Amafi > Association française des marchés financiers
FINANCIAL MARKET PROFESSIONALS

AMAFI / 19-16b
11 February 2019

AMAFI STANDARD LIQUIDITY AGREEMENT

DRAFTING NOTE

1. The entry into force, on 3 July 2016, of Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (MAR) led the *Autorité des marchés financiers* (French Financial Markets Authority), in accordance with Article 13 of MAR, to establish **liquidity agreements on shares** as an **accepted market practice via AMF decision no. 2018-01 of 2 July 2018** (the AMF decision). The AMF Decision applies from 1 January 2019, date on which it replaces the accepted market practice AMF no. 2011-07 on liquidity agreements.

2. Under the conditions set out in Article 13.4 of MAR, the accepted market practice (the AMP) established by the 2018 AMF Decision was first submitted to the European Securities and Markets Authority (ESMA) for review and ESMA's opinion was published on its website on 11 April 2018 (*ESMA 70-145-442 - Opinion on AMF AMP on liquidity agreements*). Under Article 13.5 of MAR, the AMF has published a notice on its website setting out the reasons for its Decision, in particular the reasons why the accepted market practice does not threaten market confidence (*Liquidity contracts - notice setting out the reasons for the AMF's decision to establish an accepted market practice*).

3. The AMP resulting from the AMF's Decision is consistent with the previous practice in respect of liquidity agreements, despite having undergone a number of material amendments. As a result of these amendments, the AMAFI decided to update its standard liquidity agreement originally drafted in 2000 and subsequently amended on four occasions (*see § 31 below et seq.*) before a new version was published on 26 November 2018 and then republished (without amendment[1]) on 15 January 2019 to provide a link to this Drafting note (*AMAFI / 19-06a*).

4. The purpose of this Drafting note, which is intended for any person interested in the operation of a liquidity agreement, whether that person is an issuer, investor or financial intermediary, is twofold:

- It first of all aims to improve understanding of the historical, legal and operational background to the AMP on liquidity agreements, the changes reflected in the AMF Decision and the consequences associated with the implementation of a liquidity agreement;
- It also aims to allow counterparties to the AMAFI standard liquidity agreement to assess the resulting impacts in terms of their obligations.

5. This document is therefore divided into three parts with the aim of:

- Restating the issues dealt with by the AMAFI standard liquidity agreement (*see p. 2 et seq.*);
- Restating changes to the regulations that govern liquidity agreements (*see p. 12 et seq.*);
- Present the AMAFI standard liquidity agreement, which is compliant with the AMF Decision, on a clause-by-clause basis, in order to best assist users in implementing the agreement (*see p. 17 et seq.*).

[1] A version without the present drafting note was published as quickly as possible so that users of the liquidity agreement had access to a model agreement that allowed them to amend their current agreements to comply with the AMF Decision.

AMAFI ■ 13, rue Auber ■ 75009 Paris ■ France
Phone : +33 1 53 83 00 70 ■ Fax : +33 1 53 83 00 83 ■ http://www.amafi.fr ■ E-mail : info@amafi.fr

A. - CHALLENGES POSED BY LIQUIDITY AGREEMENTS

6. The purpose of a liquidity agreement is to provide market liquidity, for a given security, ensure that its price remains stable and avoid price mismatches that are not in line with market trends. Through the use of a liquidity agreement, an intermediary is thus entrusted with a certain amount of shares and cash, and is responsible for using them for a dual purpose. Firstly, taking a long or short position on the market in order to, depending on what the needs are, provide market liquidity and thereby reduce, or even avoid, the price mismatches that may result from the imbalance created by the non-simultaneous presence of buyers and sellers. Secondly, ensure that it may continue to provide its services by ensuring that it is able to use the assets it has been entrusted with in the long term, and therefore by endeavouring to assess the extent of its interventions in light of this demand.

7. To achieve these objectives, the intermediary uses its knowledge of the market to determine, based on the resources allocated, the times at which its intervention will generate the additional liquidity needed by the market, and at what times an underlying upward or downward trend exists that it cannot, and should not, seek to stem.

8. As such, the liquidity Agreement, a long-standing and proven technique, is an important feature of the Paris market. Indeed, more than 400 French listed companies – that is more than half of all listed companies – currently use this technique to enhance, for the benefit of investors, the liquidity of transactions and the stability of the pricing of their shares, and to avoid price mismatches that are not in line with market trends. Through the liquidity agreement, France has thus developed a real and unique alternative to market-making, which, it must be emphasised, does not meet the same needs, since it is not subject to any real limits in relation to illiquid shares (*see § 23 et seq below*).

9. The recognition of these advantages led four other EU Member States to introduce this technique in their financial systems, from 2007 onwards[2], with, however, only very limited success, probably due to the fact that these countries do not have long enough history of apprehending the requirements of this technique. In France, this long-standing technique was standardised in 2001 on the basis of a Code of Conduct drawn up by the AMAFI in consultation with the COB[3].

10. The result is that the Paris' market is currently home to 90% of the liquidity agreements entered into in the European Union. Liquidity agreements constitute a particular challenge for France, shared by no other European Member State.

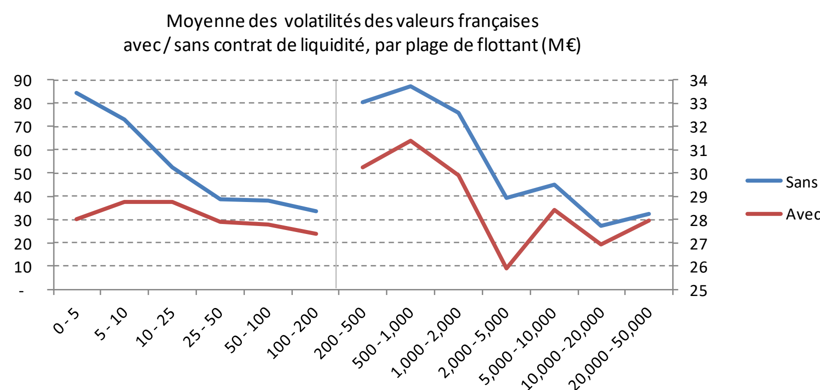
11. There are four major aspects to the challenges to liquidity agreements.

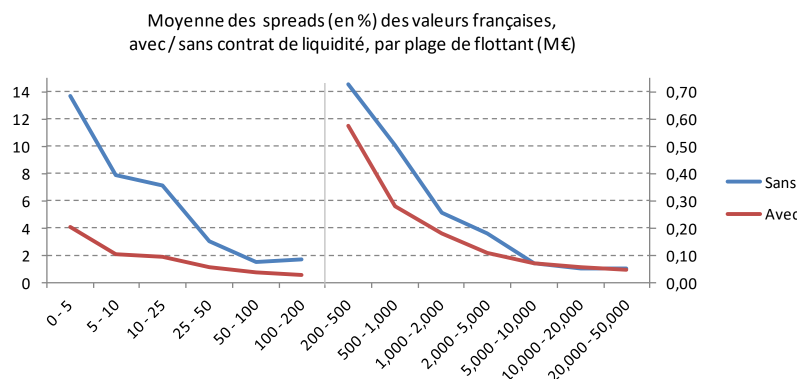
[2] They are now only 3, i.e. Spain, Italy and Portugal, as the Netherlands has finally stopped using it.
[3] The AMF's predecessor.

➢ Liquidity agreements reduce volatility and spreads that are particularly sensitive to stocks with low liquidity

12. A study carried out by the AMAFI based on 2016 data, but which does not claim to be scientifically accurate, particularly because at this stage certain parameters were not precisely defined[4] or were not available[5], highlights the following:

- For stocks with a free float of less than €5bn, entering into a liquidity agreement leads to a sharp fall in volatility and in the bid-offer spread;
- In terms of the volatility, the fall is more than 25% for stocks with a free float of less than €200m, and around 10% for stocks with a free float between €200m and €5bn;
- In terms of the bid-offer spread, the fall is more than 50% for stocks with a free float of less than €200m, and between 20% and 40% for stocks with a free float of between €200m and €5bn;
- For stocks with a free float of more than €5bn, the benefits of a liquidity agreement in terms of the volatility or bid-offer spread appear significantly lower (*but on this aspect, see 13 et seq below*).



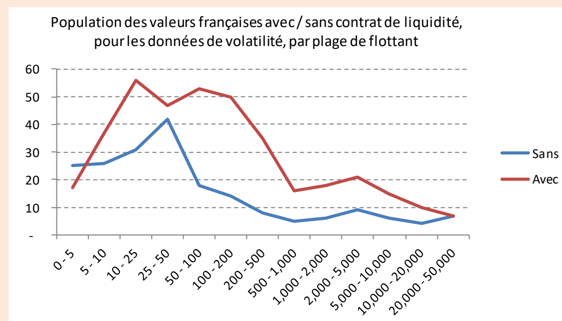


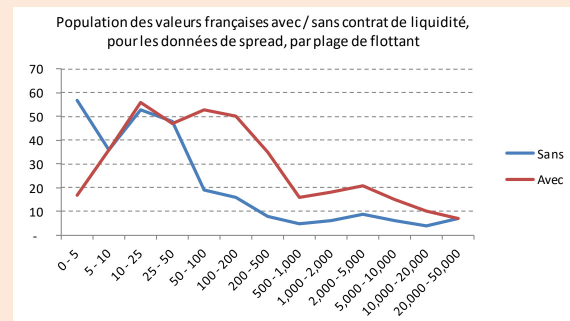
[4] This is the case of the concept of free float on which the study is based, and which is the most accurate reflection of a stock's real liquidity. The concept of free float is indeed extremely volatile. It is not uncommon, even in respect of large stocks, for the various sources - including the ESMA base - to differ significantly on this point. For example, for Havas, which has a market capitalisation of around €3bn, Bloomberg shows a free float of 24%, while Datastream shows 94%. Analysis of the distribution of share capital results in a rate of around 40%... Similarly, for Amundi, which has a market capitalisation of around €8bn, Bloomberg and Datastream deduct the shares held by the Crédit Agricole Group (75%), while the ESMA database does not and shows a free float between €8bn and €9bn.

[5] Information on volatility and spreads is not available for all stocks.

The following were used as the basis for the study:

- The 395 liquidity agreements that were the subject of the statistical study produced by AMAFI in mid-May 2016;
- A Bloomberg data extraction to obtain, for the 700 stocks listed in Paris (including Alternext):
  - ✓ Average 30-day volatility,
  - ✓ 2015 volume (in number of shares),
  - ✓ Average bid-offer spread,
  - ✓ Average market capitalisation,
  - ✓ Free float percentage;
- Datastream, Enternext, Euronext and ZoneBourse data extractions to check the free float level;
- A data extraction from the ESMA website of liquid/illiquid shares.





➢ For highly liquid stocks, the liquidity agreement has a short-term, rather than a structural, impact

13. For highly liquid shares, such as those listed on the CAC40, the benefit of a liquidity agreement is often portrayed as questionable on the grounds that an additional injection of liquidity is not sufficiently justified.

14. Whilst it is difficult to refute such an assertion in terms of structural liquidity, the same cannot be said for short-term liquidity. From this point of view, the challenge is to limit the volatility that may be observed at certain times during the trading day. Indeed, the volatility spikes that even highly liquid stocks may experience lead to price mismatches that are not justified by market trends. This scenario, which is viewed particularly negatively by professional investors (whose concentration has also led to the concentration of asset lines in portfolios), is likely to reduce the attractiveness of a share that is excessively volatile in terms of frequency and/or intensity: in order to meet the expectations of their principals, these investors' investment strategies are now routinely, as confirmed by a study produced by the Banque de France[6], based on a predetermined risk index in which the shares they hold or plan to hold are included.

15. Therefore, in a number of respects, liquidity agreements on large caps have the same use as for other liquidity classes:

- The liquidity agreement aims to reduce volatility and therefore price movements that are unrelated to the news flow and trading noise not correlated to the market and the stock.

[6] A recent study by the Banque de France highlighted that institutional investors pay attention to volatility: "*The results of* [the analysis carried out] *clearly indicate that volatility has a negative impact on non-resident investments. All other things being equal, the most volatile stocks in any given quarter receive relatively less investment by non-residents in the following quarter*" (*"La détention par les non-résidents des actions des sociétés françaises du CAC 40 à la fin de l'année 2017" [The holding by non-residents of shares in French CAC 40 companies at the end of 2017], Bull. de la Banque de France 219/1, Sept.-Oct. 2018*).

- The aim is to reduce the volatility spread between the security and its benchmark and not to oppose price changes. Since shocks are generally observed over periods shorter than for mid-caps, there is therefore a need to:
  - occasionally trade very large volumes to compensate a lack of volume or depth observed in the market at these times;
  - act as a one-way counterparty in order to counter the abnormal price mismatch;
  - place orders within the market spread, because otherwise the investment manager would only be following the trend without being able to counter it;
- Action taken when trading opens and closes is particularly important to ensure that changes in the stock's price are correlated with changes in the market and/or its comparables and/or its ADRs. While trading is usually relatively quiet at opening, and particularly during the first hour of trading, excessive volatility after opening is a statistically proven factor, even for CAC40 stocks. The regulating effect of the liquidity agreement therefore enables algorithms to interact with orders under the agreement, thereby reducing volatility.

16. This regulating effect during the trading session, which cannot counter a fundamental market trend in view of the resources available, is particularly useful as it affects CAC40 stocks, which have a modest market capitalisation (between €10bn and €14bn only) compared to international standards. Given that it is irregular and limited in light of the daily volumes traded, the effect of such action on volatility and spread is not is not as clearly demonstrated through statistical analysis as it is on less liquid stocks (*see § 11 above*).

➢ Taking account of liquidity issues while correcting anomalies in the price formation process

17. The issues associated with a stock's liquidity remain insufficiently appreciated. The effectiveness of the price formation process based on a comparison of orders depends on structural or temporary liquidity. The belief that the absolute and intrinsic efficiency of the market, naturally and at any time, gives the "correct" price is an illusion, long stated by the Association and particularly highlighted during the sub-prime crisis.

18. The buying and selling interests simultaneously present on the market are not always representative of the fundamental balance in existence[7]. Delays on either side of the transaction may trigger volatility, which is necessarily disruptive for investors who are then unsure that they are buying or selling at the "correct" price. In addition to the information already set out above on large caps (*see § 14 above*), for small- and mid- caps, the investors' ability to simply invest or divest is also at stake. For institutional investors, this ability is all the more important, as without a minimum level of liquidity, they are unable to invest in a quantity that is sufficient to justify their interest without suffering a delay in execution, such that the market risk will become unacceptable: in the end, they are potentially unable to realise the entire position within the prices set at the outset[8]. And, without the presence of institutional investors, the liquidity available to all investors will inevitably be reduced.

[7] Since liquidity in order book markets is "natural liquidity" derived automatically from the number of shares offered for purchase on the one hand, and for sale on the other, situations may arise in which the imbalance between buyers and sellers does not reflect an underlying trend, characterised by investors' desire to mainly buy or sell a security, but only a temporary mismatch between supply and demand.

[8] A survey carried out by Actifin in February 2005 showed that, for French managers that specialise in small- and mid-caps, liquidity is, after valuation and upside potential, an important criterion in selecting an investment.

19. But investors' interests are not disconnected to those of issuers. The liquidity premium required by investors when an issuer raises funds on the primary market in order to finance its development directly depends on the smooth functioning of the secondary market and its ability to reach a price that reflects the valuation fundamentals of the stock as accurately as possible.

20. The issuer's cost of capital is also, therefore, at stake: this is, moreover, what drives it to find solutions to improve the liquidity of its stock.

21. The very purpose of the liquidity agreement is to try and correct market anomalies that may have an impact on the price formation process as a result of an imbalance between buying and selling interests. As an anomaly, this imbalance is necessarily a one-off event: the purpose of the liquidity agreement is not to counteract a fundamental trend, and the resources available make it possible in any event. The data collected in respect of 2016 established that, on average, based on the categories defined by ESMA, as a percentage of market capitalisation, the resources available under liquidity agreements were:

- 0.15% for highly liquid shares;
- 0.27% for liquid shares;
- 0.36% for illiquid shares;

22. This is how the liquidity agreement should be assessed in light of the prohibition on price manipulation defined in Article 12(1)(a)(i) of MAR: it is not a matter of hindering the freedom of the price formation process; quite the contrary, it is a matter of, where possible, improving the quality of the process for the benefit of investors and issuers.

➢ Market making is not an alternative to the liquidity agreement

23. During the European discussions that accompanied the drafting of MAR, and despite the fact that the European Commission had put on the negotiating table a proposed text providing for the abolition of accepted market practices, many were supporting the idea that market making was the only acceptable way of providing liquidity, as being the only way of guaranteeing that the absence of structural market abuse.

24. The most frequently heard arguments against liquidity agreements and in favour of market making are associated with the "incestuous" link that liquidity agreements are said to naturally create between intermediaries and issuers[9]. It is said that an intermediary acting on behalf of an issuer in reality aims to promote the issuer's interests, either by creating a financial profit via interventions at appropriate moments dictated by the issuer, based on information that is, by definition, insider information; or by favouring an attractive market price that is disconnected to the reality. By contrast, market making is said to be a "pure" model because it is safe from such abuse!

25. This leads to the question of why the AMF – which had, for a long time, been particularly attentive compared to other European market authorities, to the issues of supervision and the repression of market abuse – could have allowed such a situation to endure throughout these years. It is probably because the evidence backing this theory, which, moreover, has never been publicly supported by a strongly substantiated argument, was only provided to the European co-legislators at a time when the possibility of implementing AMPs was finally provided for by MAR.

26. Market-making and liquidity agreements are both aimed at providing market liquidity, i.e. providing investors with the ability to sell or buy financial instruments on the secondary market. As a result, both techniques strengthen the ability of economic agents to raise capital in the primary market by improving the security's liquidity and enhancing the stability of the price of the stock.

[9] ESMA's opinions on the CNMV AMP are enlightening in this respect (*see ESMA/2016/1663 § 21 et seq., and more specifically § 24*) and on the AMF AMP (*see ESMA70-145-442 § 18, 19, 55, 94, 95 and 105*).

27. In this context, and without asserting that either model is superior to the other, it must nevertheless be stated that they differ in a certain number of aspects as highlighted in the table below.

Liquidity agreement (LA)	Market making (MM)
LAs are managed on behalf of the issuer and indirectly on behalf of investors by seeking to prevent accidental price movements associated with a lack of liquidity rather than fundamentals. LAs thus reduce excessive price fluctuations.	MM is carried out in the interests of the financial intermediary, using its own funds.
LAs use the issuer's own funds. Accordingly, it does not generate any financial risk for the intermediary. The issuer pays a remuneration to an intermediary that implements the LA (the Liquidity Provider). The LA does not therefore give rise to any additional costs that are charged directly or indirectly to investors.	This activity constitutes proprietary trading, which does not give rise to any payment by the issuer. The gains made on transactions must therefore be sufficient to cover both the prudential costs of a position in the portfolio on the one hand and the risk of capital losses linked to the management of the portfolio on the other. The extra cost of the positions is therefore recharged to investors.
The risk in terms of market abuse is that an issuer may wish to manipulate the market for its benefit using the LA implemented by the Liquidity Provider. The framework of the LA is such that it keeps the Liquidity Provider independent from the issuer, on whose behalf the Liquidity Provider is acting. In any event, this risk remains limited in view of the resources allocated to this activity. The risk of favouring investors is low because, on the one hand, the intermediary cannot derive any benefit as a result of implementing the liquidity agreement and, on the other hand, rules on information barriers apply to this activity.	The risk in terms of market abuse is that the market maker seeks to put its own interests first, to the detriment/benefit of the issuer or investors, respectively. This risk is generally controlled through the strict separation of origination and trading activities using information barriers, a series of conduct rules and enhanced monitoring by the regulators and of MM.
There is no mercantile objective in relation to the funds entrusted by the issuer under the LA. Moreover, the issuer cannot have a direct financial interest via the LA. A "good" LA is not intended to generate a positive result except in specific circumstances; rather, it is intended to be balanced, slightly negative or slightly positive. This point can also be easily checked through the half-year review that the **AMAFI Charter** on LAs introduced a number of years ago (*see § 31 et seq below*). This review, now included in the AMF decision (*Art. 2.3*), which details changes to the available resources in cash and shares, is in fact likely to reveal significant findings. The reasons underlying these can then be carefully analysed to establish whether they result from intentions other than those assigned to the LA.	MM constitutes a risky activity for the intermediary carrying it out. MM must be sufficiently profitable to cover not only the cost of committed capital but also both the general risk of the equity markets and the specific risk of the shares that are traded. MM's profitability requirement has now been increased due to new capital adequacy requirements imposed on financial institutions. Moreover, a number of MM players have ceased their activity, and MM has decreased on stocks with lower profitability.
The conditions governing the remuneration of the Liquidity Provider mean that it has no interest in maximising the income generated by the LA to the detriment of its assigned purpose. These conditions have been determined for many years by the **AMAFI Charter** on LAs (*see § 31 et seq. below*), and are now	The market maker's objective is to obtain the highest profit in view of the risk that it bears as a result of this activity.

Liquidity agreement (LA)	Market making (MM)
incorporated into the AMF Decision (*Art. 6*).	
The issuer has an objective interest in setting up an LA. The liquidity of the secondary market is a key factor in the price at which it may, when it considers it necessary, raise new resources. Its cost of capital is directly dependent thereon. By generating activity in the order book for mid- and small-caps, the LA stimulates supply and demand from investors who would not otherwise have considered the stock. By providing additional liquidity, the LA prevents imbalances that result simply from timing differences in the availability of buyers and sellers. For mid- and small-caps, these timing differences can carry over several trading sessions without however ever becoming a fundamental trend. For large caps, these timing differences generally fall within a single trading session, or often for only one or a few periods within the same session. Through this twofold effect, the LA allows the price discovery process to play its role as best as possible by providing a market price that is realistic in view of the fundamentals. The liquidity premium required from the issuer by investors in the primary market will thus be adjusted as closely as possible to the stock's fundamentals.	The liquidity provided to the market by the market maker remains necessarily under control, given the analysis it has carried out with regard to, on the one hand, the market risk that it is bearing and, on the other hand, the economic gains on the buy and sell transactions that it is likely to generate. These factors naturally encourage market makers to intervene in liquid stocks where market risk management is easier. In order to optimise the margins achieved and reduce risks, the MM has an interest in developing a wholesale market - principally off-market blocks - generally to the detriment of small orders that are proportionally too expensive.
For large caps, the LA's ability to take corrective action against excessive volatility is particularly important. Excessive volatility discourages investors who are not acting only on a short- or very short-term basis: it creates uncertainty about the ability to sell at the right time without suffering negative effects. Volatility thus weakens the issuer's shareholder structure compared to the benefits of a shareholder base able to support it in its medium and long-term development. As a result, excessive volatility tends to have a negative impact on share price trends.	The MM has no interest in counteracting a high volatility market trend, from which it may benefit. It does not help in limiting anomalies. The nature of the positions taken by some investors may even increase volatility (negative gamma positions or desire to eliminate risk in line with the market). The MM's action is specific, non-continuous, driven by its market predictions in the short, medium and sometimes long term, in exchange for its obligations to constantly display prices. Its main objectives are to capture price differences and generate capital gains on the positions it is obliged to take in order to offer prices while reducing risks.
The LA operates within a specific framework providing, in particular, for periodic transparency obligations vis-à-vis the market. The market is thus able to assess the resources made available under the LA and their evolution over time. The LA does not allow for a debit position in shares (or cash).	By nature, market makers have no particular obligation to be transparent about their positions and their gains are necessarily indirectly charged to the issuer or to the market.

Liquidity agreement (LA)	Market making (MM)
Except where it is linked to a Liquidity Provider (LP) agreement with the market platform on which it is implemented, the LA does not constantly display prices, but only when it considers it necessary in view of the agreement's purposes. It seeks to maximise the result of its interventions by reference, on the one hand, to the usefulness of the additional liquidity it provides to the market and, on the other hand, to the resources available (shares and cash). The LA generally bucks market trends because it is where the additional liquidity provided is most useful. The countercyclical action of the LA is particularly important in the event of one-off market stress events. The LA is unable to counter a fundamental market trend, as its available resources in the form of shares and cash are insufficient.	The MM anticipates, supports and amplifies the trend. Its actions are by nature pro-cyclical, particularly at closing. Acting differently would be likely to increase its market risk, or rather make the risk more difficult to control. The MM may have an interest in going along with trends and therefore accentuating them, even where they are not structural but only cyclical. In such circumstances, due to its pro-cyclical action, it takes liquidity away from the market.
The LA leads to a tightening of the bid-offer spread. Given that it is not expected to generate a return on its capital and risks, it has no interest in wide spreads. On the contrary, narrow spreads are likely to attract investors.	MM carried out by a liquidity provider may take the form of an obligation to continuously offer a bid-offer spread in the market for a minimum amount of capital. This obligation disappears, however, on the occurrence of certain market circumstances that prevent the risk derived from the transactions from being controlled. The lower the MM's bid-offer spreads, the greater the risk. The wider they are, the more its market risk is properly controlled. The combination of the breadth of the bid-offer spread and the number of shares to which it applies is an important factor in managing the market risk borne by the MM. The less liquid the stock, the more the MM has to broaden its bid-offer spreads to be able to manage its market risk. This can go as far as presenting dissuasive spreads, which do not promote liquidity. His orders will be dynamic and not static. When dealing with a customer or the market, the MM's objective is to create spreads in order to maximise its remuneration.

28. This information should also be reconciled with the information noted by the AMF in a study published in early 2017 on the behaviour of high-frequency traders. The press release accompanying its publication noted that these players "*are important contributors to liquidity during normal market conditions. They are present more than 90% of the time at the best bid (best buy or sell price offered) and they represent on average 80% of the market depth in the order book at the three best price limits. They enter the order book gradually and help reduce the bid ask spread (the difference between the best buy and sell prices) at the beginning of the day, however they clearly reduce their presence in the order book ahead of announcements that are likely to affect share prices*" (see AMF press release of 26 January 2017).

29. The AMF also notes that, in a period in which "*markets have experienced times of high volatility in recent years, illustrated at the beginning of 2016 by fears about the Chinese economy or in June by the uncertainty surrounding the UK referendum*", "*another finding of this study is that high-frequency traders consume on average more liquidity than they provide, particularly during periods in which volatility is higher. The analysis also shows that overall market stress has a negative impact on liquidity and always results in a fall in the quantity offered at the best quotes for all market participants. Finally, localised periods of intense stress are marked by the increased presence of high-frequency traders. In particular after announcements, their market share and their consumption of liquidity increase sharply.*"

30. It should also be noted that market making's ability to improve the liquidity of small- and mid-caps is yet to be proven.

The counter-example of market making on small- and medium-cap stocks
Study of the behaviour of Alternative Investment Market stocks

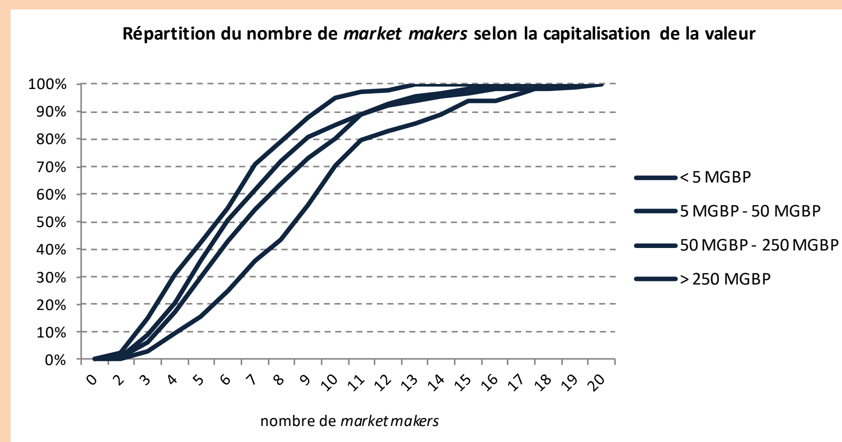
The AIM segment of the London Stock Exchange is the market dedicated to small- and mid-cap stocks. This market operates through the involvement of market makers, who facilitate the execution of investors' orders. 50 companies are registered as market makers, and each stock has its own listed market makers.

The London Stock Exchange publishes monthly AIM activity statistics, available on its website (http://www.londonstockexchange.com/statistics/historic/aim/aim.htm).

In 2016, more than 1,100 stocks were included in the statistics published by the LSE. Out of those, monthly statistics systematically gave a non-zero capitalisation for 835 stocks. The following information is based on a study of these 835 stocks.

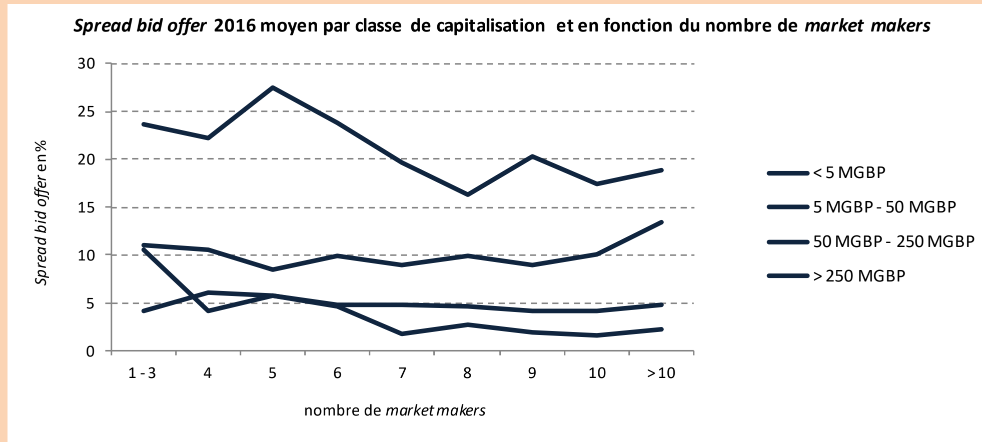
These companies are divided into capitalisation classes (on average over 2016) as shown opposite.

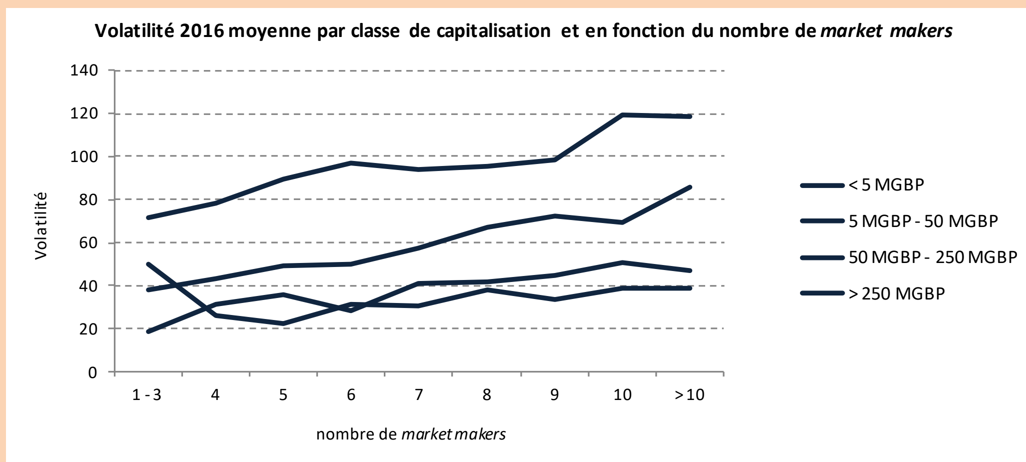
Capitalisation class	Number of stocks
< 5 MGBP	155
5 MGBP - 50 MGBP	401
50 MGBP - 250 MGBP	215
> 250 MGBP	64
Grand Total	**835**



Quite logically, the average number of market makers for a stock increases with the capitalisation of stocks: a larger capitalisation actually offers the prospect of greater activity.

The study of the average bid-offer spreads and average volatility of the stocks under consideration (data obtained via Bloomberg), based on their capitalisation class and the number of market makers gives the following results:





Several conclusions may be drawn from this information:

- As in the study on French stocks, whether or not a liquidity agreement is in place, a company's capitalisation seems to quite directly impact the level of the average bid-offer spread and the stock's average volatility: a larger capitalisation causes these two variables to fall;
- However, for a given level of capitalisation, there does not seem to be any obvious correlation between the number of market makers known to deal with a stock and its bid-offer spread or its volatility. Worse, it seems that the stocks with a greater number of market makers are more volatile…

  That being said, it is unlikely that the actions of market makers play a role in increasing volatility or spreads. The causal link is probably the opposite: market makers are more likely to turn to shares offering potentially higher returns, without any intention to reduce spreads or volatility;
- For a given level of capitalisation, the bid-offer spread and the volatility of AIM stocks, even where there is a large number of market makers, are significantly higher than those seen in relation to French stocks with the same capitalisation and with a liquidity agreement in place.

In view of these factors, it seems that market making, at least in the way it is carried out on AIM, does not at all provide the same benefits to small and medium-sized issuers as a liquidity agreement, in particular with regard to reducing volatility and bid-offers spread on their stocks, a key point for investors and, therefore, for corporate financing.

B. – CHANGES IN THE REGULATIONS APPLICABLE TO LIQUIDITY AGREEMENTS

31. The AMAFI liquidity agreement, which is commented on in this document, has passed through a number of iterations. It was originally drafted in 2000, before being amended in 2001, 2005, 2008 and 2011.

➢ 2000, introduction of an AFEI standard liquidity agreement

32. Liquidity agreements is a long-standing technique on the French market for a long time. Used for many years now, the technique was questioned at the end of the 1990s following the reforms made to the legal framework applicable to issuers buying their own shares[10] (*Articles L. 225-206 and L. 225-210 of the French Commercial Code*).

33. At the end of 1998, work was carried out by the AMAFI (known at the time as the AFEI), in close partnership with the *Commission des Opérations de Bourse*[11], to clarify the constraints imposed by this new legislative framework, as well as the consequences to be drawn therefrom for liquidity agreements.

34. In February 2000, this review was finalised by the publication of the AFEI standard liquidity agreement that set out the general contractual framework applicable to the activities of intermediaries carrying out buy and sell transactions on the market in order to boost the liquidity of certain shares.

➢ 2001, first amendments to reflect the framework put in place by the COB in consultation with the AFEI

35. However, the work carried out in order to implement the AFEI Standard Agreement also highlighted the need to adapt the regulatory framework defined by the COB: certain requirements that it imposed actually hampered, without appropriate reasons, the proper implementation of liquidity agreements.

36. Following a new phase of discussions between the AFEI and the COB, the COB amended its regulations (*COB Regulation 2000-06 published in the French Official Journal of 22 December 2000*) in order to give a presumption of legitimacy to interventions carried out on behalf of an issuer by an investment services provider acting under a liquidity agreement in accordance with a code of conduct approved by the COB.

37. It was ahead of this regulatory change that, in November 2000, the AFEI began working, again in partnership with the COB, on the elaboration of a code of conduct. This Code of Conduct, structured around eleven major principles - strongly inspired by the contents of the Standard Agreement published in February 2000, was approved by a COB directive in April 2001.

38. In May 2001, the Association published an AFEI standard liquidity agreement amended in order to ensure a perfect articulation with the AFEI Code.

➢ 2005, reflecting the amendments introduced by the Market Abuse Directive

[10] See Law no. 98-546 of 2 July 1998 containing various economic and financial provisions which, on this point, included most of the proposals set out in the report produced by Mr Esambert, published under the aegis of the Belgian Official Gazette in January 1998 (*"Le rachat par les sociétés de leurs propres actions" [The purchase by companies of their own shares], A review chaired by Bernard Esambert, January 1998*).
[11] Whose role has been now been taken over by the AMF.

39. Since the Market Abuse Directive[12] amended, through the implementation of European Regulation 2273/2003 of 22 December 2003, the conditions on which issuers may buy back their shares, a review was launched at the beginning of 2004 in close partnership with the *Autorité des marchés financiers* (French Financial Markets Authority) (which had in the meantime taken over the responsibilities of the COB), with the aim of preserving the liquidity agreement technique.

40. After European regulation no. 2273/2003 had opened up the possibility of recognising, at national level, accepted market practices that offered a presumption of legitimacy while derogating from the general framework laid down by this regulation, the AMF agreed to bring liquidity agreements within this framework.

41. This decision then led to a few changes to the AFEI 2001 Code, without, however, any substantial amendments being made. This revised Code was the subject of the AMF decision of 22 March 2005, which recognised liquidity agreements that complied with the principles set out in the Code as an "*accepted market practice*".

42. The AMAFI subsequently published an amended Standard Agreement reflecting this new Code.

➢ 2009, extension to Alternext and removal of certain restrictions

43. For a number of years, the AMAFI had been working on adapting the share buy back mechanism to the specific features of liquidity agreements. These requests were finally taken into account through:

- The introduction, by Law No. 2008-776 of 4 August 2008, of a new Article L. 225-209-1[13] in the French Code of Commerce extending the availability of liquidity agreements to companies whose shares are admitted to trading on an organised multilateral trading facility (MTF);
- The introduction, by Order No. 2009-105 of 30 January 2009, of the principle under which the 10% threshold applicable to a company's holding in its own shares referred to in Articles L. 225-209 and L. 225-209-1[14] of the French Code of Commerce must, in the event that the shares are redeemed in order to promote the liquidity of the security, be calculated on a net basis, i.e. after deducting the number of shares sold;
- The introduction, by the aforementioned order of 30 January 2009, in Article L. 225-210, of an exception to the obligation to hold in registered form shares bought back for the purpose of promoting the liquidity of the company's shares.

44. These changes led the Association to publish a new AMAFI Code of Conduct on liquidity agreements in September 2008 (replacing the AFEI Code of 2005). This Code of Conduct was the subject of an AMF Decision dated 1 October 2008 on the approval of liquidity agreements as an *"accepted market practice"*.

45. To reflect these changes, an amended version of the AMAFI standard liquidity agreement was published in March 2009.

➢ 2011, amendments made as a result of the AMF's review of the AMP

46. In 2010, the AMF reviewed the accepted market practice on liquidity agreements. Further to a market consultation followed by a number of discussions with the AMAFI, an amended legal framework was introduced in 2011, comprising:

[12] Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse).
[13] Article subsequently repealed by Law No. 2012-387 of 22 March 2012, its content having been incorporated into Article L. 225-209.

- A new version of the AMAFI Code of Conduct on liquidity Agreements dated 8 March 2011,
- Accepted market practice no. 2011-07 on liquidity agreements, based on the aforementioned AMAFI Code of Conduct,
- An AMF decision of 21 March 2011 approving that accepted market practice,
- An AMAFI memo of 24 March 2011 stating the framework governing the intervention of Liquidity Providers.

47. In May 2011, to act on these changes, the AMAFI published a new version of the standard liquidity agreement.

➢ 2018, reflecting the entry into force of MAR

48. The entry into force of MAR led the AMF, as a result of the 2018 AMF Decision, to establish, with effect from 1 January 2019, a new accepted market practice on share liquidity agreements. The publication of this decision is the result of almost three years of work and discussions between the AMAFI and the AMF.

Work carried out in conjunction with the AMF

In October 2015, with MAR having entered into force on 1 July of that year, discussions were initiated by the AMF to determine the changes to be made to the system governing the implementation of liquidity agreements. A number of discussions took place, the main stages of which are summarised below.

In order to assist the AMF in its initial analysis, and to highlight some of the issues relating thereto, in May 2016, the AMAFI gave a presentation to the AMF on statistics based on data collected in respect of 395 liquidity agreements that operated during 2015. By capitalisation segment (below €150m, between €150m and €1bn, between €1bn and €5bn, above €5bn) and by stock market index (CAC40, SBF80, CAC All Shares and Alternext), these statistics indicated:

- ✓ The number of LAs in question,
- ✓ The share (average and median) that they represent in terms of the market volumes,
- ✓ The number of LAs exceeding various pre-determined volume limits,
- ✓ The resources (average and median) allocated to LAs relative to market capitalisation
- ✓ The number of LAs exceeding various pre-determined capitalisation limits.

Discussions continued over subsequent months, and work was also carried out on the same area by ESMA. At the beginning of December 2016, the AMAFI alerted the Chairman of the AMF, Mr Rameix, on the risks arising from this initiative in relation to issues which were specific to the French market, given the large number of LAs which were not compliant with the limits being put in place.

At the beginning of January 2017, the AMF provided the AMAFI with a draft decision on the approval of the Liquidity Agreement AMP based, in particular, on the opinion previously issued by ESMA on the Liquidity Agreement AMP introduced by the Spanish market authority (*ESMA/2016/1663*).

At the end of February 2017, the AMAFI sent the AMF a document (*AMAFI / 17-20*) that contained various comments and proposals. These mainly covered:

- ✓ The lack of legitimacy of an approach that sought to align national AMPs, especially in a context where they are defined in MAR as "*a specific market practice that is accepted by a competent authority in accordance with Article 13*" (*MAR, Art. 3-1-9*).
- ✓ The absence of evidence produced by the AMF of market abuse associated with the existing AMP that would require a significant strengthening exercise, even though, among its counterparts in other Member States, the French authority is not only one of the most attentive to the prevention and sanction of such situations, but also the authority that probably has the most sophisticated market monitoring tools in this area.
- ✓ The difficulty, even though it is not prohibited, of efficiently implementing LAs that do not comply with the AMP given the requirements applicable to issuers and financial intermediaries.

In March 2017, the AMAFI, Afep, MEDEF, Middlenext, AFG and SFAF pointed out to Mr Rameix, the President of the AMF, that, given the issues surrounding corporate financing, this matter needed to be reviewed in detail.

At the end of April 2017, ESMA published a document entitled "*Points for convergence in relation to MAR accepted market practices on liquidity contracts"* (*Opinion ESMA70-145-76*), which revisits and clarifies a number of points already covered by the opinion issued previously on the Spanish AMP

In June 2017, this publication led various Paris market participants (Afep, MEDEF, Middlenext, AFG, Af2i, SFAF, Euronext, AMAFI and regional financial market places) to challenge the approach chosen by ESMA before the European institutions (*see letter to Mr Dombrovskis in Annex 2 of the AMAFI note/17-56*). In addition to there being no legal basis for this Opinion, the fact that ESMA, by primarily seeking to simplify the conditions under which it would issue an opinion, completely ignored the benefits of liquidity agreements in terms of financing the economy, has been particularly criticised. And this happened at the same time as the capital markets union project focused on the necessary expansion of markets, and especially equity markets, in the financing of European companies.

The AMF was also provided with a new statistical analysis of 410 stocks for which a liquidity agreement was in place on 31 December 2016. In order to enable the AMF to carry out its own analysis, it was provided with all the data used (stock by stock).

At the end of August 2017, based on this statistical work, the AMAFI sent the AMF a new set of comments and made proposals that, to ensure that it was as concrete as possible, were structured based on the various criteria used by the ESMA in its Opinion (*AMAFI / 17-56*). This document particularly highlighted, even though no impact study had yet been carried out, the difficulties that would arise in a variety of situations as a result of the proposed limits in terms of volume, price and resources.

In December 2017, the AMAFI and other market stakeholders (Afep, MEDEF, Middlenext, AFG, Af2i, SFAF and Euronext) were consulted by the AMF on proposed revisions to the framework for LAs. The AMAFI then made observations and proposals (*AMAFI / 17-88*).

In February 2018, the AMF notified ESMA of a proposed AMP to enter into force on 1 January 2019.

In April 2018, ESMA published an overall negative opinion on this proposed AMP (*ESMA70-145-443*). This opinion was mainly driven by the "non-compliance" of the exemptions valid for two years for liquid and illiquid stocks only (i.e. excluding therefore stocks in the CAC 40), to the limits on resources, volumes and prices otherwise imposed by this AMP.

This publication led the AMF to regret, via a press release, "*the negative nature of the opinion, at a time when every effort has to be focused on encouraging the listing of mid-cap companies on the financial markets, and given that these shares could be affected by a decrease in the research devoted to them following the implementation of MiFID2*". The Authority also stated that it intended to consider how it should respond by holding discussions with the various stakeholders (issuers, financial intermediaries, investors, infrastructures).

The AMAFI also reacted by issuing a press release. In particular, it emphasised that "*the opinion issued by ESMA illustrates the risk arising from seeking convergence at all costs, even where there is no need for it, while the focus should be on the principles of subsidiarity and proportionality. The very essence of an AMP is to enable a national authority to take account of the particular circumstances of its market. An AMP is only effective within the territorial jurisdiction of the authority in question. Of the 28 regulators that comprise ESMA, only 4 (including the AMF) have an AMP of this nature. In Europe, more than 90% of liquidity agreements fall under the AMF PMA, by far the longest-standing.*"

The AMF then made proposals in order to make it impossible to exceed, on a discretionary basis, the limits provided for. To that end, a system containing double limits in terms of volume and resources was implemented for liquid and illiquid shares:

- ✓ Below the lower limit, no issue;
- ✓ Between the lower limit and the upper limit, need to justify and document the breach;
- ✓ Beyond the upper limit, action not covered by the AMP (which does not mean, however, that market abuse has been committed, since that has to be established by the AMF).

In mid-May 2018, the AMAFI sent the AMF its comments on these proposals (*AMAFI / 18-24*).

At the beginning of July 2018, the AMF published Decision 2018-01, containing certain amendments to take account of certain aspects of ESMA's opinion.

In a press release, Middlenext, AFG, AF2i, SFAF, Euronext, AMAFI and the regional financial market places welcomed this document, highlighting in particular that "*After more than two years of consultation with the French Market, the AMF has adopted a system which, pending the collection of the necessary data, preserves a technique widely used on the Paris marketplace for the benefit of listed companies and investors".*

As an extension of Decision 2018-01, the AMAFI then started working on updating the standard liquidity agreement which it makes available to the market. Following a number discussions with the AMF, an amended version was published on 26 November 2018.

Discussions were also held with the AMF to clarify certain implementation points in relation to Decision 2018-01.

49. Even though the 2018 AMF Decision is largely based on previous practice (which was repealed on the same date) and the principles of the AMAFI Code of Conduct on liquidity agreements (which also ceases to apply), it nevertheless contains a number of significant changes applicable for a period of two years at the end of which the AMF will carry out a comprehensive review.

50. As a result, AMAFI updated its standard liquidity agreement, which was published on 26 November 2018 (*AMAFI / 18-67*), before being republished (but without any amendment) on 15 January 2019 (*AMAFI / 19-06a*) to link it to this Drafting note.

C. - THE AMAFI STANDARD LIQUIDITY AGREEMENT - COMMENTS BY ARTICLE

51. References between brackets link to those contained in the right-hand column of the AMAFI standard liquidity agreement (the Agreement).

➢ Parties to the Agreement

[A] The Parties to the Agreement are, of course, the Issuer and the Liquidity Provider. Due to changes affecting the practice, the previous versions of the Standard Agreement did not exclude the possibility of one or more shareholders being parties alongside the Issuer, but did not promote such an arrangement.

As this version of the Liquidity Agreement falls more than ever within the restricted framework resulting from both MAR and the regulators' interpretation of MAR and the provisions governing an issuer buying its own shares, it was felt that including this option in the AMAFI Standard Agreement would not be appropriate. However, it may still be used.

It is therefore up to the users of the Agreement, when the time comes, to determine - necessarily with the utmost caution - whether the involvement of certain shareholders alongside the Issuer, or even entering into a Liquidity Agreement solely with those shareholders, is appropriate.

➢ Preamble

[P.1.] The Agreement falls within the new framework defined by the MAR and its Delegated Regulation (2016/908 of 26 February 2016) "*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*".

It is also part of the framework established, on the one hand, by the 2018 AMF Decision, which established an accepted market practice in France pursuant to MAR and, on the other hand, by the other provisions referred to as reference texts at the start of the 2018 AMF Decision.

Lastly, it complies with the provisions of the French Code of Commerce applicable to an issuer's buying its own shares under a share buyback programme authorised by its Shareholders' Meeting.

[P.2.] As a reminder, actions carried out in accordance with the provisions of the Agreement, which itself falls under an accepted market practice, cannot, under Article 13.1 of MAR, as a result thereof, constitute market manipulation or attempted market manipulation. However, actions that do not comply with the conditions set out in the 2018 AMF Decision are not prohibited. These actions simply do not benefit from Article 13.1 of MAR (*AMF decision, Preamble, § (3)*).

Nevertheless, the AMF could find that an offence has been committed if it appears that interventions led to "*entering into a transaction, placing an order to trade or any other activity or behaviour which:*

- *gives, or is likely to give, false or misleading indications as to the supply of, demand for, or price of, a financial instrument, a related spot commodity contract or an auctioned product based on emission allowances; or*
- *secures, or is likely to secure, the price of one or several financial instruments, a related spot commodity contract or an auctioned product based on emission allowances at an abnormal or artificial level; (…)* (*MAR, Art. 12.1.a*)

It should be noted that, in order to be sanctioned, the price manipulation breach must in any event be identified by the Sanctions Committee. The conditions of such identification are set out in its case law and that of the appeal courts (*see, in this context, "Financial markets: Principles derived from case law 2003-2016", AMF, 7 June 2018, p. 267 et seq*).

This case law, even where it pre-dates MAR, remains fully relevant: the only changes introduced by MAR to the mechanism provided for by the MAD relate to the list of instruments covered by the prohibition on price manipulation, which already included equity shares. Thus, although the criteria set out by the Sanctions Committee in this area are still subject to change, it nevertheless appears that the broad outline established to date already characterises misconduct with a certain degree of precision.

Thus, one or more interventions carried out in the context of an LA but outside the framework of the Decision may only be considered as price manipulation to the extent that they are carried out in a way that, in the the Sanctions Committee's view, constitutes such a breach.

[P.3.] The amount of the Issuer's share capital, the number of shares comprising the share capital and their nominal value must be stated, given that these equity shares constitute the subject matter of the Agreement.

[P.4.] Due to the framework defined by the French Code of Commerce (*Art. L. 225-209 et seq.*) in respect of share buybacks, which covers the liquidity agreement technique (*see [p.6.] below*), the Agreement may only be implemented on one or more regulated markets or on one or more organised MTFs within the meaning of Article 525-1 of the AMF General Regulation. Furthermore, these markets

and systems necessarily fall under the authority of the AMF, rather than authorities located outside France[14].

As a result, the choice is currently limited to Euronext Paris and Euronext Growth.

[P.5.] The purpose of the Agreement is briefly restated (and is also of course restated in Article 1 which sets out the purpose of the Agreement). The 2018 AMF Decision 2018 states, in this regard (*AMF decision, Preamble, § (2)*) that, under Article 13.1 of MAR (on accepted market practices), the prohibition of market manipulation and attempted market manipulation set out in Article 15 of MAR does not apply to the activities referred to in Article 12(1)(a) of MAR, "*if the person entering into a transaction, placing an order to trade or engaging in any other behaviour establishes that such transaction, order or behaviour has been carried out for legitimate reasons, and complies with* [the recommendations of the accepted market practice established by the AMF Decision]".

But on the fact that failure to comply with the 2018 AMF Decision does not in itself constitute market manipulation or attempted market manipulation, see [P.2.] above.

[P.6.] The Agreement is implemented within the framework of a share buyback programme subject to the provisions of Articles L. 225-206 et seq. of the French Code of Commerce Code. This leads to the Issuer being subject to certain obligations. Hence, the Issuer must first obtain a decision from its shareholders at an ordinary general meeting (and not at an extraordinary general meeting, since the purpose of the transaction is not a capital reduction) authorising its board of directors or managing board to carry out the transaction. This authorisation, which cannot be granted for a period of more than 18 months, must set out the purposes and terms of the transaction as well as a cap. If this authorisation is amended, it may have an impact on the Liquidity Agreement and it is therefore important that the Issuer notifies the Liquidity Provider accordingly.

[P.7.] Furthermore, foreign issuers in particular may be subject, under their applicable law, to specific obligations, or even prohibitions or limits that may have an impact on their ability to enter into a liquidity agreement. It is therefore important that they carry out this check and confirm, when they enter into the Agreement, that they are authorised under their domestic laws to purchase and sell their own shares on the conditions set out in the Agreement.

[P.8.] The Liquidity Provider must be an investment services provider other than a portfolio management company. The new condition introduced by the 2018 AMF Decision is that it must be a member of the market on which it carries out market making transactions on behalf of the Issuer and must take action in the relevant market using its own trading identity (*AMF decision, Art. 4.1*).

[P.9.] Additional wording is provided, if the Parties consider it useful, in order to establish a contractual link between the liquidity agreement and a Euronext Liquidity provider agreement, which may also have been entered into.

In this respect, it should be noted that, since the liquidity agreement technique is not the only technique used to strengthen the liquidity of certain shares, the Euronext Liquidity provider agreement should be specifically referred to. The liquidity agreement and the Euronext Liquidity provider agreement are frequently linked to each other, but this is not an overriding rule. Indeed, in light of the significant commitments under the Liquidity provider agreement, many intermediaries may only agree to assume those commitments if, under the liquidity agreement, they have access to the resources made available to them by the Issuer.

[14] "*A market practice that has been established by a competent authority as an accepted market practice in a particular market shall not be considered to be applicable to other markets unless the competent authorities of those other markets have accepted that practice pursuant to this Article*" (MAR, art. 13.2).

As such, the Euronext Liquidity provider agreement (*Euronext Rule Book, Art. 4107*) is an agreement between a market member and Euronext (in contrast to the liquidity agreement, which is between the Issuer and the Liquidity Provider) and under which, in return for the commitment made by the market member to stabilise the price of a stock through market interventions subject to contractually defined conditions, Euronext Paris provides the member in question:

- Firstly, with the publicity srrounding the status of Liquidity Provider;
- Secondly, with free orders transmitted to and trades carried out under the liquidity provider agreement.

Article 1 – Purpose of the Agreement

[1.1.] As referred to above (*see [P.1.] et seq. above*), this article sets out that the purpose of the agreement is to "*enhance the liquidity of the Shares, improve the regularity of trading and avoid price swings that are not justified by the current market trends*" (*also see [4.1.] below*), thereby restating the principle referred to in Article 1 of the AMF Decision.

[1.2.] The liquidity agreement is an agency agreement. The Liquidity Provider acts as agent for its co-contracting party: as a professional, it puts its knowledge, experience and technical market expertise at the service of its co-contracting party to fulfil, in the best possible fashion, the aims of the liquidity agreement. In this respect, the service provided by the Liquidity Provider under the liquidity agreement is not fundamentally different from the service provided by a portfolio manager to its client. The only difference is the intended objective: the manager seeks to maximise the returns on the sums entrusted to it; the Liquidity Provider seeks to ensure that the Issuer's shares remain liquid.

[1.3.] The Agreement also sets out the conditions governing the allocation of resources in the form of Shares or cash to the Liquidity Provider to fulfil the duties it is entrusted with.

Article 2 – Liquidity Account Opening

[2.1.] The Liquidity Account is intended to record all transactions carried out by the Liquidity Provider under the Agreement, and those transactions only. In other words, in order to avoid any intermingling of assets available under the Agreement, in the event that the Liquidity Provider carries out other transactions on behalf of the Issuer, they will need to be recorded in an account other than the Liquidity Account.

[2.2.] The resources held in the Liquidity Account must be proportionate to the objectives of the Liquidity Agreement (*see [2.4.] below*). This principle also governs the provisions of Article 10 of the Agreement relating to the balance required in the Liquidity Account (*see [10.1.] below*). One of the consequences of this principle is that the Liquidity Account cannot be overdrawn either in relation to cash or shares (*AMF decision, Art. 4.6, last paragraph*).

The obligation, however, that the "*cash and shares in the Liquidity Account must, at all times, show a credit balance* ", does not prevent cash balances from being included in a cash pooling system under the conditions previously set out by the AMF (*see Letter from Mr Thierry Francq, Secretary General of the AMF, to AMAFI on 14 April 2009*).

[2.3.] Since the implementation of the Liquidity Agreement assumes that shares and cash are made available to the Liquidity Provider so that it may take action on the Market, the Liquidity Account is initially funded by payments in Shares and cash made for this purpose.

It is possible, however, in certain circumstances, for initial payments to be made only in cash (*on the available solutions to create a minimum provision of Shares, see Agreement, Art. 3*).

[2.4.] By stating that "*the resources in cash or financial instruments allocated by an Issuer to the implementation of a liquidity agreement must be proportionate and appropriate to the objectives of the agreement and must take account of the liquidity of the market for the relevant share"* (AMF decision, Art. 4.6), restrictions are placed on the amount of the resources in the form of cash and shares that may be allocated to the Liquidity Agreement. These restrictions, which will be reviewed two years after the AMF Decision enters into force, i.e. in respect of 2019 and 2020 (the Interim Period), are stated in relation to Article 10 of the Agreement (*see [10.1.] below*).

Article 3 – Allocation of Shares

[3.1.] As previously stated (*see [2.3.] above*), there may be situations where the Liquidity Account is initially funded with cash payments only. However, where no Shares are held in the Liquidity Account, except in exceptional market circumstances (extended downward trend leading to the liquidity agreement being used only for purchases), the Liquidity Provider will not be able to take action in accordance with the terms of its mandate: "*enhance the liquidity of the Shares, improve the regularity of trading and avoid price swings that are not justified by the current market trends*".

The mechanism described herein is therefore one of the implementing aspects of the principle of proportionality referred to above (*see [2.4.] above*). The aim is to allow for a potential Share acquisition phase in the Agreement that is unrelated to the strict purpose of the Liqiduity Provider's mandate, so that Shares may be credited to the Liquidity Account.

[3.2.] As an exception to the purpose of the Agreement as defined above (*see [1.1.] above*), the mechanism put in place is strictly regulated since the sole purpose of purchasing the Shares *"shall be the creation of a provision of Shares in order to enable the provision of services under this Agreement*".

Furthermore:

- Shares may only be purchased and may not be sold; this clearly shows that the liquidity agreement is not yet "*operational* ".
- The acquisition phase is governed either by a time limit left to the discretion of the parties, or is limited in terms of the number or amount of Shares.

[3.3.] If a deadline has been specified for the purchase of the shares used to fund the Agreement, and the Liquidity Provider is unable to establish the provision of shares at the end of the extended period, the Parties may, for example, agree that the Agreement shall in fact be terminated due to its purpose not being possible to fulfil.

[3.4.] The Liquidity Provider must keep the Issuer informed about the Shares acquired on the Market with a view to having adequate resources available, in cash and in Shares, on behalf of the Issuer, to implement the Liquidity Agreement.

Article 4 – Conditions governing the Liquidity Provider's trading

[4.1.] The conditions on which it trades are left to the sole discretion of the Liquidity Provider (*on the independence thus conferred, see Article 5 below*): it shall be responsible, in its capacity as a market professional, for assessing when and at what level its effectiveness will be maximised. It should be noted, however, that the sole objective of its interventions is to "*enhance the liquidity of the Shares, improve the regularity of trading and avoid price swings that are not justified by the current market trends*" (*see also [1.1] above*).

This contractual limit applies all the more since "*the act of any person entering into a transaction, placing an order to trade or any other behaviour which gives, or is likely to give, false or misleading indications as to the supply of, demand for, or price of, a financial instrument, or which secures, or is likely to secure, the price of one or several financial instruments, a related spot commodity contract at an abnormal or*

artificial level" is, under Article L. 465-3-1, I. A of the French Monetary and Financial Code, subject to the penalties provided for in Article L. 465-1 of the same Code, i.e. five years' imprisonment and a fine of €100 million, the amount of which may be increased above this amount to up to ten times the amount of the benefit obtained from the offence. It should be noted that the second paragraph of Article L. 46[5]-3-1[15] referred to above states that "*Sub-paragraph I(A) shall not apply in cases where the transaction or behaviour referred to in this sub-section I is based on a legitimate reason and is consistent with an accepted market practice*".

[4.2] After restating that the investment services provider may not issue orders resulting in a price swing that is not justified by market trends, Article 4.3 of the AMF Decision states that "*with a view to reducing this risk*", trading on the market in question is subject to restrictions in terms of volumes and prices and during auction periods. These restrictions are set out in paragraphs a, b and c, respectively, of this Article 4.3.

Before reiterating the nature of these restrictions as set out below, attention should be drawn to three points:

(i) Firstly, the AMF Decision provides for special conditions which, in certain situations, require the Liquidity Provider to record, for each trading day, evidence that exceeding the thresholds was essential to the proper execution of the Agreement and that it did not hinder the normal operation of the market;

(ii) These special conditions are directly derived from discussions held with the Association. Their purpose is to introduce a certain degree of flexibility in the implementation of the Agreement while at the same time providing the AMF with the necessary documentary evidence so that it can subsequently more accurately calibrate the restrictions it has imposed. This review will be conducted at the end of a two-year transitional period beginning on the entry into force of the AMF Decision (the Interim Period), i.e. 2019 and 2020 (*in relation to the rules that will apply after the Interim Period, see [4.5.] below*);

(iii) As stated above (*see [P.2] above* and *AMF decision, Preamble, § (3)*), actions that do not comply with the conditions set out in the 2018 AMF Decision are not prohibited but do not benefit from the provisions of Article 13 of the MAR.

- ***Restrictions in terms of volume (AMF decision, Art. 4.3.a)***

Above a threshold of €20,000 for all trades during the same trading day, the Liquidity Provider is not authorised, on a trading day, to buy or sell more than a certain percentage of the average daily volume of shares traded on the market on which the liquidity agreement is implemented.

This percentage is determined, in respect of purchases and sales, based on the level of liquidity of the shares on the trading platform. It is calculated by dividing the cumulative value of purchase transactions and sale transactions carried out pursuant to the liquidity agreement by the value of the average volume of shares traded during the 30 previous trading days on the market in question.

The limit is based on the level of liquidity of the Shares that are the subject of the Agreement, by reference to the liquidity requirements applicable to shares, which are defined in Article 1 of Commission Delegated Regulation (EU) 2017/567 of 18 May 2016.

It is therefore important that the categorisation of Shares as "Illiquid Shares" or "Liquid Shares" or "Highly liquid Shares" is specified in the Agreement.

[15] NdT: il semble qu'il y ait une erreur dans le document source – « 463-3-1 » au lieu de « 465-3-1 ».

(i) For illiquid shares, the percentage is capped at 50%. Should trading exceed a 25% threshold, the Liquidity Provider must record, for each trading day, evidence that exceeding the thresholds was essential to the proper execution of the Agreement and that it did not hinder the normal operation of the market.

(ii) For liquid shares, the percentage is capped at 25%. Should trading exceed a 15% threshold, the Liquidity Provider must record, for each trading day, evidence that exceeding the thresholds was essential to the proper execution of the Agreement and that it did not hinder the normal operation of the market.

(iii) For highly liquid shares, the percentage is capped at 5%, with no possibility of it being exceeded.

It should be noted that the 50% and 25% thresholds referred to respectively in (i) and (ii) above only apply during the Interim Period (*[4.4.] below*).

It should also be noted that the Liquidity Provider may carry out a block trade outside the central order book of the Market when that trade is carried out to rebalance its available cash resources and shares and if the transaction is reported to the Market under the conditions provided for by the platform's organisational and operating rules. In such circumstances, the block trade is not subject to the volume restrictions referred to above (*AMF decision, Art. 4, para. 4*).

- ***Restrictions in terms of price (AMF decision, Art. 4.3.b)***

Outside the framework of a valuation system provided for by the organisational and operational rules of the market in question, the Liquidity Provider must issue buy or sell orders in accordance with the price limits set out below:

(i) The pricing limit on buy orders must not be greater than the higher of the two following values: the price of the most recent independent transaction or the highest current independent purchase bid;

(ii) The pricing limit on sell orders must not be lower than the lower of the two following values: the price of the most recent independent transaction or the lowest current independent sale bid;

For Shares classified as “illiquid shares” or "liquid shares” the price limit may, during the Interim Period, be more competitive than the limit referred to in the paragraph above, provided that the corresponding order is positioned between the best purchase bid price and the best sale bid price.

When using this option, the Liquidity Provider must record, for each trading session, evidence that the use of this option was essential to the execution of the Agreement and that it did not hinder the operation of the market.

- ***Restrictions during auction periods (AMF decision, art. 4.3.c)***

It is also advisable, even though they are not dealt with in a specific provision of the Agreement, to mention the restrictions applicable during auction periods, as referred to in the AMF Decision. The Liquidity Provider must do its utmost not to issue orders during auction periods, where the price limit has a significant impact on the price resulting from the auction. If the Shares are exclusively traded by auction, the Liquidity Provider shall ensure that it does not issue orders that disrupt the market’s underlying trend.

[4.3] The conditions under which the documentation required by the AMF is to be produced have been specified by the Association in conjunction with the Authority.

[4.4] As stated above (*see [4.2]*), since the above restrictions depend on the level of liquidity of the Shares covered by the Agreement, by reference to the liquidity requirements applicable to shares as defined in Article 1 of Commission Delegated Regulation (EU) 2017/567 of 18 May 2016, the categorisation of the Shares into "Illiquid shares" or "Liquid shares" or "Highly Liquid Shares" must be specified in the Agreement.

[4.5] In the event of a change of category pursuant to Article 4.3.a of the AMF Decision, the Parties shall agree on and take all actions necessary for the proper execution of this Agreement, in compliance always with the AMF Decision (*AMF Decision, Art. 4, par. 7*).

[4.6] As stated above (*see [4.2.], (ii) above*), some of the restrictions imposed by the AMF Decision are only to apply to the Interim Period. In this respect, it is reiterated that, as the AMAFI wished, the AMF has introduced a framework that leaves sufficient freedom to liquidity providers for a period of two years, during which the AMF will collect the data it requires to ultimately refine this framework by tightening or relaxing certain restrictions. This means that other rules may be introduced at the end of the Interim Period. In order to avoid the need to amend the Agreement when the new rules come into force, it is provided that they will automatically apply to the Agreement, the sole obligation of the Liquidity Provider in this respect being to inform the Issuer in due course.

[4.7] As stated above (*see [P.2.]*), it remains possible to act outside the framework of the AMP without such activity automatically constituting a price manipulation. As the AMF will necessarily pay greater attention to such actions, this article provides for a specific permission by the Issuer.

[4.8] For shares with a market capitalisation of more than €1bn, action outside the AMP triggers the application of the financial transactions tax. This tax, which only applies to the balance of transactions carried out on the same day resulting in a net long position at the end of the day, is then payable by the Issuer.

[4.9] A special provision is provided in the event that the Parties wish to contractually link their liquidity agreement to a Euronext Liquidity provider agreement (*see [P.7] above*).

➢ Article 5 – Independence of the Liquidity Provider

[5.1.] The Liquidity Provider's independence is at the very heart of the process (*AMF decision, Art. 1 and 4.5*) and this independence in particular means that the Liquidity Provider "*shall alone determine the appropriateness of its actions on the Market*". The Issuer may not therefore give the Liquidity Provider any instructions or otherwise provide any information with the intention to influence the Liquidity Provider in the execution of its obligations under this Agreement As part of its mandate and the purpose of the liquidity agreement, the Liquidity Provider's discretion is thus limited in only two ways:

- The first is that it must act in accordance with the purpose of the mandate for which it is engaged.
- The second is that it must determine the usefulness of each of its actions in light of its impact on the continuity of the Agreement.

[5.2.] The Liquidity Agreement must be implemented with a view to ensuring the continuity of trading. As such, the Liquidity Provider must use the available Shares and/or cash in a way that enables its actions to be carried out over the long term. Is it merely a question of correcting an erratic movement or is there a fundamental trend in the Market and/or the Shares that it would be unrealistic to try and counteract using the resources held in the Liquidity Account? Where a movement is representative of a fundamental trend in the Market or in the Shares, it should be noted that "counteracting" such movements do not fall within the scope of the Agreement, as such action may constitute price manipulation (*see [4.1.] above*).

As such, if all the Liquidity Provider's actions are required to "*enhance the liquidity of the Shares and improve the regularity of trading*" and if it is required to "*purchase and sell the Shares (…) under normal*

market conditions" (AMF Decision, Art. 4.2), it is not the case that it must buy and sell Shares at immediately executable prices. It is its responsibility, not only to judge whether it would be more useful to buy or sell, but also to ensure that it retains the ability to take action over the long term, hence without an excessive use of its available shares and cash.

[5.3.] Again, with a view to ensuring the Liquidity Provider's independence, the Agreement provides that the Liquidity Provider must "*maintain an appropriate internal structure in order to ensure the independence of staff in charge of trading under this Agreement*".

When such an internal structure cannot be put in place, due to the Liquidity Provider's size, the AMF follows the principle previously set out in its AMP of 21 March 2011, namely "*where the investment services provider, in view of its size, cannot ensure the independence of the employees who are responsible for implementing agreements, neither by physically separating the coordination and trading teams, nor by having them report to a non-trading activity, it must identify potential conflicts of interest and implement appropriate measures to manage them"* (*AMF decision, Art. 4.5*).

[5.4.] To the extent that the mechanism described herein applies in any event under Article L. 465-1 of the French Monetary and Financial Code, this article may appear to be superfluous in the context of the Agreement.

However, it is considered useful to specifically draw the Issuer's attention to this point. Experience shows that, in certain situations, and particularly for companies with the lowest market capitalisations, their managers are not always sufficiently aware of the rules applying to the disclosure of inside information. Also, while the relationship between the Issuer and the Liquidity Provider under the liquidity agreement must not cause the Issuer to become less vigilant as to the nature and extent of the information that it discloses to the Intermediary, this article is primarily designed to raise awareness.

In this context, the measures that the Liquidity Provider must take to avoid the use of inside information (insider trading) and the communication thereof, sanctioned by Article L. 465-1 of the French Monetary and Financial Code (disclosure of insider information offence) are only restated as a corollary to the Issuer's obligations. Unlike the Issuer, the Liquidity Provider is subject to compliance obligations (AMF regulations) on a continuous basis which must be considered prior to taking any action.

[5.5.] Article 17-7 of the MAR provides as follows: "*Where disclosure of inside information has been delayed in accordance* [with the provisions of the regulation] *and the confidentiality of that inside information is no longer ensured, the issuer or the emission allowance market participant shall disclose that inside information to the public as soon as possible*".

The Liquidity Provider therefore undertakes to keep such information confidential if it becomes aware thereof in the context of the relationship that the Agreement entails, and the Issuer agrees to take the necessary steps to comply with its obligation under Article 17-7 of the MAR.

➢ Article 6 – Reporting

[6.1.] Companies that buy back their own shares are subject to special disclosure obligations derived from the provisions of the French Code of Commerce on share buybacks. In addition, issuers that trade in their own shares in the context of an AMF accepted market practice are subject to transparency obligations vis-à-vis the public and the AMF, as set out in the AMF Decision. Some of these obligations overlap with the French Code of Commerce which refers in certain places to accepted market practices.

- Most of these obligations apply to the Issuer, not the Liquidity Provider. However, as provided for in Article 7 of the Agreement, the Liquidity Provider must provide the Issuer with all information needed to comply with its obligations (*AMF decision, Art. 2.1; see also [7.1] below*).

- ✓ The relevant provisions specific to share buybacks in the French Code of Commerce and the AMF General Regulation are the following:

  - Under the first paragraph of Article L. 225-212 of the French Code of Commerce, "*Companies must declare the transactions they propose to carry out pursuant to Article L. 225-209 to the AMF"*. This declaration is deemed to have been made when made pursuant to an accepted market practice, i.e. the AMF Decision. They must also inform the AMF on a monthly basis *"of acquisitions, disposals, share cancellations and share transfers that they made*";
  - Under Article L. 225-211 of the French Code of Commerce, companies must keep a register of purchases and sales made pursuant to Article L. 225-209 that includes the information set out in Article R. 225-160 of the same Code;
  - Under Article 241-4 of the AMF General Regulation, any issuer that transacts in its own shares within the framework of a buyback program must send monthly electronic reports of such transactions to the AMF in accordance with the procedures and format defined in an AMF instruction. Article 241-7 of the General Regulation refers to the accepted market practice, in relation to the reporting of transactions to be made to the AMF, by way of exception to Article 241-4.

- ✓ The provisions specific to the accepted market practice that appear in the AMF Decision are the following:

  - The disclosure obligations to the public and to the market in advance of implementing the liquidity agreement are set out in paragraph 2 of Articles 2 and 3, respectively;
  - The disclosure obligations to the public and to the market during the life of the liquidity agreement are set out in paragraph 3 of Article 2 and paragraph 2 of Article 3. They include a half-yearly disclosure obligation as well as a monthly report referred to in Article L. 225-212 of the French Code of Commerce and Article 241-4 II of the AMF General Regulation (*see above*);
  - The disclosure obligations to the public and to the market when the liquidity agreement is terminated are set out in paragraph 4 of Article 2 and paragraph 3 of Article 3.

- Certain obligations apply directly to the Liquidity Provider

  - ✓ It must keep and maintain, for at least 5 years, a register of orders and transactions carried out under the liquidity agreement (*AMF decision, Art. 4.1, (ii)*);
  - ✓ It must inform the AMF annually on the "*services provided to the Issuer under the liquidity agreement and the various fees received in connection therewith* (*AMF Decision, Art. 3.4*), i.e. the services which, with respect to the activity under the Agreement, are not protected by an information barrier within the meaning of the AMF General Regulation.

[6.2.] Also, in addition to any information obligations imposed on the Liquidity Provider in its capacity as a service provider supplying order execution services and, where applicable, custody account-keeping services, the Liquidity Provider is, like any agent, required to periodically report on the conditions in which it carries out its duties. A monthly report has been considered sufficient. In order to enable the Issuer to comply with its monthly reporting obligation to the AMF on a monthly basis *(see [6.1.] above*) on its share buyback programme, it is the Liquidity Provider's responsibility to provide the Issuer with all the information needed, in a readily usable format.

[6.3.] Furthermore, on an optional basis, and where applicable for an additional fee, the Liquidity Provider and the Issuer may further agree that the Liquidity Provider will calculate, on the Issuer's behalf, both for the previous month and for the period since the Agreement was signed:

- The number of Shares purchased and their weighted average cost,
- The number of Shares sold and their weighted average cost.

➢ Article 7 – Market disclosure

[7.1.] Please see explanations given above (*see [6.1] above*).

[7.2.] It may be agreed that the Liquidity Provider's duties extend to drafting a draft press release that contains the information required to comply with the Issuer's transparency obligations (*see [6.1] above*).

➢ Article 9 – No dividends

[9.1.] Since shares held by the Issuer cannot give rise to the payment of a dividend (since they do not have voting rights) (*Art. L. 225-210, 4th para. of the French Code of Commerce*), it was considered appropriate to restate this principle in the Agreement.

This means that, in order to ensure compliance with this principle, all shares held in the Liquidity Account that, in essence, are held on behalf of the Issuer, do not entitle the holder to dividends.

➢ Article 10 – Liquidity Account balance

[10.1.] It is reiterated that the resources in the form of cash and Shares (together referred to as the "Resources") held in the Liquidity Account must be proportionate and tailored to the purpose of the Agreement (*see [2.2.] above*).

In addition to this principle, which is set out in the AMF Decision, the Decision imposes restrictions, during the Interim Period, on the amount of Resources that may be allocated by the Issuer to the liquidity agreement. These restrictions depend on the liquidity of the shares and therefore the way in which the Shares covered by the Agreements are categorised, as stated in Article 4.1 of the Agreement (*see [4.2] above*). It is therefore appropriate to restate the category in which the Shares fall in Article 10.

These restrictions are as follows (*AMF decision, Art. 4.6*):

(i) For illiquid shares, Resources may not exceed 750% of the average daily trading volume observed on the Market during the previous 30 trading days or 1.5% of the Issuer's market capitalisation, subject to a limit of €3 million. Where Resources exceed 500% of the daily trading volume or 1% of market capitalisation, or exceed €1 million, the Issuer must record evidence that the additional resources were essential to the proper execution of the Agreement and remain proportionate and tailored to its purpose;

(ii) For liquid shares, Resources may not exceed 300% of the average daily trading volume observed on the Market during the previous 30 trading days, subject to a limit of €30 million. Where Resources exceed 200% of the daily trading volume, or exceed €20 million, the Issuer must record evidence that the additional resources were essential to the proper execution of the Agreement and remain proportionate and tailored to its purpose;

(iii) For highly liquid shares, Resources may not exceed 100% of the average daily trading volume observed on the Market during the previous 30 trading days, subject to a limit of €50 million.

The above referenced limits shall be considered at the time of signature of this Agreement. They must be reconsidered at the end of the term of the Agreement and its renewal. They may also, "if deemed necessary", be reconsidered during the term of this Agreement. Where the resources allocated to the liquidity agreement are required to be reduced, the readjustment may be carried out within 6 months following the Agreement being renewed (*see [12.2] below*).

In the event of the Shares being re-categorised under paragraph 3a of the AMF Decision, the Parties shall agree on any necessary action pertaining to the execution of the Agreement. Such action shall comply with the AMF Decision.

[10.2] These restrictions, like some of the restrictions referred to in article 4.1 of the Agreement, only apply during the Interim Period. This means that, in all likelihood, other rules may be enacted at the end of the Interim Period, possibly as part of a more general review of the AMF decision. In order to avoid the need to amend the Agreement as a result of these new rules, it is provided that they will automatically apply, the sole obligation of the Liquidity Provider in this respect being to inform the Issuer in due course (*see [4.4] above*).

[10.3.] In order to ensure the continuity of the agreement, which must allow the Liquidity Provider to continue its work in accordance with the principle of proportionality referred to above (*see [10.1] above*), a mechanism is provided, as an exception to the principles that govern the Liquidity Provider's actions, to permit the Liquidity Account to be "rebalanced". This "rebalancing" must be carried out in accordance with the limits on Resources imposed by the 2018 AMF Decision (*see [10.1] above*).

Purchase and sale transactions carried out to restore the balance of the Liquidity Account are not intended to enhance the liquidity of the shares and improve the regularity of trading. They are therefore not subject to the provisions of Article 4 of the Agreement. They must, however, be made as soon as possible, in the Issuer's best interests and without interfering with the orderly operation of the market or misleading other parties.

➢ Article 11 - Further allocations of Resources to the Liquidity Account

[11.1.] In accordance with the principle of continuity, it is stipulated that additional contributions may be made to the Liquidity Account under conditions to be defined by the Parties which are of course subject to compliance with the principle of proportionality as well as the limits placed on Resources by the 2018 AMF Decision (*see [10.2] above*).

[11.2.] Any increase in the Resources allocated to this Agreement should be made public as soon as possible, as per Article 221-3 of the AMF General Regulation (*AMF Decision, Art. 4.6*).

➢ Article 12 – Withdrawals from the Liquidity Account

[12.1.] In the event of favourable market circumstances, it may be the case that the resources in the form of Shares and/or cash held in the Liquidity Account become too large relative to actual needs. In view of the principle of proportionality applicable to the Resources allocated to the Agreement, this article sets out the conditions on which amounts may be withdrawn from the Liquidity Account.

[12.2.] This article may, in particular, set out the conditions on which the cash allocated to the liquidity agreement that is not used by the Liquidity Provider may be included in the Issuer's cash pooling system in accordance with conditions determined by the AMF.

It is reiterated that, in March 2009, the application of the principle of proportionality, discussed in detail above, gave rise to a particular question from the AMAFI on whether an Issuer could include the cash allocated to the liquidity agreement that is not used by the Liquidity Provider, in its cash pooling system, through cash being formally "withdrawn" from the Liquidity Account held by the Liquidity Provider. The analysis carried out in this area by the Association led to consider that such a use was not contrary to the market practice accepted at the time[16] provided that it did not in any way limit the Liquidity Provider's ability to fulfil its duties by having, at all times, the freedom to use all cash and/or shares allocated to the agreement by the Issuer.

[16] AMF decision of 1 October 2008 on the approval of liquidity agreements as an "*accepted market practice*" based on the principles of the AMAFI Code of Conduct on liquidity agreements of 23 September 2008.

This analysis was supported by the AMF, through its Secretary General[17], who confirmed that "*this is a technical implementation method that is not contrary to the market practice accepted by the AMF, provided that the mechanism does not prevent the service provider from carrying out its duties in an independent manner*". To this end, however, it was specified that three conditions must be met:

- The Issuer must undertake to make funds available to the Liquidity Provider within a time frame that allows for ful compliance with the payment obligations derived from any purchases made;
- A minimum cash buffer must be maintained in the Liquidity Account in order to deal with day to day operations;
- The Liquidity Provider must have the option of unilaterally terminating the mechanism if implementation difficulties arise, particularly in relation to the provision of resources required to carry out its duties.

This analysis was not questioned as part of accepted market practice No. 2011-07 on liquidity agreements, based on the AMAFI Code of Conduct dated 8 March 2011.

AMAFI believes that the principles that support the AMF's position on this issue are unchanged in the accepted market practice implemented by the AMF Decision, and that therefore this analysis remains applicable.

[12.3.] Under the AMF Decision (*Article 4.6 and 4.7*), where the allocated Resources are required to be reduced, the adjustment may be made within a maximum of six months following the renewal of the Agreement or, if applicable, a change in the Shares' category, unless otherwise agreed by the AMF. Any reduction in the Resources allocated to the implementation of the Agreement (like any increase in those Resources, *see [11.2] above*) must be disclosed to the public as soon as possible, as required by Article 221-3 of the AMF General Regulation.

[12.4.] Cash is simply wired by bank transfer out of the Liquidity Account.

[12.5.] Under accepted market practices in respect of liquidity agreements prior to one established by the AMF Decision, the "*cash output"* principle applied, under which the Issuer was unable to directly take Shares back, in respect of both Article 12 and Article 13 on the closure of the Liquidity Account.

Under this principle, the Shares were necessarily required to be sold on the Market, and only cash could be transferred.

By way of exception, the Issuer could nevertheless take back a number of shares equal to or less than the number it had allocated to the implementation of the Agreement, whether at the outset of the Agreement or during the term of the Agreement by making "additional contributions" to the Liquidity Account (*Agreement, Art. 11*). Of course, in the event of multiple operations, the cumulative number of shares taken back in this way had to be taken into account, compared with the total number of shares contributed by the Issuer.

This mechanism was originally intended to ensure that the liquidity account could not be used by the Issuer to "store" Shares there before being used for other purposes. The increasingly precise framework for liquidity agreements has, over the years, significantly diminished the appeal of a restriction that, in certain situations, can be counter-productive. The special framework introduced by the AMF Decision means that this constraint no longer applies.

[12.6.] Shares can now be taken back in two ways:

[17] Letter from Mr Thierry Francq, Secretary General of the AMF, to AMAFI on 14 April 2009 - see also AMAFI mailshot of 15 April 2009.

- Either the Shares remain in the Liquidity Account. They are then sold within six months on the market by the Liquidity Provider and its actions are not subject to the provisions of Article 4 of the Agreement.

- Or, as with cash, they may be withdrawn from the Liquidity Account and transferred to an external account, with the resources being adjusted accordingly. In these circumstances, however, this transfer must be made no later than three months after the date on which the adjustment is required to be made.

[12.7.] Any decrease or increase in the Resources (*see [11.2] above*) allocated to this Agreement should be made public as soon as possible, as per Article 221-3 of the AMF General Regulation (*AMF Decision, Art. 4.6*).

Article 13 – Liquidity Account closure

[13.1.] The non-renewal or termination of the Liquidity Agreement shall cause the Liquidity Account to be closed, and therefore the cash or Shares booked in the Liquidity Account must be transferred to another account.

Article 14 – Fees

[14.1.] The remuneration arrangements must of course be determined in a way that does not affect the principle of independence of the Liquidity Provider (*see [5.1] above*). The AMF Decision states that the investment services provider's remuneration must be determined but that it "*may include a variable component if its amount does not exceed 15% of the total remuneration and if it does not result in a behaviour that is detrimental to the integrity of the market or its proper functioning*" (*AMF Decision, Art. 6*). The Parties therefore remain free to set the terms and frequency of payments in accordance with the principle set out above.

Article 16 – Duration

[16.1.] The Parties must agree on the duration of the Agreement, bearing in mind that the most common duration is 12 months but that a longer duration of up to 18 months (which is the maximum implementation period of a buyback programme approved by the Issuer's shareholders in a general meeting) may be chosen. It is envisaged that the Agreement will then be renewed for successive periods of twelve months (unless otherwise stated), unless either Party gives notice to the contrary to the other Party before the renewal date of the Agreement. The Parties must define, in days or months, the length of this notice period.

Unless otherwise stated, the Agreement shall take effect on the date on which it is signed; hence the importance of stating this date at the relevant place above the signature lines. Of course, the Parties may agree to defer its effective date.

➢ Article 17 – Suspension

[17.1.] Article 5 of the 2018 AMF Decision expressly provides for two scenarios in which the Agreement must be suspended:

- In the event of stabilisation measures being put in place: in this scenario, the suspension begins on the admission to trading of the shares affected by the stabilisation measures and ends on the publication of the information referred to in Article 6(3) of Delegated Regulation (EU) 2016/1052, which must be made within one week of the end of the stabilisation period;
- During a public offer or during a pre-offer period and until the offer closes, where the Issuer is the initiator of the offer or when its shares are covered by the offer.

As an option, it may be stated that the performance of the Agreement is suspended at the Issuer's request for a period it specifies. The Issuer may, at its discretion, suspend the Agreement under this provision, on any grounds, and for any period.

The only restriction is that, where the LA is suspended at the Issuer's request or pursuant to the Agreement, it must be on the basis of (sufficiently precise) circumstances that have been verified and about which the public will have been informed priori to the LA being implemented (*AMF Decision, Art. 2.2*).

➢ Article 18 – Termination

[18.1.] These provisions do not require any particular comment, other than that the alternative set out in *[18.4]* is intended to provide a link to Article 4 (*see [4.6.] above*). Given the link between the liquidity agreement and the Euronext liquidity provider agreement, it seems appropriate to provide for the automatic termination of the liquidity agreement upon termination of the Euronext liquidity provider agreement.

➢ Article 20 – Disputes

[20.1.] In the event of arbitration, the Parties must specify the applicable rules, by referring, where relevant, to an existing arbitration procedure, for example that of EuroArbitrage or the *Association française d'arbitrage* (French Arbitration Association).