ESMA publishes opinion on CMVM’s MAR accepted market practice on liquidity contracts

This AMP refers to liquidity contracts by which a credit institution or an investment firm (financial intermediary) quotes in the Portuguese equity market on behalf of the issuer, with a view to enhancing the liquidity of a particular share and its regular trading. In that respect, it would ultimately benefit investors, in the sense that the likelihood of finding a counterparty for entering or exiting a position in that share would increase. This practice is available to all issuers who have requested admission to trading or approved the trading of their shares on a Portuguese market.

ESMA considers that the proposed AMP on liquidity contracts is compatible with MAR and with its technical standard on AMPs, and contains various mechanisms to limit the threat to market confidence. ESMA also notes that the proposed AMP incorporates all the conditions and limits set out in its Opinion on liquidity contracts issued in April.

Background

MAR’s purpose is to guarantee the integrity of European financial markets and increase investor confidence. The concept of market abuse typically consists of insider dealing, unlawful disclosure of inside information, and market manipulation.

However, some exceptions apply. The prohibition of insider dealing and market manipulation does not apply to trading in own shares in buy-back programs or trading in securities for the stabilisation of securities when some conditions laid down in MAR are met. Moreover, MAR does not apply to public authorities in pursuit of monetary, exchange rate or public debt management policy. Other specific exceptions apply in the framework of the EU’s climate policy or the EU’s Agricultural Policy for instance. MAR also provides a defence against market manipulation if the transaction was legitimate and carried out in accordance with an AMP and MAR describes the non-exhaustive factors that a competent authority should take into account before deciding whether or not to accept a market practice.

In April ESMA published an opinion on the points for convergence in relation to AMP under MAR on liquidity contracts. These agreed points are expected to be used as a reference in the assessment of the MAR AMPs on liquidity contracts that national competent authorities (NCAs) may submit to ESMA after a domestic consultation and on which ESMA will have to issue an opinion.