Acceptance by the Autorité des Marchés Financiers on 22 March 2005 of a market practice related to share buy back programs : Buy an hold for future use as means of payment for acquiring another company on Euronext (France)

Description of the National AMP:
A company (the issuer) – which shares are admitted to trading on a regulated market – can buy and hold its own shares for future use as means of payment when acquiring a company. The issuer can hold the shares without any time limit. If the holding of these shares turns out to be unnecessary, the issuer can allocate them to the objectives mentioned in article 3 of Regulation (EC) n°2273/2003, to another accepted market practice or sell them. Reference to this practice was found in COB's April 2001 Instruction pursuant to COB Regulation n°90 – 04 which has been repealed since the publication of the new AMF General Regulation. The provisions of COB Regulation n°90-04 as regard this practice will be replaced by the present AMP. When buying its own shares under the present AMP, the issuer must comply with articles 4, 5 and 6 of Regulation (EC) n°2273/2003. Block trades are authorized under this practice. Trades performed under this practice must not lead the issuer to hold at any time more than 10% of its shareholder equity. If the issuer decides to reallocate the shares to another objective or AMP or to dispose of them, this decision must be publicly disclosed no later than the date of the next shareholders' meeting following the date when that decision was taken. If the issuer has implemented a share buy back program, the shares must be sold either by an Investment Services Provider which makes its trading decisions independently of, and without influence, by the issuer with regard to the timing and volumes of the sales or by block trades. When using shares representing more than 1% of its shareholder equity to acquire another company, the issuer requires an independent expert to produce a fairness opinion.

Rationale for why the practice would constitute manipulation
This practice cannot benefit from the exemption of the prohibitions of Directive 2003/6/EC as provided for by Article 8 since it doesn't match the objectives of article 3 of Regulation (EC) n°2273/2003.

[refer to article 1(2) (a) of Directive 2003/6/EC]

<u>List of Factors</u>

Commission Directive 2004/72/EC Article 2

Non-exhaustive list of factors to be taken into account by Competent Authorities when assessing particular practices whether they occur on a regulated market or an OTC market:

- The level of transparency of the relevant market practice to the whole market(art 2(1) (a))

Transparency of market practices by market participants is crucial for considering whether a particular market practice can be accepted by competent authorities. The less transparent a practice is, the more likely it is not to be accepted. However, practices on non regulated markets might for structural reasons be less transparent than similar practices on regulated markets. Such practices should not be in themselves considered as unacceptable by competent authorities. (preamble 2)

<u>Conclusion regulator:</u> When buying shares under the present AMP, the issuer must comply with disclosure obligations of article 4 (4) of Regulation (EC) n°2273/2003. The issuer must also disclose the amount of shares allocated to this practice in the document approved by the AMF or the press release published before the implementation of a new share buy back program. These obligations guarantee the transparency of the practice.

- the need to safeguard the operation of market forces and the proper interplay of the forces of supply and demand; (art 2(1) (b))

Market practices inhibiting the interaction of supply and demand by limiting the opportunities for other market participants to respond to transactions can create higher risks for market integrity and are, therefore, less likely to be accepted by competent authorities. (preamble 1)

<u>Conclusion regulator:</u> The trades carried out under this practice by the issuer are not aimed at impairing the operation of market forces. All trades are reported to the regulator on a regular basis. The AMF can therefore undertake any investigation that it would deem necessary to verify the absence of market manipulation.

- the degree to which the relevant market practice has an impact on market liquidity and efficiency. (art 2(1) (c))

Market practices which enhance liquidity and efficiency are more likely to be accepted than those reducing them. (Preamble 1)

<u>Conclusion regulator:</u> When buying shares under the present AMP, except for block trades, the issuer must comply with the volume condition of article 5 (2) of Regulation (EC) n°2273/2003. Trades carried out under this practice should not therefore have a significant impact on the market.

- 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(art 2(1) (d)).

Conclusion regulator: All trades are carried out on regulated markets and within opening hours. The issuer can carry out block trades.

- 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. (art 2(1) (e))

  Particular market practices in a given market should not put at risk market integrity of other, directly or indirectly, related markets throughout the Community, whether those markets be regulated or not. Therefore, the higher the risk for market integrity on such a related market is within the Community, the less those practices are likely to be accepted by competent authorities. (Preamble 3)

Conclusion regulator: When buying shares under the present AMP, the issuer must comply with the conditions and restrictions of articles 5 and 6 of Regulation (EC) n°2273/2003. These conditions guarantee the safety of all investors and the market integrity.

- the outcome of any investigation of the relevant market practice by any competent authority or other authority mentioned in Article 12(1) of Directive 2003/6/EC, 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; (art 2(1) (f))

Conclusion regulator: There haven't been any adverse results of any investigation that might question this practice.

- the structural characteristics of the relevant market including whether it is regulated or not, the types of financial instrument traded and the type of market participants, including the extent of retail investors participation in the relevant market; (art 2(1) (g))

Conclusion regulator: The trades performed by the issuer are carried out on a regulated market. The restrictions and conditions of the practise guarantee the safety of all investors on the relevant market.

CESR

Overriding Principles

Overriding principles to be observed by Competent Authorities to ensure that accepted market practices do not undermine market integrity, while fostering innovation and the continued dynamic development of financial markets:

- new or emerging accepted market practices should not be assumed to be unacceptable by the Competent Authority simply because they have not been previously accepted by it;
- Practising fairness and efficiency by market participants is required in order not to create prejudice to normal market activity and market integrity.
- Competent Authorities should analyse the impact of the relevant market practice against the main market parameters such as weighted average price of a single session, daily closing price, specific market conditions, before carrying out the relevant market practice.

Conditional elements
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