquidity contract shall provide that the resources allocated to the liquidity account should be exclusively used for the purpose of the liquidity contract.

#### *Article 5*

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

1. The liquidity contract shall specify the limits to the resources allocated to the liquidity account in terms of amount of cash and number of shares. Such resources, in the form of cash and shares, must be proportionate and commensurate to the objective of enhancing liquidity.
2. The resources allocated to the liquidity contract shall not exceed the following thresholds:
  - a) for illiquid shares: [500%] of the average daily turnover of the share, capped at [1 million] Euro. A single hard threshold of [500,000] Euro may be applied where the [500%] of the average daily turnover would not allow the liquidity provider to effectively provide liquidity.
  - b) for liquid shares: [200%] of the average daily turnover of the share, capped at [20 million] Euro.

## **SECTION II**

Provisions concerning the liquidity provider and the performance of the liquidity contract

#### *Article 6*

### **Independence of the liquidity provider**

1. The liquidity contract shall contain provisions to ensure the independence of the liquidity provider from the issuer and appropriate mechanisms to prevent and manage conflicts of interests arising from the performance of the liquidity contract.
2. The liquidity contract shall specify that:

- a) the issuer shall not exercise any influence on the liquidity provider as regards the way trading is to be conducted;
- b) the liquidity provider has in place mechanisms to ensure that the trading decisions related to the liquidity contract remain independent from other trading desks, groups or units engaged in trading activities within the liquidity provider.

#### *Article 7*

### **Conditions governing the trading of the liquidity provider**

1. The liquidity contract shall contain price conditions and volume limits for the activity of the liquidity provider.
2. The price conditions shall ensure that the liquidity provider does not alter the prices in the market where there is independent trading interest available.
3. The liquidity contract shall establish the following daily volume limits for the activity of the liquidity provider:
  - a) for illiquid shares: trades shall not exceed [25%] of the average daily turnover; a single hard threshold of 20,000 Euro may be applied where the [25%] of the average daily turnover would not allow the liquidity provider to effectively provide liquidity.
  - b) for liquid shares: trades shall not exceed [15%] of the average daily turnover.

#### *Article 8*

### **Obligations of the liquidity provider**

The liquidity contract shall require the liquidity provider to maintain records of orders and transactions relating to the liquidity contract for at least five years in a way that allows it to easily distinguish them from other trading activities.

#### *Article 9*

### **Fees structure and remuneration of the Liquidity Provider**

1. The liquidity contract shall define the fees structure and the remuneration to which the liquidity provider is entitled for carrying out the liquidity provision activity.

2. The remuneration of the liquidity provider may consist of:
  - a) a fixed amount;
  - b) a variable amount.
3. The liquidity contract shall specify the conditions and parameters to be met to access the variable remuneration, which shall not exceed [15%] of the total remuneration.

### SECTION III

#### Provisions on transparency

##### *Article 10*

#### **Transparency obligations towards the public**

The liquidity contract shall require that the issuer discloses to the public, by means of publication on its website or other means specified in the contract, the following information:

- a) Before the liquidity contract enters into force:
  - (i) the identity of the issuer and the liquidity provider;
  - (ii) the identification of the shares for which the liquidity contract is stipulated;
  - (iii) the starting date and the duration of the liquidity contract, as well as situations or conditions leading to the temporary interruption, suspension or termination of its performance;
  - (iv) the identification of the SME growth market on which the obligations set in the liquidity contract will be carried out, and, where applicable, an indication of the possibility to execute transactions outside a trading venue;
  - (v) the limits to the resources allocated to the liquidity contract.
- b) Once the liquidity contract has entered into force:
  - (i) on a semi-annual basis, details of the trading activity relating to the performance of the liquidity contract such as the number of transactions



executed, volume traded, average size of the transactions and average spreads quoted, prices of executed transactions;

- (ii) any changes to previously disclosed information on the liquidity contract, including changes relating to available resources in terms of cash and financial instruments, changes to the identity of the liquidity provider, and any change in the allocation of cash or financial instruments in the accounts of the issuer and the liquidity provider.
- c) When the liquidity contract ceases to be performed:
- (i) the fact that the performance of the liquidity contract has ceased;
  - (ii) the reasons or causes for ceasing the performance of the liquidity contract.

### CHAPTER III

#### **FINAL PROVISION**

##### Article 11

##### **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.

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 I: Template of 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 [.....] euros, with registered office at [address], enrolled in the Company Register of [city/country] under the number [ ..... ], represented by [ ..... ],

("the **Issuer**")

**and**

[company name], a company with a share capital of [.....] euros, having its registered office at [address], authorized by the [National Competent Authority], reference number [ ..... ] and listed on the Company Register of [city/country] under the number [ ..... ], represented by [ ..... ],

("the **Liquidity Provider**")

(collectively referred to as "the **Parties**")

#### **Preamble**

This Contract has been prepared in accordance with the applicable law, and in particular in complies with:

- Regulation (EU) No 596/2014 of the European Parliament and of the European Council of 16 April 2014 on market abuse (MAR),

- Commission Delegated Regulation (EU) No ..../... of ... laying down regulatory technical standards setting out a contractual template to be used for the purposes of entering into liquidity contracts for issuers whose financial instruments are admitted to trading on an SME growth market, supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council,

### **The Parties hereby agree as follows:**

#### **1. Definitions**

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

- (a) “Market”: the SME Growth Market on which the Issuer’s shares are admitted to listing and trading, i.e. [name of the SME Growth Market(s)]; [Where the shares are listed on more SME Growth Markets, a separate liquidity contract should be executed for each venue]
- (b) “Shares”: the Issuer’s share capital of Eur [.....], divided into [...] shares with a par value of [...] as identified in Article 4;
- (c) “RTS on Liquidity Contracts”: the Commission Delegated Regulation (EU) No..../.... of [...] laying down regulatory technical standards setting out a template to be used for the purposes of liquidity contracts for issuers whose financial instruments are admitted to trading on an SME growth market, supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council;

[other definitions]

#### **2. Purpose of the Contract**

2.1. The Parties acknowledge that the Purpose of the Contract is to appoint the Liquidity Provider that will operate on the Market with the aim to enhance the liquidity of the Shares of the Issuer.

#### **3. Performance of the Contract**

3.1 The Liquidity Provider wishes to buy and sell the Shares on the Market in order to enhance their liquidity and improve the regularity of trading or avoid price swings that are not justified by the current market trend. So as not to interfere with the orderly operation of the Market or mislead other parties, and in accordance with any Market rules, the sole purpose of the Liquidity Provider's trading under this Contract shall be to enhance the liquidity of the Shares and improve the regularity of trading.

3.2 The Shares are admitted to listing and trading on the Market. The Shares to which the Contract applies are identified by the following ISIN(s):

[.....]

3.3 The Shares are categorised as [Illiquid Shares] / [Liquid Shares] according to the RTS on Liquidity Contracts.

#### **4. Liquidity Account and resources allocated**

4.1 The Liquidity Provider has opened the dedicated account, number [.....] ("the **Liquidity Account**"), on which all transactions undertaken by the Liquidity Provider on behalf of the Issuer under the Contract shall be recorded.

4.2 No other transactions are to be recorded on the Liquidity Account.

4.3 The resources allocated to the Liquidity Account shall exclusively be used for the purpose of the Contract.

4.4 The Liquidity Account may not, under any circumstances, be overdrawn either in relation to cash or Shares.

4.5 To allow the Liquidity Provider to carry out transactions as per this Contract, the Issuer shall credit the Liquidity Account with the following resources (the "**Resources**"):

- the sum of [.....] euros,
- [.....] Shares.

4.6 The Liquidity Provider shall close the Liquidity Account in the event that the Contract is terminated or otherwise not renewed.

4.7 Acting on the Issuer's instructions, the Liquidity Provider undertakes to transfer any cash and/or Shares held on the Liquidity Account to the account(s) designated by the Issuer as soon as possible.

#### **5. Independence of the Liquidity Provider**

5.1 The Liquidity Provider shall act independently in the execution of the Contract. In particular, the Liquidity Provider has full discretion as to when to trade on the Market in order to:

- enhance the liquidity of the Shares and improve the regularity of trading; and
- ensure continuity of service having regard to the Shares and cash available in the Liquidity Account.

- 5.2 The Issuer undertakes not to issue any instructions or otherwise provide any information with the intention to influence the Liquidity Provider in the execution of its obligations under this Contract.
- 5.3 The Liquidity Provider undertakes to maintain an appropriate internal structure and ensure appropriate controls in order to ensure the independence of staff in charge of trading under this Contract from other trading desks, groups or units engaged in trading activities within it.
- 5.4 The Issuer undertakes not to communicate to the Liquidity Provider any information which may be construed as an inside information within the meaning of MAR.
- 5.5 If, however, such information comes to its knowledge in connection with the activities carried out under this Contract, the Liquidity Provider shall take all necessary measures to keep it confidential and to ensure that it is not disclosed or otherwise used, directly or indirectly, for its own, or another person's account. In such case, the Liquidity Provider shall promptly inform the Issuer accordingly.

## **6. Conditions governing the Liquidity Provider's trading**

- 6.1 In order to perform the Contract, in light of Article 3.1 above, and to maintain sufficient cash and Shares in the Liquidity Account for the purpose of this Contract, the Liquidity Provider may purchase and sell the Shares under normal market circumstances. It shall not issue orders which may create an unjustifiable spread considering the current market trend.
- 6.2 With a view to reducing this risk, the Liquidity Provider's operations are subject to restrictions in terms of the volume and price, as per paragraphs (1) or (2) of Article 7 of the RTS on Liquidity Contracts.
- 6.3 [Supplemental situations or conditions when the performance of the Contract may be temporarily suspended or restricted]

## **7. Obligations of the Liquidity Provider regarding the performance of the Contract**

- 7.1 The Liquidity Provider hereby represent and warrants to the Issuer that it is duly authorized by the [national competent authority] to carry out the activity of [financial service] and it is a registered member of the Market(s).
- 7.2 The Liquidity Provider undertakes to take all necessary actions, over the duration of the Contract, in order to execute, deliver and perform its obligations under this Contract, including but not limited to the actions necessary to maintain the authorization from the competent authority and the membership to the Market.

- 7.3 In performing its duties under this Contract, the Liquidity Provider ensures that it complies with Directive 2014/65/EU of 15 May 2014 on markets in financial instruments<sup>14</sup> (MiFID II) and that it will assume sole responsibility for its compliance with all applicable laws and regulations.
- 7.4 The Liquidity Provider undertakes to maintain adequate records of orders and transactions relating to the Contract for at least five years.
- 7.5 The Liquidity Provider undertakes to make available to the Issuer the documentation demonstrating that orders introduced are entered separately and individually without aggregating orders from several clients or from its own proprietary trading activity.
- 7.6 The Liquidity Provider undertakes to ensure that the trading decisions relating to the Contract remain independent from other trading desks, groups or units engaged in trading activities within the liquidity provider (orders to trade received from clients, portfolio management or orders placed on its own account).
- 7.7 The Liquidity Provider guarantees to possess the compliance and audit resources to monitor and ensure compliance at all times with the conditions of the Contract.
- 7.8 [Supplemental obligations]

## **8. Obligations of the Issuer**

- 8.1 The Issuer undertakes to promptly provide the [National Competent Authority] with a copy of the Contract upon its request.

## **9. Fees structure and remuneration of the Liquidity Provider**

- 9.1 In consideration of the services provided under this Contract, the Issuer undertakes to pay and the Liquidity Provider will receive [specify amount] of fixed amount and [specify percentage] of variable amount [specify the compensation, the criteria to determine the variable remuneration, which cannot exceed [15%] of the total, and fees and frequency of payment] .

## **10. Transparency Obligations**

- 10.1 The Parties agree that the transparency obligations towards the public will be fulfilled by the Issuer.
- 10.2 The Issuer undertakes to disclose to the public the information on the Contract set out in Article 10(1), subparagraphs (a), (b) and (c) of RTS on Liquidity Contracts on the [Issuer and/or Liquidity Provider' website and/or the Market's website or other means].

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<sup>14</sup> OJ L 173, 12.06.2015, p. 349.

10.3 The Liquidity Provider undertakes to provide the Issuer with all necessary information in order for the Issuer to comply with its transparency obligations vis-à-vis the public and the [national competent authority].

## 11. Other contractual terms and conditions

11.1 [Law governing the Contract, confidentiality, duration, termination, renewal, jurisdiction, etc.]

The Issuer submitted a draft of this contract to [*Market Operator*], that 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 now been entered into the [*day*] and [*year*].

SIGNED BY

The **Issuer**

[*name*]

for and on behalf of

[*name*]

The **Liquidity Provider**

[*name*]

for and on behalf of

[*name*]

## 7.4 Annex IV- Draft ITS on Insider Lists

### COMMISSION IMPLEMENTING REGULATION (EU) .../...

of [ ]

**laying down implementing technical standards with regard to the precise format of insider lists and for updating insider lists and specification of the format of insider lists for issuers whose financial instruments are admitted to trading on an SME growth market amending in accordance with Regulation (EU) No 596/2014 of the European Parliament and of the Council and repealing Implementing Regulation (EU) 2016/347 (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 Articles 18(6) and 18(9) thereof,

Whereas:

- (1) Pursuant to Article 18 of Regulation (EU) No 596/2014, issuers, emission allowance market participants, auction platforms, auctioneers and auction monitor, or any other persons acting on their behalf or on their account are required to draw up insider lists and keep them up to date in accordance with a precise format.
- (2) The establishment of a precise format, including the use of standard templates, should facilitate the uniform application of the requirement to draw up and update insider lists laid down in Regulation (EU) No 596/2014. It should also ensure that competent authorities are provided with the information necessary to fulfil the task of protecting the integrity of the financial markets and investigate possible market abuse.
- (3) Since multiple pieces of inside information can exist within an entity at the same time, insider lists should precisely identify the specific pieces of inside information to which persons working for issuers, emission allowance market participants, auction platforms, auctioneers and auction monitor have had access to (whether it is, inter alia, a deal, a

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

project, a corporate or a financial event, publication of financial statements or profit warnings). To that end, the insider list should be divided into sections with a separate section for each piece of inside information. Each section should list all persons having access to the same specific piece of inside information.

- (4) To avoid multiple entries in respect of the same individuals in different sections of the insider lists, the issuers, emission allowance market participants, auction platforms, auctioneers and auction monitor, or the persons acting on their behalf or on their account, may decide to draw up and keep up to date a supplementary section of the insider list, referred to as the permanent insiders section, which is of a different nature to the rest of sections of the insider list, as it is not created upon the existence of a specific piece of inside information. In such a case, the permanent insiders section should only include those persons who, due to the nature of their function or position, have access at all times to all inside information within the issuer, the emission allowance market participant, the auction platform, the auctioneer or the auction monitor.
- (5) The insider list should in principle contain personal data that facilitates the identification of the insiders. Such information should include the date of birth, the personal address and, where applicable, the national identification number of the individuals concerned.
- (6) The insider list should also contain data that may assist the competent authorities in the conduct of investigations, to rapidly analyse the trading behaviour of insiders, to establish connections between insiders and persons involved in suspicious trading, and to identify contacts between them at critical times. In this respect, telephone numbers are essential as they permit the competent authority to act swiftly and to request data traffic records, if necessary. Moreover, such data should be provided at the outset, so that the integrity of the investigation is not compromised by the competent authority having to revert in the course of an investigation to the issuer, the emission allowance market participant, the auction platform, the auctioneer, the auction monitor or the insider with further requests for information.
- (7) To ensure that the insider list can be made available to the competent authority as soon as possible upon request and in order not to endanger an investigation by having to seek information from the persons in the insider list, the insider list should be drawn up in electronic format and updated at all times without delay when any of the circumstances specified in Regulation (EU) No 596/2014 for the updating of the insider list occurs.
- (8) The use of specific electronic formats for the submission of insider lists as determined by competent authorities should also decrease the administrative burden for competent authorities, issuers, emission allowance market participants, auction platforms, auctioneers or auction monitor and those acting on their behalf or on their account. The electronic

formats should allow for the information included in the insider list to be kept confidential and for the rules laid down in Union legislation on the processing of personal data and the transfer of such data to be complied with.

- (9) Pursuant to the amendments to Article 18 of Regulation (EU) No 596/2014 where Member States have chosen to make use of the derogation to the general regime concerning issuers admitted to trading on an SME growth market, such issuers have to include all the persons who have access to inside information. However, in order to reduce their administrative burden, it is appropriate to limit the fields of insider lists to those strictly necessary for the identification of the relevant individuals by the competent authority.
- (10) It is also appropriate to maintain the freedom to select the format in which issuers admitted to trading on an SME growth market keep their insider lists, as long as that format ensures the completeness, integrity and confidentiality of the information.
- (11) Given the close link between the existing implementing provisions regarding the format of insider lists and the new implementing provisions, it is appropriate to keep all implementing provisions on the format of insider lists consolidated in one legal act. Implementing Regulation (EU) 2016/347 should therefore be repealed.
- (12) This Regulation is based on the draft implementing technical standards submitted by ESMA to the Commission.
- (13) ESMA has conducted open public consultations on the draft implementing technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the advice of the Securities Markets Stakeholder Group established by 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*

#### **Definitions**

For the purposes of this Regulation, the following definition shall apply:

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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).

‘electronic means’ are means of electronic equipment for the processing (including digital compression), storage and transmission of data, employing wires, radio, optical technologies, or any other electromagnetic means.

## *Article 2*

### **Format for drawing up and updating the insider list**

1. Issuers, emission allowance market participants, auction platforms, auctioneers and auction monitor, or any person acting on their behalf or on their account, shall ensure that their insider list is divided into separate sections relating to different inside information. New sections shall be added to the insider list upon the identification of new inside information, as defined in Article 7 of Regulation (EU) No 596/2014.

Each section of the insider list shall only include details of individuals having access to the inside information relevant to that section.

2. Without prejudice to article 3, the persons referred to in paragraph 1 may insert a supplementary section into their insider list with the details of individuals who have access at all times to all inside information (‘permanent insiders’).

The details of permanent insiders included in the supplementary section referred to in the first subparagraph shall not be included in the other sections of the insider list referred to in paragraph 1.

3. The persons referred to in paragraph 1 shall draw up and keep the insider list up to date in an electronic format in accordance with Template 1 of Annex I.

Where the insider list contains the supplementary section referred to in paragraph 2, the persons referred to in paragraph 1 shall draw up and keep that section updated in an electronic format in accordance with Template 2 of Annex I.

4. The electronic formats referred to in paragraph 3 shall at all times ensure:

- (a) the confidentiality of the information included by ensuring that access to the insider list is restricted to clearly identified persons from within the issuer, emission allowance market participant, auction platform, auctioneer and auction monitor, or any person acting on their behalf or on their account that need that access due to the nature of their function or position;
- (b) the accuracy of the information contained in the insider list;

(c) the access to and the retrieval of previous versions of the insider list.

5. The insider list referred to in paragraph 3 shall be submitted using the electronic means specified by the competent authority. Competent authorities shall publish on their website the electronic means to be used. Those electronic means shall ensure that completeness, integrity and confidentiality of the information are maintained during the transmission.

### *Article 3*

#### **SME growth market issuers**

1. For the purposes of Article 18(6) first subparagraph of Regulation (EU) No 596/2014, an issuer whose financial instruments are admitted to trading on an SME growth market shall provide the competent authority, upon its request, with an insider list in accordance with the template in Annex II.

2. For the purposes of Article 18(6) second subparagraph of Regulation (EU) No 596/2014, where Member States have decided to make use of the derogation set out in this article, an issuer whose financial instruments are admitted to trading on an SME growth market shall provide the competent authority, upon its request, with an insider list in accordance with the template in Annex III.

3. Issuers whose financial instruments are admitted to trading on an SME growth market shall keep their insider lists in a format that ensures that the completeness, integrity and confidentiality of the information are maintained during the transmission to the competent authority.

### *Article 4*

#### **Repeal**

Implementing Regulation (EU) 2016/347 is repealed from the date of application of this Regulation as set out in the second subparagraph of Article 5. References to the repealed Regulation shall be construed as references to this Regulation.

### *Article 5*

#### **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*.

It shall apply from [ ].

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*

*[For the Commission  
On behalf of the President*

*[Position]*

*Annex I*

TEMPLATE 1

**Insider list: section related to [Name of the deal-specific or event-based inside information]**

**Date and time (of creation of this section of the insider list, i.e. when this inside information was identified): [yyyy-mm-dd; hh:mm UTC**

*(Coordinated Universal Time)]*

**Date and time (last update): [yyyy-mm-dd, hh:mm UTC (Coordinated Universal Time)]**

**Date of transmission to the competent authority: [yyyy-mm-dd]**

<b>First name(s) of the insider</b>	<b>Sur-name(s) of the insider</b>	<b>Birth sur-name(s) of the insider (if different)</b>	<b>Professional telephone number(s) (work direct telephone line and work mobile numbers)</b>	<b>Company name and address</b>	<b>Function and reason for being insider</b>	<b>Obtained (the date and time at which a person obtained access to inside information)</b>	<b>Ceased (the date and time at which a person ceased to have access to inside information)</b>	<b>Date of birth</b>	<b>National-Identification-Number (if applicable)</b>	<b>Personal telephone numbers (home and personal mobile telephone numbers)</b>	<b>Personal full home address: street name; street number; city; post/zip code; country)</b>
[Text]	[Text]	[Text]	[Numbers (no space)]	[Address of issuer/emission allowance market participant/auction platform/auctioneer /auction monitor or third party of insider]	[Text describing role, function and reason for being on this list]	[yyyy-mm-dd, hh:mm UTC]	[yyyy-mm-dd, hh:mm UTC]	[yyyy-mm-dd]	[Number and/or text]	[Numbers (no space)]	[Text: detailed personal address of the insider  — Street name and street number  — City  — Post/zip code  — Country]

TEMPLATE 2

**Permanent insiders section of the insider list**

**Date and time (of creation of the permanent insiders section)** [yyyy-mm-dd, hh:mm UTC (*Coordinated Universal Time*)]

**Date and time (last update):** [yyyy-mm-dd, hh:mm UTC (*Coordinated Universal Time*)]

**Date of transmission to the competent authority:** [yyyy-mm-dd]

<b>First name(s) of the insider</b>	<b>Surname(s) of the insider</b>	<b>Birth surname(s) of the insider (if different)</b>	<b>Professional telephone number(s) (work direct telephone line and work mobile numbers)</b>	<b>Company name and address</b>	<b>Function and reason for being insider</b>	<b>Included (the date and time at which a person was included in the permanent insider section)</b>	<b>Date of birth</b>	<b>National Identification Number (if applicable)</b>	<b>Personal telephone numbers (home and personal mobile telephone numbers)</b>	<b>Personal full home address (street name; street number; city; post/ zip code; country)</b>
[Text]	[Text]	[Text]	[Numbers (no space)]	[Address of issuer/emission allowance market participant/auction platform/auctioneer/auction monitor or third party of insider]	[Text describing role, function and reason for being on this list]	[yyyy-mm-dd, hh:mm UTC]	[yyyy-mm-dd]	[Number and/or text]	[Numbers (no space)]	[Text: detailed personal address of the insider  — Street name and number  — City  — Post/zip code  — Country]

ANNEX II

**Template for the insider list to be submitted by issuers of financial instruments admitted to trading on SME growth markets in accordance with Article 3(1)**

**Insider list: section related to [Name of the deal-specific or event-based inside information]**

**Date and time (creation):** [yyyy-mm-dd, hh:mm UTC (Coordinated Universal Time)]

**Date of transmission to the competent authority:** [yyyy-mm-dd]

<b>First name(s) of the insider</b>	<b>Sur-name(s) of the insider</b>	<b>Birth sur-name(s) of the insider (if different)</b>	<b>Professional telephone number(s) (work direct telephone line and work mobile numbers)</b>	<b>Company name and address</b>	<b>Function and reason for being insider</b>	<b>Obtained (the date and time at which a person obtained access to inside information)</b>	<b>Ceased (the date and time at which a person ceased to have access to inside information)</b>	<b>National Identification Number (if applicable) Or otherwise date of birth</b>	<b>Personal full home address (street name; street number; city; post/zip code; country) (If available at the time of the request by the competent authority)</b>	<b>Personal telephone numbers (home and personal mobile tele- phone numbers) (If available at the time of the request by the competent authority)</b>
[Text]	[Text]	[Text]	[Numbers (no space)]	[Address of issuer or third party of insider]	[Text describing role, function and reason for being on this list]	[yyyy-mm-dd, hh:mm UTC]	[yyyy-mm-dd, hh:mm UTC]	[Number and/ or text or yyyy-mm-dd for the date of birth]	[Text: detailed personal address of the insider — Street name and number — City — Post/zip code — Country]	[Numbers (no space)]

*ANNEX III*

**Template for the insider list to be submitted by issuers of financial instruments admitted to trading on SME growth markets in accordance with Article 3(2)**

**Insider list: section related to (name of the deal-specific or event-based inside information)**

**Date and time (creation):** [yyyy-mm-dd, hh:mm UTC (Coordinated Universal Time)]

**Date of transmission to the competent authority:** [yyyy-mm-dd]

<b>First name(s)</b> of the insider	<b>Surname(s)</b> of the insider	<b>Professional telephone number(s)</b> (work direct telephone line and work mobile numbers)	<b>Personal telephone numbers</b> (home and personal mobile telephone numbers)  (If available at the time of the request by the competent authority)	<b>Function and reason for being insider</b>	<b>Obtained</b> (the date and time at which a person obtained access to inside information)	<b>Ceased</b> (the date and time at which a person ceased to have access to inside information)	<b>National Identification Number</b> (if applicable)  Or otherwise date of birth
[Text]	[Text]	[Numbers (no space)]	[Numbers (no space)]	[Text describing role, function and reason for being on this list]	[yyyy-mm-dd, hh:mm UTC]	[yyyy-mm-dd, hh:mm UTC]	[Number and/or text or yyyy- mm-dd for the date of birth]

## 7.5 Annex V- Preliminary high-level cost-benefit analysis, RTS on Liquidity Contracts

This section provides a high-level cost-benefit analysis (CBA) of the draft RTS on the template for liquidity contracts on the SME growth market. A more detailed CBA will be published together with the final ESMA proposal.

To the extent possible, the final CBA will include some quantitative data to provide a more refined assessment of the impact of the ESMA proposal on market participants. To that end market participants are invited to respond to the questions below.

The stakeholders directly impacted by the ITS are:

- Issuers whose financial instruments are admitted to trading on an SME growth market;
- Investment firms and credit institutions offering investment services; and
- Market operators or investment firms operating an SME growth market.

The investors community and other market participants would be positively impacted through the increased liquidity that liquidity contracts would bring to the market and through the market integrity they should overall entail. However, this benefit is attributable to the SME GMs Regulation and not to these RTS.

Similarly, the use of a common template may reduce the capacity of the parties to determine the terms and conditions of the contract but again, this is directly attributable to the SME GMs Regulation.

	Qualitative description
Benefits	<p>The use of common templates for signing liquidity contracts should reduce the administrative burden that both supervised persons and issuers admitted to trading on an SME GM have to face.</p> <p>Equally, the existence of a unified template and technical standards specifying the content of the liquidity contracts clauses should reduce the administrative burden for market operators and investment firms operating an SME GM which have to agree with the terms and conditions of the contract.</p>

Compliance costs	<p>Market operators and investment firms operating an SME GM will have to agree with the terms and conditions of the contract.</p> <p>It should be however noted that the cost stems from the SME GM Regulation and not from the draft RTS.</p>
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## 7.6 Annex VI- Preliminary high-level cost-benefit analysis, ITS on Insider List

This section provides a high-level cost-benefit analysis (CBA) of the draft amendments to the ITS 2016/347 on insider lists. A more detailed CBA will be published together with the final ESMA proposal.

To the extent possible, the final CBA will include some quantitative data to provide a more refined assessment of the impact of the ESMA proposal on market participants. To that end market participants are invited to respond to the questions below.

The stakeholders directly impacted by the ITS are:

- Issuers whose financial instruments are admitted to trading on an SME growth market in a Member State that has opted for requiring these issuers including in their insider lists all persons who have access to inside information, and not only those who have regular access; and
- NCAs.

Investors and market participants would be indirectly impacted through the increased market integrity they should overall entail.

The draft technical standards relating to insider lists concern only the format of the insider lists, by reducing the data fields required.

	Qualitative description
Benefits	<p>The use of common templates for setting up, maintaining and submitting to the competent authority the insider list, and the reduction of the fields to be included will facilitate the implementation by those subject to the requirements, in particular when their instruments are admitted to traded or traded in venues in different Member States.</p>

<p>Compliance costs</p>	<p>Currently issuers whose financial instruments are admitted to trading on an SME growth market are exempted from the obligation to keep an insider list, but still subject to the ongoing monitoring of the persons who have access to inside information. This requirement permits them to produce a list of insiders upon request of their competent authority. The amendment of Article 18(6) of MAR will force these issuers to maintain on an ongoing basis their insider lists. Whereas this implies a cost, such cost is attributable to level 1, not to this ITS.</p> <p>No additional costs can be identified at this stage.</p> <p>For national competent authorities, the reduced number of fields may imply an increased administrative cost in case of investigation of potential cases of market abuse, since they may have to request the missing data from the issuer/persons working on their behalf or on their account/individuals.</p>
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**CBA Q1: Can you identify any other costs and benefits? Please elaborate**