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Autorité fédérale de surveillance des marchés financiers FINMA
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# Trading own equity securities with the purpose of ensuring liquidity under the new provisions on market manipulation

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# 1 Introduction

Following the revision of the Swiss Federal Act on Stock Exchanges and Securities Trading (Stock Exchange Act, SESTA; SR 954.1) and resultant legislation, the regulatory basis for stock market offences and market abuse has been realigned. This affects a broader target group now that markets have been placed under general market supervision. The new rules on trading own equity securities (shares, participation certificates, profit sharing rights) or on the issuer's behalf with the purpose of making ready liquidity apply not only to securities dealers, but also to issuers themselves. Subsequently and based on experience gained from multiple investigations and enforcement proceedings, FINMA has decided to describe in more detail its expectations of current market conduct rules on trading own equity securities. This newsletter is directed at issuers whose equity securities are listed for trading on Swiss stock exchanges or similar institutions and who, with the purpose of ensuring liquidity, trade own equity securities or engage a third party to do so. It is also directed at securities dealers designated by issuers to trade their own equity securities.

# 2 Legal principles

Article 33f SESTA prohibits public dissemination of information, conducting business transactions and executing buying and selling orders that give out false or misleading signals regarding supply and demand and market price of securities listed for trading on Swiss stock exchanges or similar institutions. Article 55e of the Ordinance on Stock Exchanges and Securities Trading (Stock Exchange Ordinance, SESTO; SR 954.11) states that conducting securities transactions to stabilise the price of securities listed for trading in Switzerland is permitted under certain conditions. In order to benefit from this safe harbour, price stabilisation measures in particular must be taken within 30 days following public placement of the securities to be stabilised. Moreover, any such measures may at most be taken at price issue or when trading subscription or conversion rights at market price only. Securities transactions that do not comply with the rules prescribed in Article 55e SESTO do not in principle constitute market abuse. Nonetheless, any conduct aimed at maintaining or controlling the price of Swiss securities will be considered by FINMA as market abuse and will be penalised.

Such undesired conduct is particularly the case where the price of securities bucks the market trend by going up or down or fixing prices artificially (see explanatory report on Amendments to the Stock Exchange Ordinance of 10 April 2013, p. 9 f., in German and French).

# 3 Permissible conduct

In accordance with Article 33f SESTA, there is no ban on market manipulation when trading for the purpose of ensuring liquidity in a security on both the buy and sell sides, and of reducing the bid/ask spread where appropriate (i.e. market making, see FINMA Circular 13/2008 'Market conduct rules', margin no. 32). This concerns market availability where an issuer or a designated third party ensures the supply of liquidity when trading a security. The aim here is not to fix or prop up prices against the market trend, but rather to make available the tradable volume of a certain bid-ask spread that moves with the market price trend (see explanatory report on Amendments to the Stock Exchange Ordinance of 10 April 2013, pp. 4 and 9 f.).

# 4 Good standard

Based on the statutory and regulatory principles outlined in this document, the following explains what practices and precautions FINMA considers as setting a good standard in trading own equity securities or on behalf of an issuer with the purpose of making liquidity available.

## 4.1 In line with closed trades and orders of other market participants

The order book entries of the issuer or the securities dealer designated by the issuer are in line with the closing prices and order book entries of independent market participants. Should supply and demand for the securities change because of closed trades or order book entries of independent market participants, traders must rapidly adjust their order book entries to those new circumstances. No price targets are to be pursued nor are rigid volume requirements to be implemented.

## 4.2 Quantitative restrictions on order book entries

Trading volumes on the supply and demand sides made available by the issuer or the designated securities dealer are, in as far as possible, generally in line with on-exchange trading volumes and allow for market-aligned volatility of the securities. Price determination on-exchange is not influenced by making high trading volume entries in the order book.

## 4.3 Same volumes on both sides of order book

The issuer or the securities dealer acting for the issuer ensures that there is a balance between the supply and demand sides of their entries in the order book. The volume made available by the issuer or the designated securities dealer on the bid side of the order book generally corresponds to the volume available on the ask side and vice versa.

### 4.4 Restrictions on own holdings

Trading in own equity securities or for an issuer is largely risk-neutral. Unless there are special reasons, this trading does not build up any large risk positions and strategic positions (long or short) in own holdings.

### 4.5 No performance pressure

Good governance includes incentive issues for the employees charged with trading own equity securities or on behalf of the issuer. Any variable compensation for employees should, in particular, not be based on the share price or the share price target of the security in question. Any incentives provided should be based on the intended purpose of the liquidity and its tradability.

### 4.6 Organisational requirements for supervised institutions

The executive board issues guidelines on trading own equity securities or on behalf of an issuer, the content of which focus in particular on provisions setting out the criteria, trading procedures, competences, reporting and responsibilities. Implementation of these guidelines is controlled internally.

## 5 Conclusion and point of contact

Non-observation of these standards does not mean that such trading activities are automatically regarded as market abuse. Where there is suspicion of market manipulation in connection with trading own equity securities or those of an issuer on his behalf, FINMA will use the criteria set out above to assess the case.

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