

ARTICLE			SUBTITLE	TITLE
CONTENT	SUBTITLE	TITLE		
<ol class="crrNumList" style="list-style-type: none"> <p>Prior to establishing a market practice as an accepted market practice (AMP) competent authorities shall:</p> <ol class="crrCharList" style="list-style-type: none"> evaluate the market practice against each of the criteria set out in Article 13(2) of Regulation (EU) No 596/2014 and specified 				

further in Section 2 of this Chapter;

- consult as appropriate with relevant bodies including, at a minimum, representatives of issuers, investment firms, credit institutions, investors, emission allowance market participants, market operators operating a multilateral trading facility (MTF) or an organised trading facility (OTF) and operators of a regulated market, and other authorities on the appropriateness of establishing a market practice as an AMP.

Competent authorities intending to establish a market practice as an AMP shall notify ESMA and the other competent authorities of that intention in accordance with the procedure laid down in Section 3, using the template set out in the Annex.

Where competent authorities establish a market practice as an AMP in accordance with Article 13 of Regulation (EU) No 596/2014 and with this Regulation, they shall publicly disclose on their website the decision establishing the market practice as an AMP and a description of the AMP concerned, in accordance with the template set out in the Annex including the following information:

- a description of the types of persons who may perform the AMP;
- a description of the types of person or a group of persons who may benefit from the performance of the AMP, either by performing it directly or through the appointment of another person performing the AMP (beneficiary);
- a description of the type of financial instrument to which the AMP relates;
- an indication of whether the AMP can

General requirements

Article 2

Establishing an accepted market practice

SECTION 1

be performed for a specified period of time and a description of situations or conditions leading to a temporary interruption, suspension or termination of the practice.

The persons referred to in point (a) of the first subparagraph shall be responsible for any trading decision, including, the submission of an order, the cancellation or modification of an order, and conclusion of a transaction or for the trading execution in relation with the AMP.

CONTENT	SUBTITLE	TITLE
<p><ol style="list-style-type: none">In determining whether a market practice can be established as an AMP and whether it fulfils the criterion set out in point (a) of Article 13(2) of Regulation (EU) No 596/2014, competent authorities shall examine whether the market practice ensures that the following information will be disclosed to the public:</p> <p><ol style="list-style-type: none">before a market practice is performed as an AMP;</p> <p><ol style="list-style-type: none">the identities of the beneficiaries and the persons who will perform it and the one among them that is responsible to fulfil the transparency requirements under points (b) and (c) of this paragraph;</p> <p><ol style="list-style-type: none">the identification of the financial instruments in relation to which the AMP will apply;</p> <p><ol style="list-style-type: none">the period during which the AMP will be performed and situations or conditions leading to the temporary interruption, suspension or termination of its performance;</p> <p><ol style="list-style-type: none">the identification</p>		

of the trading venues on which the AMP will be carried out, and, where applicable, indication of the possibility to execute transactions outside a trading venue;

- reference to the maximum amounts of cash and of the number of financial instruments allocated to the performance of the AMP, if applicable.

once the market practice is performed as an AMP:

- on a periodic basis, details of the trading activity relating to the performance of the AMP such as the number of transactions executed, volume traded, average size of the transactions and average spreads quoted, prices of executed transactions;
 - any changes to previously disclosed information on the AMP, including changes relating to available resources in terms of cash and financial instruments, changes to the identity of persons performing the AMP, and any change in the allocation of cash or financial instruments in the accounts of the beneficiary and the persons performing the AMP.
- when the market practice ceases to be performed as an AMP on the initiative of the person who has been performing it, of the beneficiary or of both:
 - the fact that the performance of the AMP has ceased;
 - a description of how the AMP has been performed;
 - the reasons or causes for ceasing the performance of the AMP.

For the purposes of point (b)(i), where multiple transactions in a single trading

Transparency

Article
3

session are performed, daily aggregated figures may be acceptable in relation to the appropriate categories of information.

In determining whether a market practice can be established as an AMP and whether it fulfils the criterion set out in point (a) of Article 13(2) of Regulation (EU) No 596/2014, competent authorities shall examine whether the market practice ensures that the following information will be disclosed to them:

- before a market practice is performed as an AMP, the arrangements or contracts between the identified beneficiaries and the persons who will perform the market practice once established as an AMP where such arrangements or contracts are needed for its performance;
- once the market practice is performed as an AMP, periodic report to the competent authority providing details about the transactions executed and about the operations of any arrangement or contract between the beneficiary and the persons performing the AMP.

- In determining whether a market practice proposed to be established as an AMP complies with the criterion set out in point (b) of Article 13(2) of Regulation (EU) No 596/2014, competent authorities shall consider whether the market practice limits the opportunities for other market participants to respond to transactions.

Competent authorities

shall also consider at a minimum the following criteria relating to the types of persons who will perform the market practice once established as an AMP:

</p> <ol class="crrCharList">
whether they are supervised persons;
 whether they are members of a trading venue where the AMP will be performed;
whether they maintain records of orders and transactions relating to the market practice performed in a way that allows it to be easily distinguished from other trading activities, including through the maintenance of separate accounts for the performance of the AMP, in particular to demonstrate that orders introduced are entered separately and individually without aggregating orders from several clients;
whether they have put in place specific internal procedures allowing: <ol class="crrRomanList">
immediate identification of the activities relating to the market practice;
 ready availability of the relevant orders and transaction records to the competent authority upon request;
whether they possess the compliance and audit resources necessary to be able to monitor and ensure compliance at all times with the conditions set for the AMP; whether they keep the records mentioned in point (c) for a period of at least five years.
 Competent authorities shall consider the extent to which the market practice establishes an ex ante list of trading conditions for its performance as an

Safeguards of the operations of the market forces and interplay of the forces of supply and demand

Article 4

AMP, including limits with regard to prices and volumes and limits on positions.

Competent authorities shall assess the extent to which the market practice and the arrangement or contract for its performance:

- enables the person performing the AMP to act independently from the beneficiary without being subject to instructions, information or influence from the beneficiary as regards the manner in which trading is to be conducted;
- allows for the avoidance of conflicts of interest between the beneficiary and the clients of the person performing the AMP.

In determining whether a market practice proposed to be established as an AMP complies with the criterion set out in point (c) of Article 13(2) of Regulation (EU) No 596/2014, competent authorities shall assess the impact the market practice has on at least the following elements:

- volume traded;
- number of orders in the order book (order depth);
- speed of execution of the transactions;
- volume weighted average price of a single session, daily closing price;
- bid/offer spread, price fluctuation and volatility;
- regularity of quotations or transactions.

In determining whether a

Impact on market liquidity and efficiency

Article 5

Specification of the criteria to consider when establishing accepted market practices

SECTION 2

DOCUMENT SECTION

SECTION

market practice proposed to be established as an AMP complies with the criterion set out in point (d) of Article 13(2) of Regulation (EU) No 596/2014, competent authorities shall consider the following elements:

- the possibility that the market practice could affect price formation processes in a trading venue;
- the extent to which the market practice could facilitate the evaluation of prices and orders entered into the order book and whether the transactions to be carried out or orders to be introduced for its performance as an AMP do not contravene the trading rules of the corresponding trading venue;
- the modalities by which the information referred to in Article 3 is disclosed to the public including where it is disclosed on the website of the relevant trading platform and, when appropriate, where it is simultaneously released on the websites of the beneficiaries;
- the extent to which the market practice establishes an ex ante list of situations or conditions when its performance as an AMP is temporarily suspended or restricted, inter alia, particular trading periods or phases such as auction phases, takeovers, initial public offerings, capital increases, secondary offerings.

For the purposes of point (b) of the first subparagraph, a market practice where transactions and orders are monitored in real time by the market operator or the

Impact on the proper functioning of the market

Article 6

investment firm or market operators operating a MTF or an OTF shall also be taken into consideration.

Competent authorities shall assess the extent to which a market practice enables:

- orders related to its performance to be submitted and executed during opening or closing auction phases of a trading session;
- orders or transactions related to its performance to be introduced or carried out during periods when stabilisations and buy-back operations are conducted.

In determining whether a market practice proposed to be established as an AMP complies with the criterion set out in point (e) of Article 13(2) of Regulation (EU) No 596/2014, competent authorities shall consider:

- whether the transactions related to the performance of the market practice once established as an AMP will be reported to competent authorities on a regular basis;
- whether the resources (cash or financial instruments) to be allocated to the performance of the AMP are proportionate and commensurate with the objectives of the AMP itself;
- the nature and level of the compensation for services provided within the performance of an AMP and whether that compensation is established as a fixed amount; where variable compensation

is proposed, it shall not lead to behaviour which may be prejudicial to market integrity or to the orderly functioning of the market and shall be available to the competent authority for assessment;

- whether the type of persons who will perform the AMP ensure, where appropriate to the market under consideration, an adequate separation of the assets dedicated to the performance of the AMP from the assets of its clients, if any, or its own assets;
- whether the respective duties of the beneficiaries and of the persons performing the AMP or, where appropriate, the duties shared by them are clearly defined;
- whether the type of persons who will perform the AMP have in place an organisational structure and adequate internal arrangements to ensure that the trading decisions relating to the AMP remain confidential from other units within that person and independent from orders to trade received from clients, portfolio management or orders placed on its own account;
- whether an adequate reporting process between the beneficiary and the person who will perform the AMP is in place to allow the exchange of the necessary information to fulfil their respective legal or contractual obligations, if applicable.

In determining whether a market practice proposed to be established as an AMP complies with the criteria set out in

Risks for the integrity of related markets

Article 7

criteria set out in point (f) of Article 13(2) of Regulation (EU) No 596/2014, competent authorities shall in particular take into account the outcome of any investigation in the markets they monitor that might question the AMP to be established.</div>	Investigation of the market practice	Article 8
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<div class="crrArticle"><p>In taking into account, in accordance with point (g) of Article 13(2) of Regulation (EU) No 596/2014, the participation of retail-investors in the relevant market, competent authorities shall assess at a minimum:</p> <ol class="crrCharList">the impact the market practice might have on retail investors' interests where the market practice concerns financial instruments traded on markets in which retail investors participate;whether the market practice increases the probability of retail investors to find counterparties in low-liquidity financial instruments, without increasing the risks borne by them. </div>	Structural characteristics of the market	Article 9
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CONTENT	SUBTITLE	TITLE
<ol class="crrNumList">Competent authorities shall notify, in accordance with Article 13(3) of Regulation (EU) No 596/2014, their intention to establish an AMP by post or e-mail to ESMA and to the other competent authorities simultaneously, using a pre-identified list of contact points to be set-up and regularly maintained by competent authorities and ESMA. <p>The notification referred to in paragraph 1 shall include the following elements:</p> <ol class="crrCharList">a statement of the intention to establish an AMP, including the expected date of		

expected date of establishment;

- the identification of the notifying competent authority and the contact details of the contact person(s) within that competent authority (name, professional telephone number and e-mail address, title);
- a detailed description of the market practice including:

- the identification of the types of financial instrument and trading venues on which the AMP will be performed;
- the types of persons who can perform the AMP;
- the type of beneficiaries;
- the indication of whether the market practice can be performed for a determined period of time and of any situations or conditions leading to a temporary interruption, suspension or termination of the practice;
- the reason for which the practice could constitute market manipulation under Article 12 of Regulation (EU) No 596/2014;
- the details of the assessment made according to Article 13(2) of Regulation (EU) No 596/2014.

The notification referred to in paragraph 1 shall include the table for assessing a proposed market practice using the template in the Annex.

- Following receipt of the notification referred to Article 13(4) of Regulation (EU) No 596/2014 and before issuing the opinion required under that paragraph, ESMA shall initiate, on its own initiative or upon request of any competent authority, a process to provide the notifying competent authority with preliminary comments, concerns, disagreement or request for clarifications, if any, concerning the notified market practice. The notifying competent authority may provide further clarification

Notification when intending to establish an accepted market practice

Article 10

Procedures

SECTION 3

<p> further clarification concerning the notified market practice to ESMA. </p> <p> Where in the course of the process referred to in paragraph 1, any fundamental or significant change is introduced that affects the basis or substance of the notified market practice or the assessment carried out by the notifying competent authority, the process of issuing the ESMA opinion on the notified practice shall cease. If appropriate, the competent authority shall initiate a new process for establishing the modified practice as an AMP in accordance with Article 13(3) of Regulation (EU) No 596/2014. </p>	ESMA opinion	Article 11
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<p> Competent authorities that have established AMPs shall assess regularly, and at a minimum every two years, whether the conditions for establishing the AMP set out in Article 13(2) of Regulation (EU) No 596/2014 and in Section 2 of this Chapter continue to be met. </p> <p> Notwithstanding the regular review in accordance with Article 13(8) of Regulation (EU) No 596/2014, the assessment process referred to in paragraph 1 shall also be triggered: </p> <ul style="list-style-type: none"> when any sanction involving an established AMP has been imposed; when due to a significant change in the market environment referred to in Article 13(8) of that Regulation, one or more of the conditions of acceptance of an established practice are no longer met; when a competent authority has reasons to suspect that acts contrary to Regulation (EU) No 596/2014 are being or have been carried out by beneficiaries of the AMP, or by persons performing it. In the event that the assessment reveals that an established AMP no	<p>Review of an established AMP</p>	Article 12

	<p>longer meets the conditions of the competent authorities' original assessment set out in Section 2, competent authorities shall either propose the modification of the conditions of the acceptance or terminate the AMP, taking into account the criteria set out in Article 13.</p> <ul style="list-style-type: none"> Competent authorities shall inform ESMA of the outcome of the assessment process, including when the AMP is maintained without modification. Where a competent authority proposes to modify the conditions of acceptance of an established AMP, it shall comply with the requirements set out in Article 2. Where a competent authority decides to terminate an established AMP, it shall publicly disclose and communicate its decision simultaneously to all other competent authorities and to ESMA, indicating the date of termination, in view of updating the list of AMPs published by it in accordance with Article 13(9) of Regulation (EU) No 596/2014. 			Maintenance, modification and termination of accepted market practices	SECTION 4
	<div class="crrArticle"> <p>In determining whether to terminate an established AMP or propose modification of the conditions of its acceptance, competent authorities shall have regard to:</p> <ol class="crrCharList" style="list-style-type: none"> the extent to which the beneficiaries or the persons performing the AMP have complied with the conditions established under that AMP; the extent to which the conduct of the beneficiaries or the persons performing an AMP has resulted in any of the criteria set out in Article 13(2) of Regulation (EU) No 596/2014 no longer being met; the extent to which the AMP has not been used by market participants for a period of time; whether a significant change in the relevant market </div>	Criteria for modifying or terminating	Article 12		

