



STATEMENT RENDERING THE 2013 CRITERIA ON DISCRETIONARY TREASURY STOCK TRANSACTIONS INEFFECTIVE

13 January 2020

In July 2013, the Spanish National Securities Market Commission (CNMV) published criteria addressed to issuers of securities for their discretionary treasury stock transactions (“Criteria on discretionary treasury stock transactions” or “Criteria”). These transactions comprise purchase and sale transactions of own shares when they are not conducted pursuant to the EU regulation on buy-back programmes or the provisions of CNMV Circular 1/2017 on liquidity contracts.

The Criteria consist of a series of recommendations on trading conditions and transparency, in order to prevent or mitigate potential risks of market abuse arising from discretionary treasury stock transactions.

The CNMV has analysed the Criteria in light of Regulation 596/2014 on market abuse (Market Abuse Regulation), which entered into force in 2016, the regime of which was transposed in full into Spanish law in 2018.

An initial consideration is that even though discretionary treasury stock transactions are not prohibited in other European Union markets, in general, they are not recognised or regulated either, meaning that other legislators and European competent authorities consider sufficient the framework of the Market Abuse Regulation, which offers protection from enforcement action when such transactions are concluded for specific purposes and comply with specific requirements through the use of the technique known as “safe harbours”.

In fact, transactions with own shares under a safe harbour in accordance with the aforementioned Regulation are, primarily, those executed complying with demanding transparency requirements and those related to how the trading should be carried out within the framework of one of the buy-back programmes referred to in Article 5 thereof. The purpose of the programme can solely be for the redemption of shares or for the reduction of the issuer’s capital, in fulfilment of the obligations attached to debt financial instruments convertible into shares or the fulfilment of obligations arising from employee stock option plans.

Furthermore, also protected in terms of safe harbour are own shares transactions which are executed pursuant to an accepted market practice under the terms of Article 13 of the Market Abuse Regulation, providing that the transactions are executed for legitimate reasons. In the case of Spain, this practice is reflected in the contract of Circular 1/2017, the sole purpose of which is to enhance the liquidity of an issuer’s shares.

In this context, it is considered that the Criteria on discretionary treasury stock transactions are hardly compatible with such Regulation, in view of its clear harmonisation design in this regard.

Furthermore, trading in own shares entails a risk for market integrity, thus a restrictive approach in this sphere would be reasonable which limits the safe harbour regime to the two cases referred to in the Regulation: stabilisation and buy-back programmes, and market accepted practices (liquidity contracts). Furthermore, in the case of the so-called discretionary treasury stock transactions, investors cannot assess a priori the risks, as they are not aware of the own shares buying (or selling) plans of the issuer, the purpose of the transactions, the amount allocated for the transactions and the period during which the transactions will be executed.

In light of all of these considerations, the CNMV considers that the 2013 Criteria on discretionary treasury stock transactions are not longer valid and it has decided to render them ineffective.

For transactions of issuers on their own shares to have some type of protection against market abuse, they must be solely executed pursuant to a stabilisation or buy-back programme foreseen in the Market Abuse Regulation or to one of the liquidity contracts provided for in CNMV Circular 1/2017.

Any trading with own shares that does not comply with these provisions will be subject to the measures that may be adopted by the CNMV to verify compliance with the prohibition of market abuse practices or insider trading contained in the aforementioned European Union Regulation.