

7.3 Annex III -Draft RTS on Liquidity contracts

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

of [date]

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

(Text with EEA relevance)

THE EUROPEAN COMMISSION

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

Having regard to Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC¹² and in particular Article 13(13) thereof,

Whereas:

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

¹² OJ L 173, 12.6.2014, p. 1.

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

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

- (8) Transparency around the liquidity contract contributes to conducting the liquidity provision in a manner that ensures market integrity and investor protection without creating risks for other market participants. In order to enable other market participants to make an informed decision about the shares subject to the liquidity contract, the contractual template should include transparency obligations covering the various stages of the liquidity provision, namely before the contract is performed, during its performance and after such performance ceases. In this respect, it is necessary to identify one responsible party, in charge of the transparency obligations. To facilitate the public in its information gathering on the relevant shares, it is appropriate that the transparency obligations are fulfilled by the issuer and that the relevant information is available at least on the issuer's website.
- (9) This Regulation is based on the draft regulatory technical standards submitted by the European Securities and Markets Authority ("ESMA") to the European Commission.
- (10) ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and has requested the opinion of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council.

HAS ADOPTED THIS REGULATION

CHAPTER I

GENERAL PROVISIONS

Article 1

Definitions

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

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

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

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

(d) ‘liquid shares’ means shares having a liquid market under Articles 1 and 5 of Commission Delegated Regulation (EU) 2017/567¹³;

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

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

CHAPTER II

LIQUIDITY CONTRACTS

SECTION I

Establishing a liquidity contract

Article 2

General provisions

¹³ Commission Delegated Regulation (EU) 2017/567 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to definitions, transparency, portfolio compression and supervisory measures on product intervention and positions

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

SECTION II

Elements of the liquidity contract

Article 3

Elements of the liquidity contract

The liquidity contract shall identify:

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

Article 4

Liquidity account

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

Article 5

Limits to the resources allocated to the performance of the contract

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

SECTION II

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

Article 6

Independence of the liquidity provider

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

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

Article 7

Conditions governing the trading of the liquidity provider

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

Article 8

Obligations of the liquidity provider

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

Article 9

Fees structure and remuneration of the Liquidity Provider

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

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

SECTION III

Provisions on transparency

Article 10

Transparency obligations towards the public

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

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



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

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

CHAPTER III

FINAL PROVISION

Article 11

Entry into force

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

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

Done at Brussels,

For the Commission

The President

Ursula von der Leyen

Annex I: Template of a liquidity contract

LIQUIDITY CONTRACT

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

between

[company name],

a company with a share capital of [.....] euros, with registered office at [address], enrolled in the Company Register of [city/country] under the number [.....], represented by [.....],

("the **Issuer**")

and

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

("the **Liquidity Provider**")

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

Preamble

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

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

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

The Parties hereby agree as follows:

1. Definitions

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

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

[other definitions]

2. Purpose of the Contract

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

3. Performance of the Contract

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

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

[.....]

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

4. Liquidity Account and resources allocated

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

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

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

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

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

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

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

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

5. Independence of the Liquidity Provider

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

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

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

6. Conditions governing the Liquidity Provider's trading

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

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

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

- 7.3 In performing its duties under this Contract, the Liquidity Provider ensures that it complies with Directive 2014/65/EU of 15 May 2014 on markets in financial instruments¹⁴ (MiFID II) and that it will assume sole responsibility for its compliance with all applicable laws and regulations.
- 7.4 The Liquidity Provider undertakes to maintain adequate records of orders and transactions relating to the Contract for at least five years.
- 7.5 The Liquidity Provider undertakes to make available to the Issuer the documentation demonstrating that orders introduced are entered separately and individually without aggregating orders from several clients or from its own proprietary trading activity.
- 7.6 The Liquidity Provider undertakes to ensure that the trading decisions relating to the Contract remain independent from other trading desks, groups or units engaged in trading activities within the liquidity provider (orders to trade received from clients, portfolio management or orders placed on its own account).
- 7.7 The Liquidity Provider guarantees to possess the compliance and audit resources to monitor and ensure compliance at all times with the conditions of the Contract.
- 7.8 [Supplemental obligations]

8. Obligations of the Issuer

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

9. Fees structure and remuneration of the Liquidity Provider

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

10. Transparency Obligations

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

¹⁴ OJ L 173, 12.06.2015, p. 349.

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

11. Other contractual terms and conditions

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

The Issuer submitted a draft of this contract to [*Market Operator*], that agreed to the draft contract's terms and conditions. The Issuer hereby confirms that the terms and conditions contained in this Contract are identical to those of the draft contract to which the [*Market Operator*] agreed.

In witness whereof this Contract has now been entered into the [*day*] and [*year*].

SIGNED BY

The **Issuer**

[*name*]

for and on behalf of

[*name*]

The **Liquidity Provider**

[*name*]

for and on behalf of

[*name*]