esma European Securities and Markets Authority

Final Report

On the amendments to the Market Abuse Regulation for the promotion of the use of SME Growth Markets

27 October 2020 | ESMA70-156-3581

Table of Contents

Acronyms and definitions used

Implementing Regulation 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[1]
Delegated Regulation 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[2]
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[3]
MAR Review Report	Final Report on the MAR review (Ref. ESMA70-156-2391)
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[4]
MiFIR	Markets in Financial Instruments Regulation – Regulation 600/2014 of the European Parliament and of the Council[5]
MTF	Multilateral Trading Facility

[1] OJ L 65, 11.3.2016, p. 49–55.
[2] OJ L 153, 10.6.2016, p. 3–12.
[3] OJ L 173 12.6.2014, p. 1.
[4] OJ L 173 12.6.2014, p. 349.
[5] OJ L 173 12.6.2014, p. 84.

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[6]
Q&A	Question and Answer
SME GM 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 small and medium-sized enterprises growth markets[7]
RTS	Regulatory Technical Standards
SME	smaller and medium-sized enterprise
SME GM	SME growth market

[6] OJ L 168, 30 June 2017, p. 12.
[7] OJ L 320, 11.12.2019, p. 1–10.

1. Executive Summary

Reasons for publication

Regulation (EU) 2019/2115[8] on the promotion of the use of SME growth markets (SME GM Regulation) amended Articles 13 of MAR (by inserting the new paragraphs 12 and 13) and 18 of MAR. Article 13(13) of MAR mandates ESMA to submit to the European Commission (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 growth market (SME GM) and their liquidity providers. The amended Article 18(6) of MAR mandates ESMA to 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 National Competent Authorities (NCAs) upon request.

A Consultation Paper (CP) presenting ESMA's proposal for the draft RTS on liquidity contracts and the draft ITS specifying the format of the insider list was published on 6 May. The consultation lasted until 15 July 2020.

The CP furthermore sought stakeholders' input and proposals on the current state of play of SME GMs in the EU and suggested initiatives to improve the attractiveness of the SME GM regime from issuers', investors' and venues' perspectives, as mandated by Article 90(1)(b) of Directive 2014/65/EU[9] (MiFID II).

This final report follows up on the proposals included in the CP regarding the draft RTS and ITS, presenting drafts which take into account the feedback received from stakeholders on MAR topics.

As indicated in the CP, the delivery timeline of both the CP and of this final report was impacted by the COVID-19 crisis, which also required a longer than usual consultation period. The SME GM Regulation requested ESMA to submit the draft RTS on liquidity contracts and the draft ITS on the format of insider lists by 1 September 2020. In this respect, ESMA acknowledges that, notwithstanding its efforts to submit the draft RTS and ITS on time, the delivery of this final report had to be delayed. As a consequence, ESMA considers the likelihood that the RTS and the ITS to be adopted by end 2020, on time for the application date of the relevant provision (Article 1) of the SME GM Regulation (1 January 2021) as very limited.

In addition, ESMA expects to submit a report to the European Commission (EC) to discuss the functioning of the SME GMs regime in the EU under MiFID II by end 2020.

Contents

This final report aims at identifying solutions that should facilitate the functioning of SME GMs concerning the operation of liquidity contracts and dealing with the insider list obligations.

It is divided into three sections. Section 2 provides a general introduction, Sections 3 and 4 contain, respectively, a description of the legal background, the indication of the received feedback to the consultation and ESMA's assessment and recommendations for the RTS on liquidity contracts and the ITS on the insider list. The Annexes detail the relevant mandates, the draft RTS and ITS, the cost benefit analysis (CBA) and the summary of the responses received to questions included in the CP.

Next Steps

This final report is sent to the EC, and ESMA is submitting the proposed RTS and the proposed ITS for endorsement in the form of Commission Delegated Regulations, i.e. legally binding instruments applicable in all Member States of the European Union. Following the endorsement, the RTS and the ITS are then subject to non-objection by the European Parliament and the Council.

Article 1 of the SME GM Regulation applies as of 1 January 2021. Considering the remaining steps mentioned above that the draft RTS and the draft ITS need to go through before being finalised and entering into force, ESMA considers it unlikely that they will be adopted by that date.

[8] 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 and better accessible 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. 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.
3. In this framework, and in addition to other initiatives targeted at fostering the growth of SME GMs, the SME GM Regulation provides for targeted amendments to MAR.
4. 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. As per such amendments, ESMA has been mandated to draft an RTS on Liquidity Contracts and an ITS on Insider Lists for SME GM issuers.
5. Regarding 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 benefit from a similar regime as those established in the framework of a MAR accepted market practice (AMP), according to Article 13(1) of MAR, without the need for NCAs to adopt any such AMP.
6. In this respect, ESMA is mandated to set out a contractual template to be used by issuers and financial intermediaries. More specifically, Recital 8 of the SME GM 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*" and Article 13(13) of MAR includes such empowerment.

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.

7. As regards the ITS on insider lists, the amendments to Article 18 of MAR introduced by the SME GM Regulation establish a new regime which imposes the obligation to draw up and maintain a slightly less detailed 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.
8. 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).
9. 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.
10. 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.

11. This final report is based on the responses received to the CP. ESMA received 25 responses, one of them confidential[10].
12. A separate report concerning the proposals discussed in the CP on the MiFID II SME GMs regime, is expected to be submitted to the EC by end 2020.

[10] Please note that the replies received concern also the part of the CP on the current state of play of SME GMs in the EU and suggested initiatives to improve the attractiveness of the SME GM regime from issuers', investors' and venues' perspectives, as mandated by Article 90(1)(b) of Directive 2014/65/EU (MiFID II).

3. RTS on liquidity contracts

3.1 Legislative background

13. MAR provides a harmonised framework for the prohibition of market manipulation. This encompasses a prohibition of 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).

14. 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 AMP.

15. 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 concerning 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 the Delegated Regulation 2016/908 which specifies common criteria, procedures and requirements to contribute to the development of uniform arrangements in the sphere of AMPs.

16. The existing AMPs[11] 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" [12], hereinafter the "Points for Convergence") which conveys common criteria that liquidity contract AMPs should have in order to ensure a more consistent and convergent approach to the establishment of such AMPs on liquidity contracts across the Union.

17. As discussed in the introductory section, the MAR amendments contain an empowerment for ESMA to draft an RTS on Liquidity Contracts for SME GM issuers which 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 AMP (under Article 13(1) of MAR).

18. The sections below summarise the general approach ESMA has used in the draft RTS and focuses on the feedback received from stakeholders in the consultation and ESMA's conclusions.

[11] As of the date of this final report, AMPs were adopted in the following four jurisdictions: Spain, Portugal, France and Italy.
[12] Available at this link: https://www.esma.europa.eu/sites/default/files/library/esma70-145-76_opinion_on_point_of_convergence_of_liquidity_contract_amps.pdf.

3.2 ESMA's general approach and general comments to the CP

3.2.1 Feedback to the consultation

19. This section deals with comments and questions that ESMA received on the general approach in the CP, on matters relating to the interpretation of MAR, as amended by the SME GM Regulation and on other transversal topics. The following sections (from 3.3 to 3.9) concern the main provisions and requirements relating to liquidity contracts that were included in the CP.

3.2.1.1 General approach followed in the CP

20. In the CP, ESMA proposed a draft RTS setting out the requirements that parties to a liquidity contract should comply with in order to make sure that such persons are not engaging in market manipulation. The Annex to the CP contained a contractual template which identified the essential clauses that a liquidity contract should have to comply with the requirements established in MAR.

21. Such contractual template included the minimum requirements, set out in the RTS, aiming at ensuring a level-playing field among issuers listed on SME GMs and investment firms, while safeguarding market integrity and while maintaining the necessary flexibility for market participants to adapt each contract to the specificities of each individual case. In particular, ESMA included in the contractual template specific parameters in order to achieve a pan-European set of directly applicable standards.

22. Some respondents to the consultation indicated that in their view the SME GM Regulation only required setting general conditions to help preventing the risk of market manipulation. These general conditions should not make any specific stipulations with regard to specific parameters (i.e. limits on resources, limits on volumes, trading during periodic auctions and restrictions on large orders). The respondents argued that such details should be left to the bilateral agreement between issuer and liquidity provider, as this would allow to have cost-effective agreements.

3.2.1.2 Requests for clarification on MAR, as amended by the SME GM Regulation

23. As indicated above, some respondents raised questions on the interpretation of the SME GM Regulation.

24. In this respect, several respondents requested further clarity on how the new regime on liquidity contracts for SMEs interacts with the existing AMPs, for those jurisdictions in which AMPs were adopted, and with other liquidity provision schemes.

25. The requests for clarifications concern the ability for issuers listed on SME GMs to: (i) choose to sign a liquidity contract under an AMP instead of under the SME GM Regulation or, for issuers that already have a liquidity contract covered by an AMP in place, rely on that contract; (ii) keep both a liquidity contract under an AMP and a separate one under the SME GM Regulation, and (iii) for the issuers that have already signed a contract for the provision of liquidity with investment firms (not covered by an AMP), keep the existing

contracts, since replacing them with liquidity provision contracts under the RTS would, according to the relevant respondents, lead to increased costs and burdens for issuers on SME GMs.

26. In this respect, certain respondents consider that the current liquidity provision practices should be kept. They consider that such practices proved successful to the development of SME GMs, especially in the Nordic countries.

3.2.1.3 Other general points raised

27. Some trading venues requested clarifications on the condition contained in Article 13(12), first subparagraph, letter (d), of MAR, that "*the market operator or the investment firm operating the SME growth market acknowledges in writing to the issuer that it has received a copy of the liquidity contract and agrees to that contract's terms and conditions*". The relevant respondents question the legal basis for the requirement since the market operator is not a party to the liquidity contract, and its obligation is to ensure that the issuer liquidity contract does not impede the orderly functioning of the market. They also asked ESMA to clarify that the market operator's obligation is limited to ensuring that the contracts meet the specific template defined by ESMA in the related RTS, and not on any provisions added by the issuer and the liquidity provider in addition to the template.

28. With reference to another general point raised in the CP, ESMA had consulted (Q11) market participants on whether mandatory liquidity provision schemes, designed in the spirit of Article 48(2) and (3) of MiFID II, could alleviate costs for SMEs issuers and provide them an incentive to go public. A number of market participants replied requesting not to adopt mandatory liquidity provision schemes, as they could contribute to increasing the overall listing costs for SMEs.

29. In addition, few SME GMs operators asked if they are obliged to allow issuers admitted to trading on SME GMs to use a liquidity provider.

30. Finally, few respondents requested to include in the draft RTS references to currencies other than the Euro for those Member States whose currency is not the Euro.

3.2.2 ESMA's assessment and recommendations

3.2.2.1 General approach followed in the CP

31. As indicated above, some respondents to the CP expressed concerns in relation to the inclusion in the contractual template of thresholds and limits on resources, trading conditions and fees. ESMA acknowledges that setting limits and boundaries on certain aspects of the liquidity contracts may limit the overall freedom to design agreements that would best suit the parties in a specific case.

32. ESMA has assessed the thresholds and limits against the provision of Article 13(2) of MAR and ESMA's mandate. In this respect:

    (i) The liquidity contract template under the SME GM Regulation, has the effect that the issuer is not deemed to be engaging in market manipulation without the need

to establish an AMP. Hence, there is no other additional framework or set of rules and principles applying;

(ii) The contractual template to be developed by ESMA has to ensure compliance with the criteria set out in Article 13(2) of MAR. The latter prescribes, among other things, that a competent authority may establish an AMP, 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;

(iii) The contractual template sets pan-European standards on liquidity contracts for issuers listed on SME GMs.

33. Regarding the three elements above, ESMA is of the opinion that:

(i) Considering that the contractual template should be self-sufficient as regards compliance with the criteria of Article 13(2) of MAR, it needs to be exhaustive and establish a set of rules which is appropriate to protect market integrity. Leaving complete contractual freedom to the parties of the liquidity contracts would not allow meeting this objective. As the parties of a liquidity contract under the draft RTS will benefit from a protection against suspicions of market manipulation equivalent to that granted to liquidity contracts executed in the framework of AMPs such high-level approach cannot be deemed sufficient and in line with the intentions of the co-legislators;

(ii) In order to ensure that the liquidity provision activity carried out under the liquidity contract complies with the criteria set out in Article 13(2) of MAR, ESMA deems it necessary to set minimum requirements creating a framework within which the liquidity contract may be considered as not threatening market integrity. ESMA considers that thresholds and limits to the resources, volumes and fees are fundamental elements of such framework;

(iii) Setting such thresholds and limits is essential to make sure that the contractual template is used to enter into liquidity contracts ensuring a level-playing field among SME GM issuers across the Union.

34. Therefore, ESMA believes that the general approach of setting minimum requirements, including thresholds and limits in the draft RTS and reflected in the template for the liquidity contract should be maintained to ensure compliance with the applicable legal provisions.

35. On balance, ESMA acknowledges that, should the thresholds included in the contractual template prove to be inadequate and on the basis of its application, a review of such thresholds could be considered.

3.2.2.2 Requests for clarification on MAR, as amended by the SME GM Regulation

36. ESMA considered the requests for clarifications on the relationship between liquidity contracts under this draft RTS and other liquidity contracts based on AMPs or not covered by any AMP (see above section 3.2.1.2). ESMA deems that this is a relevant factor to ensure the seamless operation of liquidity contracts from a practical standpoint.

37. As regards the relationship between the liquidity contracts under the draft RTS and liquidity contracts based on AMPs, ESMA notes that Article 13(12) of MAR specifies that "*without prejudice to accepted market practices as established in accordance with paragraphs 1 to 11 of this Article, an issuer of financial instruments admitted to trading on an SME growth market may enter into a liquidity contract for its shares"*. In addition, Recital 7 of the SME GM Regulation provides that "*it is, however, essential that the proposed Union framework on liquidity contracts for SME growth markets does not replace, but rather complements, existing or future accepted national market practices. It is also essential that competent authorities retain the possibility of establishing accepted market practices in respect of liquidity contracts in order to tailor their conditions to local specificities or to extend such agreements to illiquid securities other than shares admitted to trading on trading venues*". In ESMA's view, the above wording indicates that the regimes of liquidity contracts for issuers listed on SME GMs based on the draft RTS and those based on national AMPs should be able to co-exist. At the same time, ESMA is of the view that issuers should not execute both a liquidity contract based on an AMP and a separate liquidity contract based on the draft RTS.

38. As regards the relationship with other contracts for the provision of liquidity not covered by an AMP, it is ESMA's understanding that such contracts can continue to exist since they are not covered by the SME GM Regulation and the related draft RTS and do not benefit from the same regime (i.e. the regime of liquidity contracts established in the framework of a MAR AMP). ESMA provides the above explanations to give a first and timely indication to market participants about how the new regime should be applied in practice. ESMA considers it appropriate to further assess and clarify the above points via the publication of a Q&A. Since the competence for producing such Q&As is with the EC, ESMA will liaise with the EC in order to effect such a clarification as soon as possible.

3.2.2.3 Other general points raised

39. For any clarification concerning the role of SME GMs operators with respect to the liquidity contracts, ESMA notes that the legislative text (Article 13(12), first subparagraph, letter (d), of MAR) requires market operators to agree to the contracts' terms and conditions.

40. With reference to the questions received on mandatory liquidity provision schemes for SME GMs, ESMA notes that, in line with Recital 7 of the SME GM Regulation, a distinction should be made between market-making arrangements [13] and liquidity contracts [14]. Question 11 of the CP did not refer to the latter.

41. As regards the question if SME GMs operators are obliged to allow issuers admitted to trading on SME GMs to use liquidity providers, ESMA is of the view that, if issuers listed on SME GMs want to enter into liquidity contracts under the template, the SME GM operator has to allow this. The main idea underlying the Union framework on liquidity contracts for issuers of SME GMs is to enable all such issuers to enter into liquidity contracts even in the absence of an AMP.

[13] Which comprises a contract between the market operator and a third party who commits to maintaining the liquidity in certain shares and, in return, benefits from rebates on trading fees.
[14] Contract between an issuer and a third party who commits to providing liquidity in the shares of the issuer, and on its behalf.

42. Finally, ESMA has amended the draft RTS on liquidity contracts to cover the case of Member States whose currency is not the Euro. In line with the approach followed in the Commission Delegated Regulation (EU) No 2017/583 of 14 July 2016[15], the draft RTS provides that the conversion of the amounts expressed in Euro in the relevant national currencies will be performed by applying the European Central Bank euro foreign exchange reference rate as of 31 December of the preceding year.

3.3 The liquidity account

3.3.1 Feedback to the consultation

43. The contractual template published in the CP provided that a dedicated liquidity account should be opened 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.

44. A small number of respondents commented that they do not consider the establishment of a liquidity account to be necessary. In particular, based on the experience of current liquidity provision contracts not framed within AMPs, some respondents argued that in the Nordic countries the provision of liquidity takes place through share-loans made available by shareholders. These loaned shares are then used to provide liquidity. Other respondents stated that the liquidity provider trades on his own account and perceives a fee from the issuer. According to such respondents, these schemes worked well in the Nordic countries without the need of opening dedicated accounts.

3.3.2 ESMA's assessment and recommendations

45. ESMA has considered the comments from respondents and notes that the contractual template covers cases in which the liquidity provider uses resources (in cash and shares) of the issuer and receives a fee for the service performed. In addition, compliance with the contractual template ensures that an issuer would not be considered to be engaging in market manipulation. No such presumption is linked to the other types of liquidity provision arrangements mentioned by the respondents.

46. Hence, ESMA maintains that the contractual template should require the opening of a dedicated liquidity account for the performance of the liquidity contract. As already stated in the CP, this would achieve three important objectives: (i) guaranteeing the separation of the resources dedicated to the liquidity contract from other resources of the liquidity provider; (ii) facilitating the recording and subsequent monitoring of the transactions performed by the liquidity provider in the execution of the liquidity contract, and (iii) helping in the management of the resources also in terms of their identification and control of the compliance with the limits. In order to mirror the text of Recital 7 of the SME GM

[15] Commission Delegated Regulation (EU) No 2017/583 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 bonds, structured finance products, emission allowances and derivatives, OJ L 87 of 31.03.2017, p. 229.

Regulation, that stipulates that the liquidity is provided on behalf of the issuer, ESMA has amended the draft RTS to indicate that the liquidity account has to be opened in the name of the issuer.

3.4 Limits on resources

3.4.1 Feedback to the consultation

47. The contractual template provides for limits on the maximum amount of resources which can be allocated to the liquidity account under the liquidity contract. The objective is to ensure that resources are proportionate to enhance liquidity without leading to artificial changes in the share prices.

48. In the CP, ESMA has calibrated such limits depending on the specific characteristics of the shares (liquid vs illiquid) and taking into account the trading activity occurring on the relevant market. Hence, limits to resources have been set as a percentage of the average trading volume for the relevant share, calibrating such percentage on the basis of the liquidity status of the share (illiquid vs liquid).

49. ESMA had proposed limits which 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. ESMA considered also a further parameter for illiquid shares proposing, on the basis of the data on liquidity observed in SME GMs, a single hard threshold of 500,000 Euros for those cases in which the 500% of the average trading turnover would not allow to perform the liquidity contract. In establishing such limits, ESMA had referred to the Points for convergence as ESMA believes that the limits identified in the latter could be appropriate for the SME GMs.

50. The majority of the respondents to the CP who expressed a view in relation to the proposed limits on resources were in agreement with ESMA's proposal. Some of those respondents considered it necessary to also introduce the alternative threshold that appears in the Points for Convergence for illiquid shares in the RTS: 1% of the capitalisation of the issuer the day preceding the execution of the contract.

51. The respondents who did not support the proposal stated that in their view issuers could be granted a general permission by the regulation of SME GMs which could set up general conditions if necessary, to prevent the risk of market manipulation.

52. Among the respondents, several did not express a view on the proposed limit to the resources, as the functioning of liquidity contracts in their jurisdictions is based on a different model where the liquidity provider trades on his own account and not with resources allocated by the issuer. Few respondents stated that, in principle, the limits proposed by ESMA may be kept as long as national parallel liquidity provision arrangements in line with current national market practice are permitted and could be upheld at the same time. If not, the respondent would recommend ESMA to review such limits.

3.4.2 ESMA's assessment and recommendations

53. ESMA has considered the feedback received on the limits to resources included in the CP. While the majority of the respondents was in agreement with ESMA's proposal, some consider that the parties to the liquidity contract should be free to set the appropriate amount of resources to be used. Since the performance of the liquidity contract should not be detrimental to market integrity, ESMA is of the view that it is necessary to impose limits on the resources.

54. ESMA deems that the limits proposed in the CP are adequate, and therefore maintains in the contractual template the following limits on resources: 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. ESMA also maintains, for illiquid shares, the further single hard threshold of EUR 500,000.

55. As indicated above, some respondents requested to add also the threshold of 1% of the capitalisation of the issuer the day preceding the execution of the contract for illiquid shares. In this respect, ESMA considers that the proposed threshold system of 500% of the average daily turnover, coupled with the single hard threshold for illiquid shares of EUR 500,000 is sufficient, and there is no merit in adding a further parameter that could vary significantly from issuer to issuer.

3.5 Independence of the liquidity provider

3.5.1 Feedback to the consultation

56. ESMA considers that the principle of independence of the liquidity provider is to be enshrined in the clauses of the liquidity contract template. The independence of the liquidity provider is essential to ensure that the trading activity linked to the liquidity provision has the sole purpose of enhancing the liquidly of the relevant share and is not influenced by the issuer.

57. In order to fulfil this objective ESMA proposed in the CP that the liquidity contract should specify 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 liquidly provider.

58. ESMA considers that the independence of the liquidity provider from the issuer enables 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.

59. ESMA is also of the view that 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.

60. The respondents raised no issues on ESMA's proposal in the CP. One market participant stated that the intermediary could provide for the presence of desks dedicated to liquidity provision, without the need to create dedicated units. The independence of such desks could be safeguarded by a system that ties the operators to the confidentiality of inside information and hence precludes them from investing on the basis of such information. Regular monitoring by the control functions would further guarantee the correct fulfilment of this requirement.

3.5.2 ESMA's assessment and recommendations

61. As indicated above, no specific issues on the independence of the liquidity provider were raised in the consultation. ESMA maintains its view that the contractual template should require the liquidity provider to have in place an appropriate internal structure to achieve independence of trading decisions for the liquidity contract from other trading activity performed by it. In this respect, and to provide further clarity, ESMA specified that the independence should be ensured with respect to other trading activities on the shares concerned by the liquidity contract or on financial instruments the price or value of which depends on or has an effect on the price or value of the mentioned shares. In addition, independence has to be guaranteed also from the issuer, that provides the resources and remunerates the liquidity provider. Such conditions are considered fundamental to guarantee that the provision of liquidity under the contractual template does not threaten market integrity.

62. With reference to the response received that the liquidity provider should not be obliged to open dedicated units to the liquidity provision, ESMA notes the following: The draft RTS requires the liquidity provider to have in place mechanisms to ensure that the liquidity provision activity remains "*independent from other trading desks, groups or units engaged in trading activities within the liquidity provider*". It does not mandate the opening of dedicated units. For the entire duration of the contract the liquidity provider needs to maintain independent judgment on whether the trading activity is needed to enhance the liquidity of the share or whether it would affect relevant trends in the market. ESMA also stresses that the control functions of the liquidity providers are invited to regularly control and monitor the correct fulfilment of this requirement.

3.6 Trading of the liquidity provider

3.6.1 Feedback to the consultation

3.6.1.1 Limits to the trading activity of the liquidity provider

63. In addition to the limits to the resources, in the CP ESMA had included in the contractual template provisions which ensure 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.

64. ESMA had proposed limits to the daily trading volumes for the activity of the liquidity provider defined on the basis of an analysis of the shares[16] traded on SME GMs. The analysis identified a limited number of liquid and highly liquid SME shares and therefore proposed to define such volume limits distinguishing between illiquid and liquid shares.

65. On the basis of the analysis conducted and the Points for convergence, ESMA had proposed volume limits of 25% of the average daily turnover (ADT) calculated over 20 days for illiquid shares and 15% for liquid shares. These limits would amount, on average, approximately to EUR 6,000 for illiquid shares and approximately EUR 16,000 for liquid ones. Furthermore ESMA has proposed, taking into account the high number of shares having a zero ADT and the fact that the liquidity provider might need to use more resources to effectively provide liquidity, to set an alternative volume limit to a maximum of EUR 20,000 for illiquid shares.

66. Most respondents to the CP agreed with these proposed limits. Among those who supported the suggested limits, some proposed possible alternative methodologies. For instance, it was suggested to calculate the hard threshold on a weekly basis, or to take into account factors such as ADT, daily number of transactions, and free float when setting the thresholds.

67. A respondent highlighted the need to periodically review and revise, where necessary, the limits. Another respondent suggested to consider lower limits in circumstances where the issuer is admitted to trading on a market with registered market makers obliged to provide two-way prices in that issuer's securities.

68. Those respondents who were against the proposed limits stated that imposing limits on volumes would be detrimental to the market, especially for the more developed SME GMs.

3.6.1.2 Price conditions

69. The draft RTS also provides that the contract should include price conditions ensuring that the liquidity provider does not alter the prices in the market where there is independent trading interest available. A respondent requested to clarify if ESMA is proposing to adopt the same limits contained in the Points of Convergence[17]. The same respondent considers that, if that is the case, the presence of a liquidity provider would have limited impact (since they will be limited to trading between the highest bid and lowest offer of market makers).

3.6.1.3 Trading in periodic auctions and large orders

70. Furthermore, ESMA consulted market participants on whether certain conditions should be specified as regards the trading during periodic auctions and on how far large trades should be able to benefit from the presumption that no market manipulation is being committed, to the extent that they are executed on venue and in compliance with the rules

[16] 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).

[17] Paragraph 25 of the Points for Convergence states the following: "Orders relating to shares should be at a price that: (a) for buy orders, is not higher than the higher between the last independent trade and the highest independent bid order in the book; (b) for sell orders, is not lower than the lower between the last independent trade and the lowest ask order in the book".

established for large orders in the MiFID II framework (MiFIR and the Commission Delegated Regulation (EU) No 2017/587[18]) and under the rules of a trading venue.

71. With respect to trading during periodic auctions, the majority of respondents did not support the introduction of specific conditions. Respondents stated that it would not be useful to standardize conditions or impose restrictions at the EU level, as those should be set considering the specificities of each market. Hence it would be best to leave such decision to market operators. According to respondents, market operators have sufficient means to identify and prevent market abuse. A respondent also argued that the conduct of the liquidity provider during auctions allows other market participants to gather information relevant to price formation and setting specific condition could affect such mechanism.

72. The respondents who supported the introduction of specific conditions regarding trading during periodic auctions stated that such conditions should mirror those set for periodic auctions by CONSOB in its AMP on liquidity contracts. Some stakeholders stressed the importance of setting conditions which take into account the liquidity of the security, proposing a more restrictive limit for liquid securities (20% as an example) and a higher limit (e.g. 50%) or no limit for illiquid ones.

73. Additionally, one respondent stated that the introduction of specific conditions might help preventing distortion affecting price discovery. Hence, the respondent suggested the introduction for liquid shares of controls as price collars, while for illiquid ones an obligation to post equal size market orders on both sides of the book with a prohibition on self-matching.

74. With respect to large trades, approximately half of the respondents agreed with ESMA's view that the liquidity contract might cover large orders only in limited circumstances[19].

75. The respondents who did not agree with ESMA's proposal had heterogenous views. Few respondents suggested that there should be an entitlement for the liquidity provider to execute large trades, but the specifics should be left to each market. Few others proposed that large orders should benefit from a separate set of rules than those for the liquidity contract. One respondent raised concerns about the adequacy of the limits to the trading of the liquidity provider if investors are willing to place large orders for very illiquid shares.

3.6.2 ESMA's assessment and recommendations

3.6.2.1 Limits to the trading activity of the liquidity provider

76. Acknowledging that the majority of respondents to the CP agreed with ESMA regarding the proposed limits for the trading of the liquidity provider, ESMA maintains the inclusion

[18] 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.

[19] Such orders are executed on venue and in compliance with the rules established for large orders in MiFID II (Commission Delegated Regulation (EU) 2017/5879) and under the rules of a trading venue.

in the draft RTS of the volume limits proposed in the CP, hence limits of 25% of the ADT calculated over 20 days for illiquid shares and of 15% for liquid shares. ESMA also maintains the alternative volume limit of EUR 20,000 for illiquid shares.

77. ESMA understands that some respondents raised concerns about the fact that the proposed limits would not be suitable in specific situations, i.e. when investors wish to place large orders in illiquid shares or where the issuer is admitted to trading on a market where registered market makers provide liquidity (in the latter case, respondents requested to set lower limits). Nevertheless, on balance, ESMA deems that the proposed volume limits are overall appropriate to diminish the risks of market manipulation. Targeting specific scenarios would result in complex trading limits with the risk of a lack of clarity and a level playing field and confusion for market participants.

3.6.2.2 Price conditions

78. As regards the price conditions, ESMA is of the view that the level of detail of the draft RTS, given its nature as a binding legal text, is adequate. ESMA notes the request for clarification received and stands ready to issue guidance, in a separate document, on that point.

3.6.2.3 Trading in periodic auctions and large orders

79. With respect to trading during periodic auctions, having further considered the matter and taking into account the feedback received, ESMA agrees with the majority of respondents that specific conditions should not be introduced. On balance, ESMA deems it more appropriate to leave such decisions to the market operators, that will be able to consider the specificities of their market.

80. With respect to large trades, as indicated above, approximately half of the respondents agreed with ESMA's view that the liquidity contract might cover large orders only in limited circumstances[20].

81. In this respect, having further considered the issue, ESMA maintains its view expressed in the CP and is also minded adding a further requirement, linked to the existence of exceptional circumstances.

82. In particular, large trades should be able to benefit from the protection provided by the liquidity contract if the following conditions are met: (i) reference is made to large trades in accordance with Article 4(1)(b) and (c) of MiFIR and the Commission Delegated Regulation (EU) 2017/587; (ii) the large trades are executed on venue; (iii) they are in line with the rules established for large orders in the MiFID II - MiFIR regime (i.e. the abovementioned Commission Delegated Regulation (EU) 2017/587); (iv) they are executed in accordance with the rules of the relevant SME GM and (v) they take place only in exceptional circumstances. As regards the latter element, exceptional circumstances may occur, for instance, where the proportion between the resources in

[20] Such orders are executed on venue and in compliance with the rules established for large orders in MiFID II (Commission Delegated Regulation (EU) 2017/5879) and under the rules of a trading venue.

cash and shares available to the liquidity provider at a specific point in time would not allow the latter to provide liquidity under the contract anymore. The draft RTS does not include a closed list of exceptional situations, and it is left to liquidity providers to independently assess if a certain observed situation has to be defined as 'exceptional'. In light of this, liquidity providers are invited to apply the provision on large trades in good faith and to narrowly interpret the existence of exceptional situations.

3.7 Obligations of the liquidity provider

3.7.1 Feedback to the consultation

83. In the CP, ESMA stated that the liquidity provider should be obliged to keep record of orders and transactions relating to the liquidity provision under the liquidity contract.

84. The draft RTS therefore included an obligation to keep such orders and transactions easily identifiable and to store the related records for five years. This should be done for the purpose of monitoring the liquidity provision activity. Respondents to the consultation did not comment on this point.

3.7.2 ESMA's assessment and recommendations

85. ESMA maintains the obligation for the liquidity provider to keep records of the orders and transactions undertaken under the liquidity contract, to be included in the contractual template.

86. ESMA considers that records of such orders and transactions should be kept in a manner that ensures their easy and prompt identification. The liquidity provider should store the records for five years.

3.8 Fee structures and remuneration

3.8.1 Feedback to the consultation

87. ESMA had proposed in the CP that in the contractual template the remuneration of the liquidity provider should be set in a way that does not affect its independence. In order to achieve this, the draft RTS provided that the variable part of the remuneration should not exceed 15% of total remuneration. Such threshold was considered as striking the right balance between providing an incentive to the liquidity provider and avoiding that its independence is impaired.

88. One respondent stated that the share of variable remuneration of the liquidity provider should be defined by the parties. There was no other feedback to this point.

3.8.2 ESMA's assessment and recommendations

89. Even though some respondents consider that – in general terms – the draft RTS should leave the setting of limits to the negotiation of the parties, and one specifically requested not to set limits to the variable remuneration in the draft RTS, ESMA does not agree with this view. In particular, considering that the variable remuneration could pose risks as regards the liquidity provider's independence, ESMA does not deem that the parties may, for instance, decide to have only variable remuneration or a very significant portion of the total remuneration.

90. ESMA therefore remains of the opinion that the 15% threshold for the variable remuneration allows to create an incentive for good performance by the liquidity provider and at the same time is not substantial enough to push towards behaviours which may pose a risk to the integrity and orderly functioning of the market. Hence, ESMA maintains its original proposal.

3.9 Transparency

3.9.1 Feedback to the consultation

91. In the CP, ESMA included in the contractual template the obligation to provide transparency about the liquidity contract towards the public before the contract enters into force, while the contract is performed and once it expires.

92. ESMA also proposed that the transparency obligations should be fulfilled by the issuer, i.e. the relevant information should be published on the issuers' website. This would facilitate finding the information concerning liquidity contracts for market participants and the public at large. ESMA, in addition, suggested an aggregate publication of liquidity contract information on the website of the SME GM operator.

93. One respondent to the CP expressed agreement with the transparency obligations toward the public included in the draft RTS, except for the published semi-annual statistics on performance (requesting to have an annual presentation on the issuer's webpage). No other specific feedback was received regarding the transparency obligations proposed in the draft RTS.

3.9.2 ESMA's assessment and recommendations

94. ESMA recommends that the draft RTS includes 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, as outlined in the CP and under the specific modalities described in detail in the draft RTS. In this respect, ESMA maintains that the issuer should be in charge of the disclosures, and that the relevant information should be disclosed on the issuer's website. As already indicated in the CP, ESMA encourages the SME GM operators to publish the data on the liquidity contracts also on their websites. That way investors can find the information about the liquidity contracts more easily without the need to consult each issuer's website.

95. ESMA stresses the importance, for issuers listed on SME GMs, to assess whether the information that they have to disclose to abide by their transparency obligations pursuant to the draft RTS constitutes inside information under Article 7 of MAR, and, should that be the case, to comply with the relevant provisions.

96. ESMA also considers that the semi-annual information on the trading activity relating to the performance of the liquidity contract (including the number of transactions executed, volume traded, average size of the transactions and average spreads quoted, prices of executed transactions) should be kept. An annual presentation would be less informative for the public. At the same time, ESMA included some clarifications on the text, providing that issuers should publish aggregated figures per day of trading.

4. ITS on insider lists

4.1 Legislative background

97. 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. The Implementing Regulation 2016/347 specifies the precise format of the insider list, facilitating the uniform application of the requirement to draw up and update such list.

98. 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 should be able to provide the NCA with an insider list upon request.

99. 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.

100. In order to further reduce the administrative obligations on SME GM issuers, the amendments to MAR have introduced the possibility to maintain only a list of persons who, in the normal exercise of their duties, have regular access to inside information.

101. 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 the SME GM Regulation. The recital states that those persons could be directors, members of the management bodies or in-house counsel.

102. 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.

103. 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.

4.2 Feedback to the consultation

104. ESMA noted in the CP 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.

105. 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 Consultation Paper on the MAR Review Report[21], ESMA proposed 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;
- identification number; and
- the grounds for being included in the list.

106. ESMA considered that the impact of the proposed reduction in terms of fields would be limited from the supervisory perspective, since it only affected the fields ‘birth surname’, ‘company name and address’, and ‘personal full home address’ and this information can still be obtained by NCAs under the powers granted by Article 23 of MAR.

107. ESMA noted in the CP that the proposal did 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.

108. Finally, ESMA considered appropriate addressing the mandate by amending the Implementing Regulation 2016/347 and adding a specific template for an SME GM insider list.

109. A minority of respondents were fully supportive of ESMA’s proposal while a slight majority supported deleting other fields from the list. Among the fields mentioned were the

[21] https://www.esma.europa.eu/sites/default/files/library/mar_review_-_cp.pdf

following: date of birth, national ID number, personal telephone number, personal full home address, birth surname and professional telephone number.

110. Whereas part of the responses did not provide arguments supporting the deletion, some respondents considered that these fields were personal data, and therefore, sensitive to retrieve and store. Other stakeholders also considered that collecting personal phone numbers is an unjustified intrusion in the privacy of individuals and also an outdated mean to convey inside information.

111. Other responses addressed issues related to Level 1 rather than the proposed ITS. Those respondents made requests for clarification, for example, on how Article 18(6) of MAR should be interpreted with respect to persons acting on behalf or on the account of the issuer.

112. One respondent requested that the issuer (or persons acting on its behalf or on its account) should be able to keep the data considered as personal ("date of birth", "national ID number", "personal telephone number" and "personal full home address") separately from the rest of the insider list.

4.3 ESMA's assessment and recommendations

113. As indicated above, this Report addresses the draft ITS on insider lists for SME GM issuers. Consequently, the questions on the interpretation of Level 1 fall out of the scope of this Report.

114. ESMA acknowledges the overall request from respondents to reduce the number of fields in the proposed template which may reduce the overall administrative burden for issuers. However, ESMA also notes that any insider list has to entail a certain minimum amount of information to be useful for supervisory purposes.

115. In that sense, ESMA recalls some of the arguments already put forward in its Final Report on the MAR Review[22]:

a) The absence of phone numbers, addresses and national identification numbers 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.

b) As this data remains necessary in the course of performing market abuse investigations its absence in the insider lists would delay the investigation and ultimately increase the administrative burden both for issuers and NCAs when requesting and aggregating the information on a retroactive basis.

116. ESMA also notes that the responses considering the collection and storage of phone numbers or other personal data as unjustified intrusions in the privacy of individuals have not provided any legal grounds to identify a potential breach of Regulation (EU) 2016/679

[22] https://www.esma.europa.eu/sites/default/files/library/esma70-156-2391_final_report_-_mar_review.pdf

on the protection of natural persons with regard to the processing of personal data and on the free movement of such data[23].

117. Finally, despite that ESMA concurs that there are other means to convey inside information, personal phone numbers still provide information that can be valuable in the course of market abuse investigations.

118. ESMA therefore continues to believe that the list of fields proposed in the CP is the minimum necessary for timely and effective market surveillance and maintains its proposal.

119. Similarly, as regards the other requests to reduce the administrative burden of SME issuers, ESMA cross-refers to its MAR Review Final Report where it has made a number of proposals that should reduce the burden of issuers in general, including the possibility to include in their own insider lists one contact person per external service provider.

120. As regards the question on the possibility to keep personal data separate from the rest of the insider list, ESMA reiterates in this context the position made public in the Final Report on the MAR Review. ESMA does not find any legal obstacle for the separate storage of personal data as long as the issuer and persons acting on its behalf or on its account have the capacity to build up the insider list according to the requirements in the Implementing Regulation 2016/347 upon request of the NCAs.

121. ESMA may address any other issues related to the interpretation of the ITS on insider lists at a later stage through its supervisory convergence tools.

[23] OJ L 119, 4.5.2016, p. 1–88

5. Annexes

5.1 Annex I-Feedback statement (Questions 15 to 19 of the CP)

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

ESMA received 17 responses to this question. Most replies were supportive of the proposal (with nuances) and few respondents were against the thresholds proposed.

Several responses raised issues related to the general interpretation of the Level 1 text, in some cases without referring to the question on the thresholds.

Few supportive responses considered it necessary to introduce in the RTS the alternative threshold that appears in the ESMA Points for convergence: 1% of the capitalisation of the issuer.

The general questions raised in relation to the new regime for liquidity contracts were: (i) some stakeholders requested clarifications regarding the coexistence between these liquidity contracts and the pre-existing AMPs, asking whether issuers traded on an SME GM should still be able to benefit from a liquidity contract under an AMP; (ii) some respondents mentioned the different experience in the Nordic countries (where either the investment firm uses its own money/shares for the liquidity contract, or it is loaned by the main shareholder/s) and asked whether the existing liquidity provision schemes under national provisions (i.e. not subject to any AMP) could still operate; (iii) the role of the market operator under the new regime was also questioned by some market participants, noting that the consent of the market operator can only be granted with respect to the elements included in the draft RTS, (iv) some respondents consider that the liquidity provision scheme should be voluntary instead of mandatory, in order to avoid the overall increase in the cost of being public companies.

A response considered that the presence of desks dedicated to liquidity provision should be sufficient, without the need to create dedicated units.

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.

ESMA received 18 responses: the majority supported the proposal, few were against and some did not express strong views.

Most respondents agreed with the proposed limits on volumes and did not propose any different approach to this matter.

Few respondents raised concerns about the adequacy of the limits. One respondent stated that some specific cases, as that of very illiquid shares or large orders deserved further consideration. In the respondent's view such limits on volumes proved of limited value when

investors are willing to place large orders on very illiquid shares. Another respondent highlighted that any limits set should be kept under review and revised where necessary. In cases where the issuer is admitted to trading on a market with registered market makers obliged to provide two-way prices in that issuer's shares ESMA might need to consider lowering the limits. One of the respondents proposed an option were the hard threshold could be calculated on a weekly basis, or as an alternative, to execute the transaction outside the trading venue at a price not higher than the price of the last independent transaction. Another respondent also proposed that ESMA should take into account factors such as ADT, daily number of transactions, and free float, in addition to market capitalisation and average price per share, when setting the thresholds.

The respondents that were against the proposal consider that imposing limits on volumes is detrimental to the market, especially for those that appear more developed in SME trading. One of the respondents added that enforcing liquidity provision contracts paid by the issuer will not incentive SMEs to go public, since in the respondent's view this will increase the costs of being public.

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?

ESMA received 15 responses, of which a minority supported the need to add conditions for trading under periodic auctions, and the majority was against. One respondent did not take a specific view on the matter, but rather reiterated that liquidity contracts should not be imposed in markets models that have proven successful.

The respondents who supported the proposal were in favour of adding specific conditions to trading in auctions. Two respondents stated that such conditions should be set analogously to the trading conditions and restrictions already set out during auction periods by Consob in its AMP on liquidity contracts. Two respondents stressed the importance of setting conditions that take into account the liquidity of the security. They suggest a more restrictive limit for liquid securities (20% as an example) and a higher limit (e.g.50%) or no limit for illiquid ones. One respondent stated that in case of period auction for liquid shares controls (e.g. price collars) might help preventing distortion affecting price discovery. In case of illiquid shares, in his opinion, such mechanisms risk not to be effective. In the case of auctions, equal size market orders posted on both sides of the book with a prohibition on self-matching would provide liquidity whilst allowing other users to dictate price discovery.

Those who were against stressed that there is no need for standardization at the EU level of possible conditions /restrictions as those might vary depending on the specificities of each market and would be best to leave such decision to market operators. Furthermore, several respondents stressed that market operators have means to identify and prevent market abuse hence further standardised conditions are not needed. One respondent stressed that would be best not to set specific conditions because the conduct of the liquidity provider during

auctions allows other market participants to gather information which is relevant to price formation.

One respondent raised the question of whether liquidity providers signing a contract with the issuer will be exempted from signing a market making agreement. The same respondent asked if a participant fulfilling the obligations of a liquidity contract would be 'dealing on their own account' if the resources to deal are not theirs (they are those of the Issuer) and how would this work if the participant is not an investment firm.

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?

ESMA received 15 answers to this question. Most respondents supported ESMA's proposal. The rest of the respondents had heterogenous views which will be described in detail below.

The majority of those respondents who supported ESMA's proposal stated that in their view block trades could benefit from the safe harbour provided by the liquidity contract, given that they are made through the market and comply with the limits established by the trading rules for this type of transactions.

Few respondents suggested that there should be an entitlement for the liquidity provider to carry large trades, but the specifics should be left to each market.

Few respondents suggested that possibly large orders should benefit from a separate set of rules than those of the liquidity contract.

Few respondents suggested that there is not a need for standardization of this matter at the European level.

One respondent commented that block trades are not typically part of the operation of a liquidity provider, hence they would need further clarifications on this matter.

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.

ESMA received 22 responses to this question.

A significant amount of the responses received were fully supportive of the proposal. However, the majority of the respondents, while agreeing with the field reduction, considered necessary deleting other fields from the template date of birth, national ID number, personal telephone number and personal full home address (however, another respondent requested specifically maintaining this field), birth surname and professional telephone number.

Other responses addressed in general the questions related to level 1, rather than to the proposed ITS:

Some respondents agreed with the reduction of fields for SME issues, but considered necessary that the reduction of the administrative burden applied to all MAR issuers. One of them proposed that the issuer (or persons acting on its behalf or on its account) should be able to keep the data considered as personal ("date of birth", "national ID number", "personal telephone number" and "personal full home address") separately from the rest of the insider list, as long as those personal data could be added to the list when effectively requested by an NCA.

A small group of respondents requested a general reduction of the administrative burden for SME issuers in relation to insider lists, without specifying any proposal.

Other responses asked exempting SME bond issuers from the obligation to draw up and maintain insider lists.

Finally, ESMA received a number of critical comments or requests for clarification in relation to the SME GM Regulation.

One stakeholder noted that the text of the new Article 18 of MAR led to the conclusion that if an SME GM issuer can have a partial list (provided that the relevant Member State is not deciding otherwise) on one specific deal, with only, for instance, members of its board, it means that the persons acting on its behalf advising such issuer will not be on the issuer's insider list. However, that person should maintain its own insider list. In this participant's view, that implied a contradiction. This respondent requested from ESMA clarification about this Level 1 issue.

The dual regime created by the SME GM Regulation was addressed by several participants: one response criticised the dual regime created by the SME GM Regulation, whereby two insider list regimes will coexist in Europe for SME issuers disincentivising issuers and investors, while another requested clarification from ESMA on the interpretation of Level 1 (which template to be used by SME in Member States that have not opted out; how should "regular access" be interpreted). Finally, an issuer representative also requested Member States not to opt out for the general regime under which only persons with regular access to inside information should be included in the insider list.

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

One respondent stated that the maintenance of the insider list should be relatively low cost for issuers as they will have already the relevant processes in place to do so. Nevertheless, some other respondents stressed that it is important to make sure that any proposed change does not result in increased costs, especially regarding the implementation of new IT infrastructure, as this could lead to less SME listings and investments.

ESMA received several responses not directly related to the current amendments, but which encompass various provisions related to the SME GM regime.

Some respondents suggested that it would be beneficial to analyse costs and benefits related to meeting high regulatory standards by microcaps. In these respondents' view microcaps have to meet almost the same regulatory standards under MAR as the biggest companies listed on the biggest markets, allocating disproportionate resources to compliance rather than to the growth of the business and consequently limiting the earnings of investors. Another respondent noted that SME issuers are also subject to the same fines as large issuers. Due to the fact that incurring in a fine could jeopardise the company's survival, they prefer to de-list and resort to private equity. In light of such elements, respondents advocated for the establishment of a special regulatory regime for microcaps or for more proportional requirements. In relation to MAR provisions the following points were raised:the requirement of keeping a list of Closely Associated Persons, as per Article 19(5) of MAR, should be evaluated as it entails a cost which is disproportionate to the benefit offered.

Stating that most SMEs have no" in-house" legal support one respondent suggests that the "timeframe" to send notifications to publicly disclose manager's transactions (two-business day time interval) should apply from the point the issuer was notified as opposed to when the transaction took place. Furthermore it was suggested that the threshold above which managers have to notify transactions in shares or bonds to the issuer and the NCA should be increased at least to 50,000 and the merits of an exemption for issuers listed on professional-only MTFs from the requirement to notify transactions carried out by PDMRs should be evaluated as this could encourage listing on SME GMs.

Other respondents considered that the amendments of the market sounding regime in Article 11 of MAR should be extended also to the case where an issuer does not have its equity or non-equity instruments admitted to trading on an SME GM, but has already submitted a request for admission to trading of its instruments and is awaiting admission. Some respondents expressed the view that the performance of SME GMs is not linked uniquely to MiFID II provisions. Those respondents suggested that national initiatives (e.g. the use of tax policies to stimulate long-term investment in listed equity of smaller companies or other regimes impacting investors' capital allocation) can foster investment in such markets. The respondents highlighted that an additional involvement of retail investors accompanied by targeted retail investor protection rules can further promote the growth of SME GM. Furthermore, it was suggested that the sustainable finance framework, including non-financial disclosure rules, shall be developed specifically with SMEs in mind. A respondent also proposed to elaborate a CMU strategy through EU-funded national educational campaigns to help the development of SME GM through the promotion of financial education. Furthermore, the creation of funds which target investment in SMEs (e.g. "IPO fund") could boost liquidity.

One respondent considered that the SME GMs are currently working very well and that many of the proposals put forward will entail unnecessary costs. In his view a cost-benefit analysis carried out with a medium to long run perspective would display higher costs than benefits. The respondent further encouraged the EU and ESMA to analyse the policies implemented in those countries where SME GM have developed successfully (e.g. Sweden) in order to develop further policy proposal.

Regarding the CSDR and Prospectus regulation, the following points were raised:

- the application of CSDR and its settlement obligations significantly damage market making activity in small cap securities, thereby stifling liquidity.
- the requirement contained in the new Article 14 of Prospectus Regulation which provides, as a condition for the use of the transfer prospectus that the company has conducted an offer to the public shall be lifted, as in some cases the admission on a market is preceded by an offer through private placement.
- issuers (especially SMEs) should be granted an exemption for the requirement to produce a prospectus where their offer is addressed to more than a 'restricted circle' of 500 investors (currently 150), as an increase in the number would allow companies to access a wider investor base and therefore reduce their cost of capital.
- the requirement to produce a prospectus in the case of secondary issues should be removed.
- to encourage listings across the Union, and cross-border listings in particular, the threshold of the offer to benefit from an exemption from the requirement to produce a prospectus, provided by art. 3, paragraph 2 of Regulation EU/2017/1129 ("Prospectus Regulation") shall be raised from the current 8 million to 25 million throughout the Union (over a period of 12 months).

5.2 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.

5.3 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[24] and in particular Article 13(13) thereof,

Whereas:

(1) The contractual template should only establish minimum requirements, 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 include a requirement on the opening of a dedicated liquidity account, to ensure that the resources that the issuer 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.

[24] 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 limits applicable to the resources and trading conditions for liquidity contracts performed on SME growth markets. Such limits 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.

(5) The limits on the resources and daily volumes are based on 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. 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 on market integrity and on the orderly functioning of the market. 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. In order to diminish the risks of market abuse, in normal market circumstances the liquidity provider should enter orders to trade on both sides of the order book. In addition, large trades should be within the scope of the liquidity contract entered into in accordance with this Regulation, provided that certain conditions on their execution are met, and that they take place in exceptional situations. Such exceptional situations may occur, for instance, where the proportion between the resources in cash and shares available to the liquidity provider at a specific point in time does not allow the latter to provide liquidity under the contract.

(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 on the share

subject to a liquidity contract or on financial instruments the price or value of which depends on or has an effect on the price or value of the share subject to a liquidity contract. Such independence is necessary so that the liquidity provider can intervene on the market without any influence from the issuer and from the other activities of the liquidity provider, 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 limits 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 in respect of 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 advice of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council.

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 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[25];

(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

[25] 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.

Establishing a liquidity contract

Article 2

General provisions

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 may agree on additional provisions to be included in 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 require that the resources allocated to the liquidity account are 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.

3. In the Member States whose currency is not the Euro, the corresponding value in the national currency is determined by applying the European Central Bank euro foreign exchange reference rate as of 31 December of the preceding year.

SECTION III

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

Article 6

Independence of the liquidity provider

1. The liquidity contract shall 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, or, in the Member States whose currency is not the Euro, the corresponding value in the national currency determined by applying the European Central Bank euro foreign exchange reference rate as of 31 December of the preceding year 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.

4. The liquidity contract shall establish that large trades in accordance with Article 4(1)(b) and (c) of Regulation (EU) No 600/2014 and Commission Delegated Regulation (EU) 2017/587[26] should be within the scope of the liquidity contract entered into pursuant to this

[26] 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

Regulation provided that they are executed on venue, in accordance with the rules of the relevant SME growth market, and where they take place in exceptional situations. Under such conditions, the liquidity provider may exceed the limits provided by Article 7(3) for that trading day.

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

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.

The liquidity contract shall require that the issuer discloses to the public, by means of publication on its website, 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 according to Article 7(4) of this Regulation;

(v) the resources in cash and shares allocated to the liquidity contract.

b) Once the liquidity contract has entered into force:

(i) on a semi-annual basis, aggregated figures per day of trading 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 the amount of cash and shares allocated by the issuer.

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/national currency], 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/national currency], 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 it 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 and on which the Contract is performed, i.e. [name of the SME Growth Market(s)];

(b) "Shares": the Issuer's share capital of [EUR/national currency], […..], 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 with the sole purpose of enhancing their liquidity and improving the regularity of trading or avoiding price swings that are not justified by the current market trend. The Liquidity Provider will not interfere with the orderly operation of the Market or mislead other parties and will perform the Contract in accordance with any Market rules.

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 in the name of the issuer, 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/national currency],
- [……] 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.

6. Conditions governing the Liquidity Provider's trading

6.1 In accordance with Article 3.1 above, and to maintain sufficient cash and Shares in the Liquidity Account, the Liquidity Provider may purchase and sell the Shares under normal market circumstances, and should enter orders to trade on both sides of the order book. 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 Delegated Regulation (EU) No …/..on Liquidity Contracts.

6.3 Large trades are subject to the limits of paragraph (4) of Article 7 of the Delegated Regulation (EU) No …/..on Liquidity Contracts.

6.4 [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.

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[27] 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 maintain the documentation demonstrating that orders introduced are entered separately and individually without aggregating orders from several clients or from its own proprietary trading activity, and to set up the appropriate controls on such documentation by the compliance or other internal control function.

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

[27] 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 Text with EEA relevance, OJ L 173, 12.06.2015, p. 349.

activities on the Shares or on financial instruments the price or value of which depends on or has an effect on the price or value of the Shares 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 to the Liquidity Provider [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 the Delegated Regulation (EU) No …/.. on Liquidity Contracts on the Issuer's website. [The information will also be disclosed on the Liquidity Provider' website and/or the Market's website or other means].

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*]

5.4 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[28], 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 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

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

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[29].

HAS ADOPTED THIS REGULATION:

Article 1

Definitions

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

‘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.

[29] 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).

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***]**

First name(s) of the insider	**Sur-name(s)** of the insider	**Birth sur-name(s)** of the insider (if different)	**Professional telephone number(s)** (work direct telephone line and work mobile numbers)	**Company name and address**	**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)	**Date of birth**	**National-Identification-Number** (if applicable)	**Personal tele-phone numbers** (home and personal mobile telephone numbers)	**Personal full home address:** street name; street number; city; post/ zip code; country)
[Text]	[Text]	[Text]	[Numbers (no space)]	[Address of issuer/emission allowance market participant/ auction plat-form/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]

First name(s) of the insider	**Surname(s)** of the insider	**Birth surname(s)** of the insider (if different)	**Professional tele-phone number(s)** (work direct tele-phone line and work mobile numbers)	**Company name and address**	**Function and reason for being insider**	**Included** (the date and time at which a person was included in the permanent insider section)	**Date of birth**	**National Identification Number** (if applicable)	**Personal tele-phone numbers** (home and personal mobile telephone numbers)	**Personal full home address** (street name; street number; city; post/ zip code; country)
[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***]**

First name(s) of the insider	**Sur-name(s)** of the insider	**Birth sur-name(s)** of the insider (if different)	**Professional telephone number(s)** (work direct telephone line and work mobile numbers)	**Company name and address**	**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	**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)	**Personal telephone numbers** (home and personal mobile tele- phone numbers) (If available at the time of the request by the competent authority)
[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*]

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]

5.5 Annex V- Cost-benefit analysis

Pursuant to Articles 10(1) and 15(1) of Regulation (EU) No 1095/2010 (the ESMA Regulation), ESMA is empowered to develop draft regulatory technical standards (RTS) or draft implementing technical standard (ITS) where the European Parliament and the Council delegate power to the Commission to adopt the RTS/ITS by means of delegated acts under Article 290 and 291 of the Treaty on the Functioning of the European Union (TFEU) in order to ensure consistent harmonisation in the areas specifically set out in the legislative acts within the scope of action of ESMA. The same Article obliges ESMA to conduct open public consultations on draft RTSs/ITSs and to analyse the related potential costs and benefits, unless they are disproportionate in relation to the scope and impact of the draft RTS/ITS or in relation to the urgency of the matter.

5.5.1 RTS on Liquidity Contracts

5.5.1.1 Introduction

The SME GM Regulation mandates ESMA to set out a contractual template to be used by issuers admitted to trading on an SME GM and financial intermediaries in order to enter into a liquidity contract which would benefit from the same regime as those executed in the framework of a MAR AMP (Article 13(1) of MAR). Such treatment applies to all issuers of SME GMs in the EU, without the need for NCAs to adopt any AMP on liquidity contracts.

This section provides a cost-benefit analysis (CBA) of the draft RTS on the template for liquidity contracts on the SME growth market, focussing on (i) an identification of the stakeholders subject to those amendments and how they might be affected (Stakeholders), (ii) an analysis of the costs and benefits arising from the changes proposed (Cost-benefit analysis).

5.5.1.2 Input received from stakeholders and ESMA's assessment

ESMA identified in the CP the following stakeholders as directly impacted by the RTS:

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

ESMA indicated in the CP that market participants and investors would be positively impacted by the introduction of liquidity contracts as they should serve the purpose of (i) increasing available liquidity in SME shares trading and (ii) providing safeguards in terms of market integrity.

On the other hand, ESMA noted that the use of a common template may reduce the capacity of the parties to define terms and conditions of the liquidity provision contract. ESMA considers this as a necessary corollary of the market integrity protection, which stems directly from the SME GM Regulation.

ESMA did not receive any feedback from stakeholders regarding the preliminary CBA on liquidity contracts that was included in the CP. Hence ESMA understands that the costs and benefits presented in the CP remain valid and added only few additional points.

5.5.1.3 CBA

	Qualitative description
Benefits	The use of common templates for signing liquidity contracts should reduce the administrative burden that both liquidity providers and issuers admitted to trading on an SME GM have to face. 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.
Compliance costs	Market operators and investment firms operating an SME GM will have to agree with the terms and conditions of the contract. This is a direct consequence of Article 13(12) of MAR, rather than of the RTS. Liquidity providers may incur in monitoring and compliance costs linked to the assessment of the independence in the provision of the liquidity under the contracts.

5.5.2 ITS on Insider List

5.5.2.1 **Introduction**

The SME GM Regulation mandates ESMA to set out an ITS specifying the format of the insider list to be used by SME GM issuers when Member States, justified by specific national market integrity concerns, 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.

This section provides a cost-benefit analysis (CBA) of the draft ITS on the insider list on the SME growth market, focussing on (i) an identification of the stakeholders subject to those amendments and how they might be affected (Stakeholders), (ii) an analysis of the costs and benefits arising from the changes proposed (Cost-benefit analysis).

5.5.2.2 Input received from stakeholders and ESMA assessment

ESMA identified in the CP the following stakeholders as directly impacted by the ITS:

- 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.

ESMA considered in the CP that investors and market participants would be indirectly and positively impacted through the increased market integrity deriving from such provision.

One of the responses to the consultation noted that the maintenance of the insider list should be relatively low cost for issuers as they already have in place the relevant processes to do so. Other respondents stressed that it is important to make sure that any proposed change does not result in increased costs, especially regarding the implementation of new IT infrastructure, as this could lead to less SME listings and investments.

Consistently with that, the responses referred to the template included in the proposed ITS (Q19) focused on the need to reduce the administrative burden for SME GM issuers.

On balance, ESMA agrees that currently issuers whose financial instruments are admitted to trading on an SME GM have to produce insider lists upon request of their competent authority. Hence the proposed changes should not entail the implementation of new processes or IT infrastructure. Moreover, in case there were an increase of costs due to the obligation to keep an insider list, those additional costs would be attributable to Regulation (EU) 2019/2115 and not to the ITS.

Therefore, and given the lack of other elements to question the proposed CBA, ESMA understands that the costs and benefits presented in the CP remain valid.

5.5.2.3 CBA

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	The use of common templates for setting up, maintaining and submitting to the NCA the insider list, and the reduction of the fields to

	be included will facilitate the implementation of this requirement by the relevant SME issuers. This advantage should become more important when the financial instruments are admitted to traded or traded in SME GM venues in different Member States.
Compliance costs	Currently issuers whose financial instruments are admitted to trading on an SME GM 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 NCA. 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. No additional costs can be identified at this stage. 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.