

# Guidelines for buy-back programmes and price stabilisation

FOR ISSUERS OF SHARES AND EQUITY CERTIFICATES ON OSLO BØRS, EURONEXT EXPAND AND EURONEXT GROWTH OSLO

FEBRUARY 2021

# 1 INTRODUCTION

Upon the entry into force of the [Market Abuse Regulation](#) (MAR) on 1 March 2021, [Commission Regulation 2016/1052](#) on buy-back programmes and stabilisation measures will also enter into force in Norway. This will replace Commission Regulation 2273/2003. Oslo Børs has been appointed to supervise compliance with the conditions for buy-back programmes and stabilisation measures, cf. section 17-1 of the Securities Trading Regulations.

Buy-backs of own shares and price stabilisation may fall within the rules on prohibition against market manipulation and illegal insider trading. MAR article 5 sets out exceptions to these prohibitions for such transactions, provided that the conditions set out in the article and as further specified in Commission Regulation 2016/1052 are met. Both MAR and the said regulation apply to the extent suitable to equity certificates, cf. section 3-2 of the Securities Trading Act.

Oslo Børs emphasizes that the exemption for insider trading only applies to insider information related to the buy-back programme or the price stabilisation, and that insider trading is generally not permitted through such transactions.

The regulation is a so-called "safe harbor" regulation, which means that buy-back of shares and price stabilisation made outside the framework of the regulation must be assessed on a case-by-case basis in terms of the rules on prohibition of insider trading, unlawful disclosure of inside information and market manipulation pursuant to MAR article 14 and 15. On a general basis, Oslo Børs recommends a high degree of transparency if an issuer is considering deviations from the requirements of the Commission Regulation.

The guidelines apply to buy-back and price stabilisation of shares and equity certificates which are carried out on Oslo Børs, Euronext Expand and Euronext Growth Oslo.

## 2 BUY-BACK PROGRAMMES

### 2.1 PURPOSE

In order for a buy-back programme to fall within the scope of the regulation, the sole purpose of the buy-back programme must be to reduce the issuer's capital, to meet obligations arising from debt financial instruments that are exchangeable into equity instruments or to meet obligations arising from share option programmes or allocations of shares to employees or to members of the administrative, management or supervisory bodies of the issuer or an associate company, cf. [MAR](#) article 5 no. 2.

### 2.2 LIMITATIONS ON WHEN A BUY-BACK PROGRAMME CAN BE CARRIED OUT

It follows from article 4 no. 1 of the [Commission Regulation](#) that the issuer during a buy-back programme shall not engage in selling of own shares. Furthermore, the issuer shall not engage in trading during the closed periods in advance of financial reporting pursuant to [MAR](#) article 19 no. 11 or where the issuer has resolved delayed disclosure of inside information pursuant to MAR article 17 no. 4 or 5.

Article 4 no. 2 of the Commission Regulation states that the above restrictions do not apply if (a) the issuer has in place a time-scheduled buy-back programme or (b) the buy-back programme is lead-managed by an investment firm or a credit institution which makes its trading decisions concerning the timing of the purchases of the issuer's shares independently of the issuer. A time-scheduled buy-back programme is defined as a buy-back programme where the dates and volume of shares to be

traded during the time period of the programme are set out at the time of the public disclosure of the buy-back programme, cf. article 1 (a) of the Commission Regulation.

Article 4 no. 3 and 4 of the Commission Regulation also states that the above restrictions do not apply if the issuer is an investment firm or credit institution and has established specific arrangements and procedures as further set out in the said provisions.

## **2.3 PUBLICATION OF INFORMATION AT THE START OF THE PROGRAMME AND SUBSEQUENT CHANGES OF THE PROGRAMME**

Prior to the start of trading in a buy-back programme, the issuer must publish information about the buy-back programme in accordance with the requirements in article 2 of the [Commission Regulation](#). This includes information about the purpose of the programme, the maximum pecuniary amount allocated to the programme, the maximum number of shares to be acquired and the duration of the programme.

Oslo Børs requests that this must be published in a separate announcement. The issuer must further publish any subsequent changes to the buy-back programme.

## **2.4 CONDITIONS FOR TRADING**

Article 3 of the [Commission Regulation](#) sets out the conditions for how the trading of shares shall be carried out under a buy-back programme.

Article 3 no. 1 (a) states that the buy-back transactions must be carried out by the issuer on a trading venue where the shares are admitted to trading or traded. Furthermore, it follows from article 3 no. 1 (b) that orders shall not be placed during an auction phase and orders placed before the start of the auction phase shall not be modified during that phase. Article 3 no. 1 (c) is not relevant for buy-back programmes carried out on the marketplaces of Oslo Børs.

Buy-backs of shares cannot be purchased at a price higher than the higher of the price of the last independent trade and the highest current independent purchase bid on the trading venue where the purchase is carried out, including when the shares are traded on different trading venues, cf. article 3 no. 2.

Furthermore, the issuer may not purchase on any trading day more than 25 % of the average daily volume of the shares on the trading venue on which the purchase is carried out, cf. article 3 no. 3 first paragraph. The second paragraph sets out two alternatives for how the calculation of the average daily volume is to be made and states that this shall be based on the average daily volume traded during either of the following periods:

- a) The average daily volume preceding the month of the disclosure of the buy-back programme, such a fixed volume shall be referred to in the buy-back programme and apply for the duration of that programme.
- b) The average daily volume in the 20 trading days preceding the date of purchase, where there is no reference to such fixed volume as set out in (a) in the buy-back programme.

In the experience of Oslo Børs, alternative (b) is the most often used alternative for buy-back programmes on the marketplaces of Oslo Børs. This means that the issuer, during the duration of the buy-back programme, must make a daily calculation of the average daily volume in the 20 trading days preceding the trading day on which buy-backs of shares are carried out.

It follows from the preamble item 4 of the Commission Regulation that buy-back transactions should be carried out on a trading venue where the shares of the issuer are admitted to trading or traded. It is however stated that negotiated transactions that do not contribute to price formation could be used for the purpose of a buy-back programme and benefit from the exemption from the prohibitions of market abuse, provided that all the conditions referred to in [MAR](#) and the [Commission Regulation](#) are met.

Oslo Børs emphasizes that contrary to what was the case under the previous Commission Regulation, it is not permitted to exceed the 25% limit in cases of extremely low liquidity.

## **2.5 PUBLICATION AND REPORTING OF TRADES MADE UNDER THE PROGRAMME**

Pursuant to article 2 no. 3 of the [Commission Regulation](#), the issuer must ensure adequate public disclosure of the information on the transactions relating to the buy-back programme no later than by the end of the seventh trading day following the date of execution of such transactions. This entails that if the issuer carries out buy-backs of shares on a daily basis during the period of the buy-back programme, such public announcement must be published at least every seventh trading day. The information must also be posted on the issuer's website and be available to the public for at least five years.

The public announcement must contain information about the transactions relating to the buy-back programme, in a detailed form and in an aggregated form, cf. article 2 no. 2 second sentence of the Commission Regulation. The aggregated form shall indicate the aggregated volume and the weighted average price per day and per trading venue. Oslo Børs requests that the information are published pursuant to the format and template set out in [Appendix 1](#). This means that specific information about the stabilisation transactions must be filled in at an aggregated level in a the stock exchange notice, while an overview of each individual trade must be attached to the stock exchange notice, as further detailed in the appendix.

It follows from article 2 no. 2 of the Commission Regulation that the same information must be reported to the competent authority of the trading venue where the shares are admitted to trading or traded. Oslo Børs has been appointed to supervise compliance with the conditions for buy-back programmes and price stabilization, cf. section 17-1 of the Securities Trading Regulations. Oslo Børs is therefore the authority for reporting of such trades for Oslo Børs, Euronext Expand and Euronext Growth Oslo. The issuer will fulfill this obligation by publishing the above information and at the same time submitting the notification to the official storage mechanism (OAM) in Norway, [NewsWeb](#).

## **2.6 OTHER RULES AND REGULATIONS RELATING TO ISSUERS TRADING IN THEIR OWN SHARES**

Other rules and regulations may be relevant to an issuer's buy-backs of own shares. The rules and regulations described below apply both within and outside the “safe harbor” regulation, and in part address matters other than those contained in the Commission Regulation.

Purchases and sales of own shares, including rights to such shares, are subject to the duty to disclose large shareholdings set out in section 4-3 of the Securities Trading Act. In respect of calculating ownership percentages for the purpose of disclosing large holdings, the calculation shall be based on the registered share capital for the purposes both of share buy-backs and share issues, cf. NOU 1996:2 p. 93 and NOU 2006:3 p. 209.

Pursuant to section 6-17 (4) of the Securities Trading Act, an issuer may be subject to restrictions on trading in its own shares if it is the target of a mandatory offer. As in the case of disclosure of large holdings, an issuer's holdings of own shares do not affect the calculation of the 1/3 threshold for a mandatory offer as the calculation is based on the registered number of shares issued.

Purchases and sales of own shares, as well as the circumstances related to such transactions, may be relevant in respect of the issuer's duty to disclose inside information pursuant to [MAR](#) article 17.

Section 15-4 of the Securities Trading Act and the exchange's issuer rules impose a general requirement for an issuer to treat the holders of all financial instruments it has issued on an equal basis. Any deviation from the principle of equal treatment must have a factual basis. The requirement for equal treatment is also relevant to an issuer's purchases and sales of its own shares. Oslo Børs considers that the requirement for an issuer of equal treatment of shareholders with regard to purchase of own shares, in general best will be addressed by or by carrying out a buy-back programme in accordance with the safe-harbor regulation. Depending on the circumstances, a public offer to all shareholders could also cater for the consideration of equal treatment.

## **3 PRICE STABILISATION**

### **3.1 INTRODUCTION**

Price stabilisation is typically carried out by the manager of a large offer of shares, that makes purchases of shares, pursuant to specific conditions, in a period following the completion of the offer if the price of the shares declines during this period. The purpose of price stabilisation is to prevent a decline in the share price caused by a selling pressure that may be generated by short-term investors immediately after an initial or secondary offering. Such price stabilisation is normally in the interest of the issuer and the investors, and can accordingly contribute to an orderly market and greater confidence of issuers and investors in the financial markets, cf. the preamble item (6) of the [Commission Regulation](#).

Price stabilisation is normally carried out by the manager, pursuant to an agreement with the issuer, which permits acceptance of subscriptions or offers to purchase a greater number of securities than originally offered (an "overallotment facility"), cf. article 1 (f) of the Commission Regulation.

In order to ensure the allocation of the correct number of shares, a shareholder will typically lend shares equivalent in number to the overallotment to the manager. The issuer will furthermore grant the manager a right to purchase up to a certain amount of shares at the offer price for a certain period of time after the offer of the shares ("greenshoe option"), cf. article 1 (g) of the Commission Regulation.

The manager can then discharge its liability in respect of borrowed shares by either purchasing shares in the market during the stabilisation period at prices lower or equivalent to the offer price or by exercising the greenshoe option. The Commission Regulation describes the use of an over allotment option or an over allotment facility as "ancillary stabilisation", cf. article 1 (e). The conditions for such ancillary stabilisation are set out in article 8 of the Commission Regulation, see section 3.7 below.

Price stabilisation can be made in securities other than shares and equity certificates. These guidelines will only address price stabilisation of shares and equity certificates, as Oslo Børs finds that this is most practical.

## **3.2 MAIN CONDITIONS**

Price stabilisation can be carried out in connection with an initial offering (when the shares are admitted to trading for the first time) or a secondary offering of shares, provided that the offering is considered as a significant distribution of shares, cf. article 5 no. 1 of the [Commission Regulation](#). The preamble item (6) of the Commission Regulation states that block trades that are strictly private transactions should not be considered a significant distribution of shares. Price stabilisation can also be carried out in connection with so-called «if/when issued» trading, cf. the preamble item (7) of the Commission Regulation.

Price stabilisation can only be carried out for a period of 30 calendar days, cf. article 5 no. 1 of the Commission Regulation. For initial offerings, the period shall start on the date of commencement of trading on the relevant trading venue. For secondary offerings, the period shall start on the date of adequate disclosure of the final price for the shares. Article 5 no. 2 of the Commission Regulation sets out how the time period is to be determined for "if / when issued" trading.

Article 7 no. 1 of the Commission Regulation states that stabilisation of the shares shall not under any circumstances be carried out above the offer price.

## **3.3 STABILISATION AGENT**

Pursuant to article 6 no. 5 of the [Commission Regulation](#), the issuer, the offeror and any entity undertaking the stabilisation, as well as the persons acting on their behalf, shall appoint one among them to act as central point responsible. This contact point is in the following referred to as the stabilisation agent.

## **3.4 PUBLICATION OF INFORMATION ABOUT THE PRICE STABILISATION IN ADVANCE OF THE OFFERING**

If price stabilisation shall be carried out, the stabilisation agent must ensure adequate public disclosure of the price stabilisation, as further specified in article 6 no. 1 of the [Commission Regulation](#). This includes information about the fact that stabilisation may not necessarily occur and that it may cease at any time, that stabilisation transactions aim at supporting the market price of the shares during the stabilisation period, the beginning and the end of the stabilisation period, name of the entity that will carry out the trades, information about any overallotment facility or greenshoe option and the trading venues where the stabilisation will be carried out.

The information must be published before the start of the initial or subsequent offering and Oslo Børs requests that the information is published in a separate announcement.

## **3.5 PUBLICATION AND REPORTING OF STABILISATION TRANSACTIONS**

It follows from article 6 no. 2 of the [Commission Regulation](#) that the stabilisation agent shall ensure adequate public disclosure of the details of all stabilisation transactions no later than the end of the seventh trading day following the date of the execution of the transactions. This means that if the issuer carries out price stabilisation on a daily basis throughout the period, such a stock exchange notice must be published at least every seventh trading day.

Oslo Børs requests that the information is published in the format specified in [Appendix 2](#). This means that specific information about the stabilisation transactions must be filled in at an aggregated level in the stock exchange announcement, while an overview of each individual trade must be attached to the stock exchange notice, as further detailed in the appendix.

It follows from [MAR](#) article 5 no. 5 and article 6 no. 4 of the Commission Regulation that the same information must be reported to the competent authority of the trading venue. Oslo Børs has been appointed to supervise compliance with the conditions for buy-back programmes and price stabilisation, cf. section 17-1 of the Securities Trading Regulations. Oslo Børs is therefore the authority for reporting of stabilisation transactions for Oslo Børs, Euronext Expand and Euronext Growth Oslo. The issuer will fulfill this obligation by publishing the above information and at the same time submitting the notification to the official storage mechanism (OAM) in Norway, [NewsWeb](#).

### **3.6 PUBLICATION OF INFORMATION FOLLOWING THE END OF THE STABILISATION PERIOD**

It follows from article 6 no. 3 of the [Commission Regulation](#) that within one week of the end of the stabilisation period, the stabilisation agent shall ensure adequate public disclosure of whether or not the stabilisation was undertaken, the date on which stabilisation started, the date on which stabilisation last occurred, and the price range within which stabilisation was carried out, for each of the dates during which stabilisation transactions were carried out. It must furthermore state at which market places the stabilisation transactions were carried out. Oslo Børs requests that the above information is be published in a separate announcement.

### **3.7 ANCILLARY STABILISATION**

The [Commission Regulation](#) also includes regulations on so-called ancillary stabilisation, cf. article 8. Ancillary stabilisation is defined as the exercise of an overallotment facility or of a greenshoe option by investment firms or credit institutions, in the context of a significant distribution of securities, exclusively for facilitating stabilisation activity, cf. article 1 (e) of the Commission Regulation.

A greenshoe option is defined as an option granted by the offeror in favor of the investment firms or credit institutions involved in the offer, for the purpose of covering overallotments, under the terms of which such firms or institutions are allowed to purchase up to a certain amount in securities at the offer price for a certain period of time after the offer of the securities, cf. article 1 (g) of the Commission Regulation.

There is a question of whether a greenshoe option only can be granted by the offeror, or whether other parties also may grant such an option. In offerings, parties other than the offeror, such as a major shareholder, may lend shares to the party undertaking the stabilisation. This will pursuant to the said definition not fall within the scope of the Commission Regulation. However, it is not necessarily the case that any deviation from the Commission Regulation represents unlawful market abuse pursuant to [MAR](#) article 14 and 15. Oslo Børs is of the view that an overallotment option may be granted by a party other than the offeror without this necessarily constituting violations of the prohibitions against market abuse.

In order to fall within the scope of the Commission Regulation, ancillary stabilisation must be undertaken in accordance with the requirements on public disclosure and reporting set out in article 6 of the Commission Regulation, as well as the price conditions set out in article 7. It is furthermore stated in article 8 (a) of the Commission Regulation that securities shall be overallotted only during the subscription period and at the offer price.

A position resulting from the exercise of an overallotment facility by an investment firm or credit institution which is not covered by the greenshoe option shall not exceed 5 % of the original offer, cf. article 8 (b) of the Commission Regulation. The greenshoe option shall not amount to more than 15 % of the original offer, cf. article 8 (d) of the Commission Regulation.

The greenshoe option shall be exercised by the beneficiaries of such an option only where the shares have been overallocated. The period during which the greenshoe option may be exercised shall be the same as the stabilisation period. The exercise of the greenshoe option shall be disclosed to the public promptly, together with all appropriate details, including in particular the date of exercise of the option and the number and nature of securities involved. Reference is made to articles (c), (e) and (f) of the Commission Regulation.



## APPENDIX 1: TEMPLATE FOR STOCK EXCHANGE NOTICE FOR PUBLICATION AND REPORTING OF TRANSACTIONS MADE UNDER A BUY-BACK PROGRAMME

### Transactions made under the buy-back programme for [ISSUER]

Date on which the buy back-programme was announced:

The duration of the buy-back programme:

Other information (optional):

Overview of transactions			
Date	Aggregated daily volume (number of shares)	Weighted average share price per day (NOK)	Total daily transaction value (NOK)
Previously disclosed buy-buys under the programme (accumulated)			
Accumulated under the buy-back programme			
<b>The issuer's holding of own shares:</b> Following the completion of the above transactions, [issuer] owns a total of [number] of own shares, corresponding to [percent]% of [the issuer's] share capital.			
<b>Appendix:</b> An overview of all transactions made under the buy-back programme that have been carried out during the above-mentioned time period is attached to this report and available at <a href="http://www.newsweb.no">www.newsweb.no</a> .			

### Explanations of the information that is to be provided in the above fields (not to be included in the stock exchange announcement):

The stock exchange announcement shall ensure compliance with the publication- and reporting requirements of transactions made under a buy-back programme pursuant to article 2 no. 2 and 3 of [Commission Regulation 2016/1052](#). Pursuant to article 2 no. 3 of the Commission Regulation, the deadline for public disclosure and reporting is no later than by the end of the seventh trading day following the date of execution of such transactions.

The template is adapted for shares and must be adjusted for equity certificates if this is the case.

**Date on which the buy back-programme was announced:** Date on which the buy back-programme was announced pursuant to article 2 no. 1 of [Commission Regulation 2016/1052](#).

**Duration of the buy-back programme:** The time period for the duration of the buy-back programme, cf. article 2 no. 1 (d) of [Commission Regulation 2016/1052](#).

**Other information (optional):** Provide further information if required.

**Overview of transactions:** The table «Overview of transactions» must include information for each trading day that transactions have been made under the buy-back programme during the period that is the subject of the notification. The issuer must also provide information on previously announced buy-backs under the buy-back programme (accumulated) and total purchases under the repurchase program (accumulated) under the fields for this.

**The issuer's holding of own shares:** Fill in the relevant information about the issuer's total holding of own shares following the completion of the above transactions made under the buy-back programme.

**Appendix:** An of each individual transaction for the period subject to the announcement must be attached to the stock exchange notice. Such appendix must include the following information (per trade): Volume, price per share, total consideration and date and time of the transaction. Oslo Børs requests that this be included in a separate appendix to the stock exchange announcement, and this must therefore be in PDF format.

## APPENDIX 2: TEMPLATE FOR STOCK EXCHANGE NOTICE FOR PUBLICATION AND REPORTING OF STABILISATION TRANSACTIONS

### [ISSUER] – Stabilisation notice

Security:

Offering size:

Offering price:

Stabilisation period:

Market place:

Stabilisation agent:

Size of overallotment facility:

Other information (optional):

Stabilisation transactions						
Date	Quantity	Price (lowest)	Price (highest)	Price (weighted average)	Currency	Market place
<b>Appendix:</b> An overview of all stabilisation transactions that have been carried out during the above-mentioned time period is attached to this report and available at <a href="http://www.newsweb.no">www.newsweb.no</a> .						

### Explanations of the information that is to be provided in the above fields (not to be included in the stock exchange announcement):

The stock exchange announcement shall ensure compliance with the publication- and reporting requirements of stabilisation transactions pursuant to [MAR](#) article 5 no. 5 and article 6 no. 2 and 4 of [Commission Regulation 2016/1052](#). It follows from article 6 no. 2 of the Commission Regulation that the deadline for public disclosure and reporting is no later than the end of the seventh trading day following the date of the execution of the transactions.

**Security:** Type of security, typically shares or equity certificates

**Offering size:** Number of shares/equity certificates that was offered in the original offer in which the price stabilisation is carried out in connection with

**Offering price:** Offering price per share or equity certificate, including currency

**Stabilisation period:** The 30-period in which price stabilisation can be carried out

**Market place:** Oslo Børs/Euronext Expand/Euronext Growth Oslo

**Stabilisation agent:** The entity being appointed as central point pursuant to article 6 no. 5 of [Commission Regulation 2016/1052](#)

**Size of overallotment facility:** Number of shares/equity certificates in the overallotment facility

**Other information (optional):** Provide further information if required.

**Stabilisation transactions (table):** Fill in information about the stabilisation transactions made per trading day in the time period for the stock exchange notice.

**Appendix:** An of each individual stabilisation transaction for the period subject to the announcement must be attached to the stock exchange notice. Such appendix must include the following information (per trade): Volume, price per share, total consideration and date and time of the transaction. Oslo Børs requests that this be included in a separate appendix to the stock exchange announcement, and this must therefore be in PDF format.