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## Frequently Asked Questions

### Accepted Market Practices (AMP)

#### What is an AMP?

An AMP, or accepted market practice, is a specific concept under the Market Abuse Directive 2003/6/EC (MAD). Article 1 (5) of this Directive states that the meaning of "accepted market practices" for the purposes of the Directive is that they are practices which are "reasonably expected in one or more financial markets and are accepted by the competent authority in accordance with guidelines adopted by the Commission...".

#### What an AMP is not?

It is not a safe harbour, which is a different concept and one dealt with in Articles 7 and 8 of Directive 2003/6/EC and Regulation 2273/2003 covering buy back programs and stabilisation. **The decision as to whether behaviour constitutes an AMP or not, is a matter of national discretion.** AMP's, therefore, are the responsibility of individual CESR members and so a practice which one competent authority considers is an AMP, may not be viewed as such by another. This is largely because approval of an accepted market practice is a national responsibility and relates to a specific national market which operates, therefore, in a specific context which may not be appropriate to other markets.

#### What is the consequence of AMPs?

As described in preamble 20 of MAD, they constitute a defence against the allegation of market manipulation where it may be established "that the reasons for entering into such transaction or issuing orders to trade were legitimate and that the transactions and orders to trade were in conformity with accepted practice on the regulated market concerned".

#### Why are AMPs necessary?

The intention of the accepted market practice concept is to avoid the penalising of behaviours which would constitute market manipulation under the effect based definition of market manipulation in Article 1(2)(a) of MAD, as, under certain circumstances and conditions such behaviours might be justified.

This defence is only available, if, in addition to the transaction/order to trade conforming with an accepted market practice, the person who entered into the transaction or issued the order to trade establishes that their reasons for so doing was legitimate. In the absence of a legitimate purpose, the accepted market practice defence would not be available.

#### How will a competent authority decide whether or not to accept a practice as an AMP?

Article 2 of the Commission Directive 2004/72/EC implementing MAD describes the non-exhaustive factors that a competent authority should take account of before deciding whether or not to accept a market practice.

These include:



- "(a) the level of transparency of the relevant market practice to the whole market;
- (b) the need to safeguard the operation of market forces and the proper interplay of the forces of supply and demand.;
- (c) the degree to which the relevant market practice has an impact on market liquidity and efficiency;
- (d) the degree to which the relevant practice takes into account the trading mechanism of the relevant market and enables market participants to react properly and in a timely manner to the new market situation created by that practice;
- (e) the risk inherent in the relevant practice for the integrity of, directly or indirectly, related markets, whether regulated or not, in the relevant financial instrument within the whole Community;
- (f) the outcome of any investigation of the relevant market practice by any competent authority or other authority mentioned in Article 12(1) of MAD, in particular whether the relevant market practice breached rules or regulations designed to prevent market abuse, or codes of conduct, be it on the market in question or on directly or indirectly related markets within the Community;
- (g) the structural characteristics of the relevant market including whether it is regulated or not, the types of financial instruments traded and the type of market participants, including the extent of retail investors participation in the relevant market. "

Member states will also ensure that:

- a) Competent authorities when considering the need to safeguard the operation of supply and demand will "analyse the impact of the relevant market practice against the main market parameters, such as the specific market conditions before carrying out the relevant market practice, the weighted average price of a single session or the daily closing price."
- b) Practices, in particular new or emerging market practices will not be assumed to be unacceptable by the competent authority simply because they have not been previously accepted by it.
- c) "Competent authorities review regularly the market practices they have accepted, in particular taking into account significant changes to the relevant market environment, such as changes to trading rules or to market infrastructure."

#### **What is the process by which a practice becomes an AMP?**

Article 3 of the Commission Directive 2004/72/EC sets out the process that the competent authority must follow. In order to achieve the most possible convergence in the treatment of market practices on markets throughout the European Community the competent authorities, while considering the acceptance of a particular market practice, shall conduct consultations of "appropriate relevant bodies such as representatives of issuers, financial services providers, consumers, other authorities and market operators" and of " other competent authorities, in particular where there exist comparable markets, i.e. in structures, volume, type of transactions", and disclosure of the decisions.

However, there might be circumstances in which a market practice can be deemed acceptable on one particular market and unacceptable on another comparable market within the EU. Recital 4 of the Commission Directive states that in such cases of discrepancies, discussion on particular market practices could take place in CESR in order to find a solution. With regard to their decisions about such acceptance, competent authorities should ensure a high degree of consultation and transparency vis-à-vis market participants and end-users.

As a consequence the CESR member must publicly disclose its decision and send this as soon as possible to CESR which publishes the decision on its website in a standard format with a link to the appropriate national text as foreseen in Article 3 of the Commission Directive. The disclosure includes a description of the "factors taken into account in determining whether the relevant practice is regarded as acceptable, in particular, where different conclusions have been reached regarding the acceptability of the same practice on different Member States' markets."