

# FINANCIAL COMMUNICATION: FRAMEWORK AND PRACTICES

2021 EDITION

Prepared by \_\_\_\_\_

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# FINANCIAL COMMUNICATION: FRAMEWORK AND PRACTICES

This edition includes new regulations up to June 2021.

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# Preface

Robert Ophèle – Chairman of the AMF

Listed companies have been using the “Financial Communication: Framework and Practices” guide to assist them in their financial communication practices for several years now.

An essential resource for investor relations professionals as well as for other financial communication stakeholders (agencies, advisory firms, etc.), the guide is updated each year to take into account new legal and regulatory developments. Much more than a collection of texts, it provides users with practical insight and operational responses to any questions they may have.

Since 2020, in the context of the health and economic crisis, increasing attention has been paid to the environmental, social and governance issues that contribute to companies’ economic and financial performance. Economic players, as well as all company stakeholders, want to know whether the business activities of the companies in which they invest, or, for example, with which they work, take into account sustainability criteria and are calling for more transparent and accountable governance. Communicating on relevant non-financial indicators may, for example, help to optimise financing costs.

In particular, investors expect issuers to communicate on a sustainable development and transition strategy targeting carbon neutrality by 2050. Identifying climate change risks in the non-financial performance statement is a key challenge for companies. These include physical risks (such as flooding and extreme temperatures), regulatory risks (such as emission limits) and other risks (such as reputational risk or changing consumer demands).

As part of the European Green Deal, the European Commission has launched a series of legislative and regulatory initiatives aimed at making the European Union climate neutral by 2050. With the implementation of the EU Taxonomy Regulation, reporting on environmentally sustainable activities by listed companies will be stepped up from 2022.

Other legislative initiatives published in 2021 help to establish a duty of care and gradually strengthen disclosure requirements for companies and financial market players. The European Commission also plans to roll out an open-access non-financial database, promoting the use, comparability and transparency of data for all stakeholders (companies, investors, researchers, NGOs, citizens, etc.), and reducing greenwashing.

The AMF is supporting stakeholders to accelerate the transition to sustainable finance, in particular by helping the market to better grasp and incorporate issues relating to sustainable finance and climate change, and by enabling issuers to improve the quality of their non-financial information. The AMF now pays very close attention to the quality of the information produced by companies in these areas.

# Preface

Olivier Psaume, Chairman of the Cliff,  
Head of Investor Relations at Sopra Steria

Each year, European and national financial and non-financial communication regulations are updated with new provisions, often raising questions about their application. Launched for the first time in 2008 and updated annually, this guide created for quoted companies aims to be simple, synoptic and educational. We hope to be pertinent and tangible in our responses to questions that users have on a daily basis as they execute their obligations in investor relations, by providing them with essential information. In the wake of changes to regulation and growing requirements in the financial markets and, more generally, from stakeholders, the guide outlines how practices are changing.

This guide has been translated into English in order to reach a wider and international audience, and since 2017, it has been enhanced with an appendix featuring a glossary of financial communication terms.

The ongoing health crisis continues to impose on our lives, businesses and communication. The shift to more virtual investor relations is not without impact. While interaction is more frequent and with a greater number of people, the quality is not always the same. Legislative and regulatory adaptations initiated in 2020 have been extended or enhanced. Their framework guides issuers in this particularly changing time characterised by limited visibility. Non-financial information is taking an increasingly important place in investor relations, as social and regulatory momentum gives rise to profound, accelerating change. The 2022 edition of this guide will represent a new milestone in these developments.

In the meantime, the 2021 edition does not include any major new items, but clarifications of existing provisions. In particular, it concerns specific texts related to the health crisis (2020 financial statements, cash position and dividends, rules relating to the organisation of shareholders' meetings, etc.), updates to various AMF guides (periodic information – especially details on estimated financial data – ongoing disclosures, URDs, prospectuses) and changes in AMF policy to further regulate shareholder activism. On a practical level, we have incorporated the numbering changes resulting from the inclusion in the French Commercial Code of a new section dedicated to listed companies. The other new items concern prospectuses, with the content of the document to be published for a prospectus exemption, and the new "EU Recovery Prospectus".

As the industry standard, the "Financial Communication: Framework and Practices" guide aims to help the various players in financial communication, including executives and investor relations professionals of listed companies as well as all other players and participants in the financial markets. The guide occasionally indicates difficulties in applying rules and highlights the need for market authorities to work hand-in-hand with all stakeholders to ensure regulations are pragmatic. In this way, they will meet the need for transparency and improve best practices in the Paris stock market.

Happy reading!

# Introduction

**Financial communication is a vital component of market transparency and constitutes a key element for investor confidence and the credibility and quality of a financial marketplace as a whole.**

The framework of financial communication by issuers has undergone deep changes in recent years, with an increase in the number of requirements and information media and the diversification of the financial public.

The regulation of financial communication is also very heterogeneous: some aspects of an issuer's financial communication are defined by very precise rules, while other aspects are covered by the application of broad principles that may be interpreted under the responsibility of the issuer.

The increased transparency required in the financial markets and the increasing complexity of regulatory constraints, imposing financial information burdens upon issuers – especially due to the multiple and complex nature of legislative texts – have led the largest listed companies to structure their financial communication into specialised departments, whose responsibilities have been broadening incessantly in recent years and whose functions are continually evolving.

Under these conditions, it has become important that every person who participates in the preparation of an issuer's financial communication has a guide listing market practices.

**This “Financial Communication: Framework and Practices” guide has been designed principally as an informative tool for senior management and the persons in charge of financial communication within listed companies.**

The general idea that preceded the preparation of this guide was to define the level of information that may reasonably be communicated to the market to satisfy its expectations, while at the same time limiting the exposure of the issuer and its executive management to any risk of liability. The primary objective of the guide is therefore to help the senior management of listed companies to make fully-informed decisions with regard to financial communication.

The first (1) part of this guide outlines the general principles of financial communication; the second (2) part presents the framework of financial communication and different circumstances to which it is applied; and the third (3) part discusses financial communication practices.



## Introductory note to this edition

The COVID-19 crisis is ongoing in 2021. It is likely to lead to specific requirements for issuers in terms of market disclosures. From the start of 2020, regulatory authorities clarified the impacts of the health crisis on the transparency obligations that weigh on different issuers.

In a press release dated February 28, 2020, supplemented on March 23, 2020, the AMF reiterated that during the exceptional health crisis, the financial markets are paying particular attention to issuers' transparency regarding their exposure to the impact of the epidemic.

In accordance with the Market Abuse Regulation, which requires issuers to inform the public as soon as possible of inside information, whether it concerns that issuer directly or indirectly, any knowledge of a material impact of the epidemic on the company's activity, performance or outlook must be disclosed immediately. Given the uncertainty around future developments of the epidemic, the AMF recommends that issuers periodically reassess the known and anticipated impact of the health crisis on their activity and the outlook for the materiality and/or amount of the impact. The regulator recalls that inside information should be published in a press release to ensure investors have equal access to the information. The AMF also recommends that issuers disclose this information when presenting their results.

In September 2020<sup>1</sup>, the AMF published key points concerning the application of financial communication rules in the context of the health crisis, in particular relating to issuers' outlook, cash position and dividends.

With respect to issuers' outlook, the AMF reiterates that companies must regularly update the market regarding the guidance disclosed. The AMF recommends that issuers withdraw their financial objectives explicitly rather than doing so implicitly by publishing new objectives that only partially cover those that were previously announced. In addition, any new indicators that constitute an alternative performance measure, i.e., not taken directly from the financial statements, must be defined. Lastly, the AMF considers it important to provide a clear, unambiguous definition of the main assumptions on which issuers' published financial objectives are based.

With regard to issuers' cash position, the AMF highlights the importance of mentioning in results press releases any significant developments affecting the cash position and cash management. The following situations must be communicated in a press release:

- suspensions or breaches of a covenant during renegotiation;
- early repayment clause likely to be invoked following a rating downgrade in the context of increased risk;
- going concern principle required specific information to be included in the financial statements;
- statutory auditors report refers to the going concern principle, regardless of form of said reference.

<sup>1</sup> – AMF, Financial communication of listed companies on the publication of their first-half 2020 results: findings and considerations, September 18, 2020.

In any event, at the very least issuers should maintain the level of information previously provided on liquidity. When reporting a “strong” or “solid” cash position, it is important to mention (i) upcoming debt repayments and, where applicable, the more difficult access to financing, as well as any greater difficulty in executing asset disposal plans, and (ii) any reductions in operating cash flow due to the ongoing health crisis, even if conditions have improved slightly, and the possible impacts on the company of the current macroeconomic environment.

With regard to dividends, the AMF considers that companies planning to announce interim dividend payments should clearly specify in the press release their nature (regular or exceptional) in accordance with the terms of derivative market maker notices. Announcement schedules must also take into account the impact on derivatives and avoid announcements too close to a quarter-end expiry, which can be significant for the biggest derivatives markets.

ESMA recommends that, to the extent possible based on both a qualitative and quantitative assessment of their business activities, financial position and economic performance, issuers provide transparent information on the actual and potential impact of COVID-19.

In addition, the AMF published recommendations relating to the 2020 financial statements and the review of the financial statements<sup>2</sup>. These relate, in particular, to the presentation in companies’ financial statements of the impacts of the pandemic and underline the importance of providing the most specific, transparent information possible on the main judgements made by the company. They also stress the relevance of the decision not to present separately in recurring operating income certain impacts of the health crisis, as well as the assumptions used for companies communicating on certain impacts of the crisis. In addition, the recommendations cover impairment testing, the importance of updating and describing key assumptions, particularly operational assumption, as well as their sensitivity. The AMF also provides recommendations on liquidity-related disclosures (going concern, liquidity and management of working capital requirements), on the specific expectations for financial institutions, particularly with regard to determining credit risk, and on the accounting for rent adjustments granted in the context of the pandemic.

These recommendations supplement those previously published by the AMF in May 2020, mainly concerning the half-year financial statements<sup>3</sup> and the 2020 half-year financial reports<sup>4</sup>.

2 – AMF Recommendation DOC-2020-09: 2020 financial statements and review of the financial statements, October 2020.

3 – AMF, Press release: As the decisive moment of the half-year accounts approaches, the AMF underlines some principles to respect, May 2020.

4 – AMF, Publication of the half-yearly financial report in the context of COVID-19: the AMF underlines some principles to respect, May 2020.

In this context, from March 2020, the French government issued a series of orders in response to the exceptional crisis situation. Given the ongoing crisis, most of these emergency measures have been renewed and continue to apply at the date of publication of this guide.

The rules relating to the organisation of shareholders' meetings "behind closed doors" and the specific procedures for shareholder participation in shareholders' meetings have also been extended. Order no. 2020-1497 of December 2, 2020 extends and amends Order no. 2020-321 of March 25, which adapted, on an exceptional and temporary basis, the rules of notice, information, meeting and deliberation for shareholders' meetings and meetings of governing bodies (executive boards, boards of directors and supervisory boards) of all companies and other private entities to enable them to carry out their duties despite the measures taken to limit the spread of COVID-19 and thereby continue operating. Decree no. 2020-418 of April 10, 2020 was also extended and amended by decree no. 2020-1614 of December 18, 2020. These provisions were renewed until July 31, 2021 by decree no. 2021-255 of March 9, 2021.

Lastly, on June 7, 2021 the French Treasury department updated its FAQ "Holding a shareholders' or board of directors' meeting during the health crisis." This new version:

- takes into account the extension of Order no. 2020-321 of March 25, 2020 until September 30, 2021;
- specifies that decree no. 2020-418 of April 10, 2020, which currently expires on July 31, 2021, is likely to be extended until September 30, 2021;
- alerts the reader to the fact that, until the decree is extended, it is not possible to apply the provisions of the decree and provisions of the order whose decree specifies the application for shareholders' meetings and meetings of other bodies to be held after July 31, 2021.

However, certain emergency measures, relating in particular to the extension of the timeframes for approving financial statements and preparing forward-looking documents, have not been extended and are therefore no longer in force.

In its 2020 annual report, the AMF highlighted how important it is that issuers comply with their regulatory obligations, *"compliance with regulatory obligations is key to maintaining investor confidence and, therefore, enabling the market to function properly, particularly during such uniquely turbulent times."* However, conscious of the difficulties caused by the crisis, the AMF wished to take a less repressive approach in supporting issuers.

This edition also incorporates the numbering changes resulting from the inclusion in the French Commercial Code of a new section dedicated to listed companies, following the application of Order no. 2020-1142 of September 16, 2020, issued pursuant to the “PACTE” law and supplemented by decree no. 2020-1742 of December 29, 2020. Inspired by the work of the Legal High Committee for Financial Markets of Paris (*Haut Comité Juridique de la Place Financière de Paris*), the reform aims to improve the accessibility of corporate law and thereby increase the appeal of the Paris stock market. Codifying the rules applicable to listed companies without impacting existing legislation, the reform is limited to separating the provisions of corporate law from those applicable specifically to listed companies. The Ministry of Justice has published a cross-reference table following the reform.

In addition, the EU Taxonomy Regulation<sup>4b</sup>, published in June 2020, is likely to influence the non-financial communication of certain issuers. The Regulation sets a series of environmental objectives and allows an economic activity to be declared sustainable if it contributes to at least one of the following objectives without significantly harming any of the others:

- climate change mitigation and adaptation;
- sustainable use and protection of water and marine resources;
- transition to a circular economy, in particular, waste prevention and increased use of secondary raw materials;
- pollution prevention and control;
- protection and restoration of biodiversity and ecosystems.

A Commission Delegated Regulation, currently in the draft stages, will soon be adopted in order to specify the content and presentation of the information to be published by companies subject to Articles 19a or 29a of Directive 2013/34/EU, as well as the methodology to be applied for the publication of said information.

In addition, in 2021, the Commission will adopt a proposal for a Corporate Sustainability Reporting Directive, which could apply for the first time to reports published in 2024 covering 2023. In particular, it would extend the scope of non-financial reporting requirements to include all large listed and non-listed companies and would introduce, for the first time at EU level, a general audit requirement for reported sustainability information.

4b – Regulation (EU) 2020/852 of June 18, 2020 on the establishment of a framework to facilitate sustainable investment; Commission Q&A, Corporate Sustainability Reporting Directive proposal, April 21, 2021, QANDA/21/1806.



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## 1

## General Principles of Financial Communication

Despite the diversity of communication situations, it is possible to provide certain general principles applicable to financial information, the most important of which are described hereafter.



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## 1 ■ NOTIONS OF PERIODIC INFORMATION, ONGOING INFORMATION AND REGULATORY INFORMATION

Financial information is subject to thorough and often complex regulations which primarily distinguish between (i) “periodic information,” (ii) “ongoing information” and (iii) “regulatory information,” to which (iv) specific transaction-related information can be added.

In October 2016, the AMF published a chart (AMF Position/Recommendation no. 2016-08 – Guide to ongoing disclosures and the management of inside information, updated on April 29, 2021, p. 3) and a table listing the various disclosure obligations of listed companies (AMF Position/Recommendation no. 2016-05 – Guide to periodic disclosures by listed companies, pp. 56 *et seq.*, updated on April 29, 2021).

“Mid-cap” issuers (i.e., compartment B and C issuers on Euronext and Euronext Growth) may refer (i) to the AMF Policy Handbook for Mid-Caps, published in November 2016, which outlines the main rules governing financial reporting and disclosures, and (ii) to the guide published by the AMF on October 23, 2017 for SMEs and mid-tier firms, which provides an overview of the main market regulations and their applicable corporate law. This practical guide, which is organised by topic and listed market, covers in particular the procedures and deadlines for publishing financial information, the type of information to disclose and corporate governance-related rules<sup>5</sup>.

Euronext Access is an organised multilateral trading facility which is present in Paris, Brussels and Lisbon and managed by market operator Euronext (Euronext Paris SA for Euronext Access in Paris). Euronext Access meets the needs of companies that are too new or small to be listed on one of the compartments of Europe’s regulated markets, i.e., Euronext or Euronext Growth. More than 200 companies are currently listed on Euronext Access in Paris. Within this market, a new compartment called Euronext Access+ was created in June 2017. The compartment is designed for growing start-ups and SMEs and serves as a springboard to other Euronext markets, enabling companies to develop an organisational structure and prepare for future growth, particularly as regards communication and transparency.

### PERIODIC INFORMATION

Periodic information includes information provided by companies whose securities are admitted to trading on a regulated market in France or within the European Union, where they fall within the AMF’s jurisdiction, at regular intervals, annually and half-yearly on a mandatory basis and quarterly on a voluntary basis. Periodic information **most notably includes the requirement to disclose an annual financial report and a half-yearly financial report** under the conditions defined by the AMF General Regulations<sup>6</sup> as well as to **file the issuer’s annual management report** and appendices at the commercial court registry as specified by the French Commercial Code<sup>7</sup>.

5 – Concise overview of issuers’ main obligations – Guide for mid-tier firms/SMEs – Obligations concerning Euronext and Euronext Growth (formerly Alternext).

6 – Articles L. 451-1-2 *et seq.* of the French Monetary and Financial Code (*Code monétaire et financier*).

7 – Article L. 232-1 II of the French Commercial Code (*Code de commerce*).

On October 26, 2016, the AMF published a Guide to periodic disclosures by companies listed on a regulated market<sup>8</sup>, the purpose of which is to present the main requirements for listed companies concerning the disclosure of periodic information and bring together in a single document the related positions and recommendations of the AMF and the European Securities and Market Association (“ESMA”)<sup>9</sup>. This guide was last updated on April 29, 2021.

It should be noted that companies whose securities are listed on a multilateral trading facility, such as Euronext Growth or Euronext Access<sup>10</sup>, are only subject to the periodic information requirements applicable in the market on which they are listed and not to market regulations in general. However, a concise overview of the periodic information requirements applicable to companies whose securities are listed on Euronext Growth and Euronext Access is provided in the last section of the above-mentioned guide (AMF Position/Recommendation no. 2016-05).

## ONGOING INFORMATION

Ongoing information is information disseminated by any company whose securities are admitted to trading on a regulated market or an organised multilateral trading facility in compliance with **the requirement imposed on them to inform the public without delay of all information likely, should it be made public, to have a material impact on the share price**. Ongoing information also includes disclosures related to the crossing of thresholds or share transactions made by an issuer’s executives or board members. Ongoing information is an indispensable tool for the market transparency of securities to the degree that transparency can only be effectively ensured if, independently of the periodic information communicated, investors are informed of any significant new event likely to provoke a material change in share price.

Requirements imposed upon issuers with respect to ongoing information are primarily the result of the **Market Abuse Regulation no. 596/2014, which took effect on July 3, 2016**, and articles 223-1 A *et seq.* of the AMF General Regulations. On October 26, 2016, the AMF published a guide to ongoing disclosures and the management of inside information<sup>11</sup>, the purpose of which is to update guidelines applicable to issuers following the application of the Market Abuse Regulation and to consolidate positions and recommendations already issued on this subject by the AMF and ESMA within a single guide. This guide is intended for issuers whose securities are admitted – or subject to a request for admission – to trading on a regulated market, such as Euronext Paris, or an organised multilateral trading facility, such as Euronext Growth and Euronext Access.

## REGULATORY INFORMATION

**Documents and information disseminated with respect to periodic and ongoing information make up “regulatory information”** for which dissemination to the public is subject to specific regulations provided for in the AMF General Regulations.

8 – AMF Position/ Recommendation no. 2016-05 – AMF Guide to periodic disclosures by companies listed on a regulated market.

9 – AMF Position/ Recommendation no. 2016-05 – AMF Guide to periodic disclosures by companies listed on a regulated market.

10 – Since June 19, 2017, Alternext has been known as Euronext Growth and Marché Libre as Euronext Access (AMF decision, May 23, 2017).

11 – AMF Position/ Recommendation no. 2016-08 – AMF Guide to ongoing disclosures and the management of inside information.

The content of this regulatory information, which is detailed in this guide, will differ depending on whether the issuer's securities are admitted to trading on a regulated market or on an organised multilateral trading facility.

In the first case, if the securities are traded on a regulated market such as Euronext Paris, regulatory information includes the following documents which are listed in article 221-1 of the AMF General Regulations:

- annual financial reports;
- half-yearly financial reports;
- reports on payments to governments provided for in articles L. 225-102-3 and L. 22-10-37 of the French Commercial Code;
- the board of directors' or supervisory board's report on corporate governance, provided for in articles L. 225-37 and L. 225-68 and L.22-10-20 of the French Commercial Code<sup>12</sup>, and the report of the statutory auditors on the aforementioned report;
- information related to the number of voting rights and the number of shares which make up share capital;
- a description of share buyback programmes;
- a press release specifying the procedure by which the prospectus, registration document or universal registration document will be made available;
- inside information listed in application of article 17 of the Market Abuse Regulation<sup>13</sup>;
- a notice describing the means by which information will be made available to shareholders prior to a shareholders' meeting (documentation listed in article R. 225-83 of the French Commercial Code);
- the information provided for in article 223-21 of the AMF General Regulations (any modifications to rights relating to different categories of shares or modifications to issuance conditions likely to have a direct impact on the rights of holders of non-equity instruments);
- the declaration relating to the competent authority which controls the regulatory information;
- the disclosures related to the crossing of thresholds, which must be communicated to the AMF.

In the second case, if the securities are traded exclusively on Euronext Growth or Euronext Access, then "regulatory information" only refers to:

- a description of share buyback programmes;
- a notice describing how a prospectus is made available; and
- inside information published in application of article 17 of the Market Abuse Regulation.

Issuers and primary information providers may refer to the Guide to filing regulatory information with the AMF and to its dissemination, published by the AMF, updated on March 26, 2019, for additional details on how to file regulatory information with the AMF. This guide is supplemented by AMF Instruction no. 2007-03 concerning the electronic filing of regulatory information, which was updated on January 8, 2021.

12 – Order no. 2017-1162 of July 12, 2017 amended disclosure requirements for joint stock companies (SAs) and partnerships limited by shares (SCAs) by reorganising the management report and the corporate governance report, which replaces the chairman's report for financial periods beginning on or after January 1, 2017.

13 – Quarterly financial information, which has been optional since January 1, 2015, is no longer deemed to be regulatory information, but may constitute inside information (see Part 2, Section 1 "Disclosure of quarterly or interim information"). Consequently, it is now disclosed as ongoing information (see Part 1, Section 5 "Requirement for market disclosure of 'inside information' concerning the issuer").

## TRANSACTION-RELATED INFORMATION

In addition to periodic and ongoing information, issuers are required to provide market information prior to carrying out any transaction. For example by publishing a prospectus in the event of an offer of securities to the public or admission to trading on a regulated market. Issuers must also respect certain requirements with respect to the regulations concerning public offerings (in particular, the requirement that the offeror and the target company publish information in the form of an offer document and potentially a response document). With respect to communication regarding shareholder activism<sup>14</sup>, the AMF recommends that ***“shareholders of the bidder or of the company targeted by the bid, persons with economic exposure to the bidder or to the company targeted by the bid by virtue of agreements or financial instruments mentioned in article L. 233-9 of the French Commercial Code, and their managers, agents and advisers”*** should be particularly vigilant in their statements during the period of a takeover bid as well as during the pre-bid period (see Part 3, Section 2 “Financial marketing and targeting”).

On June 17, 2020, the AMF published a Guide to preparing the prospectus and the information to be provided for public offerings or admission to trading of securities<sup>15</sup>. The Guide presents the Prospectus Regulation and related AMF guidance.

## 2 | PRINCIPLE OF EQUAL ACCESS TO INFORMATION

In order to ensure perfectly equal access to information for shareholders, when communicating inside information to a third party<sup>16</sup> who is not bound by a confidentiality undertaking, the issuer must assure **effective and complete dissemination** either simultaneously, in the case of intentional communication, or as quickly as possible, in the case of unintentional communication (the issuer will, for example, be required to publicly disseminate such information in the case that confidential information is communicated to an analyst during a one-on-one meeting or during a roadshow). Issuers with websites that have information spaces reserved for members of their shareholders’ clubs need to be especially careful in this regard.

In addition, with the same concern for equal access, the information disseminated must be **accessible to all investors simultaneously** in order to avoid creating an unfair distribution of information which favours certain investors to the detriment of others<sup>17</sup>.

Accordingly, if an issuer or any of its subsidiaries are listed in a foreign country, the information must be **disseminated simultaneously in France and the foreign country**. It should be noted that the principle must be applied both for the dissemination by a press release and for the notification or the filing of documentation with foreign authorities (for example, the 6K report in the USA).

14 – AMF Position/ Recommendation no. 2016-08, updated on April 29, 2021, incorporating components of “Shareholder activism: the AMF updates its policy”, March 17, 2021.

15 – AMF Position/ Recommendation no. 2020-06, updated on April 29, 2021.

16 – Even in the absence of any disclosure of inside information, a simple recommendation to a third party based on inside information may constitute insider trading (AMF Sanc., April 16, 2013, confirmed by the Conseil d’Etat (France’s highest administrative court) on July 10, 2015 in ruling no. 369454, 1<sup>st</sup> and 6<sup>th</sup> sub-sections).

17 – Article 223-10-1 of the AMF General Regulations.

Issuers are also recommended to disclose financial information **outside of market trading hours** in order to permit all investors to assimilate the information before the beginning of trading to avoid turbulent changes in the issuer's share price. In that respect, even if the French legal transposition of the directive on financial instruments markets (the **MiFID**) put an end to the requirement to concentrate market transactions on the regulated markets and welcomed alternative means of executing transactions, the majority of share transactions for French issuers listed on Euronext Paris remains on Euronext Paris. Under those conditions, the opening and closing hours for trading securities on Euronext Paris will continue to provide the appropriate reference for the publication of information by companies listed on Euronext Paris.

In the case of a multi-listing, it is recommended that issuers adapt their dissemination procedures to avoid disclosing significant new events while the market is still open.

The standard practice for French companies is nevertheless to base themselves on the trading hours of Euronext Paris. They do however retain the right to use another stock exchange's hours as a reference.

Finally, in order to respect the principle of equal access to information for all shareholders, in the case that an issuer holds a significant stake in another listed company, it is essential that the communication calendars of the issuer and that company are coordinated.

### 3 ■ PRINCIPLE OF CONSISTENCY

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According to the principle of consistency, the communication of information must be considered by the issuer in light of **prior communication practices** in order to avoid misleading investors.

Specifically, the issuer must maintain the **same treatment** regarding the communication of information likely to impact its share price either upwards or downwards.

In applying the principle of consistency, the issuer must also ensure the **coherence** of all information disseminated, regardless of the date, format or recipient of the information. In particular, financial information disseminated through the written press must be consistent with information disseminated by electronic means. This requirement for consistency implies the implementation by the issuer of a pre-dissemination control process and the centralisation of information disseminated. In accordance with the principle of consistency, if the issuer chooses to disclose indicators in addition to those based directly on its financial statements (i.e., alternative performance measures) or business segment information, such information must be consistent over time. Any changes that reflect changes in the issuer's strategic focuses must be explained in all of the communication materials used<sup>18</sup>.

## 4 ■ DISSEMINATION OF ACCURATE, TRUE AND FAIR INFORMATION

Information provided to the public by the issuers must **be accurate, true and fair**<sup>19</sup>. These requirements apply as much to regulatory disclosures as to information disclosed on a voluntary basis. The information must be accurate, true and fair at the date of its dissemination.

Information provided to the public by the issuer must be **accurate**, which means without errors, but also **true and fair**, which means that the issuer must communicate, in a way that leaves no room for ambiguity, all of the details related to the event which is the subject of the communication to the market so that the market can evaluate the impact of the event and the outlook for the issuer. This requirement is linked to the requirement that information be complete: what distinguishes true information from accurate information is that accurate information may not be true if the issuer has omitted certain information which could have changed the perception of its situation by the market<sup>20</sup>. However, the provision of inaccurate information alone does not in itself constitute misconduct<sup>21</sup>. In accordance with **articles 12 and 15 of the Market Abuse Regulation**, which provide a basis for penalising deficiencies in the quality of information disclosed to the public, **two additional elements are required in order to constitute misconduct**: (i) *the disputed information gives, or is likely to give, false or misleading signals as to the supply of, or demand for, or price of, a financial instrument, or fixes, or is likely to fix, the price of one or several financial instruments at an abnormal or artificial level, and* (ii) *the knowledge, whether proven or presumed, of the false or misleading nature of the disclosure*.

Information disclosed by the issuer must be **fair**. The fairness of the information provided implies that both the positive and negative components related to the information under consideration are communicated. This is also linked to the principle of consistency described above.

19 – Article 223-1 of the AMF General Regulations. See also article 47 of the Market Abuse Regulation.

20 – AMF Position/ Recommendation no. 2016-08 – Guide to ongoing disclosures and the management of inside information (section 1.5.1). See also Cass. Com., November 18, 2008, no. 08-10.246.

21 – AMF, Enforcement Committee, SAN-2017-097-09, November 2, 2017.

## 5 ■ REQUIREMENT FOR MARKET DISCLOSURE OF “INSIDE INFORMATION” CONCERNING THE ISSUER

For **periodic information** or **for specific circumstances within which regulations require disclosure**, the driver of the disclosure requirement is based upon one or several **objective criteria** which require **no judgement on the part of the issuer**. The issuer must promptly publish an annual financial report with respect to each financial year (periodic information) or publish a prospectus when its securities are offered to the public or admitted to trading on a regulated market, unless exempted from doing so.

On the other hand, for **ongoing information**, it is the **responsibility of the issuer** to determine whether or not this information should be disclosed to the public in accordance with the principles contained in the Market Abuse Regulation. Consequently, the AMF recommends that issuers devise internal procedures to assess whether or not a given piece of information constitutes inside information<sup>22</sup>.

Article 7 of the Market Abuse Regulation defines **inside information** as information of a **precise nature**, which has not been made public, relating, directly or indirectly, to one or more issuers or to one or more financial instruments, and which, if it were made public, **would be likely to have a significant effect on the price** of those financial instruments or on the price of related derivative financial instruments, meaning information that a reasonable investor would be likely to use as part of the basis of his or her investment decisions.

Information shall be deemed to be of a **precise nature** if it indicates a set of circumstances which exists or which may reasonably be expected to come into existence, or an event which has occurred or which may reasonably be expected to occur, where it is specific enough to enable a conclusion to be drawn as to the possible effect of that set of circumstances or event on the prices of the financial instruments or the related derivative financial instruments, the related spot commodity contracts, or the auctioned products based on the emission allowances. These circumstances or events may be of a financial, strategic, technical, organisational or legal nature.

The Court of Justice of the European Union in its judgement of March 11, 2015 (C-628/13) had already specified that information could be considered as being true even if the direction of a change in the price of the financial instruments concerned could not be determined with a sufficient degree of probability. Taken literally, this decision gave the obligation to disclose ongoing financial information a significantly broader scope. In the same judgement, the Court of Justice reaffirmed that the definition of inside information is the same regardless of whether there is an obligation to disclose information or an obligation to refrain from trading (insider dealing).

In principle, the issuer must disclose this information **as soon as possible**, if its financial instruments have been admitted or are subject to a request for admission to Euronext Paris, Euronext Growth or Euronext Access<sup>23</sup>. The issuer and its executives may be held

22 – AMF Position/ Recommendation no. 2016-08 of October 26, 2016 – Guide to ongoing disclosures and the management of inside information (updated on April 29, 2021).

23 – Article 17.1 of the Market Abuse Regulation.



liable in the event of failure to comply with this requirement<sup>24</sup>. France's supreme court of appeal (*Cour de cassation*), has ruled that, since the Market Abuse Regulation (MAR) came into effect, the issuer's executives continue to be liable - as set forth in article 221-1 of the AMF General Regulations (since unamended) – in the event of delayed disclosure of inside information, even though the MAR does not provide for such liability (Cass. Com., November 14, 2018, no. 16-22.845). The *Cour de cassation* stipulates that the provisions of the MAR only constitute the minimal measures that Member States must implement to ensure that competent authorities have the powers to impose appropriate administrative sanctions and measures to enforce the rules for the smooth functioning of the market.

Nonetheless, under the terms of article 17.4 of the Market Abuse Regulation and article 223-6 of the AMF General Regulations, and as specified in AMF Position/Recommendation no. 2016-08, an issuer may, **on its own responsibility**, delay disclosure to the public of inside information, provided that the three cumulative conditions below are met:

- immediate disclosure is **likely to prejudice the legitimate interests of the issuer**, it being specified that the issuer merely has to refer to its corporate purpose or a vague general principle such as business confidentiality or commercial, economic or strategic interest to justify deferring dissemination<sup>25</sup>. ESMA has issued guidelines that provide a non-exhaustive and indicative list of legitimate interests of issuers to delay disclosure of inside information, provided that the two additional conditions required by article 17.4 of the Market Abuse Regulation are fulfilled.

The guidelines, which are reiterated in AMF Position/Recommendation no. 2016-08, cover the following circumstances<sup>26</sup>:

- the issuer is conducting negotiations, such as mergers, acquisitions, splits and spin-offs, purchases or disposals of major assets or branches of corporate activity, restructurings and reorganisations, where the outcome of such negotiations would likely be jeopardised by immediate public disclosure of that information<sup>27</sup>;
- the financial viability of the issuer is in grave and imminent danger, although not within the scope of the applicable insolvency law, and immediate public disclosure of the inside information would seriously prejudice the interests of existing and potential shareholders, by jeopardising the conclusion of the negotiations aimed at ensuring the financial recovery of the issuer;
- the inside information relates to decisions taken or contracts entered into by the management body of an issuer which need, pursuant to national law or the issuer's articles of association, the approval of another body of the issuer (other than a shareholders' meeting) in order to become effective, provided that:
  - i. immediate public disclosure of that information before such a definitive decision would jeopardise the correct assessment of the information by the public; and
  - ii. the issuer arranged for the definitive decision to be taken as soon as possible;
- the issuer has developed a product or an invention and the immediate public disclosure of that information is likely to jeopardise the intellectual property rights of the issuer;
- the issuer is planning to buy or sell a major holding in another entity and the implementation of such a plan is likely to be jeopardised with immediate disclosure of that information;
- a deal or transaction previously announced is subject to a public authority's approval, and such approval is conditional upon additional requirements, where the immediate

24 – AMF Enforcement Committee, SAN-2019-13, October 1, 2019, Biophytis: the AMF sanctioned an issuer operating in the biotechnology sector for failing to publish information “as soon as possible” regarding a delay in the provisional timetable for the second phase of clinical trials on the company's flagship drug candidates. This certain information, although not quantitative, was considered to be specific and sensitive enough to qualify as inside information.

25 – AMF Position/Recommendation no. 2016-08 of October 26, 2016 – Guide to ongoing disclosures and the management of inside information (section 1.2.2.1) (updated on April 29, 2021)

26 – ESMA – Guidelines on the Market Abuse Regulation (“MAR”). Delay in the disclosure of inside information, ESMA/2016/1478.

27 – Example of a deferred financial disclosure (negative) considered as unjustified, as not prejudicial to the company's legitimate interests, while the company was involved in negotiations with an investment company to increase its share capital (AMF Enforcement Committee, April 13, 2018).

disclosure of those requirements will likely affect the ability for the issuer to meet them and therefore prevent the final success of the deal or transaction.

- Delay of disclosure is not likely to **mislead the public**.

According to ESMA and the AMF, delay of disclosure of inside information is likely to mislead the public where the inside information whose disclosure the issuer intends to delay:

- is materially different from the previous public announcement of the issuer on the matter to which the inside information refers; or
- is linked to the fact that the issuer's financial objectives are not likely to be met, where such objectives were previously publicly announced; or
- is in contrast with the market's expectations, where such expectations are based on signals that the issuer has previously sent to the market, such as interviews, roadshows or any other type of communication organised by the issuer or with its approval.

- The issuer is able to **ensure the confidentiality of that information**.

In particular, the AMF recommends that the issuer:

- put in place effective measures that prevent any persons working for the issuer whose functions do not warrant or require that they have access to the inside information from accessing said information;
- take the necessary measures to ensure that all persons with access to inside information are familiar with the statutory and regulatory obligations related to such access and are aware of the applicable penalties in the event that they unlawfully use or communicate inside information;
- deploy the processes necessary for ensuring immediate, accurate, true and fair disclosure if it is unable to ensure confidentiality<sup>28</sup>, especially when there is a sufficiently detailed rumour referring explicitly to the inside information whose disclosure has been delayed (see Part 2, Section 7 "Rumours").

To maintain control of inside information, the issuer is required to establish, maintain and promptly update lists of all persons having access to inside information related to the issuer and who work for the issuer under a contract of employment or otherwise performing tasks through which they have access to such information. The AMF can request to see such lists (see Part 3, Section 1 "Insider lists").

In its Guide to ongoing disclosures and the management of inside information, the AMF has issued recommendations on how to prevent insider misconduct through the implementation of preventive measures such as the appointment of a compliance officer and the definition of "closed periods" for the issuer's securities<sup>29</sup> (see Part 3, Section 1 "Financial communication calendar").

28 – AMF Position/ Recommendation no. 2016-08 – Guide to ongoing disclosures and the management of inside information (section 1.2.2.1).

29 – AMF Position/ Recommendation no. 2016-08 – Guide to ongoing disclosures and the management of inside information (section 1.2.2.1).

In any case, pursuant to article 17.4 of the Market Abuse Regulation and article 4.3 of the Implementing Regulation of June 29, 2016 laying down implementing technical standards with regard to the technical means for appropriate public disclosure of inside information and for delaying the public disclosure of inside information<sup>30</sup>, reproduced by the AMF in its Guide to ongoing disclosures and the management of inside information, any issuer who delays the disclosure of inside information must inform the AMF *“immediately after disclosure of the information”* in writing by sending an email to [differepublication@amf-france.org](mailto:differepublication@amf-france.org)<sup>31</sup> once the information in question has actually been disclosed. The issuer must communicate the following information:

- the identity and full legal name of the issuer;
- the identity and contact details of the person making the notification: name, surname, position within the issuer, professional e-mail address and phone number;
- the identification of the publicly disclosed inside information that was subject to delayed disclosure: title of the disclosure statement, the reference number (where applicable), date and time of the public disclosure of the inside information;
- the date and time of the decision to delay the disclosure of inside information;
- the identity of all persons responsible for the decision to delay the public disclosure of inside information.

The AMF may, where applicable, request that the issuer provide a written explanation as to how the issuer meets the three conditions allowing delayed disclosure, which then must be submitted immediately.

Furthermore, the issuer must ensure the implementation of the adequate internal procedures that will enable it to prove subsequently to the AMF that it has fulfilled the three conditions required by the Market Abuse Regulation to delay the disclosure of inside information.

Where the issuer has delayed the disclosure of inside information in accordance with article 17(4) of the Market Abuse Regulation, and the information subsequently no longer meets the condition of having **a significant effect on share prices**, the information no longer qualifies as inside information and is therefore not considered as falling within the scope of article 17(1) of the Market Abuse Regulation.

Consequently, the issuer is under no obligation to publicly disclose said information or report it to the competent authority. Nevertheless, given that the information was deemed to be inside information for some length of time, the issuer is required to comply with all related obligations as regards updating insider lists and keeping delay of disclosure-related information up to date<sup>32</sup>.

30 – AMF Position/ Recommendation no. 2016-08 – Guide to ongoing disclosures and the management of inside information (section 1.2.2.2).

31 – AMF Instruction no. 2016-07 on the notification procedure for delaying disclosure of inside information.

32 – Q&A on the Market Abuse Regulation (MAR), updated on March 23, 2018.

Pursuant to article 175 of the Market Abuse Regulation, in order to preserve the stability of the financial system, an issuer that is a credit institution or a financial institution may, under its own responsibility, delay the disclosure of inside information, including information which is related to a temporary liquidity problem and, in particular, the need to receive temporary liquidity assistance from a central bank or lender of last resort, provided that all of the following conditions are met:

- a) the disclosure of the inside information entails a risk of undermining the financial stability of the issuer and of the financial system;
- b) it is in the public interest to delay the disclosure;
- c) the confidentiality of that information can be ensured; and
- d) the AMF has consented to the delay on the basis that the conditions in points (a), (b) and (c) are met.

Article 176 of the Market Abuse Regulation specifies that this prior authorisation procedure is not applicable if the credit or financial institution intending to delay the disclosure of inside information meets the three conditions provided for in the above-mentioned article 174 (immediate disclosure is likely to prejudice the legitimate interests of the issuer, delay of disclosure is not likely to mislead the public and the credit or financial institution is able to ensure the confidentiality of that information).

In the event of a delay in disclosing inside information, the issuer must inform their contact at the AMF's issuer management department, who will inform them of how to proceed in a secure manner. This obligation stems from article 5.1 of the Implementing Regulation of June 29, 2016 laying down implementing technical standards with regard to the technical means for appropriate public disclosure of inside information and for delaying the public disclosure of inside information, and the AMF Instruction on the notification procedure for delaying disclosure of inside information<sup>33</sup>.

Lastly, issuers setting up an equity line programme who have decided to delay the disclosure of inside information should immediately suspend execution of their equity line programme. The AMF has reiterated that being in possession of inside information is an obstacle to taking an equity drawdown decision in an equity lines programme if said information has not been made public. Consequently, an issuer that decides to temporarily postpone publication of inside information must immediately suspend execution of this programme until such time as the information has been published<sup>34</sup>.

The AMF has reiterated the best practices to adopt **in the event of doubt as to whether information, held by a listed company, is inside information**, for example when the company is experiencing a number of disruptions to its operations.

In such situations, and to ensure equal access to accurate information for investors, the AMF encourages issuers to disclose, **as soon as possible**, the information in question. Such a disclosure should be accompanied by details of the measures being taken to address the disruptions, and regular updates regarding the progress of these remedial measures should be provided.

33 – AMF Instruction no. 2016-07 on the notification procedure for delaying disclosure of inside information.

34 – AMF Position/ Recommendation no. 2012-18 – Market information when setting up an equity line programme (see, in particular, section 3, updated on January 8, 2019).

The AMF also reiterated the importance of providing investors with accurate information as well as the measures that issuers must implement to ensure that their **employees** do not disclose or use for personal gain any information of which they become aware during the course of their duties. One way in which issuers can prevent insider trading<sup>35</sup> is by training all of their employees.

## 6 ■ COMPLETE AND EFFECTIVE DISSEMINATION OF REGULATORY INFORMATION

The AMF published a practical Guide to filing regulatory information with the AMF and to its dissemination. This guide was updated on March 26, 2019.

The issuer must ensure the **complete and effective dissemination** of all relevant regulatory information, with the exception of disclosures related to the crossing of thresholds which are handled by the AMF itself<sup>36</sup>.

Regulatory information must be disseminated **using electronic means** in accordance with the principles defined by the AMF General Regulations requiring dissemination to **as wide a public as possible**, within **as short a timeframe as possible** and using methods which ensure **the integrity of the information**. In order to achieve this, issuers may, at their own discretion, choose to disseminate regulatory information themselves or decide to use the services of one of the **primary information providers** registered on a list published by the AMF, in which case it is assumed that they have met their effective and complete dissemination obligation<sup>37</sup>.

To ensure easier access to information, the AMF also recommends that issuers indicate on social networks that their financial statements can be found on their website under a specific section visible from the homepage or on a “Finance” or “Investors” page. The issuer’s statutory financial statements and its subsidiaries’ financial statements should be clearly identified as such<sup>38</sup>.

Issuers are also required to file their regulatory information with the AMF in electronic format via the ONDE extranet site at the same time as the information is publicly disseminated, unless the issuer uses a primary information provider registered on a list published by the AMF, in which case the primary information provider will directly file it with the AMF. **Issuers are no longer required to issue financial communication in the written press**<sup>39</sup>. The AMF nevertheless recommends that such communication be issued according to a timetable that the issuers consider appropriate for the type of securities issued, their shareholder base and their size (AMF Position/Recommendation no. 2016-05, section 19.5, updated on April 29, 2018).

35 – AMF press release of December 21, 2018 – Disclosure of inside information – Best practices.

36 – Article 221-3 of the AMF General Regulations.

37 – AMF Position/Recommendation no. 2016-08 – Guide to ongoing disclosures and the management of inside information (section 1.6.4.2).

38 – AMF Position/Recommendation no. 2016-08 – Guide to ongoing disclosures and the management of inside information (sections 1.6.4.1 and 1.6.4.2).

39 – Article 221-4 VI of the AMF General Regulations amended by the decree of November 7, 2019.

Issuers whose securities are admitted – or subject to a request for admission – to trading on Euronext Growth must also ensure the complete and effective dissemination of all regulatory information according to the same rules as issuers listed on Euronext Paris<sup>40</sup>. The same applies for issuers whose securities are admitted – or are subject to a request for admission – to trading on Euronext Access.

## PREVENTING THE DISSEMINATION OF FALSE INFORMATION

The AMF recommends that issuers<sup>41</sup>:

- train the team involved in the process for managing the dissemination of regulatory information in the possibility of an erroneous press release;
- send all press releases submitted to press agencies to primary information providers at the same time;
- release financial communications as much as possible outside of quotation periods, without excluding financial communications during the trading session that it may be necessary to disclose under the Market Abuse Regulation;
- implement reliable communication procedures that guarantee that information is sent and accessible via a secure channel, in particular by using a primary information provider (provided there is rigorous management of the access codes used to send press releases to said information provider) and make information sent electronically more secure. This applies to issuers who want to maintain an additional dissemination channel for certain players, including analysts, investors, media outlets and journalists;
- implement a monitoring system (identify any domain names similar to that of the issuer's, detect false websites, develop a system to prevent the website from being duplicated, etc.);
- establish and regularly update an emergency procedure enabling a swift response to any incidents (persons involved, decision-making chain, "standard" denial press release, be aware of the relevant contact persons at the AMF and Euronext, etc.);
- stay abreast of new hacking and identity theft techniques and update company processes accordingly.

Press agencies to which issuers send their information are encouraged to complete their operational procedures in order to prevent the dissemination of false information (in particular, increased vigilance with regard to verifying sources).

In addition, to simplify the process of verifying the reliability of sources for journalists and press agencies, the AMF has published a list indicating the name of the primary information provider used by each issuer whose securities are admitted to trading on the Euronext Paris regulated market and who use such a service provider. The list was updated on April 13, 2018. On December 23, 2019, the **AMF established a list of primary information providers** having declared that they meet the criteria for the publication of regulatory information along with the conditions for being included on the list of providers.

40 – Article 221-4 of the AMF General Regulations.

41 – AMF Position/ Recommendation no. 2016-05 – Guide to periodic disclosures by listed companies (section 19.2), updated on April 29, 2021.

In this respect, it should be noted that the AMF Enforcement Committee sanctioned Bloomberg<sup>42</sup> for disseminating a press release containing misinformation about Vinci on its terminals, which led to a significant drop in the company's share price. The AMF considered that journalists had not performed the necessary checks before publication and that the qualification of said dissemination of information as unlawful did not constitute *"a disproportionate interference with the right to freedom of expression of journalists"*.

## 7 ■ ARCHIVING AND TRANSPARENCY OF REGULATORY INFORMATION

Issuers are required to post their regulatory information on their website as soon as it is disseminated<sup>43</sup>.

Under the terms of article 17.1 of the Market Abuse Regulation, issuers are required to post and maintain on their website, for a period of **at least 5 years**, all inside information they are required to disclose publicly.

**The documents listed below must be available for a period of 10 years:**

- annual financial reports;
- half-yearly financial reports;
- reports on payments to governments<sup>44</sup>.

The ESMA Questions and Answers of October 22, 2015 relating to the Transparency Directive specify that reports that were made publicly available less than 5 years before November 26, 2015 must remain publicly available for 10 years (as from the date the reports were originally published).

The AMF also recommends that companies store regulatory information that is sensitive, but that does not constitute inside information and was not included in their annual and half-yearly financial reports, for a sufficient length of time.

In addition, the DILA (*Direction de l'information légale et administrative* – French office of legal and administrative information) provides for the centralised storage and archiving of regulatory information on its website **www.info-financiere.fr** for a period of 10 years.

The Transparency Directive (Directive 2013/50/EU), supplemented by Commission Delegated Regulation (EU) 2016/1437, **provides for a centralised archive storage facility at EU level** (the European Electronic Access Point), the objective of which is to facilitate both access to financial information and the comparability of companies' financial statements.

42 – AMF, Enforcement Committee, SAN-2019-17, December 11, 2019.

43 – Article 221-3 II of the AMF General Regulations; see also section 1.3.3 of AMF Position/Recommendation no. 2016-08 – Guide to ongoing disclosures and the management of inside information, and section 14 of AMF Position/Recommendation DOC-2016-05 – Guide to periodic disclosures by listed companies, updated on April 29, 2021.

44 – For more information on these three reports, see articles L. 451-1-2 I and L. 451-1-2 III of the French Monetary and Financial Code, and article L. 225-102-3 VII of the French Commercial Code, respectively.

As such, ESMA issued the final version of the Regulatory Technical Standards (RTS) for the European Single Electronic Format on December 18, 2017<sup>45</sup>. **Initially applicable to financial statements for financial years beginning on or after January 1, 2020, the requirement to prepare annual financial reports in XHTML format has been deferred to financial statements for financial years beginning on or after January 1, 2021<sup>46</sup>. Issuers that choose to defer this obligation must inform their statutory auditors.**

Where appropriate, IFRS consolidated financial statements must be labelled using XBRL tags (for primary financial statements: balance sheet, income statement and cash flow statement and, as of 2022, certain information in the notes to the financial statements). Access to regulatory information is set out in Commission Delegated Regulation (EU) 2016/1437 of May 19, 2016.

## 8 ■ FINANCIAL COMMUNICATION LANGUAGE

The growing internationalisation of the financial markets with an increasingly wide geographical shareholder base, the listing of several issuers on several markets (multiple listings) and the increase in cross-border transactions are all contributing factors to the greater importance placed on the linguistic treatment of documents containing information disclosed by issuers.

The need to translate these documents may be a significant constraint for an issuer or slow their access to foreign financial markets. At the same time, in order to ensure that investors are well informed, it is necessary that information disseminated by an issuer on a foreign financial market be available in a **language which is understandable to the investors concerned**.

In order to favour the movement of capital within the European Union and the European Economic Area while guaranteeing that investors are properly informed, EU law has harmonised the rules governing the language of the various documents published by issuers.

The principles laid down within the EU – often expressed in a complex manner – have been transposed by the AMF within its General Regulations.

### REGULATORY INFORMATION<sup>47</sup>

The AMF reiterated that all listed companies for which **the AMF is the competent authority** for controlling their periodic information may publish the information either in **French** or in another language commonly used by the financial community.

45 – ESMA, Final report on the Regulatory Technical Standard (RTS) on the European Single Electronic Format, no. 32-60-204, December 18, 2017.

46 – Delegated Regulation no. 2020/1989, art. 2.

47 – Article 221-2 of the AMF General Regulations.



Companies governed by French law that decide to use English as the official language of their periodic information are still required to produce their financial statements in French on an annual basis in compliance with legal requirements regarding filing at the competent commercial court<sup>48</sup>.

The AMF recommends that the choice of language for periodic information be **consistent over the long term and take into consideration the company's corporate shareholder strategy**.

Aside from publishing periodic information in English, the AMF also recommends that companies with a shareholder base that is primarily made up of French individual investors publish their periodic information in French<sup>49</sup>.

Should the AMF not be the competent authority which controls the regulatory information disclosed by an issuer, and the securities of that issuer are accepted for trading on a French regulated market, regulatory information disclosed in France should be written either in French or in a language commonly used by the financial community.

## PROSPECTUS<sup>50</sup>

The adoption of Regulation (EU) no. 2017/1129 of June 14, 2017 (**Prospectus 3 Regulation or "PD3"**), concerning the prospectus to be published when securities are offered to the public, has significantly amended the rules governing the filing of a prospectus, the circumstances entitling filers to exemptions and related thresholds, the documents required and their content. Most of these rules entered into force on July 21, 2019.

All of these rules are detailed in the AMF Guide to preparing the prospectus and the information to be provided for public offerings or admission to trading of securities, published on June 17, 2020 (updated on April 29, 2021), which also sets out AMF policy.

Pursuant to PD3, article 212-12 of the AMF General Regulations provides that the AMF will accept **French or English as the language for the preparation and update of a prospectus or URD**. When a prospectus is written in a language other than French, **the summary must nevertheless be translated into French**, except in the following circumstances:

- the offer of financial securities to the public made in one or more Member States of the European Union, excluding France, and not giving rise to admission to trading on a regulated market in France;
- admission to trading on a regulated market sought in one or more Member States of the European Union, excluding France, and not giving rise to any offer to the public other than (i) a private placement, (ii) an offer of securities with a nominal value of at least €100,000, (iii) an offer for investors acquiring these values for a total amount of at least €100,000 per investor and per transaction, or (iv) a crowdfunding offer meeting the conditions provided for in article L. 411-2, 2° of the French Monetary and Financial Code;
- admission to trading of equity securities sought in the professional segment of the regulated market.

48 – AMF Position/ Recommendation no. 2016-05 – Guide to periodic disclosures by listed companies (section 17), updated on April 29, 2021.

49 – AMF Position/ Recommendation no. 2016-05 – Guide to periodic disclosures by listed companies (section 17).

50 – AMF Position/ Recommendation no. 2020-06 of June 17, 2020 (updated on April 29, 2021).

It should be noted that an offer of securities to the public (as defined in article L. 411-1 of the French Monetary and Financial Code), by reference to the definition in Regulation (EU) 2017/1129, involves:

- sending a communication in any form and by any means to persons and presenting sufficient information on the terms and conditions of the offer and on the securities concerned in order to enable an investor to decide to purchase or subscribe for these securities; or
- the placement of securities by financial intermediaries. “Placement of securities” refers to all techniques used to sell a large quantity of securities on the market. Initial public offerings, block trades, capital increases, and public bond issues are the four main types of transactions that constitute the placement of securities.

Carrying out an initial public offering or admitting securities to trading on a regulated market requires the issuer to fulfil specific requirements regarding financial information, unless specifically exempted and waived by the applicable regulations<sup>51</sup>.

If the public offering also takes place in one or more other European Union Member States or EEA member countries, the prospectus must also be made available to the regulatory authorities of the other countries in a language commonly used by the financial community. These regulatory authorities may only require that a summary of the prospectus be translated into their official language<sup>52</sup>.

The final conditions and summary of the individual issue are drafted in the same language as the approved “base” prospectus<sup>53</sup>. Where the final terms of the base prospectus are communicated to the AMF, the summary note of the individual issuance annexed to the final terms must be prepared in French<sup>54</sup>.

On the basis of article 212-13 of the AMF General Regulations, where an issuer files or registers a URD in French with the AMF, it may also file or register the document in a language commonly used by the financial community. In this case, the subsequent updates should be drafted in French and the same language commonly used by the financial community.

However, the AMF has specified that companies governed by French law that include the management report in their URD and wish to use it for filing at the commercial court registry must draft the document in French, as the French Commercial Code requires that the financial statements and the management report be prepared in French<sup>55</sup>.

51 – Article 1 paragraph 3, 4, 5 and article 3, paragraph 2 of Regulation (EU) 2017/1129, articles L. 411-2 and L. 411-2-1 of the French Monetary and Financial Code and article 211-2 of the AMF General Regulations.

52 – Regulation (EU) 2017/1129, art. 27, paragraph 2.

53 – Regulation (EU) 2017/1129, art. 27, paragraph 4.

54 – Article 212-12 of the AMF General Regulations.

55 – AMF Position/Recommendation no. 2020-06 of June 17, 2020, updated on April 29, 2021.

**OTHER INFORMATION DISSEMINATED BY THE ISSUER**

There is no specific regulation applicable to other information which may be disseminated by an issuer on its own initiative outside its obligations in the case of a public offering or an application for admission to trading on a regulated market (broker presentations, slide shows, etc.: see Part 3, Section 3 “Relations with financial analysts and investors”).

## 2

## Framework for Financial Communication

Following Part 1, which was devoted to the principles of financial communication, Part 2 sets out the framework for various situations of financial communication. Beyond the simple reminder of the regulatory framework upon which financial communication strategy is constructed, this second part seeks to illustrate common practices for various scenarios.

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## 1 ■ DISCLOSURES OF PERIODIC INFORMATION

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Disclosures of periodic information are major events in the financial communication of an issuer. Through these disclosures, the listed company disseminates, through various means, a large amount of information regarding its strategy, markets and performance as well as the impact of this information on the financial statements and the company's life. Analyses performed by market participants on the issuer are mainly based upon this information. Therefore, for analyses to be as relevant as possible, it is essential for a listed company to assist these participants in their analysis and the understanding of its business model.

To this end, entities whose securities are admitted to trading on a regulated market must set up a specialised committee responsible for monitoring the preparation of financial information. In practice, this is the audit committee.

The AMF published a **Guide to periodic disclosures by companies listed on a regulated market**<sup>56</sup>, which takes up the main financial reporting obligations applicable to issuers listed on the Euronext Paris market and includes a section on Euronext Growth and Euronext Access.

<sup>56</sup> – AMF Position/ Recommendation no. 2016-05 – Guide to periodic disclosures by listed companies, updated on April 29, 2021.

## DISCLOSURE OF ANNUAL RESULTS

The disclosure of annual results includes several types of **mandatory** and optional **documents** for which the type, method and calendar of dissemination are as follows:

Type of document/ event	Driving factor	Dissemination method	Calendar
Press releases	Mandatory	Through electronic means Posted on the issuer's website	After the meeting of the board of directors or the supervisory board and, in the case of revenue announcements, within 60 days
Information meetings	Common market practice	Physical meeting/conference call	
Financial notice	Optional	Written press, internet or radio	
Annual financial report	Mandatory	Through electronic means with the possibility of only disclosing the means by which the report has been made available (regulatory information) Posted on the issuer's website and sent to the AMF	Within 4 months of the financial period closing date
Universal registration document (URD)	Optional	Posted on the issuer's website and sent to the AMF	No regulatory deadline
Integrated report	Optional	Posted on the issuer's website	No regulatory deadline
Documents published in the BALO (Bulletin of legal announcements)	Mandatory	Electronic transmission to the BALO	Within 45 days of the shareholders' meeting held to approve the financial statements
Documents filed with the commercial court registry	Mandatory	Within the month following the approval of the annual financial statements by the shareholders' meeting or within 2 months of the approval if filed through electronic means	

Companies listed on Euronext Growth shall, **within 4 months of the financial period closing date**, disclose the annual financial statements, the management report, and, if applicable, the consolidated financial statements and group management report as well as the corresponding statutory auditors' reports (Euronext Growth Market Rules, section 4.2). This information shall be posted on the websites of the issuer and Euronext Growth for a two-year period (Euronext Growth Market Rules, section 4.1). Companies listed on Euronext Access+ must disclose the same information within the same time period (Euronext Access Market Rules, section 3.2).



## Press releases

### *Press releases announcing annual results*

Press releases disseminated by issuers commonly include the following types of information:

- analysis of changes in consolidated revenue and income statement items (organic growth, changes in consolidation scope, impact of exchange rates);
- business segment information, supplemented, as appropriate, by a description of the company's activities, performance and perspectives in the geographical areas and operational sub-segments at risk or where very different situations exist;
- balance sheet items and cash flow;
- where applicable, a description of any changes in accounting methods which took place from one period to another and any changes in the consolidation scope which have an impact of more than 25% on the financial statements (see Part 2, Section 1 "Changes in the consolidation scope of the issuer");
- the strategic orientation of the issuer;
- significant events during the period regarding the previously announced strategy;
- post-closing events where applicable;
- the objectives/forecasts of the issuer, provided on a voluntary basis (see Part 2, Section 2 "Disclosure of estimates or prospective information");
- the amount of dividends proposed at the shareholders' meeting for the period as well as the payment date if approved;
- the situation as regards the certification of the financial statements by the statutory auditors;
- the date of the meeting of the board of directors or supervisory board adopting or reviewing the financial statements;
- details of other related information available on the issuer's website (e.g., full financial statements, analyst presentations, etc.).

Some issuers also include more detailed accounting information in an appendix (income statement, balance sheet, cash flow statement, segment information). Moreover, it is common market practice to include a short message from the chairman/legal manager giving a more qualitative perspective on the financial position of the company and its market/industry and, if appropriate, indicating the company's short- to medium-term outlook.

The AMF stipulates that while the annual results press release may only contain material items from the financial statements and appropriate related comments, it must **disclose net income and information on balance sheet items**. Close attention should be paid to alternative performance measures such as discussed below in Section "Components related to periodic disclosures." Moreover, if more detailed information on the financial statements is available on the issuer's website, this should also be mentioned in the press release<sup>57</sup>.

In practice, the press release is to be disseminated after the meeting of the board of directors approving the financial statements or after the meeting of the supervisory board reviewing the financial statements presented by the executive board. The AMF recommends that **the press release be published outside stock exchange trading hours** (issuers whose shares are traded on several regulated markets should be particularly cautious in this respect) and that the date, as well as the time<sup>58</sup>, of its dissemination be disclosed.

Such press releases shall be subject to a **complete and effective dissemination as regulatory information**. They shall be posted on the issuer's website and sent to the AMF at the same time as they are disseminated. The AMF recommends sending the press release electronically to an AMF-certified primary information provider, in which case the issuer is deemed to have fulfilled its complete and effective dissemination obligation<sup>59</sup>.

Article 19.11 of the Market Abuse Regulation provides for a 30-day closed period before publishing a press release announcing an annual financial report. In a Questions and Answers document<sup>60</sup>, ESMA considers that publication by an issuer of a press release announcing annual financial results represents **an announcement of the annual financial report** and therefore also triggers the aforementioned closed period. For further details on closed periods, see Part 3, Section 1 "Data confidentiality".

### *Press releases on annual revenue*

As annual revenue is likely to be considered inside information, the AMF recommends that issuers planning to disclose their annual results more than 60 days after the financial period closing date, disclose information on annual revenue for the past year along with comparative information as soon as possible after the financial period closing date, and no later than the end of February or **60 days after the closing date**. However, the issuer is not obliged to disclose its revenue separately if it does not consider this information to be relevant, notably owing to the nature of its activity or if such a disclosure might be misleading to the market<sup>61</sup>.

### **Information meetings**

In order to ensure wide and continuous dissemination, the issuer may present its annual results during information meetings held for its main audiences (buy-side or sell-side analysts, legal managers, investors, shareholders, journalists, etc.), or through conference calls or webcasts. In its Guide to periodic disclosures by listed companies<sup>62</sup>, the AMF reiterates that these meetings do not usually concern **important additional information or information which differs from that disclosed to the public**, but that the way in which it is presented can bring certain new and interesting perspectives.

In any case, the issuer should take care to ensure that all information unknown to the public which is disclosed during these meetings and which may have an influence on share prices, including significant comments or developments related to the issuer, is immediately disseminated to the public.

58 – AMF Position/ Recommendation no. 2016-05 – Guide to periodic disclosures by listed companies (section 2.3.1), updated on April 29, 2021.

59 – Article 221-4 IV of the AMF General Regulations.

60 – Questions and Answers on the Market Abuse Regulation – ESMA/2016/1129, Section 2 "Managers' transactions" (March 23, 2018).

61 – AMF Position/ Recommendation no. 2016-05 – Guide to periodic disclosures by listed companies (section 1).

62 – AMF Position/ Recommendation no. 2016-05 – Guide to periodic disclosures by listed companies (section 2.3.3).

It is common practice to hold these meetings as soon as possible following the dissemination of a press release. The AMF recommends that any **presentations for financial analysts be systematically posted online** as soon as possible, and no later than the date the presentations are made to the analysts<sup>63</sup>.

### Financial notices

Besides the press release on annual revenue, the issuer **may disclose** information about its annual results in the written press or by electronic means using the presentation methods it deems appropriate given its shareholder profile and size. The content of that disclosure is determined by the issuer. However, it must be consistent with the information disclosed in the annual financial report or press release. No deadline has been established by regulations for this disclosure; nonetheless, it is common practice to disseminate such notice after the press release.

### Annual financial report

Issuers listed on Euronext Paris are required to publish an annual financial report<sup>64</sup> and file it with the AMF **within 4 months following their financial period closing date**<sup>65</sup>. For corporations with an executive board and supervisory board, the executive board shall approve the financial statements within 3 months of the financial period closing date in order to enable the supervisory board to perform its review. The AMF also recommends that the supervisory board review the financial statements adopted by the executive board as soon as possible<sup>66</sup>.

The AMF recommends that companies whose securities are admitted to trading on a regulated market publish, as part of their periodic disclosures, a press release concerning the consolidated financial statements for the previous year or half-year period, as soon as they are available. Within the meaning of AMF Recommendation no. 2016-05, consolidated financial statements are deemed available when they have been approved for issue by the board of directors or reviewed by the supervisory board.

#### Annual financial reports shall include the following components:

- the full annual financial statements (i.e., the statutory financial statements);
- where applicable, the consolidated financial statements<sup>67</sup>;
- a management report;
- a statement made by the natural persons taking responsibility for the annual financial report;
- the statutory auditors' reports on the annual financial statements and, where applicable, on the consolidated financial statements.

The AMF published (i) DOC-2018-06 – Summary of financial statement recommendations applicable as at January 1, 2020, which sets out all the recommendations issued for IFRS financial statements (2006 to 2019) that are still in force, and (ii) AMF Recommendation no. 2020-09 – 2020 Financial statements and review of financial statements, intended for listed companies that publish IFRS financial statements.

63 – AMF Position/ Recommendation no. 2016-05 – Guide to periodic disclosures by listed companies (section 2.3.3).

64 – The requirement to publish an annual financial report also concerns non-listed companies that issue debt securities on a regulated market within the European Union under certain conditions relating to the nature and nominal value of the instruments.

65 – Article L. 451-1-2-I of the French Monetary and Financial Code, supplemented by article 222-3 of the AMF General Regulations.

66 – AMF Position/ Recommendation no. 2016-05 – Guide to periodic disclosures by listed companies (section 2.1.2).

67 – The AMF published its Guide to the relevance, consistency and readability of financial statements in June 2015. This Guide provides issuers with tips to improve the understanding of their financial statements and in particular the notes to the financial statements.

Implementing decree no. 2017-1162 of July 12, 2017 of the “Sapin II” law, applicable to reports for financial years beginning on or after January 1, 2017, reorganises the periodic information contained in the management report and a new corporate governance report which replaces the chairman’s report. The content of the information shall be reorganised essentially on the basis of established law<sup>68</sup>.

From now on, the aforementioned **management report** included in the annual financial report shall contain the following information:

- a complete objective analysis of the company’s business development, results and financial position, in particular its debt structure, with regard to the volume and complexity of its business;
- where necessary in order to understand the company’s business development, results and financial position, the key financial and, where applicable, non-financial performance indicators relevant to the company and the business, such as information pertaining to environmental issues and personnel matters;
- a description of the main risks and uncertainties the company faces;
- a description of the financial risks related to the effects of climate change and the measures taken by the company to mitigate these by deploying carbon-light processes in all components of its business;
- the main characteristics of the internal control and risk management procedures set up by the company for preparing and processing accounting and financial information;
- where appropriate for the measurement of the company’s assets, liabilities, financial position and results, a description of its objectives and policies concerning the hedging for each main category of planned transactions for which hedge accounting is used, as well as its exposure to price risk, credit risk, liquidity risk and cash management risk. This description also includes the company’s use of financial instruments.

The management report shall also disclose:

- information related to the number of shares purchased and sold during the financial period within the framework of a share buyback programme and the nature of the transactions<sup>69</sup>;
- the company’s situation during the financial year ended, the expected outlook for the company, significant events having taken place between the financial period closing date and the date of the report, any research and development activities and existing subsidiaries<sup>70</sup>;
- should the issuer be required to prepare consolidated financial statements, all of the above-mentioned information for the companies included in the consolidation<sup>71</sup>.

68 – AMF, 2017 Annual report on corporate governance, executive compensation, internal control and risk management, published on November 22, 2017.

69 – Article L. 225-211 of the French Commercial Code.

70 – Article L. 232-1 of the French Commercial Code.

71 – In a consolidated management report, as required under article L. 225-100-1-II and L. 22-10-35 of the French Commercial Code.

Issuers may add to the annual financial report the **corporate governance report**, as well as the statutory auditors' report on this report<sup>72</sup>. By doing so, they are exempted from the requirement to disclose that information separately. The corporate governance report replaces the chairman's report and is the responsibility of the board of directors or supervisory board. It is attached to or included in the management report (only for corporations with a board of directors) and contains the following:

- solely for companies whose shares are listed, **information on the company's compensation policy for corporate officers** (articles L. 22-10-8 and L. 22-10-26 of the French Commercial Code):
  - the components of fixed and variable compensation and the decision-making process for determining, reviewing and implementing this policy. The content of the policy and the procedures for disclosing it are defined by article R. 22-10-14 of the French Commercial Code;
- solely for companies whose shares are listed, information on compensation and benefits granted for each corporate officer, including those whose term has expired and those newly appointed during the year (article L. 22-10-9 of the French Commercial Code):
  - total compensation and benefits in kind paid by the company during the year, setting out the fixed, variable and exceptional components, including equity securities, debt securities, or securities giving access to the capital or to the debt securities of the issuer, its parent or its subsidiaries, or awarded in respect of their duties during the same year, specifying the main conditions for exercising the above rights, particularly the exercise price and date, and any amendments to said conditions,
  - the relative proportion of fixed and variable compensation<sup>73</sup>,
  - the commitments of any kind contracted by the company and relating to compensation components or benefits awarded or likely to be awarded for taking up positions, terminations or changes in responsibilities, or for a prior financial period, in particular pension and other annuity commitments, referring, under the conditions and in line with the procedures set out in article D. 22-10-16 of the French Commercial Code, to the specific procedures for determining these commitments and the estimated total amounts likely to be paid in this respect,
  - any compensation paid or awarded by a company in the scope of consolidation within the meaning of article L. 233-16 of the French Commercial Code,
  - the level of compensation of the chairman of the board of directors, the chief executive officer and each deputy chief executive officer compared with (i) the average compensation of company employees other than corporate officers, on a full-time equivalent basis, and (ii) the median compensation of company employees, other than corporate officers, on a full-time equivalent basis (known as "pay ratios"; see Section "Compensation and benefits"),
  - the annual change in compensation, the performance of the company, the average compensation of employees other than executives, on a full-time equivalent basis, and the ratios mentioned in the previous paragraph, over at least the past 5 financial years, presented together in such a way as to enable comparisons,
  - the way in which the vote at the last ordinary shareholders' meeting, provided for in article L. 22-10-34 of the French Commercial Code, was taken into consideration,

72 – According to the revised professional standard 9510, published in the French official journal in October 2018, the statutory auditors formulate their opinion on the corporate governance report in the section of their report on the financial statements relating to the verification of the management report, other documents on the financial position and the financial statements and information derived from the corporate governance report. Therefore, the statutory auditors do not have a specific report to prepare on corporate governance, despite what article L. 225-235 of the French Commercial Code might lead us to believe.

73 – Addition of the French PACTE law to articles L. 225-37-3 and L. 22-10-9 of the French Commercial Code.

- any deviation from the procedure for determining the compensation policy and any exemption applied in accordance with article L. 22-10-8 III, paragraph 2 of the French Commercial Code, including an explanation of the nature of the exceptional circumstances and an indication of the specific items for which an exemption is applied,
- application of the provisions of article L. 225-45, paragraph 2, and article L. 22-10-14 of the French Commercial Code, on the suspension of payment of compensation when the board of directors is not formed in accordance with articles L. 225-18-1, paragraph 1 and L. 22-10-3, paragraph 1 of the French Commercial Code,
- following the introduction of the French Action Plan for Business Growth and Transformation ("PACTE") law<sup>74</sup>, the corporate governance report must also specify, during the *ex-post* vote, other points, in particular how the total compensation of each executive complies with the adopted compensation policy, including how it contributes to the company's long-term performance;

■ **information on corporate governance** (articles L. 225-37-4 and L. 22-10-10 of the French Commercial Code):

- a list of all the remits and functions performed by each corporate officer in each entity during the financial period,
- the agreements entered into, directly or indirectly, between (i) one of the corporate officers or shareholders holding more than 10% of a company's voting rights, and (ii) following the introduction of the PACTE law, another company controlled by the first company within the meaning of article L. 233-3 of the French Commercial Code, excluding agreements concerning transactions entered into in the ordinary course of business on an arm's length basis<sup>75</sup>,
- the description of the procedure that should be implemented by the board of directors, or the supervisory board (as applicable), to regularly assess whether the agreements concerning transactions entered into in the ordinary course of business on an arm's length basis fulfil these conditions (it being specified that the people directly or indirectly concerned by one of these agreements must not be involved in said assessment)<sup>76</sup>, which is not a detailed description of the entire internal control process for entering into and recording such agreements. The description must demonstrate that sufficient information is communicated to the board to ensure that the appropriate criteria and processes are maintained,
- a table presenting the current powers granted in connection with capital increases as approved by the shareholders' meeting (articles L. 225-129-1 and L. 225-129-2 of the French Commercial Code) and summarising the uses to which these powers were put,
- upon the first report or in the event of modification, the choice made between one of the two modes of executive management as stipulated under article L. 225-51-1 of the French Commercial Code,
- the composition of the board and the conditions of preparation and organisation of its work,
- for companies that exceed two out of the three thresholds defined in articles R. 225-104 and R. 22-10-29 of the French Commercial Code (net assets of €20 million; net revenue of €40 million; average number of permanent employees at 250), a description of the diversity policy for members of the board of directors with respect to criteria for age, gender, and professional qualifications and experience, as well as a description

74 – Article L. 225-37-3 and L. 22-10-9 of the French Commercial Code.

75 – Addition of the French PACTE law to articles L. 225-37-4, 2°, and L. 22-10-10 of the French Commercial Code.

76 – Addition of the French PACTE law to articles L. 225-37-4, 10°, and L. 22-10-10, 6°, of the French Commercial Code. According to the ANSA (communication no. 19-061, December 2019): "The board of directors (or supervisory board) is responsible for establishing the assessment procedure provided for by law, with a considerable degree of freedom".

of the objectives of the policy, the procedures for its implementation and the results obtained over the past year. This description is supplemented with information on (i) how the company pursues gender equality on the committee set up, where applicable, by executive management to assist it in its duties and (ii) gender diversity in the 10% of the most senior positions within the company<sup>77</sup>. If the company does not apply such a policy, the report will provide explanations and justification,

- any limitations imposed by the board of directors on the chief executive officer,
- when a company refers voluntarily to a code of corporate governance drawn up by organisations representing companies, the provisions that have been ruled out and the reason for this decision, as well as the place where the code can be consulted, or, where the company does not refer to a code, the reasons why the company has made this decision, as well as, where appropriate, any rules adopted in addition to those required by law,
- specific procedures for shareholder participation in shareholders' meetings, or the provisions in the articles of association specifying these procedures;

■ **information likely to have an impact in the event of a takeover bid or public exchange offer** (article L. 22-10-11 of the French Commercial Code):

- the company's capital structure,
- restrictions established by the company's articles of association on the exercise of voting rights and share transfers, or clauses in other agreements brought to the company's attention in application of article L. 233-11 of the French Commercial Code,
- any known direct or indirect ownership of the share capital of the company, in accordance with articles L. 233-7 and L. 233-12 of the French Commercial Code,
- a list of all holders of securities bearing special rights of control and their description,
- the control mechanisms in place for any employee shareholding plan, where the control rights are not exercised by the employees,
- agreements between shareholders of which the company is aware, and which might result in restrictions on the transfer of shares and the exercise of voting rights,
- the rules applicable to the appointment and replacement of members of the board of directors, as well as to modification of the articles of association,
- the powers of the board of directors, in particular those concerning the issuance or buyback of shares,
- agreements entered into by the company which are modified or terminated in the event of a change of control in the company, unless this disclosure, excluding cases of legal obligation to disclose, is likely to prejudice the interests of the company,
- agreements providing for benefits to members of the board of directors, or to employees, if they resign or are dismissed without just cause, or if their employment is terminated due to a takeover bid or public exchange offer;

■ **information concerning the limits imposed on the opportunity for executives to exercise options** (articles L. 225-185, paragraph 4 and L. 22-10-57 of the French Commercial Code) or dispose of free shares (articles L. 225-197-1 II, paragraph 4 and L. 22-10-59 of the French Commercial Code)<sup>78</sup>:

- when stock options have been granted to executives: conditions defined by the board of directors (or the supervisory board, as applicable) for the exercise of stock options

77 – Addition from law no. 2018-771 of September 5, 2018 on the freedom to choose one's professional future. According to the ANSA (law on the freedom to choose one's professional future: non-financial performance statement, corporate governance report and deliberations by the board on professional equality, Sept. 2018, no. 18-039), in light of the terms used by the lawmakers, only the executive committee should be concerned, to the exclusion of board committees and other committees set up by executive management to deal with specific and/or non-recurring matters.

78 – These disclosures are no longer required in the management report (article L. 225-185, L. 22-10-57 and L. 225-197 of the French Commercial Code, amended by Order no. 2019-1234 of November 27, 2019.

- granted to them and for the sale of shares acquired by them following the exercise of an option, while in office,
- when free shares have been granted to executives: conditions defined by the board of directors (or the supervisory board, as applicable) on the sale, while in office, of free shares granted to them.

The annual financial report together with the corporate governance report, as well as the universal registration document (which replaced the registration document as of July 21, 2019) defined below, may **serve as the annual report submitted to the shareholders' meeting**, provided that it also includes the following information:

- employee profit-sharing plans (article L. 225-102 of the French Commercial Code);
- the disclosures required, where applicable, as part of the non-financial performance statement (see Section "Information on Corporate Social Responsibility (CSR)" below);
- a description of Seveso installations (article L. 225-102-2 of the French Commercial Code);
- the business activities of subsidiaries and minority investments and the portion of ownership (article L. 233-6 of the French Commercial Code);
- a summary of transactions in company shares carried out and declared during the year by executives (article 223-26 of the AMF General Regulations and article L. 621-18-2 of the French Monetary and Financial Code);
- the amount of dividends distributed for the previous 3 years (article 243 *bis* of the French Tax Code – *Code général des impôts*);
- the five-year financial summary (article R. 225-102 of the French Commercial Code);
- information on supplier payment terms (article L. 441-6-1 of the French Commercial Code);
- the company's situation during the financial year ended, the expected outlook for the company, significant events having taken place between the financial period closing date and the date of the report, as well as any research and development activities. Existing subsidiaries are also mentioned (article L. 232-1 II of the French Commercial Code);
- where appropriate, the amount of any loans granted to businesses with economic ties to the issuer (article L. 511-6 of the French Monetary and Financial Code);
- where appropriate, the chairman's report on payments to governments (articles L. 225-102-3 and L. 22-10-37 of the French Commercial Code);
- where appropriate, details of any oversight measures put in place by parent companies pursuant to their oversight obligations (article L. 225-102-4 of the French Commercial Code);
- the shareholder structure and all shareholder thresholds that have been crossed (article L. 233-13 of the French Commercial Code).

This annual management report may be contained within an annual report setting out all of the information presented to the shareholders' meeting, which may also include:

- draft resolutions submitted to the shareholders' meeting;
- the statutory auditors' special report on related-party agreements.



In addition to being filed with the AMF, the annual financial report must as a rule be disseminated through electronic means in accordance with the dissemination methods for regulatory information<sup>79</sup> described in the first part of this guide. In practice, the issuer can disseminate a simple press release describing the means by which the document<sup>80</sup> has been made available (an example of a press release is included in appendix 6 of the Guide to filing regulatory information with the AMF and to its dissemination).

The revised Transparency Directive (Directive 2013/50/EU) provides for **a single format for publishing annual financial reports** designed to facilitate both access to financial information and the comparability of companies' financial statements. On December 18, 2017, ESMA issued the definitive version of the Regulatory Technical Standards (RTS) for the European Single Electronic Format. Initially, this format was to be used by all issuers to prepare their annual financial statements as from January 1, 2020, but the deadline was extended to January 1, 2021, giving issuers who so wished additional time to comply with this requirement. From that date, all annual financial statements must be prepared in XHTML format. IFRS consolidated financial statements must be presented in XBRL format (for primary financial statements: balance sheet, income statement and cash flow statement, and, as of 2022, certain items of information in the notes to the financial statements)<sup>81</sup>. To assist issuers in the transition to this new format, the AMF has set up a dedicated section on its website.

### Universal registration document

The universal registration document (URD) contains a **summary of all legal, economic, financial and accounting information** relating to an issuer for a given financial period. The production of a URD is optional. Nonetheless, most issuers produce one. It may be incorporated by reference (provided that it is up-to-date) within a **prospectus disseminated in the case of a public offering** or of an application for admission to trading of securities on a regulated market. The production of a URD can facilitate such transactions and speed up the process.

#### The contents of the URD are governed by:

- Regulation (EU) 2017/1129 of the European Parliament and of the Council of June 14, 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71;
- Delegated Regulations 2019/979 and 2019/980 supplementing Regulation 2017/1129;
- an AMF Instruction of December 6, 2019, amended on April 29, 2021 (AMF Instruction no. 2019-21), on the procedures for filing and publishing prospectuses<sup>82</sup>;
- an AMF Position/Recommendation of January 8, 2021, updated on April 29, 2021 (AMF Position/Recommendation no. 2021-02), on compiling universal registration documents;
- AMF recommendations; and
- ESMA recommendations and ESMA Q&A of January 28, 2021 on Regulation (EU) 2017/1129 of June 14, 2017 (known as "PD3").

79 – Articles 221-3 *et seq.* of the AMF General Regulations.

80 – Article 221-4 V of the AMF General Regulations.

81 – ESMA, press release, "New rules make EU issuers' annual financial reports machine-readable", December 18, 2017.

82 – AMF, Filing of prospectuses and universal registration documents: the AMF brings its instruction in line with the Prospectus Regulation, December 6, 2019.

The URD, established by PD3 repealing the Prospectus Directive, replaced the French registration document as of July 21, 2019. In principle, the filed URD is only subject to a pre-publication review by the competent authority for 2 consecutive years (compared with 3 years previously in France). Following this consecutive two-year review period, the URD is subject only to random reviews by the competent authority following publication. The document, which may be drafted by issuers whose securities are admitted to trading on a regulated market or a multilateral trading facility, must describe the issuer's organisation, business, financial position, earnings and outlook, and governance and shareholding structure (see Section 9 "Financial transactions"). In addition to the information already contained in the registration document, PD3 introduces requirements for more detailed information and/or information to be presented differently in the URD on the issuer's strategy, non-financial information and risk factors. Concerning the **presentation of risk factors**, in accordance with article 16 of PD3, companies must:

- assess the materiality of the risk factors based on the probability of their occurrence and the expected magnitude of their negative impact;
- present the risk factors in a limited number of categories, depending on their nature;
- mention the most material risk factors first in each category;
- describe each risk factor adequately, explaining how it affects the issuer (or the securities being offered or to be admitted to trading).

All of these rules are detailed in the AMF Guide to preparing prospectuses and the information to be provided for public offerings or admission to trading of securities<sup>83</sup>, which covers the applicable law and AMF and ESMA guidance.

For further details on the presentation of risk factors in the URD, see Section 9 "Financial transactions").

There is **no deadline imposed by regulations for the publication of a URD**. Nonetheless, in practice, the URD is usually disclosed before the shareholders' meeting and within 4 months of the financial period closing date to serve as the annual financial report and the management report. When the URD includes all of the information required in the annual financial report, the issuer is exempt from the requirement to publish an annual financial report separately under the condition that (i) a press release indicating the availability of the URD is disseminated electronically and (ii) the document is archived on the issuer's website, or on a referenced archive site, for a period of 10 years (*an example of a press release is set out in appendix 11 of the Guide to filing regulatory information with the AMF and to its dissemination*). Additional information concerning the preparation of the URD is presented in the Appendix.

Issuers must file their URD, any accompanying documents and all subsequent versions (after filing or approval, the URD may be updated as and when) with the AMF, using the dedicated "ONDE" extranet site, which can be accessed from the AMF's website at the following address: <https://onde.amffrance.org/>.

To find out about the possibility of filing the URD with the commercial court registry, see "Filing at the commercial court registry" below.

## Integrated report

Despite the fact that regulators aim to promote transparency, it is not always easy for stakeholders to understand a company's strategy from its regulatory information.

Listed companies and their multi-faceted business models deserve a clearer presentation than can presently be achieved from simply comparing their current publications, i.e., their annual report, URD, CSR report, etc.

**Hence, the idea of the “integrated report” is to present stakeholders (and not just the financial community) with a clear, straight-forward overview of the issuer's strategy, adapted to the specific features of the company, addressing in particular social, environmental and labour-based aspects from the perspective of future ambitions and current operations.** Mirroring international practices, more and more French issuers are publishing integrated reports as part of a voluntary, non-compulsory approach to communication that is easier for stakeholders to understand, drawing on existing indicators published as part of regulatory information requirements.

In 2020, 47 companies published an integrated report, including seven for the first time. The integrated report has been adopted in all business sectors. Half of the reports published were from companies in the consumer goods and industrial sectors<sup>84</sup>.

As set out in its Recommendation no. 2016-13 on social, societal and environmental responsibility, the **AMF supports the inclusion of an integrated report in the URD**, *“although the initial versions of this report now under development have most frequently been designed, for practical reasons (learning curve, gradual selection of indicators, data reporting times, etc.) as separate documents”*. In particular, the AMF mentions that *“providing integrated presentations in the registration document is helpful to investors, provided the integrated reporting maintains the overall goal/objective of presenting the information concisely. Investors could thus have a summary of the company's strategy and performance indicators, which would serve as an excellent introduction to the registration document (URD)”*.

The *Mouvement des Entreprises de France* (MEDEF) has also declared its stance in favour of integrated reporting so as to improve the quality of the information made available to investors and other stakeholders, on condition that it be a voluntary, optional measure, meeting the need for a summary of relevant information. The goal is not simply to collect data, but to provide an overall, intelligible picture of the company's business model, strategy, organisation and corporate governance, with a carefully selected number of key indicators<sup>85</sup>.

84 – PwC – *Le rapport intégré: les pratiques des sociétés cotées en 2020. Un enjeu clé dans la communication de l'entreprise* (in French).

85 – MEDEF, CSR Committee, *Retours d'expérience sur le reporting intégré* (Feedback on integrated reporting), November 2017.

### Statutory auditors' fees

The decree dated February 27, 2017 **abolished the requirement for issuers of equity instruments to publish a press release on statutory auditors' fees** within 4 months of the financial period closing date (deletion of article 222-8 of the AMF General Regulations and of AMF Instruction no. 2006-10 on the disclosure of fees paid to statutory auditors and members of their networks).

However, issuers are required to **disclose fees paid to statutory auditors in the notes to the consolidated financial statements** prepared under IFRS or French GAAP, or where no consolidated financial statements are prepared, in the notes to the statutory financial statements, pursuant to ANC Standard nos. 2016-07, 2016-09 and 2016-10. Issuers are required to disclose, for each statutory audit firm, the total amount of fees carried in the income statement for the period, separating fees relating to the statutory audit engagement from fees paid in respect of other services.

### Publication in the BALO

Issuers must publish the following documents in the BALO within 45 days of the shareholders' meeting:

- a statement that **the financial statements were approved** without modification by the shareholders' meeting and indicating the date of dissemination of the annual financial report or, in the event of modification versus the financial statements published in the annual financial report, the approved annual financial statements and consolidated financial statements, accompanied by the certification of the statutory auditors; and
- **the decision regarding the allocation of net income.**

See also the BALO publication obligations regarding the shareholders' meetings in Part 4 "Corporate governance – Shareholders' meetings".

### Filing at the commercial court registry

Within one month of the approval of the annual financial statements by the shareholders' meeting or within the 2 months following this approval when the filing is made electronically, issuers shall file **the following documents** at the commercial court registry where their headquarters are registered:

- the annual financial statements and, where applicable, the consolidated financial statements;
- the management report as required by the French Commercial Code, along with the accompanying corporate governance report;
- the statutory auditors' report on the annual financial statements and, where applicable, the consolidated financial statements;
- the proposed allocation of net income and the resolution approved at the shareholders' meeting.

Companies whose URD comprises some or all of the above-mentioned documents are authorised to file it at the commercial court registry in lieu of filing the mandatory annual reports it contains<sup>86</sup>. The URD must include a table of contents enabling the commercial court registry to identify the documents it contains.

## DISCLOSURE OF HALF-YEARLY RESULTS

To a large extent, requirements related to the disclosure of half-yearly results are **comparable to those applicable to the annual results** concerning the following items:

- press releases;
- information meetings; and
- financial notices.

An information meeting supported by slide presentations is recommended and can be held through a physical meeting, webcast or conference call.

The main difference with the annual results concerns the **disclosure deadline, which is shorter for the half-yearly financial report**; this disclosure must take place within the 3 months following the end of the first half-year period.

No documents need to be filed with the commercial court registry.

Some issuers may decide to update their URD at the same time. The disclosure of half-yearly results, which should take place within 3 months of the half-year financial period closing date, therefore includes several types of mandatory or optional documents for which the type, method and calendar of dissemination are as follows:

Type of document/ event	Driving factor	Dissemination method	Calendar
Press release	Mandatory	Through electronic means Posted on the issuer's website	After the meeting of the board of directors or the supervisory board
Information meeting	Common market practice	Physical meeting/conference call	
Financial notice	Optional	Written press, internet or radio	
Half-yearly financial report	Mandatory	Through electronic means, with the possibility of only disclosing the means by which the report has been made available (regulatory information) Posted on the issuer's website and sent to the AMF	Within 3 months following the end of the first half-year period
Update to URD	Optional	Posted on the issuer's website and sent to the AMF	No regulatory deadline

86 – Article L. 232-23 of the French Commercial Code.

Issuers listed on Euronext Growth shall disclose a report covering the first half-year period within 4 months of the end of the second quarter (Euronext Growth Market Rules, section 4.2). Such reports include half-yearly financial statements and a management report on the period, and shall be posted on the issuer's and Euronext Growth's website for a two-year period.

Issuers listed on Euronext Access+ must also publish the same information within 4 months of the end of the second quarter (Euronext Access Market Rules, section 3.2).

### Half-yearly financial report

Issuers listed on Euronext are required to disclose half-yearly financial reports and file them within 3 months of the end of the first half-year of their accounting period<sup>87</sup>.

#### The half-yearly financial report shall include the following items:

- the condensed or full financial statements for the past half-year, presented in consolidated form where applicable, in which case the issuer may prepare full or condensed financial statements pursuant to IAS 34 ("Interim Financial Reporting");
- a half-yearly management report (for which the content is defined in article 222-6 of the AMF General Regulations);
- a statement from the natural persons assuming responsibility for the half-yearly financial report (regarding this item, it seems logical that the same individuals sign both the annual and half-yearly financial reports);
- the statutory auditors' review report on the half-yearly financial statements, which includes a reference to the fairness and consistency with the financial statements of the information given in the half-yearly management report.

**If a company discloses a complete set of financial statements** in its half-yearly financial report, the form and content of such statements **shall be compliant with the requirements of IAS 1** ("Presentation of Financial Statements"). If a company discloses a condensed or summarised set of financial statements, such statements shall at least contain all items and sub-totals presented in the most recent annual financial statements, as well as the selection of explanatory notes to the financial statements required by IAS 34 ("Interim Financial Reporting").

They should also present the financial statement items and notes to the financial statements for which the omission would result in the half-yearly condensed financial report being misleading.

Where the issuer is not required to produce consolidated financial statements or to apply international accounting standards, the half-yearly financial statements shall at least include (i) a balance sheet, (ii) an income statement, (iii) a table indicating the changes in shareholders' equity, (iv) a cash flow statement, and (v) explanatory notes to the financial statements which may, should the financial statements be condensed, contain only a selection of the most significant notes.

The condensed balance sheet and income statement shall contain all of the items and sub-totals contained in the issuer's most recent annual financial statements. Additional items may be added if, by excluding them, the half-yearly financial statements would provide a misleading view of the assets, financial position and results of the issuer. The notes to the financial statements should contain at least enough information to ensure the comparability of the condensed half-yearly financial statements with the annual financial statements, and sufficient information and commentary to ensure that the reader is correctly informed of any material changes to amounts or trends in the half-year period concerned, which are reflected in the income statement and balance sheet<sup>88</sup>.

Although the approval of half-yearly financial statements by the board of directors or the supervisory board is not legally required, **the publication of those financial statements without the approval of the board of directors or supervisory board or without them having been previously reviewed by its audit committee would seem imprudent** and contrary to the principles of corporate governance<sup>89</sup>.

The half-yearly management report included in the half-yearly financial report shall include the following information:

- material events that occurred in the first half of the year and their impact on the half-yearly financial statements;
- a description of the main risks and uncertainties for the second half of the year. It should be noted that an update of the risks described in the management report or the URD is sufficient;
- for issuers of shares, material transactions between related parties (within the meaning of IAS 24 ["Related Party Disclosures"]).

Like the annual financial report, **the half-yearly financial report must be disclosed to the public through electronic means**, in particular via the issuer's website, in accordance with the means of dissemination for regulatory information described in Part I of this guide<sup>90</sup>.

However, the issuer can choose to disseminate a simple press release indicating the means by which the half-yearly financial report will be made available<sup>91</sup>.

Lastly, if the issuer releases an amendment to its URD, which includes all information required in the half-yearly financial report, within 3 months of the end of the first six-month period, it is exempt from a separate disclosure of the half-yearly financial report.

## Publication in the BALO

Half-yearly information is not required to be published in the BALO.

88 – Article 222-5 I of the AMF General Regulations.

89 – ANSA statement no. 06-053 of the Legal Committee of October 4, 2006.

90 – Articles 221-3 *et seq.* of the AMF General Regulations.

91 – Article 221-4 V of the AMF General Regulations; an example of a press release is provided in appendix 8 of the AMF Guide to filing regulatory information with the AMF and to its dissemination, dated March 26, 2019.

## DISCLOSURE OF QUARTERLY OR INTERIM INFORMATION

**As of January 1, 2015, “quarterly financial information” within the meaning of the European Transparency Directive no longer has to be published.** Issuers may, however, voluntarily decide to disclose quarterly (or interim) financial information, and quarterly (or interim) financial statements<sup>92</sup>. The AMF draws issuers’ attention to **the risks of failing to report any financial information over an excessively long period** (risk of failing to meet ongoing information requirements) and recalls that any such lack of reporting is contrary to the interests of investors and the smooth operation of the market.

### Characteristics of quarterly or interim financial information

To ensure issuers have all the information needed before they decide whether or not to disclose quarterly (or interim) financial information, the AMF has set out the following four specifications:

- The decision to communicate quarterly financial information or not should be consistently applied over time to ensure the market stays properly informed. The AMF recommends that companies outline their policy in the disclosure calendar they publish on their website at the start of each year.
- Should the issuer choose to disclose quarterly financial information, the information should be accurate, true and fair, in accordance with the principles that apply to financial communication. While issuers can choose to present the quarterly financial information in any format, the AMF recommends that, to keep the market properly informed, the information should be released with comments explaining the circumstances in which business took place and in particular reviewing operations and significant events over the quarter. This sheds light on the financial information and helps investors fully understand the issuer or group’s position.
- Issuers should uphold the principle of equal access to information among investor categories and countries. If a company discloses quarterly financial information to specific investors, analysts or financial partners in any country whatsoever, this information must be immediately brought to the public’s attention in the form of a press release disseminated according to the methods set out under articles 221-3 of the AMF General Regulations, in particular on the issuer’s website<sup>93</sup>.
- The quarterly financial information at the issuer’s disposal may constitute inside information and, as such, must be disclosed as part of ongoing information requirements (see Part 1, Section 5 “Requirement for market disclosure of ‘inside information’ concerning the issuer”). The AMF recommends that companies that choose not to disclose quarterly financial information pay particularly close attention to their ongoing information requirements in order to improve investor confidence in the transparency of their financial communication.

92 – AMF Position/ Recommendation no. 2016-05 – Guide to periodic disclosures by listed companies (section 10), updated on April 29, 2021.

93 – Failure (example) to uphold the principle of equal access to information among investor categories (analysts and shareholders) according to article 223-10 of the AMF General Regulations (AMF Enforcement Committee, November 2, 2017).



## COMPONENTS RELATED TO PERIODIC DISCLOSURES

### Disclosure of alternative performance measures

Performance indicators not defined by accounting standards, otherwise known as alternative performance measures (APMs) or “Non-GAAP” measures, can provide investors with **additional relevant information** that gives a better understanding of an issuer’s strategy and financial performance.

Although they are not defined by accounting standards, **these indicators are sometimes disclosed in the financial statements**, either because they are tracked by the chief operating decision maker as part of business segment reporting, or because they round out the disclosures required under IFRS. If they are included in the financial statements, these indicators must comply with the accounting principles of presentation and consistency.

**If they are not included in the financial statements, their disclosure must comply with the ESMA guidelines** issued in October 2015 and reiterated in an AMF Position intended to enhance the comparability, reliability and understandability of APMs<sup>94</sup>. This position is applicable to APMs communicated by issuers or persons responsible for a prospectus, publishing regulatory information or prospectuses from July 3, 2016, in accordance with the following principles:

- communicating clearly and intelligibly the definitions of all APMs used, their components, the basis of calculation adopted and details of all material assumptions used;
- including denominations that reflect the content and basis of calculation of APMs to avoid sending misleading information to users;
- not erroneously qualifying non-recurring or unusual items. For example, items recognised in prior periods that are likely to recur in future periods will rarely be deemed non-recurring or unusual items (such as restructuring costs or impairment losses);
- reconciling APMs with financial statement aggregates from the corresponding period, or the closest sub-total or total, by disclosing amounts and identifying and explaining the main adjustments made:
  - when reconciling items are included in the financial statements, users must be able to identify these in the financial statements,
  - when reconciling items are not taken directly from the financial statements, the reconciliation must show how the figure has been calculated;
- giving the reason for using APMs so that users can appreciate their relevance and reliability;
- not assigning APMs greater importance or emphasis than indicators taken directly from the financial statements;
- including benchmark indicators for corresponding prior periods. When APMs are based on forecasts or estimates, benchmark indicators must reflect the most recent historical data available;

- presenting reconciliations for all benchmark indicators disclosed;
- the definition and calculation of APMs must be consistent over time. In exceptional circumstances when issuers decide to redefine an APM, they must:
  - explain the changes made,
  - explain how the changes will provide more reliable and relevant performance indicators, and
  - provide comparative restated figures;
- if an issuer stops disclosing an APM, they must explain why they consider that this indicator no longer provides relevant information;
- with the exception of prospectuses, APM disclosure requirements may be met by referring back to other previously published and readily accessible documents that contain the requisite information in relation to the APMs.

ESMA has also published Questions and Answers on its APM guidelines, in particular specifying that they apply to quarterly and interim information published under article 17 of the Market Abuse Regulation, and that since the concept of operating income is not defined under IFRS, the rules governing APMs should be applied. In the latest update of its Questions and Answers (April 2020), ESMA added question 18 “How should an issuer present the impact of COVID-19 for the purpose of the APM Guidelines?” ESMA:

- urges caution when making adjustments to previously used APMs or including new APMs, which must intend to provide transparent and useful information to the market; and
- observes that **it may not be appropriate to include new APMs or to adjust previously used APMs insofar as the impacts of COVID-19 have a pervasive effect** on the company's overall financial performance and/or its cash flow, as these new or adjusted APMs may mislead users' understanding of the issuer's financial situation.

Therefore, rather than adjusting existing APMs or including new APMs, ESMA urges issuers to **improve their disclosures and include narrative information** in their communication documents in order to explain (i) how COVID-19 impacted and/or is expected to impact their operations and performance, (ii) the issuers' level of uncertainty concerning their operations and performance, and (iii) the measures adopted or in the process of being adopted to address the COVID-19 outbreak<sup>95</sup>.

### Changes in the segment organisation

Segment information disclosed by companies is a key item of financial communication. Segment information corresponds to quantitative data for each of the issuer's business activities and geographic areas. This information must be **consistent with the segment information presented in the consolidated financial statements**, which must be prepared in accordance with IFRS 8 (*“Operating Segments”*).

It must be prepared on the basis of the entity's internal reporting and monitored by the chief operating decision maker when allocating resources to different segments and regularly assessing their performance.

Segment information may therefore change in line with changes to the internal reporting, such as a change in activities or economic models due to external growth transactions, restructuring or discontinued activities. Segment information may also change if changes occur to the indicators monitored by the group's chief operating decision maker.

It is important to ensure **consistency between financial press releases and the segment information** that is presented in the financial statements, in terms of both the definition of segments and the choice of performance measures.

The AMF also recommends rounding out segment information with a breakdown by geographical area and operational sub-segments at risk when communicating results to the market<sup>96</sup>.

	IFRS 8
General principle for determining operating segments	Segments are determined on the basis of internal reporting
Quantitative information	At least revenue, segment profit or loss, segment assets and liabilities
Evaluation methods of segment information	Evaluation according to the accounting principles adopted for internal reporting and, where applicable, reconciliation of segment aggregates with the corresponding IFRS consolidated amounts

### Changes in the consolidation scope of the issuer (publication of pro forma information)

AMF Recommendation no. 2013-08, revised on August 2, 2019 following the entry into force of Regulation (EU) 2017/1129 and the related Delegated Regulations, was repealed, and the provisions thereof were included in AMF Position/Recommendation DOC-2021-02 (Guide for compiling universal registration documents).

Changes in the consolidation scope may be associated with one or more acquisitions, divestitures, spin-offs, carve-outs, mergers and partial contributions of assets. If these changes have a material effect on the consolidated financial statements, the issuer should provide pro forma information (an accounting presentation allowing users to compare two financial periods by harmonising certain variables such as the company's scope of consolidation) illustrating the results of the new scope as if the operation(s) had taken place at the beginning of the reporting period.

<sup>96</sup> – AMF Position/Recommendation no. 2016-05 – Guide to periodic disclosures by listed companies (section 10).

The pro forma disclosures required are the same, regardless of whether they are included in a URD or a prospectus, but differ if they are included in a (annual or half-yearly) financial report. The table below provides a summary of the various documents and their implication on the pro forma information to be reported:

	Regulatory texts	Driving factors	Threshold	Reporting period	Nature of the information	Specific statutory auditors' report
Prospectus or URD	Annex II of the European Regulation  For the URD: see Annex 20 of Delegated Regulation 2019/980 and Annexes 1 and 12 of ESMA's technical advice no. 31-62-800  AMF Instruction no. 2005-11 (DOC-2019-21), amended on January 8, 2021	Material changes in gross values	25% The threshold should be assessed on a transaction-by-transaction basis	Current period Most recent prior period, and/or most recent interim period	No detailed definition, however the following could be provided, for example: balance sheet, income statement and supporting notes, statement of changes in shareholders' equity, cash flow statement	Yes (in accordance with Annex 1 of Delegated Regulation 2019/980)
Financial report	AMF Position/ Recommendation no. 2021-02	Change in consolidation scope	25% The threshold should be assessed on a transaction-by-transaction basis	At least the current period (period concerned)	Provide income statement intermediate balances in the notes to the financial statements in addition, if applicable, to the information required by accounting requirements (see below)	None (information is disclosed in the notes to the financial statements)
IFRS	IFRS 3, IFRS 5	Business combinations (IFRS 3)/ Divestiture or closure of a business (IFRS 5)	No threshold	Current period (period concerned)	- IFRS 3: impact on revenue and income as if the combination took place on the first day of the financial period - IFRS 5: presentation of the impact on the income statement and the balance sheet on separate lines (restatement of prior-year income statements, however no comparative balance sheet)	None (information is disclosed in the notes to the financial statements)

The pro forma information provided will also depend on the date of the event triggering the communication.

The table below summarises, for the various documents, the applicable regulatory texts and the pro forma information requirements based upon whether the transaction takes place during the financial period concerned or a prior period:

	Financial report	URD/prospectus
Regulatory texts	Information required by AMF Position/ Recommendation no. 2021-02	Information required by Annex II of the European Regulation and AMF Instruction DOC-2019-21  For the URD: see the Delegated Regulations of March 14, 2019 and Annexes 1 and 12 of ESMA's technical advice no. 31-62-800
Transaction occurred during the financial year or period concerned	Provide income statement intermediate balances in addition, if applicable, to the information required by accounting requirements	No additional information required except for information concerning acquisitions of isolated assets or liabilities, or significant financial commitments not included in the financial statements (intended sale), or sales of businesses which cross the 25% threshold but where the business transferred is not considered to be discontinued as defined by IFRS 5 (without restatement of income)
Transaction occurred following the financial year or period concerned		Provide pro forma information as required by Annex II of the European Prospectus Regulation  For the URD: see the Delegated Regulations of March 14, 2019 and Annexes 1 and 12 of ESMA's technical advice no. 31-62-800  + specific report from the statutory auditors

According to ESMA, when an issuer prepares pro forma financial information on a voluntary basis (for example, where there are no material changes to the gross values) for inclusion in a URD or prospectus, this information must meet the requirements set out in Annex 20 of Delegated Regulation 2019/980, and the statutory auditors must issue a specific report thereon<sup>97</sup>. The AMF has stated that no exemptions or waivers to this obligation are possible, including for an annual financial report or half-yearly financial report included or incorporated by reference in a URD or prospectus<sup>98</sup>.

### Accounting restatements

Should an issuer make an accounting restatement related to an error and/or a change in accounting methods, the information associated with the restatement is in principle disclosed to the market within periodic disclosures in the explanatory notes to the financial statements; it shall be in accordance with the principles prescribed in IAS 8 ("Accounting Policies, Changes in Accounting Estimates and Errors").

If the issuer believes that an immediate disclosure is appropriate, that disclosure should mention, at least, the impact of the restatement on the financial statements if such information is sufficiently reliable, the cause and nature of the error, as well as, if such is the case, the financial impact on objectives that may have been communicated.

97 – ESMA – Guideline 26 of July 15, 2020.

98 – Position/ Recommendation no. 2021-02: Guide for compiling universal registration documents, Part 3.

99 – ESMA public statement no. 32-63-791 of October 22, 2019.

100 – AMF Recommendation no. 2019-13 of October 23, 2019 – 2019 financial statements and review of the financial statements.

101 – AMF Recommendation no. 2019-13 of October 23, 2019 – 2019 financial statements and review of the financial statements.

102 – AMF Position/ Recommendation no. 2016-05 – Guide to periodic disclosures by listed companies, updated on April 29, 2021.

103 – For further information, see *Reporting RSE, Déclaration de performance extra-financière* (CSR reporting, Non-financial performance statement), 2<sup>nd</sup> edition, published by MEDEF on September 25, 2017.

104 – Articles L. 225-102-1, I to III, L. 22-10-36, R. 225-104 and R. 22-10-29 of the French Commercial Code. The non-financial performance statement also applies to companies whose securities are not admitted for trading on a regulated market, but whose total assets and liabilities, or total sales, exceed €100 million and who employ more than 500 people on average

The issuer shall judge if the disclosure of the potential impact of such restatement on its safety clauses or bank covenants is relevant and justified.

ESMA<sup>99</sup> and the AMF<sup>100</sup> have also developed recommendations relating to the application, since January 1, 2019, of IFRIC 23 (“Uncertainty over Income Tax Treatments”). The AMF recommends that companies significantly concerned by the interpretation present the main judgements made and assumptions used in the financial statements. As such, companies may specify:

- whether the company has considered uncertain tax treatments separately or together; and
- if the company concludes it is not probable that the taxation authority will accept an uncertain tax treatment, whether the effect of the uncertainty has been reflected using the most likely amount or the expected value (sum of the probability-weighted amounts in a range of possible outcomes).

Lastly, the AMF and ESMA stressed that as Argentina is now considered to be a hyperinflationary economy under IFRS, as of July 1, 2018, this will have accounting and financial impacts that will need to be reflected in the financial statements and disclosures of companies that are materially exposed to the country<sup>101</sup>.

### Financial communication calendar

The AMF recommends that issuers define and publish their provisional financial communication calendar, specifying the dates of their periodic disclosures and the reasons for choosing these dates, **in their annual report and on their website, in a clearly identified section**. To comply with good practices, this calendar should also be published in a press release.

If one or more of the dates initially disclosed are changed, companies should determine whether a press release is required (for the specific case of a change in the dividend payment date, see Section “Change in the dividend payment date” below).

In any case, the communication calendar is to be updated each year<sup>102</sup>.

### Information on Corporate Social Responsibility (CSR)

A **non-financial performance statement** (NFPS)<sup>103</sup> must be included in the management report of companies whose securities are admitted to trading on a regulated market and (i) whose total assets and liabilities exceed €20 million or whose net revenue exceeds €40 million and (ii) that employ more than 500 people on average during the financial year. Companies not listed on a regulated market are also subject to this requirement if they exceed certain thresholds<sup>104</sup>.

Companies preparing consolidated financial statements shall publish a NFPS if all the companies included in their consolidation scope exceed these thresholds. On the other hand, companies that exceed these thresholds but are under the control of another company, which includes them in its consolidated financial statements, are not required to disclose non-financial information if the parent company issues a consolidated statement.

In line with the “comply or explain” principle, the NFPS presents information on the way in which the company takes account of **the social and environmental impact of its business activities** (including the impacts of its business activities and the use of the goods and services it produces on climate change, as well as its social commitments to sustainable development, the circular economy, combating food waste, *“combating food insecurity, respecting animal welfare and eating responsibly, fairly and sustainably”*<sup>105</sup>, collective agreements in place within the company and their impact on the company’s financial performance, as well as on employees’ working conditions, actions designed to combat discrimination and promote diversity and of *“measures in support of people with disabilities”*<sup>106</sup>) but only *“to the extent necessary for an understanding of the company’s situation and changes in its business, economic and financial results, and the impact of its activity”*<sup>107</sup>.

Companies listed on a regulated market and exceeding the above-mentioned thresholds must present the impact of their business activities **on human rights** and the **fight against corruption and tax evasion**<sup>108</sup>. According to the ANSA’s legal committee meeting of December 5, 2018, no. 18-061 (new statements added to the NFPS: entry into force), each company interprets these provisions in light of its organisational structure and field of operation. Where appropriate, the company may provide general information regarding its compliance with reporting requirements in the area and indicate that, for the financial year, no consequences of the group’s activities in this respect have been identified when conducting the appropriate internal control measures.

For each type of information mentioned above, the statement shall include<sup>109</sup>:

- a description of the main risks related to the company’s business activities, where appropriate, as well as its business relations, products and services;
- a description of the policies applied in respect of such risks, along with, where appropriate, the reasonable procedures put in place to anticipate, identify and limit the occurrence of these risks;
- the results of these policies, including key performance measures. The statement presents data collected over the year then ended and, where appropriate, the previous financial year so as to facilitate comparison of the data. When the company complies voluntarily with a national or international standard on social or environmental matters, it must mention the standard and indicate the pertinent recommendations<sup>110</sup>.

The European Commission has issued non-restrictive guidelines aiming to assist companies in disclosing non-financial (i.e., environmental, social and corporate governance) information relative to diversity, in accordance with European Directive 2014/95/EU of October 22, 2014<sup>111</sup>.

during the financial year. Other entities defined as public interest entities by the Accounting Directive (2013/34/EU) that exceed the thresholds stipulated for listed or non-listed companies are also subject to this requirement pursuant to specific legislation.

105 – Addition from law no. 2018-938 of October 30, 2018 to balance trade relationships in the agricultural and food sector and provide food which is healthy, sustainable and accessible to all.

106 – Addition from law no. 2018-771 of September 5, 2018 on the freedom to choose one’s professional future.

107 – Article L. 225-102-1 III of the French Commercial Code.

108 – Addition from law no. 2018-898 of October 23, 2018 relating to the fight against fraud.

109 – Article R. 225-105 I of the French Commercial Code.

110 – Article R. 225-105-1, I and II of the French Commercial Code.

111 – European Commission, Guidelines on non-financial reporting (methodology for reporting non-financial information), 2017/C 215/01, July 5, 2017.

The AMF specifies that this non-financial information must be pertinent, material and specific to the entity and that, in this respect, the increasing volume of non-financial information should lead companies to pursue measures to simplify the information while also ensuring its pertinence, which may require them to make messages more concise and select appropriate indicators<sup>112</sup>. The AMF encourages the practice, developed by certain companies, of ranking sustainable development issues based on strategic priorities and stakeholder expectations (particularly through materiality studies), insofar as it renders the information more pertinent and, thereby, contributes to the proper application of the “comply or explain” principle through more detailed explanations. The AMF also recommends, as part of the implementation of materiality studies, ensuring total transparency regarding the methodology used and the results of the analysis of the labour-related, social and environmental impacts of the company’s activities, so as not to emphasise only the issues that are financially material for its own business. These recommendations are reiterated in the 2019 AMF report on the social, societal and environmental responsibility of listed companies, following an analysis of the first non-financial information statements of 24 French listed companies<sup>113</sup>.

In its 2019 annual report, the AMF emphasised the need **to consolidate non-financial information**. Some companies do not yet report on all the undertakings within their scope of consolidation. The scope may also vary between topics and indicators without explanation, which impairs the transparency of the report. The AMF also noted that indicators should be sorted to **highlight those that are most relevant** for assessing the outcomes of the policies implemented. Additionally, the calculation methodology must be outlined and consistent over time. Lastly, the overall consistency of non-financial reporting must be ensured by creating a link between the risk analysis performed with respect to the business model and the description of the policies, action plans, outcomes and indicators attached to each of the significant risks identified<sup>114</sup>.

The NFPS is presented in a dedicated section of the management report, but companies can also use all or part of this information in other financial communication materials (URD, annual financial report, website, etc.). In this case, the AMF recommends that companies ensure **that the non-financial information is consistent across the different communications**, for example using cross-reference tables and references to the website. In its Guide for compiling universal registration documents<sup>115</sup>, the AMF states that companies should seek to ensure maximum consistency between the URD and the information provided in the NFPS<sup>116</sup>.

For example:

- the company’s business model, as described in the NFPS, may be used as part of the description of the company’s strategy required by the Prospectus Regulation (Delegated Regulation 2019/980, Annex 1, Item 5.4);
- the risks presented in the NFPS should be described in the “Risk factors” section of the URD if they are also specific and material within the meaning of the Prospectus Regulation. The URD may direct readers to the dedicated section of the NFPS for more information.

112 – AMF Recommendation DCC-2018-12, Annual financial report – 2018 Financial statements and review of the 2016-2017 financial statements, October 29, 2018, recalling a recommendation from the AMF report on social, societal and environmental responsibility, November 2016.

113 – The 2019 AMF report on social, societal and environmental responsibility for listed companies and AMF press release of November 14, 2019.

114 – AMF, 2019 Annual report, page 74.

115 – Position/ Recommendation no. 2021-02.

116 – AMF Position/ Recommendation no. 2016-05 – Guide to periodic disclosures by listed companies (section 5), updated on January 8, 2021.



The AMF gives an example of how to reconcile the non-financial risks in the NFPS and the “Risk factors” section of the URD.

The statement must be made available to the public and easily accessible on the company's website for a five-year period, within 8 months following the financial period closing date<sup>117</sup>.

**The information contained in the statement must be verified by an independent third-party body**, whose opinion is then made known to the shareholders, in companies whose (i) total assets and liabilities or net revenue exceed €100 million and (ii) number of employees is more than 500, whether or not the company's securities are traded on a regulated market. The independent third-party body's report must include (i) an opinion as to the statement's compliance with article R. 225-105 and the fairness of the information provided, and (ii) the procedures implemented by the independent third-party body to carry out its audit engagement<sup>118</sup>.

There are likely to be changes over the coming years in the rules regarding the information to be presented in the NFPS, the verification of the statement and the companies subject to the obligation to issue one. On April 21, 2021, the European Commission published a proposal for a Corporate Sustainability Reporting Directive (CSRD), which would replace Directive 2014/95/EU (Non-Financial Reporting Directive – NFRD). The aim of the proposed directive is to enhance and harmonise the sustainability information disclosed by companies, in order to give financial institutions, investors and the broader public access to reliable and comparable sustainability information. To accompany the new directive, European non-financial reporting standards are currently being drawn up by the European Financial Reporting Advisory Group (EFRAG). Once adopted, the CSRD will be applicable for reporting periods beginning on or after January 1, 2023.

Companies subject to the NFRD will also be required to disclose, as of January 1, 2022 in their NFPS for the 2021 reporting period, information on the proportion of their business activities that can be considered sustainable within the meaning of the EU Taxonomy Regulation of June 2020 (2020/852/EU). The disclosures concern the proportion of revenue, capital expenditure and operating expenditure associated with environmentally sustainable economic activities. An initial Delegated Act was published on April 21, 2021, establishing a first set of technical screening criteria for determining which business activities contribute substantially to two of the environmental objectives of the Taxonomy Regulation: climate change adaptation and climate change mitigation.

### Duty of care plan of parent companies and contractors

Since the entry into force of law no. 2017-399 of March 27, 2017 on the duty of care incumbent on parent companies and contractors, companies falling within the scope of the new article L. 225-102-4 of the French Commercial Code are required to draw up, implement and publish a duty of care plan (see below for more details) along with a report on the implementation of this plan. These two documents are made public, and

117 – Article R. 225-105-1 III of the French Commercial Code.

118 – Article R. 225-105-2 of the French Commercial Code.

are **included in the management report** referred to in paragraph 2 of articles L. 225-100 and L. 22-10-35 of the French Commercial Code.

This article concerns any company which, at the end of two consecutive financial periods, (i) employs at least 5,000 people within the company itself and within its direct or indirect subsidiaries and has its registered office in France, or (ii) employs at least 10,000 people within the company itself and within its direct or indirect subsidiaries and has its registered office in France or in another country.

The plan sets out the reasonable oversight measures for identifying risks and preventing any serious breach of human rights and fundamental freedoms, personal health and safety and the environment resulting from the business activities of the company or of the companies it directly or indirectly controls within the meaning of article L. 233-16 II of the French Commercial Code, as well as the business activities of subcontractors or suppliers with which the company has established trade relations, when these activities are related to the aforementioned relationship.

## 2 ■ DISCLOSURE OF ESTIMATES OR PROSPECTIVE INFORMATION

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### DISCLOSURE OF QUALITATIVE PROSPECTIVE INFORMATION

The disclosure by the issuer of qualitative prospective information to the market is **required**:

- in the management report prepared for the shareholders' meeting in application of articles L. 233-26 and L. 232-1 II of the French Commercial Code (article L. 233-26: *"The group management report describes [...] foreseeable developments [for the group comprising all the companies included in the consolidation scope]"*; article L. 232-1 II: *"The management report describes [...] the foreseeable developments [of the company]"*;
- in the URD, pursuant to Commission Delegated Regulation 2019/980 of March 14, 2019:
  - pursuant to Item 18.7 of Annex 1 of Delegated Regulation 2019/980, the issuer is required to *"describe any significant change in the financial position of the group which has occurred since the end of the last financial period for which either audited financial statements or interim financial information have been published, or provide an appropriate negative statement"*; and
  - pursuant to Item 10.1 of Annex 1 of Delegated Regulation 2019/980, the issuer is required to provide a *"description of (a) the most significant recent trends in production, sales and inventory, and costs and selling prices since the end of the last financial year to the date of the registration document, (b) any significant change in the financial performance of the group since the end of the last financial period for which financial information has been published to the date of the registration document, or provide an appropriate negative statement"*;

- pursuant to Item 10.2 of Annex 1 of Delegated Regulation 2019/980, the issuer is required to communicate *“information on any known trends, uncertainties, demands, commitments or events that are reasonably likely to have a material effect on the issuer’s prospects for at least the current financial year.”*

In some cases, qualitative prospective information communicated by an issuer can be requalified by the AMF as a forecast of results (see below).

## DISCLOSURE OF QUANTITATIVE PROSPECTIVE FINANCIAL INFORMATION

The disclosure of prospective quantitative information to the market by the issuer concerning its own outlook is **optional** and entirely at the issuer’s discretion. Such disclosures depend notably on the existing related business practices and specificities of a particular business segment. This type of information should be differentiated from estimated financial data relating to a past period (see Part 2, Section 2 “Disclosure of estimated financial data”).

The disclosure of quantitative prospective information is treated differently depending on whether it is being disclosed with periodic information or in a prospectus. The AMF Guide to preparing prospectuses and the information to be provided for public offerings or admission to trading of securities covers all the rules applicable to profit forecasts and estimates<sup>119</sup>.

### Within the framework of periodic information

Among the various types of prospective information, it is necessary to **distinguish between “objectives” and “forecasts”**. This distinction was clarified in April 2000 by the report of the working group led by Jean-François Lepetit<sup>120</sup>, which indicated that *“objectives are a quantitative, concise reflection of the expected impacts of the strategy adopted by the managing bodies from a commercial (e.g., market share or revenue growth, etc.) or financial (e.g., return on capital employed, earnings per share, etc.) perspective. They express the company’s goals as defined by management based upon their anticipations of prevalent economic conditions, often expressed in normative form, and the resources that they have decided to employ.”*

The working group stated that *“in general, forecasts are the quantified conclusions of studies aimed at determining the total impact of a list of factors related to a future period (so called, assumptions)”* and notes that *“the disclosure of forecast results is generally the responsibility of financial analysts, as by nature such a task is based upon a high level of uncertainty, with results sometimes significantly differing from forecasts initially presented”*.

Financial data classified by an issuer as “forecasts” (versus “objectives”) in its URD must be accompanied by a description of the underlying assumptions. The statutory auditors no longer have a report to issue.

Should an issuer choose to disclose prospective financial data, it is general practice to communicate objectives and forecasts when disclosing half-yearly or annual results.

119 – Position/ Recommendation no. 2020-06 of June 17, 2020 (updated on April 29, 2021).

120 – Report on profit warnings dated April 6, 2000 from the working group created under the supervision of the COB and chaired by Jean-François Lepetit.

In any case, an issuer may only communicate quantitative prospective information to the market on the condition that the reliability of the data has been checked internally prior to any communication in order to ensure the relevance of the information communicated and to avoid misleading the public on its forecast results. In accordance with the recommendations of the working group's report on profit warnings, the disclosure of quantitative prospective financial data by the issuer should clearly state the nature of such information (objectives or forecasts) as well as the time frame.

### Within the framework of a prospectus

When quantitative prospective information is communicated by an issuer within the framework of a prospectus and that information can be qualified as *"profit forecasts"* within the meaning of the Prospectus Regulation 2017/1129, it must be accompanied by a **description of the underlying assumptions**. As of the application of PD3, a statutory auditors' report on this information is no longer required. It should be noted that the previous Prospectus Regulation (EC) 809/2004 defined the notion of profit forecast as *"a form of words which expressly states or by implication indicates a figure or a minimum or maximum figure for the likely level of profits or losses for the current financial period and/or financial periods subsequent to that period, or contains data from which a calculation of such a figure for future profits or losses may be made, even if no particular figure is mentioned and the word 'profit' is not used"*.

Item 11 of Annex 1 of Commission Delegated Regulation 2019/980 of March 14, 2019 specifies the information relating to profit forecasts (and estimates) that issuers are required to publish in URDs for equity securities (these provisions are applicable to the URD by the reference made by Annex 2 of the Delegated Regulation):

- where an issuer has published a profit forecast or profit estimate (which is still outstanding and valid), that forecast or estimate shall be included in the registration document/URD. If a profit forecast or profit estimate has been published and is still outstanding, but no longer valid, then the issuer must provide a statement to that effect and an explanation of why such forecast or estimate is no longer valid (Item 11.1 of Annex 1);
- the forecast or estimate shall comply with the following principles:
  - a) there must be a clear distinction between assumptions about factors which the members of the administrative, management or supervisory bodies can influence and assumptions about factors which are exclusively outside the influence of the members of the administrative, management or supervisory bodies,
  - b) the assumptions must be reasonable, readily understandable by investors, specific and precise and not relate to the general accuracy of the estimates underlying the forecast,
  - c) in the case of a forecast, the assumptions shall draw the investor's attention to those uncertain factors which could materially change the outcome of the forecast (Item 11.2 of Annex 1);
- lastly, the prospectus shall include a statement that the profit forecast or estimate has been compiled and prepared on a basis which is both a) comparable with the historical financial information, and b) consistent with the issuer's accounting policies.

## DISCLOSURE OF ESTIMATED FINANCIAL DATA

An issuer can choose, before the press release announcing its results, to communicate estimated financial data after the closing date of the financial period or half-year financial period, but before the disclosure of the finalised financial statements for the same period. Although historically issuers have made use of such a communication for estimated or “provisional” financial data, reduced disclosure deadlines are gradually rendering that practice obsolete.

In any case, excluding certain specific situations (for example, in the case of a financial transaction following the end of an accounting period but before the disclosure of the financial statements), **such practice is not recommended.**

If the issuer decides to publish estimated financial data, it must respect the general principles set out by the AMF in its Guide to periodic disclosures by listed companies outlined in its Position/Recommendation no. 2016-05 as amended on April 29, 2021, including in particular the following principles:

- all financial information other than revenue (assets and liabilities, financial position and performance) issued between the financial period closing date and the date of disclosure of the financial statements must be systematically qualified as “estimated results (or financial data)”, excluding any other terminology, and the issuer must eliminate any risk of confusion with the definitive financial statements with respect to either terminology or presentation;
- the communication must clearly state the degree to which the competent authorities (board of directors or executive board) were involved in examining the estimated financial data as well as the date expected for closing the financial statements;
- information provided to the market must be as consistent and complete as possible given the stage of the closing process;
- in particular, the information must:
  - be sufficiently clear to be understood by all investors,
  - be presented based on the indicators customarily used by the issuer and, if they include alternative performance measures, be precisely defined and reconciled with the standard accounting indicators,
  - be presented as absolute values and not only as relative values showing the percentage change,
  - be systematically accompanied by comparable data from the prior-year financial statements and a summary of the most recent estimated data published, where applicable,
  - not contain any omissions in respect of any known material factors regarding the issuer that could affect the relevance and fairness of the information;
- the reliability of information communicated to the market must be ensured through the respect of appropriate accounting and/or budgeting processes, and the issuer must indicate that the data communicated have not yet been reviewed or are currently being reviewed by the statutory auditors;
- should the subsequent disclosure of finalised financial statements reveal significant differences from the previously disclosed estimated data, those differences must be explained in detail;

- within the framework of a prospectus, the rules applicable to profit forecasts, pursuant to Annex 1 of Commission Delegated Regulation 2019/980 of March 14, 2019 (see Section “Disclosure of quantitative prospective financial information – Within the framework of a prospectus”, p. 67), apply *mutatis mutandis* to profit estimates.

## PROFIT WARNINGS

A clear and consistent long-term communication strategy allows companies to avoid a situation where they have to urgently publish a profit warning to inform the market of a **changed financial outlook**. Nonetheless, despite companies’ efforts to improve the quality and frequency of their financial information, an issuer may find itself having to publish a warning to the market regarding a **change in forecast profits**.

In its guidelines on the Market Abuse Regulation, ESMA specifically indicates that a delayed disclosure of inside information which “*is different from previous public announcements or from the financial objectives communicated by the issuer or is in contrast with the market’s expectations based on signals that the issuer has previously sent to the market*” is likely to mislead the public.

The AMF therefore recommends<sup>121</sup> that issuers take particular care to respect the obligation of disclosing inside information as soon as possible, when they observe that their expected results or performance measures:

- will differ from the results or other performance measures expected by the market, even when the issuer has not disclosed its objectives or its forecasts to the market or when there is no market consensus;
- and that these results or other performance measures are likely to significantly influence the price of the issuer’s financial instruments or the price of any related derivative financial instruments<sup>122</sup>.

When **the difference concerns only the economic assumptions used** (e.g., exchange rate, different expectations regarding commodity price trends between the company and analysts), companies are not required to provide additional clarifications.

However, if management decides that this difference arises as a result of an inadequate explanation of the company’s strategy, its own economic fundamentals or its degree of sensitivity to various external inputs, a specific disclosure should be made in order to restore a satisfactory level of information about such events. That disclosure may be followed by an analyst meeting.

Aside from the expected one-time explanation, this disclosure should also **focus on qualitative and strategic items** as well as detail the measures to be taken so that the market may assess the issuer’s ability to deal with events.

<sup>121</sup> – AMF Position/ Recommendation no. 2016-08 – Guide to ongoing disclosures and the management of inside information (section 1.4.2).

<sup>122</sup> – For an example of sanctions against an issuer in financial difficulty that failed to meet market disclosure obligations in a timely manner: see AMF Enforcement Committee, SAN-2017-06, June 20, 2017.

### 3 ■ EVENTS ASSOCIATED WITH A COMPANY'S BUSINESS

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Information regarding a company's sales, production, research and development and, to a certain extent, employment-related issues, constitute, along with more strategic announcements (acquisitions or divestitures), the "newsflow" of an issuer, aimed at illustrating the implementation of its strategy and image. **The issuer must always make sure that the events it decides to communicate are material, in order to avoid saturating market participants by delivering them an excess of information without any mention of its relative importance.**

Thus, information of a commercial or technical nature, of local or specific interest (related to a sector or technology), which does not achieve a certain threshold of materiality (see below), need not be the subject of an effective, complete dissemination (because it does not qualify as regulatory information), and can just be made available on the issuer's website.

When an event related to a company's business occurs, the issuer therefore assesses whether it should be disclosed to the market depending on whether the event is material or not and on the potential impact it may have on the share price of the issuer. The issuer can base its decision on the following criteria:

- the expected consequences on financial performance (revenue, margins, costs incurred);
- the impact on the balance sheet structure (net debt, shareholders' equity);
- the estimated impact on the competitive position (gain or loss of market share, technological advances conferring a competitive edge, etc.) of the strategy (expansion into a new geographical area, diversification of the business, etc.);
- the estimated labour-related consequences (recruitment, organisational restructuring, etc.), especially on the geographical area concerned (country, region, etc.);
- the business sector of the issuer (e.g., the significance of patents for issuers in the pharmaceutical and cosmetic industries, the significance of large contracts within the oil industry, etc.).

#### SALES AND MARKETING

This may concern the signing or loss of a contract, the failure of a debt buyback<sup>123</sup>, the gain or loss of a customer, the signing or loss of a commercial agreement or of a new partnership, or the termination of a partnership.

Any such press release will provide: a strategic view, a presentation of the contract, commercial agreement or partnership and its impact on revenue. An introduction of the customer or partner may also be included.

## **PRODUCTION**

Examples of this type of press release might be the announcement of an industrial investment plan, a reorganisation or restructuring plan, or the opening or closing of a production line or production site.

Points worth mentioning in such a press release include: a reminder of the strategic and market environment, the nature of the production, the locations concerned, the forecast calendar for the opening or closing of production facilities, the amount of investment or the cash and non-cash financial impact of the discontinuation of the business, any related impact on the issuer's organisation and the personnel concerned.

## **RESEARCH & DEVELOPMENT**

Relevant events include the filing, loss, launch, change or discontinued use of a brand name, licence or patent, or the launch or discontinuation of a product or service. In some sectors, such as health and biotechnology, companies should be particularly attentive regarding market disclosures on the progress of various phases of R&D projects and the results of tests and studies likely to be considered inside information.

If a press release is disseminated, it shall mention the estimated impact on the business, the R&D or marketing expense, the calendar for the launch or discontinued use and, if relevant, the customers concerned.

## **EMPLOYEE-RELATED EVENTS**

### **Restructuring plans, redundancies or strikes**

Should the issuer decide to disseminate a press release on one of these topics, the strategic, macroeconomic, competitive and social impact on the company can be mentioned as well as the factors having led to this type of decision, the number of employees and locations concerned, and the potential impact on cash or other aspects.

It should be noted that, in all cases, any communication to the market of a restructuring plan must be coordinated with the steps to inform/consult with the issuer's employee representative bodies.

### **Employee savings plans (PEE)**

Communication regarding an employee savings plan shall not be made unless such an event results in a material change, for example, in the employee shareholding in the issuer's capital.

Regulations related to the steps to be taken to inform employee representative bodies of such plans must also be complied with.



## FINANCIAL DIFFICULTY<sup>124</sup>

The AMF pays particular attention to financial information disclosed by issuers in financial difficulty. On principle, the issuer remains responsible for information provided to the market, regardless of proceedings in progress.

Periodic financial information must be provided to the market, regardless of the difficulties facing the listed company and of whether or not preventive or collective proceedings have been launched. In this respect, any issuer in financial difficulty must closely monitor changes in its debt as well as its available cash at the time of its periodic disclosures.

**Implementing the ongoing disclosure requirement is more complex** when it affects the confidentiality of preventive proceedings designed to help companies in difficulty (special mediation and conciliation). In contrast, no such confidentiality restrictions exist with regard to collective proceedings (safeguard, rehabilitation and compulsory liquidation), since the ongoing disclosure requirement applies.

The AMF recommends that issuers in financial difficulty take particular care to meet their market disclosure obligations in a timely manner at the different stages of any such proceedings and especially at the end of negotiations with creditors for issuers involved in preventive proceedings, at the start of collective proceedings, upon receiving takeover offers, or whenever the schedule of such proceedings is changed. In advance of collective proceedings, the AMF imposed sanctions on an issuer, on the basis of article 223-2 of the AMF General Regulations, for having published information relating to a material downturn in its current operating income, only 6 months after it became aware of this specific, non-public information, which was likely to influence the market price of its financial instruments<sup>125</sup>.

Furthermore, it is recommended that companies inform the AMF upon the start of preventive proceedings and during the proceedings, and upon the start of collective proceedings. In the latter case, the issuer shall also disclose its provisional calendar.

## 4 ■ CORPORATE GOVERNANCE

### REFERENCE TO A CORPORATE GOVERNANCE CODE

The provisions of Directive 2013/34/EU establishing the **“comply or explain”** principle have been transposed into article L. 225-37-4-8°, of the French Commercial Code. The corporate governance report must specify *“when a company refers voluntarily to a code of corporate governance drawn up by organisations representing companies, the provisions that have been ruled out and the reason for this decision, as well as the place where the code can be consulted, or, in the event that the company does not refer to a code, the reasons why it has decided not to do so as well as, where appropriate, any rules adopted in addition to those required by law.”*

124 – AMF Position/ Recommendation no. 2016-08 – Guide to ongoing disclosures and the management of inside information (section 1.4.4).

125 – AMF Enforcement Committee, SAN-2017-06, June 20, 2017.

This information must be sufficiently clear, true and complete. It must cover (i) recommendations effectively applied (including how they were applied as well as disclosure on their website) and (ii) recommendations that are not applied (including how, why and what measures have been taken to achieve the underlying objectives of the relevant recommendation).

The two main corporate governance codes to which issuers currently refer are the **AFEP-MEDEF Code**, for listed companies, and the **Middlenext Code**, for SMEs.

The January 2020 version of the AFEP-MEDEF Code sets out all these recommendations, as does the AMF, which also recommends that issuers disclose all recommendations that they do not apply, and the reasons for not doing so, in a specific section or table in the URD or annual report<sup>126</sup>.

**Each year, the AMF publishes a report on practices observed and issues recommendations** in terms of required disclosures regarding governance and executive compensation (AMF 2020 Report on corporate governance and executive compensation).

It is important to note that, since June 2018, the AFEP-MEDEF Code has enhanced the **enforcement powers of the High Committee on Corporate Governance**, giving it the ability to “name and shame”. Consequently, if a company fails to respond within 2 months of receiving a letter from the High Committee asking it to justify its non-compliance with the Code’s recommendations, it runs the risk of the content of the letter being made public<sup>127</sup>.

## COMPOSITION OF THE EXECUTIVE BOARD, BOARD OF DIRECTORS OR SUPERVISORY BOARD

### Appointment, dismissal or resignation of a member of the board of directors or supervisory board

In principle, the composition of the board of directors or supervisory board is communicated **in issuers’ periodic information** (such information is included in the corporate governance report accompanying the management report). The corporate governance report may be incorporated in the universal registration document<sup>128</sup>.

In the event that an issuer wishes to disclose such information before the dates for disclosure of periodic information, a press release can be issued introducing the person concerned and the main positions occupied and possibly explaining the reason for his appointment, dismissal or resignation. In practice, issuers do not disseminate such a press release except when it concerns the chairman of the board, a board member representing a strategic shareholder or the financial or accounting expert on the audit committee.

126 – AMF Recommendation D0C-2012-02, updated on April 29, 2021, article 1.1.2.

127 – AFEP-MEDEF Code, January 2020, article 27.2.

128 – Article 222-9 of the AMF General Regulations and AMF Recommendation D0C-2012-02.

In the event that management or the board of directors propose that an appointment be put to a vote at the shareholders' meeting, the press release may be disclosed following a meeting of the board of directors or supervisory board or, at the latest, when the resolution approved by the shareholders' meeting is disclosed.

In the case of a **co-optation** by the board of directors or supervisory board or a resignation, this must be **disclosed immediately after the meeting of the board of directors** or supervisory board at which to the co-optation or the resignation took place.

In the event that the shareholders' meeting decides on the dismissal of a board member, this shall be communicated immediately after the shareholders' meeting at which the resolution was approved.

### **Appointment, dismissal or resignation of a member of executive management or a member of the executive board**

Communications related to a chief executive officer or members of the executive board are made **in periodic disclosures** (this information is included in the URD and in the corporate governance report provided for by article L. 225-37 of the French Commercial Code). Immediate communication to the market by the issuer seems nonetheless necessary as of the appointment, dismissal or resignation of a chief executive officer or a member of the executive board.

In practice, in the case of an appointment, the press release disseminated by an issuer will indicate the main functions performed by the chief executive officer or executive board member and may present the various stages of his professional career and the context of his appointment, dismissal or resignation.

The AFEP-MEDEF Code, amended in January 2020, strengthened the **objectives for gender diversity on governing bodies**. At the proposal of executive management, the board of directors must determine gender diversity objectives for the governing bodies, as well as the timeframe in which these objectives must be met, and report on them in the corporate governance report. This report may be included in the URD. If the objectives have not been met, the board of directors must explain the reasons and the measures taken to remedy the situation. The concept of governing body refers not only to the board of directors, but also the executive and management committees and, more broadly speaking, senior management<sup>129</sup>.

### **Creation of a specialised committee (audit committee and other committees)**

All issuers whose securities are listed on a regulated market are required to create an **internal committee** acting under the sole collective responsibility of the members of the board of directors or supervisory board and comprising members of these bodies only (and not company management). This committee is responsible for **monitoring the process of preparing financial information**, the effectiveness of internal control and risk management systems, the statutory audit of the financial statements and,

where applicable, the consolidated financial statements and the independence of the statutory auditors.

The AMF recommends that the audit committee's members and chairman be clearly identified, and that in the paragraph presenting the members of board of directors, a description of their responsibilities be given<sup>130</sup>.

As regards financial communication, the AMF specified that the audit committee must ensure that a **preparation process is in place for the** annual, half-yearly and, where appropriate, quarterly **press releases**<sup>131</sup>.

There are exceptions to the requirement to create an audit committee. Companies controlled by an entity which itself has such a committee, certain collective investment undertakings, certain credit institutions, and entities with a board of directors or supervisory body which fulfils the duties of this committee are exempt from this requirement.

In addition to the audit committee's assignments as defined by the law, **the board may decide to create further specialised committees** charged with strategy, appointments, compensation or even corporate social responsibility matters.

Information related to the creation and functioning of a specialised committee is communicated to the market **in periodic disclosures** (the information is included in the corporate governance report relating to the conditions of preparation and organisation of the board's work<sup>132</sup> and of the company's URD). Immediate communication to the market is not necessary.

The issuer may nonetheless wish to immediately communicate the creation of a specialised committee in order to demonstrate the implementation of best corporate governance practices.

### **The indictment, involvement or condemnation of an executive in a legal affair**

Information related to any convictions pronounced against an executive is, in principle, to be disclosed in the URD<sup>133</sup>.

In addition, whenever an executive is placed under formal investigation or, more generally, finds themselves implicated in a legal affair, the issuer may evaluate whether a disclosure to the market is necessary or appropriate. Such a decision will be based on whether the implication of the executive is likely to have an impact on his or her ability to perform his or her functions or on the business of the issuer.

130 – AMF Recommendation D0C-2012-02, amended on April 29, 2021.

131 – AMF Recommendation no. 2010-19 on audit committees dated July 22, 2010.

132 – Article L. 225-37-4-5° and L. 22-10-10 of the French Commercial Code.

133 – Commission Delegated Regulation (EU) 2019/980 of March 14, 2019 (Part A, Annex 1, Item 12.1, and Annex 2).

## ACTIVITIES OF THE EXECUTIVE BOARD, BOARD OF DIRECTORS OR SUPERVISORY BOARD

### Management and executive board meetings

In practice, meetings of the management or of the executive board are not subject to any public disclosure.

### Meetings of the board of directors or of the supervisory board and special committees

Within the framework of periodic information, the meetings of the board of directors or supervisory board or other specialised committees shall be communicated **within the corporate governance report**<sup>134</sup> (in the URD, where applicable, indicating, in particular, board or committee members, responsibilities and activities during the financial year). The AFEP-MEDEF Code adds that the corporate governance report must also provide shareholders with all relevant information regarding the **individual attendance of directors at these meetings**<sup>135</sup>.

In principle, issuers only disseminate a press release following meetings of the board of directors or supervisory board related to important decisions likely to have a material impact on share prices (approval of financial statements, a decision to carry out a financial transaction, etc.). Such communication may however be deferred, under the responsibility of the issuer, if there is (i) a legitimate interest in doing so, (ii) the absence of communication is not likely to mislead the public, and (iii) the issuer is able to ensure the confidentiality of the information.

Should the board meeting not concern such a decision, immediate communication to the market does not seem necessary.

Lastly, the AFEP-MEDEF Code on corporate governance for listed companies recommends **that non-executive directors meet at least once a year without the executive or internal directors**. The issuer must either provide accounts of these meetings or adhere to the “comply or explain” principle, explaining why it has not met these requirements<sup>136</sup>.

## COMPENSATION AND BENEFITS

### Executive compensation and stock options

In principle, market disclosures related to executive compensation, the allocation and exercise of stock options, and free share grants are made **within the context of periodic information** (the information is included in the financial statements, in the corporate governance report and in the company's URD). However, under the AFEP-MEDEF Code, companies should publicly disclose “*all of the executive officers' compensation components, whether potential or vested*” immediately after the meeting of the board approving the relevant decisions (AFEP-MEDEF Code, Recommendation 26.1).

134 – Article L. 225-37-4-5° of the French Commercial Code.

135 – AFEP-MEDEF Code, January 2020, article 11.1.

136 – AFEP-MEDEF Code, January 2020, article 11.1.

To avoid the fragmentation of information, the AMF also recommends that companies ensure that the explanations provided to justify certain components of executive compensation in a given year – even when they have already been disclosed to investors (in press releases or on the issuer’s website in particular) – are also included in the universal registration document or the annual report for the financial period concerned<sup>137</sup>.

The Guide for compiling universal registration documents<sup>138</sup> sets out how the “Compensation and benefits” section of URDs should be presented. The AMF recommends summarising the compensation of each corporate officer in a table. A template can be found in **appendix 2 of the Guide**.

The allocation and payment of compensation has been increasingly regulated and is now subject to various conditions. France’s “Breton” Law dated July 26, 2005 first states that the award of deferred compensation by an issuer to its officers requires the prior approval by the board of directors or supervisory board and the approval of the shareholders’ meeting. The TEPA law dated August 21, 2007 also states that the granting of deferred compensation is tied to performance criteria and must be approved by the board of directors or supervisory board, depending on the case, after the beneficiary has completed his or her term of office and before any payment is made to him or her. The law of December 3, 2008 also imposed new terms and conditions for granting deferred compensation, such as the existence of a similar compensation system for employees.

The TEPA law also requires the disclosure of the board of directors’ or supervisory board’s decisions authorising the granting of deferred compensation and the transfer of such to the beneficiary. **The board’s decision authorising the granting of this deferred compensation is disclosed on the company’s website within the 5 days following the board meeting** and may be viewed during the entire duration of the beneficiary’s functions. **The board’s decision authorising the payment of this deferred compensation is also disclosed on the company’s website within the same five-day period** and may be viewed at least until the following shareholders’ meeting. Each year, shareholders are informed about the existing system of deferred compensation via a special report.

France’s “Macron” Law of August 6, 2015 **extended these tighter controls** to defined benefit **top-up pension schemes** contracted after August 7, 2015 on behalf of the chairman, chief executive officer or deputy chief executive officers by treating them as related-party agreements and stipulating that these commitments must be approved via a specific resolution submitted to the shareholders’ meeting for each beneficiary and each time a term of office is renewed. The Macron Law also stipulates that the board of directors determines any annual increase in the conditional entitlements of these corporate officers and caps the annual increase at 3% of the annual compensation used as the benchmark for calculating the annuity payable.

137 – 2016 annual report by the AMF on corporate governance and the compensation of corporate officers, p. 45.

138 – AMF Position/ Recommendation DCC no. 2021-02.

Following the application of the Order of November 27, 2019, issued pursuant to the PACTE law<sup>139</sup>, all compensation and benefits payable or likely to be payable due to the termination of or changes in the beneficiary's duties, as well as top-up pension schemes, are not considered related-party agreements and are **put to the vote of shareholders under the say on pay system**.

### Shareholders "say on pay"

The PACTE law has given the French government the power to transpose, via government orders, Directive (EU) 2017/828 of the European Parliament and of the Council of May 17, 2017 into French law and create "a binding, unified mechanism" governing the compensation of executives of listed companies.

Accordingly, the Order of November 27, 2019 and the decree of the same date significantly amended the controls governing the compensation of listed company executives that was introduced by the "Sapin II" Law of December 9, 2016<sup>140</sup>.

**The "say on pay" system is based on an *ex-ante* vote on the compensation policy, and an *ex-post* vote on compensation paid or awarded in respect of the previous financial year.**

The new rules apply to all companies whose shares (no longer securities) are listed on a regulated market, including partnerships limited by shares (*société en commandite par actions*), which were previously not subject to such rules.

The system applies to **all corporate officers**, including members of the board of directors and the supervisory board, subject to the specific rules governing the *ex-post* vote (see below paragraph on *ex-post* votes). In the case of partnerships limited by shares, the system applies to legal manager(s) and supervisory board members. The order does not expressly cover the deputy chief executive officers who are not members of an administrative, management or supervisory body mentioned in article 2(i)(ii) of the Directive.

The new say on pay system covers **all types of compensation**, including components of compensation that were previously treated as related-party agreements pursuant to articles L. 225-42-1 and L. 225-90-1 of the French Commercial Code, which have now been repealed (compensation or benefits payable or likely to be payable due to the termination of or changes in the beneficiary's duties, as well as top-up pension schemes and benefits in respect of a non-compete clause).

139 – Order no. 2019-1234 of November 27, 2019 regarding compensation for corporate officers of listed companies.

140 – Order no. 2019-1234 of November 27, 2019 regarding compensation for corporate officers of listed companies; implementing decree no. 2019-1235 of November 27, 2019.

### **Ex-ante vote**

The competent bodies of companies whose shares are listed on a regulated market must establish a compensation policy for corporate officers<sup>141</sup>. This policy must be clearly and intelligibly presented in the corporate governance report.

The content of the compensation policy is expressly set out in the applicable law<sup>142</sup>.

- **The compensation policy for all corporate officers** must “*be aligned with the company’s interests, contribute to its long-term viability, and form part of its business strategy*” and explain “*the decision-making process for determining reviewing and implementing the policy*,” which includes the following information:
  - measures that help avoid or manage conflicts of interest;
  - if applicable, the role of the compensation committee or of the other committees concerned;
  - how the compensation and employment conditions of the company’s staff are taken into account in the decision-making process for determining and reviewing this policy;
  - the methods used to determine the extent to which the corporate officers have satisfied the performance criteria for variable compensation and share-based payment;
  - the criteria used to allocate the fixed annual amount (formerly attendance fees) granted by the shareholders’ meeting to directors or granted to members of the supervisory board of corporations and partnerships limited by shares;
  - when the compensation policy is amended, a description and explanations of all significant amendments, and the way in which the most recent shareholder votes on the compensation policy and on the information submitted to an *ex-post* vote, along with any opinions expressed at the most recent shareholders’ meeting, are taken into consideration;
  - the rules for applying the provisions of the compensation policy for corporate officers or legal managers (for partnerships limited by shares) who have been recently appointed or whose term has been renewed, pending, if applicable, approval of the significant changes to the compensation policy by the shareholders’ meeting; and
  - when the board of directors or supervisory board (for corporations) or partners (for partnerships limited by shares) provide for deviations from applying the compensation policy, the procedural conditions under which these exemptions may be applied as well as the policy sections for which exemptions may be applied.

An exemption from the compensation policy may temporarily be applied in exceptional circumstances, provided that the exemption aligned with the company’s interests and is necessary to ensure its long-term viability.

141 – Articles L. 225-37-2, L. 22-10-8, L. 225-82-2, L. 22-10-26 and L. 226-8-1 of the French Commercial Code.

142 – Articles L. 22-10-8, L. 225-37-2, I, R. 225-29-1 and R. 22-10-14 (joint stock companies – SAs – with a board of directors); L. 225-82-2, I, L. 22-10-26, R. 225-56-1, R. 22-10-18 (SAs with a supervisory board) and L. 226-8-1, I; R. 226-1-1 (partnerships limited by shares – SCAs) of the French Commercial Code.



- **For each corporate officer**, the compensation policy must set out:
  - *“all components of fixed and variable compensation”* as well as their respective weighting;
  - when the company awards a share-based payment, *“the vesting periods, any lock-up periods applicable following vesting, and how share-based payments contribute to the objectives of the compensation policy”*;
  - *“any deferral periods and, if applicable, the possibility for the company to claw back variable compensation”*;
  - more specifically, concerning variable compensation, the compensation policy must set out *“clear, detailed and varied financial and non-financial criteria, including, if applicable, those relating to corporate social responsibility, which determine its award, as well as how these criteria contribute to the objectives of the compensation policy”*;
  - *“the length of the term(s) of office, and, if applicable, the employment or service contracts entered into with the company, the applicable notice periods and the applicable termination and resignation conditions”*;
  - the main characteristics and the conditions for terminating commitments taken by the company itself, or by a company it controls or by which it is controlled, with respect to components of compensation or benefits payable or likely to be payable due to the termination of or changes in the beneficiary's duties, or, subsequent thereto, conditional entitlements granted in respect of defined benefit pension commitments matching the characteristics of the plans mentioned in articles L. 137-11 and L. 137-11-2 of the French Social Security Code (“top-up pension” commitments);
  - *“when the company takes commitments and grants conditional entitlements, the clear, detailed and varied financial and, if applicable, non-financial criteria, including those relating to corporate social responsibility, which determine its award, and how these criteria contribute to the objectives of the compensation policy.”*

Regarding payments in respect of a non-compete clause, in accordance with the recommendations of the AFEP-MEDEF Code, no benefit is payable if the beneficiary retires.

**New disclosure rules have been introduced.** The compensation policy submitted to the shareholders' meeting, and the date and outcome of the most recent shareholder vote, are published on the company's website on the first working day following the vote, and remain publicly available for at least the period during which the policy applies.

The compensation policy is submitted to the ordinary shareholders' meeting every year and whenever a significant amendment is made.

**In the event of an unfavourable vote**, the board of directors must submit a draft resolution setting out a revised compensation policy for approval at the next ordinary shareholders' meeting, demonstrating the way in which the shareholder vote and, if applicable, the opinions expressed during the shareholders' meeting, have been taken into consideration.

In the interim, the previously approved compensation policy continues to apply or, if no policy has been approved by shareholders, the compensation is determined on the basis of the compensation awarded in respect of the previous year or, if no compensation was awarded in the previous year, on the basis of existing company practices.

The AMF also recommends that, in addition to the compensation policy, the corporate governance report and the URD include an overview of its implementation over several years<sup>143</sup>.

The binding nature of the *ex-ante* vote was enhanced by the Order of November 27, 2019. Any compensation determined, awarded or paid by a company, or any commitment taken by a company, will be deemed invalid unless it is compliant with the compensation policy approved by the shareholders.

### **Ex-post vote**

Following the introduction of the Order of November 27, 2019, the *ex-post* vote comprises two parts: a “general” resolution, and individual resolutions for each executive corporate officer.

#### **■ The vote on all compensation paid or awarded to corporate officers**

Pursuant to article L. 22-10-34 of the French Commercial Code, the shareholders’ meeting must vote on a draft resolution on the information set out in article L. 22-10-8 I of the French Commercial Code, which is included in the corporate governance report (for more information on the content of article L. 22-10-8 of the French Commercial Code, see Section 1 – Disclosures of periodic information).

If the draft resolution on this information is rejected by the shareholders, the board of directors or the supervisory board must submit a revised compensation policy for approval at the next shareholders’ meeting, and the amounts paid to the directors and supervisory board members in consideration of their activity (formerly attendance fees) are suspended until the revised policy is approved. **If there is a second unfavourable vote concerning the resolution on the amended compensation policy, payment of the suspended compensation is definitively cancelled<sup>144</sup>.**

#### **■ The vote on individual compensation for executive corporate officers**

*“The fixed, variable and exceptional components of the total compensation and benefits in kind paid in the previous year or awarded in respect thereof”* to each executive corporate officer are subject to a shareholder vote<sup>145</sup>. The second part of the *ex-post* vote therefore does not apply to the members of the board of directors or supervisory board.

**In the event of an unfavourable *ex-post* vote on these individual resolutions, the fixed components of the executives’ compensation remain valid**, but the variable and exceptional components will be paid.

143 – AMF Recommendation DGC-2012-02, amended on April 29, 2021, article 2.1.4.

144 – Article L. 225-100 II, paragraph 3, L. 22-10-34 and L. 226-8-2 I, paragraph 3, of the French Commercial Code.

145 – Article 225-100 III, L. 22-10-34 and L. 226-8-2 II of the French Commercial Code.

Annex 4 of the AFEP-MEDEF Code, updated in January 2020, provides a standard presentation of the compensation for corporate officers in table form.

### Benefits for taking up positions

The AFEP-MEDEF, the AMF and the High Committee on Corporate Governance recommend that issuers publicly disclose the amount of any benefits awarded for taking up positions at the time they are set, even if the payment of such benefits is staggered over time or deferred. Benefits for taking up positions may only be granted to a new executive officer **who has come from a company outside the group** (section 25.4 of the AFEP-MEDEF Code). They also recommend that companies be more transparent about the benefits granted to the officer concerned in respect of previous duties, insofar as these are available for public disclosure.

### Termination payments upon departure

The AFEP-MEDEF Code states that the performance requirements set out for such payments must be assessed over at least 2 financial years, and that they must be demanding and not allow for the indemnification of an officer unless his or her departure is imposed. Termination payments **must not exceed, where applicable, the sum of 2 years' compensation** (fixed and annual variable)<sup>146</sup>.

The AMF recommends that the board of directors or supervisory board regularly review the compensation components likely to be awarded on or after the officer's departure from company, and that the board explore the possibility and opportunity of bringing policies in line with the new provisions of the AFEP-MEDEF Code.

As part of the "comply or explain" approach, presented in its corporate governance report, the board of directors or the supervisory board should also systematically **explain all deviations from the current version of the Code**, stating, where applicable, why the company chose not to align the communication with the new version of the Code prior to its entry into force<sup>147</sup>.

The AMF considers that, when calculating the amount of the annual variable compensation<sup>148</sup>:

- companies must clearly specify (at least) the level attained for each quantitative objective, and;
- the board of directors or the supervisory board must clearly justify its decision if there is a significant difference in the ratio between the qualitative and the quantitative criteria (compared to what it was originally), but such situations should remain exceptional.

The AMF and AFEP-MEDEF also recommend that issuers disclose a **press release that provides an exhaustive list of the financial terms and conditions of an officer's departure**, especially the following:

- fixed compensation for the current reporting period;
- the basis to be used for calculating the annual variable compensation due for the current reporting period;
- any exceptional compensation;

146 – Section 25.5.1 of the AFEP-MEDEF Code.

147 – AMF Recommendation DOC-2012-02 concerning corporate governance and executive compensation in companies referring to the AFEP-MEDEF code (section 2.1.5), amended on April 29, 2021.

148 – AMF, 2017 Annual report on corporate governance, executive compensation, internal control and risk management, November 2017.

- details of what happens to pending, open, multi-year or deferred compensation plans and to free and share purchase options;
- payment of any severance or non-compete indemnities;
- top-up pension benefits (with details of the amount of the annual annuity payable and the related provision accrued).

Furthermore, the AMF recommends that companies set out in the URD the compensation policy and benefits that may be due based on various departure scenarios (voluntary departure, dismissal, forced departure and retirement)<sup>149</sup>.

### Pay ratios

Corporations and limited partnerships whose shares are admitted to trading on a regulated market must provide pay ratios<sup>150</sup> in their corporate governance report, i.e. **information on the difference between the compensation of their company executive officers and that of their employees**.

AFEP has issued guidelines<sup>151</sup> specifying what components to take into account to calculate the ratios, both for the numerator (executive compensation) and the denominator (employee compensation). The guidelines state that severance pay, non-compete benefits and top-up pension plans must be excluded from the calculations for both executives and employees. In order to standardise the presentation of ratios and allow for their comparison, the AFEP guidelines suggest using a table under which companies should provide details of the methodologies applied.

The AFEP-MEDEF Code recommends that holding companies with no employees (or very few) include in the denominator a payroll scope that takes into account the salaries of French employees of subsidiaries over which the holding company has exclusive control<sup>152</sup>. This recommendation goes beyond the legal requirements, which are only applicable to employees of listed companies. Such companies are required to disclose these pay ratios in their corporate governance report.

In its 2020 report on corporate governance and executive compensation in listed companies, the AMF issued recommendations for improving transparency concerning the methodology used by companies to calculate pay ratios in relation to:

- the employee scope used;
- the executive compensation taken into consideration.

The AMF also recommends presenting the pay ratio by position (chairman of the board of directors, chief executive officer, etc.) and then for each person, and commenting on changes in governance, stating the dates on which positions were created, abolished and first held, as well as the names of the persons having held or holding these positions.

### Transactions in the issuer's shares made by executives

Pursuant to articles 3 and 19 of the Market Abuse Regulation, officers, senior managers and people closely associated with them<sup>153</sup> must **notify the AMF and the issuer of any transactions conducted on their own account** relating to the shares or debt

149 – AMF Recommendation D0C-2012-02, article 2.1.6.

150 – Articles L. 225-37-3 and L. 22-10-9 of the French Commercial Code, amended by Order 2019-1234 of November 27, 2019.

151 – Guidelines on compensation ratios of January 28, 2020, updated on February 2021.

152 – AFEP-MEDEF Corporate Governance Code, updated in January 2020; article 26.2.

153 – Persons and entities subject to the notification requirement are specifically listed by articles 19 and 3.1.26 of the Market Abuse Regulation and for French law, in articles L. 621-18-2 and R. 621-43-1 of the French Monetary and Financial Code, as summarised in AMF Position/ Recommendation no. 2016-08, Guide to ongoing disclosures and the management of inside information (section 2.2.2).

instruments of that issuer or to derivatives or other financial instruments linked thereto. Article 10 of the Delegated Regulation (EU) 2016/522 of December 15, 2015 provides a list of some (but not all) notifiable transactions, which include:

- acquisition, disposal, short sale, subscription or exchange;
- acceptance or exercise of a stock option;
- entering into or exercise of equity swaps;
- subscription to a capital increase or debt instrument issuance; or
- gifts and donations made or received.

The notification requirement only applies if the overall amount of transactions carried out in a calendar year exceeds €20,000 for the current calendar year<sup>154</sup>. For stock options, the value for calculation purposes is the economic value assigned to them by the issuer at the time they are granted<sup>155</sup>.

Parties subject to the notification requirement report to the AMF and to the issuer **within three business days of the transaction**, by electronic means using the dedicated “ONDE” extranet (this can be accessed from the AMF’s website), as set out in AMF Instruction no. 2016-06 on transactions by managers and persons mentioned in article 19 of the European Market Abuse Regulation. Notification is the sole responsibility of the notifier.

Pursuant to article 223-26 of the AMF General Regulations, the **management report** referred to in the French Commercial Code must include a **summary statement** of the transactions carried out in the previous financial period; nominative information must also be presented for each officer. However, the summary statement does not mention the name of any closely associated persons.

In certain exceptional cases, the issuer may want to communicate on a transaction should it deem it to be material in nature.

## RELATED-PARTY AGREEMENTS

Since the introduction of the business growth and transformation law (the French PACTE law)<sup>156</sup>, companies whose shares are admitted to trading on a regulated market must disclose information on “related-party agreements” (entered into, directly or indirectly, between the company and (i) its chief executive officer, (ii) one of its deputy chief executive officers, (iii) one of its directors, (iv) a member of its executive or supervisory board, (v) one of its shareholders holding more than 10% of the company’s voting rights or, if it is a shareholder company, (vi) the company controlling it within the meaning of article L. 233-3 of the French Commercial Code) on the company’s website no later than the date on which the agreement is signed.

A decree issued by the French government specifies the information to be published<sup>157</sup>:

- the name or company name of the person directly or indirectly involved;
- the nature of their relationship with the company;
- the date; and
- the financial terms of the agreement.

154 – Article 19 of the Market Abuse Regulation.

155 – ESMA – Questions and Answers on the Market Abuse Regulation (MAR), updated on March 23, 2018.

156 – Articles L. 225-39, L. 22-10-12, L. 225-40, L. 225-40-2 and L. 22-10-13 of the French Commercial Code or, as applicable, articles L. 225-87, L. 22-10-29, L. 225-88, L. 225-88-2 and L. 22-10-30 of the French Commercial Code.

157 – Article 2 of decree no. 2019-1235 of November 27, 2019 on the transposition into French law of Directive (EU) 2017/828 of May 17, 2017, codified in articles R. 225-30-122-10-17, R. 22-10-19 and R. 225-57-1 of the French Commercial Code.

The publication must also contain *“all other information required to assess the interest of the agreement for the company and the shareholders, including minority shareholders, who are not directly or indirectly involved. This information is to include in particular the purpose of the agreement and its price for the company as a proportion of its most recent annual earnings”*.

Any interested party may request the president of the court, acting in interim proceedings, to order, if necessary under financial compulsion, the board of directors or executive board to disclose this information.

## SHAREHOLDERS' MEETINGS

Following the measures taken in 2020 to enable issuers to hold their shareholders' meetings during the COVID-19 health crisis, lawmakers have extended the exceptional measures applied to the rules for notice, information, meeting and deliberation of shareholders' meetings<sup>158</sup>. In particular, shareholders' meetings may be held behind closed doors, without the shareholders in attendance, provided that an online webcast of the meeting is provided by the issuer.

Nevertheless, in its 2020 report on corporate governance, the AMF stressed how important it is for issuers to provide shareholders with straightforward procedures for voting and participating in the meetings, irrespective of the conditions under which the meeting is held. The AMF also emphasised the importance of upholding shareholders' right to exercise their vote.

### Information to the shareholders concerning shareholders' meetings

The issuer's shareholders shall be informed of shareholders' meetings through the **publication of a notice in the BALO at least 35 days prior to such a meeting** (that deadline being shortened to 15 days in the case of a meeting that has been called for a public offering, in order to respect the calendar constraints associated with the offering procedure).

In particular, the notice of meeting shall indicate **the meeting agenda and provide the draft resolutions** to be submitted to shareholders for approval as well as the address of the website which provides all information regarding the shareholders' meeting and if need be the address of the website dedicated to electronic voting. The notice of meeting may also be taken to represent the convening notice if no draft resolutions have been added and if it includes all of the disclosures required in a convening notice.

The issuer shall also post **on its website an explanatory statement for the draft resolutions** at the same time as the notice of meeting<sup>159</sup>.

The French Commercial Code, moreover, sets out a specific framework for electronic voting by correspondence and by proxy<sup>160</sup>.

158 – Order no. 2020-321 of March 25, 2020, amended by Order no. 2020-1497 of December 2, 2020 and by French decree no. 2021-255 of March 9, 2021; French decree no. 2020-418 of April 10, 2020 as amended by French decree no. 2020-1614 of December 18, 2020.

159 – Proposal no. 1.5(B) regarding AMF Recommendation no. 2012-05 of July 2, 2012, amended October 5, 2018.

160 – Articles R. 225-61 et seq. of the French Commercial Code.

At the latest, 15 days prior to the initial notice of a shareholders' meeting (or 6 days in the case of a shareholders' meeting for the approval of a public offering) and, at the latest, 6 days prior to a second notice (or 4 days in the case of a public offering), a **notice** shall be published in a journal approved for the disclosure of legal announcements within the French district where the issuer's headquarters are registered and in the BALO.

In order to favour shareholder participation in shareholders' meetings, the AMF<sup>161</sup> recommends, in addition to the publication on the website of the notice of meeting that issuers also post their notices on their websites and disclose the date, location and time of the shareholders' meeting through a **notice published in a newspaper** with national circulation. Such disclosure should be made concurrently with the publication in the BALO and the journal of legal announcements. The AMF also recommends that issuers include on their website and in a press release the means by which shareholders can obtain the preliminary documentation to prepare for the shareholders' meeting.

In order to make the resolutions more intelligible to the shareholders, issuers are advised to present draft resolutions separately when a draft resolution covers several distinct material issues which are likely to give rise to separate votes. Lastly, issuers and shareholders who add draft resolutions to the agenda are advised to prepare a written explanation, for publication on the issuer's website, of the reasons for doing so<sup>162</sup>.

For providing access to shareholders' meeting-related documents (notices of meeting, reports, draft resolutions, etc.) the AMF recommends making a boiler-plate request form available on the company's website. Issuers and asset management companies are also advised to endeavour to inform shareholders by email of the available documentation<sup>163</sup>.

*(A sample press release is shown in appendix 5 of the Guide to filing regulatory information with the AMF and to its dissemination).*

### Written and oral questions from shareholders

The AMF advises issuers to reply to all oral questions addressed by the shareholders, except for those which are redundant or frivolous in nature, and to choose the shareholders wishing to speak in an impartial manner<sup>164</sup>.

In application of the principle of equal access to information, the communication of answers to written and oral questions asked by shareholders is necessary **if the issuer deems that those answers provide inside information** within the meaning of market regulations.

If the issuer deems that, in application of the aforementioned principle, market communication is necessary, the issuer's press release must be disclosed at the beginning of the shareholders' meeting in the case of answers to written questions and immediately following the shareholders' meeting in the case of oral questions.

161 – Guide to filing regulatory information with the AMF and to its dissemination.

162 – AMF Recommendation, General meetings of shareholders of listed companies, DOC-2012-05, amended on April 29, 2021.

163 – AMF Recommendation, General meetings of shareholders of listed companies, DOC-2012-05, amended on April 29, 2021.

164 – AMF Recommendation, General meetings of shareholders of listed companies, DOC-2012-05, amended on October 5, 2018.

## Meeting minutes

The AMF recommends, in any event, posting summary minutes of shareholders' meetings on the company's website **within 2 months** of the meeting and drawing up the full report as soon as possible and **within 4 months** of the meeting<sup>165</sup>.

## Transparency of the voting process

In its recommendation on general meetings of shareholders of listed companies, updated on October 5, 2018, the AMF put forward proposals, even recommendations, aimed at strengthening voting transparency at shareholders' meetings:

- the AMF reminds issuers that they must take into account any vote expressed via a document or form satisfying legal and regulatory requirements and recommends that they use the standardised voting form designed by the ANSA and the CFONB (without prejudice to their right to recommend the use of the voting form of their choice);
- the AMF recommends providing a reasonable number of voting boxes at shareholders' meetings to corporate officers requesting such devices;
- the AMF recommends that issuers whose shareholders hold shares in bearer form clearly indicate to these shareholders, in the notice of general meeting, that an admittance card is sufficient to participate in the meeting in person and that they only need to request a certificate of ownership in exceptional cases where they have lost their admittance card or did not receive it in time;
- the AMF recommends, lastly, to shareholders and issuers using the services of bailiffs at their shareholders' meetings that they require the latter to specify in the report they produce the extent and limits of their assignment.

The AMF has put forward proposals for legislative and regulatory amendments, which aim in particular at<sup>166</sup>:

- providing that any vote by proxy or by correspondence be date- and time-stamped and that its receipt be confirmed electronically;
- ensuring the right, for all types of shareholders and vote, for shareholders to obtain confirmation that their votes have been taken into account at the shareholders' meeting, or the reason why they have not been taken into account, upon request made within 3 months of the date of the vote;
- disclosing publicly, when the results of the vote are announced, the total number of rejected voting rights of which the issuer is aware at the date of the shareholders' meeting;
- drafting a **methodological guide on how votes are processed at shareholders' meetings** for the transfer agents, custody account-keepers and issuers that handle some or all of this processing. This guide was published by the French Association of Securities Professionals (*Association Française des Professionnels des Titres – AFTI*) in February 2020.

165 – Proposal no. 1.8 regarding AMF Recommendation no. 2012-05 of July 2, 2012, last amended on April 29, 2021.

166 – AMF Recommendation, General meetings of shareholders of listed companies, DOC-2012-05, amended on October 5, 2018.



## Results of shareholder votes

Within 15 days of the shareholders' meeting, issuers must publish on their website the results of votes including at least the number of shareholders in attendance or represented at the meeting, the number of votes represented by these shareholders as well as, for each resolution, the total number of votes cast, stating the number of shares and the proportion of the capital they represent, as well as the number and percentage of votes for and against the resolution and the number and percentage of abstentions out of the total number of voting rights<sup>167</sup>. For shareholders' meetings held to approve the financial statements for the first financial year ended after July 19, 2019, abstentions, as well as blank or invalid votes, are excluded from the vote count rather than being considered votes against the resolution<sup>168</sup>.

## 5 | EVENTS AFFECTING THE SHAREHOLDING STRUCTURE

### CHANGES IN THE SHAREHOLDING STRUCTURE

#### Voting rights and shares making up the share capital

According to article 223-16 of the AMF General Regulations, **every month**, issuers are required to send to the AMF and publicly disclose the total number of shares and voting rights making up the share capital if those figures differ from the information previously disclosed (*a sample press release is shown in appendix 12 of the Guide to filing regulatory information with the AMF and to its dissemination*).

Information on the number of shares and voting rights making up issuers' share capital is not published on the AMF's website. It is **disseminated by issuers within the scope of their regulated information**. Consequently, issuers must ensure that the information is disclosed effectively and in full, and is posted on their own website.

#### Crossing of legal thresholds (information for which the shareholder is responsible)

Pursuant to article L. 233-7 of the French Commercial Code, any individual or legal entity, acting alone or in concert, holding directly or indirectly a number of shares that crosses a legal disclosure threshold (i.e., 5%, 10%, 15%, 20%, 25%, 30%, one-third, 50%, two-thirds, 90% or 95% of the issuer's share capital or voting rights), whether upwards or downwards, must notify the issuer **no later than the fourth trading day after the shareholding threshold has been crossed**.

167 – Articles R. 225-106-1 and L. 22-10-30 of the French Commercial Code, amended by French decree no. 2019-1486 of December 27, 2019.

168 – Articles L. 225-96 and L. 22-10-31 of the French Commercial Code, amended by French Law no. 2019-744 of July 19, 2019 on the simplification, clarification and update of corporate law.

Article 223-14 of the AMF General Regulations requires these persons to also notify the AMF, no later than the close of trading on the fourth trading day after the shareholding threshold has been crossed. Information on crossed shareholding thresholds is considered regulatory information and **full and effective disclosure of such information is now exceptionally provided by the AMF itself on its website**<sup>169</sup>.

The **automatic granting of double voting rights has been in effect since April 2, 2016** (unless stipulated otherwise in the articles of association) for all fully paid shares that can be proven to have been **held in the same name for at least 2 years**. Consequently, shareholders should be particularly attentive to crossing these thresholds. The AMF publishes this information on its website once it has received the form for disclosing the threshold crossing. **A model disclosure form is also available on the AMF website.** Order no. 2015-1576 of December 3, 2015 amended the scope of disclosures made in respect of crossing thresholds.

- Article L. 233-7 I of the French Commercial Code now states that shares included in the calculation of shareholding thresholds may be **owned "directly or indirectly"**.
- The scope of financial instruments excluded from the calculation has been enlarged. In addition to shares, this now also includes agreements and financial instruments listed in article L. 233-7 and article L. 233-9 of the French Commercial Code that meet certain criteria (acquired for the sole purpose of clearing, held by custodians, held in the trading portfolio of an investment services provider, acquired for the purpose of stabilisation, etc.).
- **Agreements and financial instruments** giving rise to a physical or cash settlement (article L. 233-9 I 4° *bis* of the French Commercial Code) and **options that are exercisable immediately or in the future**, are now included in the shares and voting rights used to calculate crossing of thresholds that must be disclosed. Clearly, only instruments giving long positions need to be included. However the AMF recently considered that a double assimilation was needed when physical calls were acquired by a party and physical puts sold by the same party, even though the characteristics of the situation make it impossible to truly acquire the shares underlying the calls and puts (a clause nullifying the calls or puts, respectively, in the event that these puts or calls are exercised).
- The acquisition of **securities as part of a buyback programme** or a financial instrument stabilisation programme represents another exemption from disclosures of upward or downward crossings of thresholds established by the company's articles of association and of legal thresholds and temporary sale agreements, provided that the attached voting rights are not exercised or used for purposes other than to intervene in the management of the issuer (article L. 233-7 IV of the French Commercial Code).

Lastly, pursuant to article 223-15-1 of the AMF General Regulations, disclosure requirements when crossing statutory and legal thresholds also apply to organised multilateral trading facilities when a single person owns **over 50% or 95% of a company's capital or voting rights**. In such cases, not only the AMF but the issuing company as well, must be informed that these thresholds have been crossed.

<sup>169</sup> – Articles 221-1 1°m) and 221-3 of the AMF General Regulations.

As a result, according to the regulation, **the notice of threshold crossing indicates in particular the crossed threshold, the total number of shares and voting rights held, and the name of the shareholder** who has crossed the threshold.

The shareholder who has crossed the threshold must also specify:

- the number of shares that the shareholder owns that give deferred rights to newly issued shares and the corresponding voting rights;
- existing shares that the shareholder may obtain, by way of an agreement or a financial instrument that requires physical or cash settlement, not including those that have already been counted in the calculation to determine the crossing of the threshold.

The notice of threshold crossing must also (i) disclose whether the shareholder is acting alone or in concert with others and, (ii) in the event of crossing the thresholds of 10%, 15%, 20% or 25% of share capital or voting rights, state the **objectives** for the next 6 months in a declaration of intent.

The declaration of intent should be sent to the issuing company and be received by the AMF **by the end of the fifth trading day following the threshold crossing**. It must specify the objectives to be pursued in the coming 6 months, the methods of financing the acquisition, whether the acquirer is acting alone or in concert, whether the acquirer is planning to stop or continue purchasing and to acquire control or not, the planned strategy in relation to the issuer and the transactions to implement this strategy, the acquirer's intent as to the settlement of the agreements and instruments mentioned in points 4° and 4° bis of section I of article L. 233-9 of the French Commercial Code, if the acquirer is a party to such agreements or instruments as well as any temporary sale agreement concerning the shares or voting rights.

This declaration will also specify whether the acquirer plans to request appointment for him/herself or for one or more persons as a director, member of the management board or the supervisory board. In the event of a change in intent within 6 months, a new declaration must be immediately sent to the company and the AMF and brought to the public's attention, thus marking the start of a new six-month period.

### Crossing of legal thresholds (information for which the issuer is responsible)<sup>170</sup>

In principle, the issuer discloses the composition of and any changes to its shareholder structure **within the framework of its periodic information** on publication of its URD. As an exception, when the shareholding structure has been modified following a transaction to which the issuer is a party, the issuer may consider it necessary to **disclose the information to the market immediately**, because of the material nature of the change.

The issuer's press release should be published either when the definitive agreement that will result in a change in the shareholding structure is reached, or prior to reaching a definitive agreement when it becomes obvious that the confidentiality of the change in the shareholding structure can no longer be assured.

170 – Articles 223-11 *et seq.* of the AMF General Regulations are applicable to issuers listed on Euronext Growth when an investor comes into possession of more than 50% or 95% of the capital or voting rights (article 223-15-1 of the AMF General Regulations).

In the absence of a material change in the shareholding structure, an issuer who wishes to disclose to the market any change in its shareholding structure is completely free to make such a disclosure.

If the issuer believes that an immediate disclosure is necessary or timely, the press release disseminated by the issuer may describe the transaction that led to the change in the shareholding structure and provide the breakdown of share capital following the transaction, the company's main commitments and, if appropriate, the company's position relative to this change in shareholding structure.

### Crossing of thresholds established by the company's articles of association

A shareholder who has crossed a threshold established by the company's articles of association is obliged to declare this breach **to the issuer** within the time limit set in the articles of association. This information is for internal purposes only and the AMF does not have to be notified.

### Shareholders' agreements concerning the issuer: signature or termination

Pursuant to article L. 233-11 of the French Commercial Code, clauses regarding shareholders' agreements (and any agreement more generally) setting out preferential terms for the disposal or acquisition of shares admitted to trading on a regulated market and concerning at least 0.5% of the issuer's share capital and voting rights, must be sent by the agreement's signatories **to the issuer concerned and to the AMF**. The AMF will then publicly disclose the information<sup>171</sup> within 5 trading days of the signature of the agreement in question.

However, the issuer is under no obligation to inform the market of the signature or termination of a shareholders' agreement of which it is the subject. In principle, the issuer provides disclosures concerning shareholders' agreements **within the framework of its periodic information** (URD).

The issuer and the AMF must also be informed of the date on which the shareholders' agreement expires.

### Shareholders' agreements concerning a subsidiary or investment of the issuer: signature or termination

When the issuer signs a shareholders' agreement concerning one of its listed subsidiaries or an investment in a listed company, or when such an agreement is terminated or expires, market disclosure is mandatory if the agreement sets preferential conditions for the disposal or acquisition of shares concerning at least 0.5% of both the share capital and voting rights of the subsidiary or the listed investment concerned. The shareholders' agreement must then, under the terms of the regulation, be **sent to the AMF**, which will issue a notice accordingly within 5 trading days of the agreement's signature.

If the agreement does not concern a listed company or if it concerns a listed company but does not set preferential conditions for the disposal or acquisition of shares covering at least 0.5% of both share capital and voting rights, **the issuer will evaluate whether market disclosure is necessary or timely** depending on the situation, by examining the materiality of the shareholders' agreement, notably with regard to the major strategic interest of the subsidiary for the issuer, the number of shares covered by the shareholders' agreement, and the rights conferred to the issuer and/or any other parties to the agreement.

If the issuer believes that market disclosure is necessary or timely, the press release should be published immediately by the issuer, as soon as the agreement is signed, expires or is terminated.

The press release published by the issuer must identify the parties to the agreement, the number of shares concerned by the agreement and the term of the agreement. The press release should also describe the main rights and obligations that the signatories will derive from the agreement, as well as the results of its termination (end of the potential concerted action, etc.).

## BUYBACK AND/OR DISPOSAL BY THE ISSUER OF ITS OWN SHARES<sup>172</sup>

In the event of a buyback and/or disposal by the company of its own shares, market disclosure is mandatory pursuant to the regulation. The content and means of the disclosure are set by the regulation.

Since the entry into force of the Market Abuse Regulation on July 3, 2016, companies whose shares are listed on a regulated market or on a multilateral trading facility must indicate their LEI number in their disclosures relating to share buybacks, in order to allow the company's management to disclose the transactions they have made<sup>173</sup>.

In addition, since March 2017, Euronext market rules require that all companies take the necessary measures to obtain an LEI number for the entire period during which their financial instruments are admitted to trading on the Euronext markets. Investment companies trading financial instruments must obtain an LEI for each participant in a transaction in order to meet AMF and ESMA regulatory requirements<sup>174</sup>.

## Setting up a share buyback programme

A document known as **"Programme Description"** not subject to AMF approval must be published prior to the implementation of a share buyback programme. The description of the buyback programme is qualified as **regulatory information** within the meaning of the AMF General Regulations and, as such, is subject to the requirement of effective and complete dissemination. If this description is included **in the URD**, annual financial report or prospectus publicly disclosed before any such programme is implemented, the issuer is exempt from the effective and complete disclosure of this information.

172 – Articles 241-1 *et seq.* of the AMF General Regulations.

173 – Articles 5 and 19 of the Market Abuse Regulation.

174 – Article 26 of Regulation (EU) no. 600/2014 of May 15, 2014.

### Decision to implement a share buyback programme<sup>175</sup>

Issuers wishing to buy back their shares must have been previously **authorised to do so by their shareholders' meeting** within the conditions set out in articles L. 22-10-62, L. 225-209-2 and L. 22-10-63 of the French Commercial Code. In general, issuers do not communicate information concerning the decision to implement a share buyback programme that has been authorised by the shareholders' meeting, given that any announcement may have an impact on the issuer's share price, and thus may make the share buyback programme's implementation more costly for the issuer.

### Implementing a share buyback programme

The buyback of shares of listed companies is subject to anti-market abuse legislation. Issuers may be allowed to deal in their own shares further to an approved exemption based on the reason for the buyback.

- Article 5 of the Market Abuse Regulation includes an exemption known as an **"irrefutable presumption of legitimacy"**, whereby issuers who buy back their own shares in the context of a buyback programme under the conditions set down by this article do not fall within the scope of market abuse.

To qualify for this exemption, the purpose of the buyback programme must be one of the following:

- to decrease 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 other allocations of shares, to employees or to members of the administrative, management or supervisory bodies of the issuer or of an associate company.

- Article 13 of the Market Abuse Regulation refers to the **"simple presumption of legitimacy"** and states that the prohibition of engaging or attempting to engage in market manipulation does not apply to accepted market practices carried out for legitimate reasons as set out by the competent authority.

Share buybacks that are carried out for purposes other than those listed above are not prohibited outright, but do not qualify for any exemption.

The AMF General Regulations and Delegated Regulation 2016/1052 require the issuer to notify the market of all transactions carried out.

Issuers wishing to qualify for the exemption provided for in article 5 of the Market Abuse Regulation are required to publish a press release on buybacks carried out in the context of a buyback programme authorised by article 5 of said Regulation (buybacks qualifying for an irrefutable presumption of legitimacy) using an effective and complete form of disclosure within 7 trading days of the transactions being carried out. **Transactions are to be presented aggregately (by day and by market) and described in detail.** Such

<sup>175</sup> – AMF Position/ Recommendation no. 2017-04 – Guide relating to trading by issuers in their own shares and stabilisation measures.

information is to be posted on the issuer's website and must be made available to the public for 5 years. The AMF must also be notified of the buybacks electronically within the same seven-day trading period, using the **notification template** included in AMF Instruction no. 2017-03 on the methods for notifying transactions carried out as part of dealings by listed issuers in their own shares and stabilisation measures.

More generally, regardless of the type of buyback, all buyback programmes are to be made public prior to implementation through effective and complete disclosure, pursuant to article 241-2 I of the AMF General Regulations.

Furthermore, any issuers conducting transactions (acquisitions, disposals, cancellations and transfers) in their own shares in the context of a buyback programme shall notify the AMF of such transactions electronically on a monthly basis, pursuant to article L. 22-10-64 of the French Commercial Code and article 241-4 II of the AMF General Regulations.

**The monthly notice constitutes regulatory information** within the meaning of the AMF General Regulations and as such is subject to the requirement of effective and complete dissemination. This information is available online on the AMF's website. If the **weekly declaration** relating to the implementation of the share buyback programme contains all the information required in the monthly notice, **the issuer is not required** to file the monthly notice.

While the buyback programme is in effect, any changes to one of the characteristics of the programme must be the subject of effective and complete disclosure under the same conditions.

Where shares are listed on several markets, the issuers must respect the disclosure formalities imposed by each competent authority.

The board of directors or the executive board must indicate, in its **annual report to shareholders**, the number of shares purchased and sold in the course of the year within the scope of the share buyback programme, the average prices of the purchases and sales, the amount of the trading fees, the number of shares registered in the company's name at the closing date and their value in terms of the bid price as well as the nominal value of shares allocated to each planned objective, the number of shares used, any reallocations of the shares to other objectives, and the fraction of share capital that they represent.

### Cancellation of own shares

In principle, market disclosure relative to the cancellation of repurchased shares is made **within the framework of the monthly notice** concerning the share buyback programme. In addition, listed companies are required to disclose the total number of shares and voting rights making up the company's share capital on a monthly basis if they differ from those in the preceding month's disclosure, as in the event of the cancellation of repurchased shares (see Part 2, Section 5 "Voting rights and shares making up the share capital").

As an exception, if the issuer considers immediate market disclosure to be necessary or timely in view of the material size of the cancellation, it should indicate in a press release the impact of the cancellation on voting rights and financial ratios for the issuer

(with the stipulation that the total number of voting rights used as a basis for calculating threshold crossings remains the same as that indicated in the most recent declaration published by the issuer pursuant to article L. 233-8 II of the French Commercial Code).

### Abstention period

To qualify for the exemption set out in article 5 of the Market Abuse Regulation, when a buyback programme is in effect, issuers must refrain from placing orders on their own shares during certain periods. These include:

- **closed periods**, i.e., within the 30 calendar days preceding the announcement of an interim or annual financial report which the issuer is required to publish and, where applicable, any closed periods established by the issuer at its own initiative. The AMF recommends that issuers voluntarily publishing financial information or quarterly or interim financial statements establish closed periods of **at least 15 calendar days** prior to publication<sup>176</sup>.
- any period during which the issuer decides to **defer publication of inside information**.

However, the AMF states that the issuer may decide not to respect these abstention periods if it has implemented a **scheduled buyback programme** (i.e., the calendar for the buyback programme was specifically set when information about the programme was published) or if execution of the programme is to be managed by an investment services provider who independently decides the dates for the buyback<sup>177</sup>.

### LIQUIDITY CONTRACT

The liquidity contract entered into by the issuer within the framework of its share buyback programme must be disclosed to the market by means of a press release disseminated according to the **same rules as regulatory information**.

A regulatory information press release shall be published:

- upon implementation of a liquidity contract;
- at the same time as the half-yearly balance sheet;
- when the liquidity contract is terminated; and
- when any change is made to any features of the liquidity contract.

As for share buybacks, monthly disclosure to the AMF is also required.

Liquidity contracts represent an accepted market practice in light of the assessment criteria established by the Market Abuse Regulation and are more widely discussed in AMF Position no. 2011-07, which was applicable until December 31, 2018 (Share liquidity contracts).

On April 25, 2017, ESMA published an opinion on its *Points for convergence in relation to MAR accepted market practices on liquidity contracts* (ESMA 70-145-76, April 25, 2017) which is to be taken into account by national authorities that have introduced

<sup>176</sup> – AMF Position/ Recommendation no. 2017-04 – Guide relating to trading by issuers in their own shares and stabilisation measures, section 1.5.2. For further details on closed periods, see Part 3, Section 1 “Data confidentiality”.

<sup>177</sup> – AMF Position/ Recommendation no. 2017-04 – Guide relating to trading by issuers in their own shares and stabilisation measures, section 1.5.3.



liquidity contracts as an accepted market practice. On April 11, 2018, ESMA published an unfavourable opinion on the AMF's plan to authorise a new market practice encompassing liquidity contracts<sup>178</sup>. The AMF acknowledged this opinion<sup>179</sup> and, on July 2, 2018, decided to establish an accepted market practice for liquidity contracts on shares<sup>180</sup>, adding a note on its website setting out the reasons for its decision and why this practice will not threaten market confidence<sup>181</sup>.

On January 15, 2019, ESMA presented its first report on accepted market practices (AMP) to the European Commission in which it issues a negative opinion on the practices proposed by the AMF on the grounds that they do not respect, during a two-year transitional period, ESMA Points for Convergence<sup>182</sup>.

In this respect, the AMF chairman sent a letter to Olivier Guersent, Directorate-General for Financial Stability, Financial Services and Capital Markets Union (FISMA) of the European Commission setting out and standing behind its position. According to the AMF, *"at a time when mid-cap listings are under pressure, notably due to regulatory constraints, which have accumulated disproportionately with regard to mid-caps, it would have been irresponsible to commit to an uncontrolled change in the system that has been used for many years by more than 400 issuers, and which is seen as an important element of the dynamism and appeal of the mid-cap compartment. The AMF Board therefore came to the unanimous conclusion that the ESMA approach was inappropriate"*<sup>183</sup>.

In April 2021, the AMF Board ruled in favour of the requests made by issuers and industry stakeholders. The AMF's proposed amendments seeking to tighten the conditions for implementing liquidity contracts were therefore rejected. As provided for in the European Market Abuse Regulation, the AMF notified ESMA of its intention to maintain its practice in respect of liquidity contracts, with a new version expected to be introduced as of July 1, 2021. In late May, ESMA issued a non-binding unfavourable opinion<sup>184</sup>. On June 22, the AMF updated the accepted market practice on liquidity contracts (see Decision no. 2021-01).

## DIVIDENDS

### Dividend payments

The draft resolution submitted to the annual shareholders' meeting concerning the distribution of a dividend accompanies the **management report** as described in the French Commercial Code. Dividends are generally paid each year on the basis of company profits. Interim dividends may be paid during the financial year before the final balance is paid.

The issuer must also publish a **press release** announcing the amount of the proposed ordinary or extraordinary dividend that is to be put to a vote at the shareholders' meeting or the amount of the interim dividend, and the planned dividend or interim dividend payment date. Information concerning the proposed dividend may be included in the issuer's press release announcing the annual results. Information concerning an interim

178 – ESMA, "Opinion relating to the intended accepted market practice on liquidity contracts notified by the AMF", April 11, 2018.

179 – AMF, press release, "The AMF notes ESMA's unfavourable opinion concerning the project to introduce a new accepted market practice governing liquidity contracts", April 13, 2018.

180 – AMF Decision no. 2018-01 of July 2, 2018 on the introduction of liquidity contracts on shares as an accepted market practice. This decision, applicable since January 1, 2019, substitutes AMF Position/ Recommendation DOC-2011-07 on share liquidity contracts.

181 – Public notice pursuant to article 13(5) of Regulation (EU) no. 596/2014 on market abuse as part of the establishment of liquidity contracts as a market practice accepted by the AMF.

182 – ESMA, Report to the Commission on the application of accepted market practices, January 15, 2019.

183 – Letter from the Chairman of the AMF to the Director-General of the FISMA dated January 17, 2019.

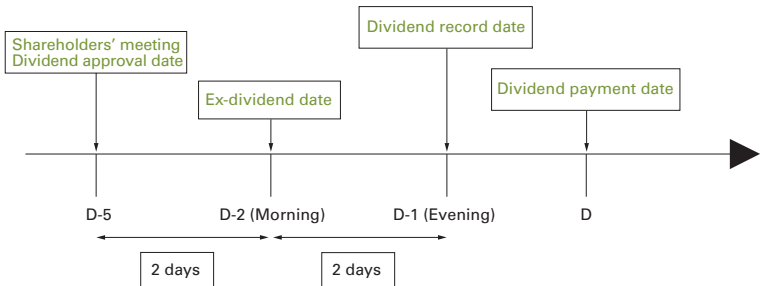
184 – AMF Position/ Recommendation DOC-2017-04 – Guide relating to trading by issuers in their own

dividend payment may be included in the issuer’s press release announcing the half-yearly or quarterly results, as appropriate.

The AMF<sup>185</sup> and ESMA<sup>186</sup> have indicated that because of their potential impact on the valuation of financial instruments and the related derivatives, dividend information such as (i) information concerning the amount of the proposed and final dividend, the form of the dividend payment, the ex-dividend date, and the payment date of the proposed dividend to be submitted to a vote by the shareholders’ meeting, and (ii) information on changes in dividend payment policy, shall be considered as inside information within the meaning of article 7 of the Market Abuse Regulation.

Given the technical constraints, applicable to securities traded on Euronext, concerning the time period for dividend payments, it should be emphasised that the **dividend payment date shall be set no earlier than the fifth working day following the shareholders’ meeting that approved the distribution of the dividend** (see diagram below).

Diagram of the positioning of dates for dividend management



Ex-dividend date: date from which trades are executed with the dividend detached, that is, bearers of shares traded from that date will not receive dividends.

Dividend record date: date on which Euroclear determines the persons who have the right to payment of the dividend on the basis of position balances at the end of its accounting day. In general, this is the day before the payment date.

Dividend payment date: date from which dividends are payable. This date is determined by the issuer and serves as a reference to anchor the other dates.

Change in the dividend payment date

When the issuer decides to change the date on which dividends are paid to its shareholders, even if this date differs significantly from the dividend payment date in the previous

shares and stabilisation measures, applicable as of April 29, 2021. See also “Retrospective analysis of the impact of liquidity contracts on the French market (December 2019 – May 2020) and potential changes in accepted market practice”, published on April 27, 2021.

185 – AMF Position/ Recommendation no. 2016-08 – Guide to ongoing disclosures and the management of inside information (section 1.4.3).

186 – ESMA Questions and Answers no. 2015/1635 of November 9, 2015.

financial period, **the market must be notified** of this as soon as possible in order to enable participants of derivatives markets, when the issuer's shares are the underlying of derivative instruments, to factor in the new dividend payment date in their pricing models<sup>187</sup>.

Such situations arise notably when payment of the dividend per share will be made during a different derivative maturity period than that in the previous year (for example, a dividend per share paid in June of year Y and ex-dividend date moved to May in year Y+1). The same principles apply when issuers modify their dividend distribution policy by scheduling one or several interim dividend payments or by modifying the ex-dividend date.

## 6 ■ RISKS AND LITIGATION

In the course of its business, the issuer may be exposed to various types of risks. Schematically, it is possible to distinguish between the **issuer's own risks** that are specific to it and are related to internal factors (for example, the risk of default of one of its clients, risks related to inappropriate supplier practices, **risks linked to a significant event** concerning a listed or non-listed subsidiary of the issuer, or the **risk of default** of a counterparty in market transactions), risks related to external factors, particularly macroeconomic factors, that may have an impact on its business and/or its results (for example, **market risks** including currency risk, interest rate risk, liquidity risk or commodity-related risk), **risks related to changes in regulation** applicable to the issuer or modification of tax law, or **country risks** that may have an impact on the issuer's production, product distribution or supplies.

In its Guide for compiling universal registration documents, the AMF sets out its recommendations for the drafting of the "Risk factors" section.

Other recommendations concerning the presentation of risk factors in the URD are included in Delegated Regulation (EU) 2019/980 of March 14, 2019. Lastly, on March 29, 2019<sup>188</sup> ESMA published its final report in which it specifies the information that should be provided, including aspects concerning the number of categories of risk and materiality.

### RISKS RELATED TO CHANGES IN MACROECONOMIC FACTORS

The issuer must in principle disclose to the market, on a regular basis, within its periodic information, information that enables investors to assess its sensitivity to macroeconomic risks. Thus, the market should in principle be able to assess the impact on the issuer's situation of any change in macroeconomic factors that may affect it.

Information on market risks to which the issuer is exposed must be **included in the issuer's financial statements under IFRS 7**. The section in the management report, the annual financial report, on the main risks and uncertainties and the "Risk factors"

187 – AMF Position/ Recommendation no. 2016-08 – Guide to ongoing disclosures and the management of inside information (section 1.4.3).

188 – ESMA 31-62-1217, March 29, 2019.

section of the URD may refer to relevant passages of the issuer's financial statements for the description of these market risks.

In addition to this information, from now on the **management report** must describe **internal control and risk management procedures** relating to the preparation and processing of financial and accounting information (as formerly described in the chairman's report on internal control). The report must also describe the financial risks **related to the effects of climate change** and the measures taken by the company to mitigate these by deploying carbon-light processes in all components of its business. Lastly, "*where appropriate for measuring its assets, liabilities, financial position and results*", the management report must outline the issuer's objectives and policies concerning the hedging for each main category of planned transactions for which hedge accounting is used, as well as its exposure to **price risk, credit risk, liquidity and cash management risk**. This description also includes the company's use of financial instruments<sup>189</sup>.

Consequently, the issuer generally does not need to make any immediate and specific communication concerning its sensitivity to changes in macroeconomic factors, such communication being made in principle through the dissemination of **periodic information**.

However, when the issuer believes that a change in a macroeconomic factor has led to an unjustified disturbance in its share price, it should examine whether the disturbance has resulted from an insufficient explanation to the market of its sensitivity to the relevant macroeconomic factor. If this is the case, the issuer should communicate rapidly to the market in order to provide it with a full explanation that will enable market participants to assess the impact of changes in the relevant macroeconomic factor on its business and/or its results.

## ISSUER-SPECIFIC RISKS

Disclosures relative to risks specific to the issuer are in principle provided within the framework of its **periodic information** (the information will be presented in the management report, the annual financial report and/or the URD, or even in an amended version of it).

However, as an exception, the issuer should **publish a press release as soon as it determines the existence of a risk that is not known to the market** if it considers the scope and potential financial impact of the risk to be of such significance, particularly with regard to the estimated impact on its performance and financial structure under various risk scenarios, the potential impact on its share price, the estimated impact on its strategy and/or organisation and the potential impact on its reputation, that it necessitates immediate market disclosure.

When the issuer considers that immediate disclosure to the market is necessary, the information should include an explanation of the type of risk and should describe the internal control procedures put in place by the issuer.

The issuer's disclosure may also include a **quantified assessment of the impact in the event that the risk materialises** (provided that this assessment is sufficiently reliable) and it may indicate whether the issuer has hedged the risk.

## LITIGATION

In the course of business, the issuer is exposed to various types of litigation.

Schematically, that litigation may be of the following types:

- litigation with a client, a supplier or a commercial partner;
- action for damages brought against the issuer due to defects in its products or services or related to non-compliance with regulations;
- litigation with the administrative authorities or any other supervisory body;
- litigation with employees or their representatives.

In principle, the issuer provides disclosures concerning any major disputes within the framework of its periodic information (URD and financial statements).

As an exception, the issuer assesses the necessity and timeliness of immediately disseminating a **press release** by examining whether the litigation is material with regard to its industrial, commercial and/or financial consequences for the issuer, it being understood that the materiality of litigation with employees and/or their representatives must be assessed with regard to the payroll concerned and claims against an employee redundancy plan or a collective bargaining agreement.

In practice, the issuer's communication generally pertains to the **terms of the litigation and the amount of the claims** against the issuer relative to the litigation. The issuer's communication may also include an assessment of the potential commercial, industrial, social and/or financial impact of the outcome of the litigation for the issuer – provided that disclosure of this assessment will not damage the issuer's interests within the framework of the legal proceedings in progress – and, if necessary, the communication may also state whether the litigation has been provisioned in the issuer's financial statements.

## 7 ■ RUMOURS AND LEAKED INFORMATION

### RUMOURS

**As a general principle, issuers should not comment on rumours** concerning them, regardless of the source of the rumour (market traders, media, internet forums on the market, etc.). As an exception, in the event of a persistent unfounded rumour which the issuer finds to be causing a significant disturbance in the price and/or trading volumes for its shares, **it is up to the issuer to assess whether a press release denying the rumour should be published.**

If the rumour has a basis in truth, the matter very likely concerns leaked information, which should be treated as such (see below, “Leaked information”).

The specific case of a rumour or leaked information relative to a takeover bid on the issuer is discussed in the section devoted to takeover bids.

See Part 3, Section 3 “Financial and digital communication” for further details on the use of social media to manage rumours.

### LEAKED INFORMATION

Pursuant to article 17.7 of the Market Abuse Regulation, taken up by AMF Position/ Recommendation no. 2016-08, Guide to ongoing disclosures and the management of inside information, where a rumour explicitly relates to inside information the disclosure of which has been delayed, and where that rumour is sufficiently accurate to indicate that the confidentiality of that information is no longer ensured, that **information should be published by the issuer as soon as possible.**

The specific case of a rumour or leaked information relative to a takeover bid on the issuer is discussed in the section devoted to takeover bids.

## 8 ■ MERGERS AND ACQUISITIONS

### ACQUISITIONS AND DISPOSALS

#### Existence of negotiations and signature of a letter of intent or pre-contractual document

If the issuer is in the process of negotiating with a third party concerning an acquisition or disposal, and the conditions for delaying the disclosure of information can no longer be met, particularly if it can no longer guarantee the confidentiality of this information, it must **judge** whether immediate market disclosure is necessary or timely, depending on the situation, with regard to whether the transaction is material (the materiality of the transaction being assessed particularly in consideration of the criteria discussed in the sub-category entitled “Signature of a firm agreement”).

If the transaction is not material, the issuer’s disclosure of the existence of negotiations is optional and may be made at its complete discretion.

If the issuer considers immediate market disclosure to be necessary or timely, the issuer’s release will indicate in practice the purpose of the negotiations, the state of advancement of the negotiations and the partner’s name.

In the event of the signing of a pre-contractual document (memorandum of understanding, letter of intent, etc.), the issuer’s communication may, in certain cases, contain a summary of the key provisions of the agreement as well as possible future steps or conditions precedent that should be fulfilled prior to the conclusion of a firm agreement or implementation of the transaction when the issuer judges that market disclosure of this information is necessary or timely.

#### Data room

AMF Position/Recommendation no. 2016-08 (section 3.2) sets out the procedures for disclosing inside information prior to the sale of significant stakes in companies listed on a regulated market (“data room” procedures). The AMF recommends that data room procedures only give access to inside information if strictly necessary for the purpose of informing participants about the transaction concerned, and that access to the data room be restricted to signatories of a letter of intent stating their intention to carry out a financial transaction and the viability of the project, and particularly their ability to finance it.

Before initiating any data room procedure, each of the participants must sign a **confidentiality agreement** aimed at preventing the dissemination and use of inside information. When information exchanged in a data room becomes inside information, the issuer must either make it public or delay disclosure in accordance with the requirements set out by the Market Abuse Regulation (see Part 1, Section 5 “Requirement for market disclosure of ‘inside information’ concerning the issuer”, pages 24 *et seq.*). In order to reiterate the

principle of equal access to information in the course of a financial transaction, the AMF also expects issuers to publish all inside information communicated between the future investor(s) and the company in the prospectus or the offer document. This disclosure does not release the issuer from its responsibility to disseminate inside information in accordance with article 17-1 of the Market Abuse Regulation. The AMF stipulates that in the event that a data room is organised in the course of a public offering and, if there are several competing bids, the issuer needs to ensure access for all of the competitors to the information contained in the data room and enter into a confidentiality agreement with each one. Lastly, the AMF recommends that issuers only set up a data room that leads or is likely to lead to the transfer of inside information in the context of major transactions only.

### Signature of a firm agreement

Upon the issuer's signing of a firm agreement concerning an acquisition or disposal transaction, **the issuer shall judge** whether immediate market disclosure is necessary or timely with regard to the material nature represented by the acquisition or disposal for the issuer. It can also decide to delay releasing the information as long as the required conditions are met (see Part 1, Section 5 "Requirement for market disclosure of 'inside information' concerning the issuer," pages 24 *et seq.*).

The material nature of the disposal or acquisition, depending on the case, should be assessed in particular with regard to the size of the acquisition, its estimated impact on the issuer's business, results and financial structure, the strategic, financial, commercial and/or industrial importance of the transaction for the issuer and the capital gain or loss realised by the issuer in the event of a disposal.

If the transaction is not of material importance for the issuer, market disclosure may nonetheless be made if announcement of the acquisition would correspond to an expectation on the part of the market.

Market disclosure is carried out in the form of a press release. In certain cases, the issuer will also organise a meeting for analysts or a press conference relative to the transaction.

In practice, the press release disseminated by the issuer generally includes a description of the target (businesses, financial results and outlook) and strategic, financial, commercial and/or industrial objectives pursued by the issuer in the framework of the acquisition or disposal, as appropriate. The press release also outlines any pending conditions precedent to the completion of the transaction (regulatory and competitive authorisations, etc.) and provides a provisional timetable for the transaction (*a sample press release is shown in appendix 3 of the Guide to filing regulatory information with the AMF and to its dissemination*).

Concerning an acquisition, the press release disseminated by the issuer generally indicates the **purchase price** if it is material and may, if the issuer judges it useful, indicate the **means of financing planned for the transaction**.



If appropriate, the press release may also indicate the accounting impact of the transaction, anticipated synergies, the advantages of changing or leaving in place the target company's management and a description of the specific risks presented by the target (such as environmental or social risks, etc.).

Concerning a disposal, the press release disseminated by the issuer generally indicates the estimated **capital gain or loss if it is material**; however, this information may be provided qualitatively instead of being quantified. It is also useful to note that, in certain cases, for specific accounting reasons related to the asset divested, this information may not be disclosed to the market if it is likely to mislead the public.

However, in practice issuers rarely disclose to the market a description of the context of the transaction or disclose the existence of agreements or related transactions (such as management contracts, commercial contracts, etc.).

### Completion of a transaction (closing)

In practice, issuers generally issue a disclosure to the market when an acquisition or disposal of material importance, and about which they have previously communicated, is completed, particularly if the market had been informed that the circumstances of the transaction carried the risk of it not being completed.

In addition, the acquisition or disposal will result in a change in the issuer's consolidation scope that may require providing **pro forma information** within its periodic information (see above, "Change in the consolidation scope of the issuer [publication of pro forma information]").

### Fulfilment or non-fulfilment of conditions precedent relating to the transaction

When conditions precedent (authorisation by the relevant competition authorities, regulatory authorisations, etc.) relating to a disposal or acquisition about which the issuer has previously communicated are fulfilled, **the issuer will assess**, on a case-by-case basis, the necessity or timeliness of disclosing this information to the market with regard to the material importance of these conditions precedent in carrying out the transaction.

In the event of non-fulfilment of a condition precedent relating to a disposal or acquisition about which the issuer has previously communicated, immediate market disclosure is necessary if such non-fulfilment of the condition precedent definitively prevents the transaction from being carried out.

### Break-off in negotiations

In the event that negotiations are broken off, immediate disclosure to the market is necessary if the market was previously informed that negotiations were in progress; in the opposite case, a disclosure of the information to the market would not appear desirable.

If the issuer discloses the break-off in negotiations, the press release published by the issuer will recall the purpose of the negotiations. In practice, it is rare for the press release to indicate the exact reasons for breaking off negotiations.

### Transfers and acquisitions of significant assets

Since June 2015, the AMF has recommended that each company whose securities are authorised to trade on a regulated market should **consult the shareholders' meeting** prior to transferring – in one or several operations – or entering into a promise or an option to sell, assets representing at least half of its total assets on average over the 2 preceding financial years. Consultation of shareholders is also recommended when at least two out of five financial ratios defined by the AMF in its Position/Recommendation no. 2015-05 reach or exceed half of the consolidated benchmark indication for this ratio, calculated over the 2 preceding financial years (e.g., sales generated by the assets or business transferred, divided by consolidated sales, or the asset sale price divided by the group's market capitalisation). If the company decided not to apply the ratios indicated previously, it must justify its choice and indicate the alternative criteria selected and justify their relevance.

The AFEP-MEDEF Code, amended most recently in January 2020, states that **in the event of an unfavourable vote at the shareholders' meeting**, the board must immediately publish a press release on the company's website setting out how it intends to proceed vis-à-vis the operation.

Moreover, if these transfers or acquisitions are part of the normal business activity of companies whose main activity is acquiring and managing investments, such companies must still explain – in a well-reasoned manner adapted to their specific situation – why they consider that it is in the company's interest to dispense with this consultation.

The AMF and the AFEP-MEDEF Code also recommend that executives inform the shareholders and the market of:

- all transfers and acquisitions of significant assets not necessarily determined by the aforementioned ratios;
- the context and negotiations regarding the sale or disposal agreement;
- strategic, economic and financial circumstances and motives that led the transfer process to be considered and then carried out;
- the successive stages in the lead-up to the operation launched by the company's governing bodies in the company's interest.

In the case of asset transfers, details must also be given of the **quantitative and qualitative criteria** used to select the successful bid and, in the event of several competing bids, how these were analysed and rejected, subject to confidentiality restrictions. For acquisitions of significant assets, details must be provided of the methods of financing the operation.

## MERGERS, DIVISIONS (SPIN-OFFS), PARTIAL MERGERS

PD3 maintains the exemption from prospectus requirements for offers of securities made as part of a takeover by means of an exchange offer, a merger or a division, provided a document is made available containing information on the transaction and its impact on the issuer.

Commission Delegated Regulation (EU) 2021/528 of December 16, 2020 supplements PD3 as regards the minimum information content of the document to be published for a prospectus exemption in connection with a takeover by means of an exchange offer, a merger or a division.

It provides that the exemption document shall contain the relevant information which is necessary to enable investors to understand:

- the prospects of the issuer, and, depending on the type of transaction, of the offeree company, of the company being acquired or of the company being divided, and any significant changes in the business and financial position of each of those companies that have occurred since the end of the previous financial year;
- the rights attaching to the equity securities;
- a description of the transaction and its impact on the issuer.

The Annexes to the Commission Delegated Regulation provide the list of information that must be contained in the exemption document. The obligation to provide this information is reinforced when:

- the exemption document relates to a takeover by means of an exchange offer in respect of which the authority has issued a prior approval of the document containing a description of the transaction and its impact on the issuer; and
- the equity securities offered are not fungible with existing securities already admitted to trading on a regulated market prior to the takeover and its related transaction, or when the takeover is considered to be a reverse acquisition transaction.

On the other hand, the information requirement is reduced where, in connection with a transaction, the equity securities are offered to the public or to be admitted to trading on a regulated market and are fungible with equity securities already admitted to trading on a regulated market, and represent no more than 10% of those equity securities.

The information contained in an exemption document shall be written and presented in an easily analysable, concise and comprehensible form and shall enable investors to make an informed investment decision. Some information may be incorporated by reference.

When issuers have a complex financial history or have made a significant financial commitment, they are obliged to describe in the exemption document their complex financial history or the effects on the issuer or on the issuer's business of the significant financial commitment undertaken.

## In the framework of an internal reorganisation

### ■ Definitive decision by the governing bodies

When the issuer decides to carry out a merger, de-merger, partial merger or spin-off within the framework of an internal reorganisation, **the issuer will assess** whether market disclosure is necessary or timely by examining the material nature of the transaction with regard particularly to its strategic, commercial, industrial and/or financial interest for the issuer, the scale of the reorganisation, the impact of the reorganisation on the issuer's consolidated financial statements and the dilutive effect of the transaction on shareholders.

If the issuer judges that disclosure is necessary or timely, the issuer's press release should be disseminated as soon as the definitive decision has been made by the governing bodies of the group's parent company.

In practice, the press release generally indicates the reasons for the transaction and its positioning in the issuer's group strategy as well as a description of the transaction and its impact on the group's reorganisation and specifies the provisional timetable for the transaction. It also indicates, if necessary, the dilutive impact of the transaction for the issuer's shareholders. In some cases, the press release disseminated by the issuer details the exchange parity or contribution value and describes the impact of the transaction on the financial statements (or at least on key figures) of the companies concerned (notably including, if applicable, an estimate of restructuring costs).

### ■ Fulfilment or non-fulfilment of the conditions precedent

Upon the fulfilment of conditions precedent (regulatory authorisations, etc.) relating to a merger, de-merger, partial merger or spin-off in the framework of an internal reorganisation, and about which the issuer has previously communicated, the issuer will determine on a case-by-case basis whether market disclosure is necessary or timely with regard to the material nature of the conditions precedent for the completion of the transaction.

In the event of non-fulfilment of a condition precedent relating to a merger, de-merger, partial merger or spin-off in the framework of an internal reorganisation, and about which the issuer has previously communicated, immediate market disclosure is necessary if the non-fulfilment of this condition precedent definitively prevents the transaction from being completed.

### ■ Completion of a transaction

In practice, issuers generally disclose to the market when a reorganisation of material size, and about which they have previously communicated, has been completed, especially if the market had been informed that the circumstances of the transaction carried the risk of it not being completed.

## In the framework of a merger with a third party

### ■ Existence of negotiations, signature of a pre-contractual agreement

When the issuer is in negotiations with a third party in relation to a merger, partial merger or spin-off, and the issuer is no longer able to guarantee the confidentiality of this information, **it will assess** whether immediate market disclosure is necessary or timely, with regard to whether the transaction is of material importance (its material importance being assessed notably in consideration of the criteria described in the sub-category entitled "Signing of the formal agreement").

If the transaction is not material, the issuer's disclosure of the existence of negotiations is optional and may be made at its complete discretion.

If the issuer judges that immediate market disclosure is necessary or timely, the issuer's communication will in practice indicate the purpose of the negotiations, their state of advancement and the partner's name.

In the event of the signing of a pre-contractual document (memorandum of understanding, letter of intent, etc.), the issuer's communication may, in certain cases, contain a summary of the key provisions of the agreement as well as possible future steps or conditions precedent that should be fulfilled prior to the conclusion of a firm agreement or implementation of the transaction when the issuer judges that market disclosure of this information is necessary or timely.

### ■ Signing of the formal agreement

In a merger, de-merger, partial merger or spin-off carried out with a third party, at the time of signing the formal merger or partial merger agreement, **the issuer assesses** whether immediate market disclosure is necessary or timely on the basis of whether the transaction is material as regards its strategic, commercial, industrial and/or financial interest for the issuer and its estimated impact on the issuer's results and financial structure.

Market disclosure is carried out in the form of a press release. In practice, the press release disseminated by the issuer generally indicates the reasons for the transaction and the anticipated synergies as well as the transaction's terms and conditions, its timetable and any possible conditions precedent (notably, regulatory and competition authorisations). It generally describes the impact of the transaction on the issuer's consolidated financial statements and on the composition of governing bodies and states the price, the exchange parity or the consideration for the contribution, as appropriate.

In certain cases, the issuer will also organise a meeting for analysts or a press conference relative to the transaction.

When the issuer is the beneficiary of the contribution, the press release disseminated by the issuer generally contains an indication of the dilution that will result from the transaction for the issuer's shareholders.

When the issuer is the contributing company, the press release disseminated by the issuer contains in most cases an indication of the issuer's strategic interest in the stake received in consideration for the contribution.

However, in practice issuers rarely disclose to the market a description of the context of the transaction or disclose the existence of agreements or related transactions (such as management contracts, commercial contracts, etc.).

#### ■ Fulfilment or non-fulfilment of the conditions precedent

Upon fulfilment of the conditions precedent (authorisation by the relevant competition authorities, regulatory authorisations, etc.) relating to a merger, de-merger, partial merger or spin-off in the framework of a merger with a third party, and about which the issuer has previously communicated, **the issuer will assess**, on a case-by-case basis, the necessity or timeliness of disclosing this information to the market with regard to the material importance of these conditions precedent to carry out the transaction.

In the event of non-fulfilment of a condition precedent relating to a disposal or acquisition about which the issuer has previously communicated, immediate market disclosure is necessary if such non-fulfilment of the condition precedent definitively prevents the transaction from being carried out.

#### ■ Completion of a transaction

In practice, issuers generally make a disclosure to the market when a merger of material importance with a third party about which they have previously communicated is completed, especially if the market had been informed that the circumstances of the transaction carried the risk of it not being completed.

### TAKEOVER BIDS

Takeover bids (*offres publiques d'achat – OPA*) entail a legal entity or individual (the “offeror”) making a public offer to the holders of financial instruments traded on a regulated market to acquire some or all of those instruments in exchange for a price settled in cash. **The offeror files a bid with the AMF along with a draft offer document.** The AMF reviews the conditions of the offer before announcing whether or not the offer can be approved. It also verifies the quality of the information provided to investors before certifying the prospectus.

Public exchange offers (*offres publiques d'échange – OPE*) involve an offeror making a public offer to holders of financial instruments traded on a regulated market to exchange those instruments against existing securities or securities to be issued. As for a takeover bid, the conditions of the offer and the quality of the information provided are verified by the AMF<sup>190</sup>. Regulation (EU) 2017/1129 on the prospectus maintains the exemption from prospectus requirements for offers of securities made as part of a takeover by means of an exchange offer, provided a document is made available containing information on the transaction and its impact on the issuer. Commission Delegated Regulation (EU) 2021/528 of December 16, 2020 supplements PD3 as regards the minimum information content of the document to be published for a prospectus exemption in connection with a takeover by means of an exchange offer, a merger or a division (see Section “Mergers, divisions (spin-offs), partial mergers”).

<sup>190</sup> – For an example of a control by the AMF of the completeness, consistency and comprehensibility of the information provided in the offer document by the offeror making a public exchange offer (CA Paris, pôle 5, ch. 7, March 14, 2017, no. 2016/20478, OPE Altice/SFR).

Combined public offerings (*offres publiques mixtes*) comprise both an OPA and OPE.

Buyout bids (*offres publiques de retrait – OPR*) enable the withdrawal of minority shareholders by arranging, on the initiative of either the majority or minority shareholders, the acquisition by majority shareholders of the shares held by minority shareholders. A buyout bid may occur when the majority shareholder(s) hold(s) over 90% of the issuer's voting rights, if a corporation (*société anonyme*) is converted into a limited partnership (*société en commandite par actions*), or if material legal or financial changes are made, in particular significant amendments to the issuer's articles of association or the sale of major assets. While majority shareholders may launch buyout bids themselves if they hold more than 90% of the voting rights, they may also be required to do so further to a decision by the AMF. Prior to the PACTE law, the required threshold for the implementation of a buyout bid was 95% of shares held by the majority shareholder when the bid is initiated either by the majority shareholders or the minority shareholders.

**The purpose of mandatory withdrawal, which implies that the majority shareholder or group holds more than 90% of the voting rights,** is to oblige minority shareholders to sell their shares, thereby enabling the withdrawal from the listing on a market and allowing majority shareholders to hold all of the shares. Mandatory withdrawals may arise as the result of a buyout bid or any other kind of takeover bid. The PACTE law lowered this threshold. Since the introduction of the PACTE law, following a public offering, shares not tendered by minority shareholders representing no more than 10% of the company's capital and voting rights may be transferred to majority shareholders at their request, compared to 5% previously, as set out in the AMF General Regulations<sup>191</sup>.

## Events concerning the offeror

### ■ Rumours

An anti-rumour mechanism ("put up or shut up") is provided for<sup>192</sup>.

This mechanism enables the AMF, in particular when the market in an issuer's securities shows significant unusual fluctuations in price or volume, to request that any entity in respect of which there is reasonable cause to think that it is preparing a takeover bid make a declaration within a period fixed by the AMF.

If the entity declares that it has no intention of making a takeover bid on the potential target, that entity may not launch an offer on the company concerned prior to the expiration of a period of 6 months following the date of this declaration, unless there is a significant change in the environment, the situation or the shareholding structure of the target or the potential offeror.

**If the entity declares its intention of making a takeover bid, it must indicate the characteristics of the bid in a press release within the time set by the AMF. Failing this, the entity is deemed to have no intention of making a takeover bid.**

The publication of the press release indicating the characteristics of the bid, either to satisfy this requirement or by any person preparing a transaction likely to have a significant influence over the price of shares, marks the beginning of the pre-offer period.

<sup>191</sup> – Article L. 433-4 of the French Monetary and Financial Code. The French PACTE law makes no provision for any transitional measures; however, it does refer to the AMF's General Regulations to lay down the conditions for these changes.

<sup>192</sup> – Articles 223-32 *et seq.* of the AMF General Regulations.

Without prejudice to the existence of the anti-rumour mechanism mentioned above, when there is a precise rumour relative to a hostile takeover bid by one or more identified potential offerors and if the rumour has led to a significant disturbance in the potential target's share price and/or the offeror's share price, it is the prospective offeror's responsibility to take, as soon as possible, all measures that it judges necessary to cut short this situation of uncertainty and to bring the price disturbance to an end.

If the rumour is unfounded, the prospective offeror should publish a release including a denial of the rumour as soon as possible.

However, if the rumour has a basis in truth and the prospective offeror is in fact planning to launch a takeover bid, the offeror should attempt to speed up the timetable for making the public offering in order to avoid prolonging the period of uncertainty beyond a reasonable time.

#### ■ Launch of a takeover bid

When a takeover bid is made, market disclosure by the offeror is mandatory pursuant to applicable regulations. The content of this disclosure and the dissemination requirements are governed by regulations which were amended to comply with the Florange Law of March 29, 2014.

**This disclosure must be made by dissemination of a press release, an offer document and a disclosure document relating to the offeror's characteristics.**

#### - Press release

The press release contains the main features of the draft offer document and specifies the procedures for consulting the draft offer document (*a sample press release is shown in appendix 13 of the Guide to filing regulatory information with the AMF and to its dissemination*).

The offeror's press release must be published no later than the filing of the draft offer document with the AMF, using procedures that will ensure its effective and complete dissemination. The press release disseminated by the offeror is also posted on the AMF's website and that of the issuer.

#### - Offer document

The content of the offer document is set by regulation. Since the Florange Law was enacted on March 29, 2014, the offer document must specify, in particular (i) the minimum number of shares and voting rights required for the offer to be acquired, on the date on which it is filed, (ii) the industrial and financial policy of the companies in question for the following 12 months, (iii) an official statement of the offeror's specific commitments and intentions made as part of the social and economic committee (formerly the works council) information/consultation procedure, and (iv) whether the offeror intends to delist the target company's shares or not<sup>193</sup>. The methods for filing and the content of the offer document are set out in an AMF Instruction, updated April 29, 2021<sup>194</sup>.

<sup>193</sup> – Article 231-18 of the AMF General Regulations.

<sup>194</sup> – AMF Instruction no. 2006-07.



**The draft offer document must be filed with the AMF at the same time as the draft offer.** As soon as the draft offer is filed, the draft offer document is made available free of charge to the public at the offeror's registered office and the offices of the institutions sponsoring the offer.

When the draft offer document has been established jointly with the target company, it is also made available at the target company's registered office and at the organisations acting as paying agent for the target company's securities. The draft offer document is then published on the offeror's and the AMF's websites.

When the draft offer document has been established jointly with the target company, it is also published on the target company's website.

**The definitive offer document, after approval by the AMF, is disseminated before the opening of the offer and no later than the second trading day after the offer is declared compliant.** The offeror's definitive offer document must either be published in a national financial newspaper or made available free of charge to the public at the offeror's registered office and at the offices of the sponsoring institutions (*a sample press release is shown in appendix 14 of the Guide to Filing Regulatory Information with the AMF and to its Dissemination*).

When the definitive offer document is not published in a national financial newspaper, the offeror must either publish a summary of the offer document in a national newspaper or issue a press release by methods that will ensure effective and complete dissemination, specifying the procedures for access to the definitive offer document.

The definitive offer document is posted on the AMF's website.

#### - Disclosure document related to the offeror's characteristics

Information concerning in particular the legal, financial and accounting characteristics of the offeror is not included in the offer document but is published in a separate disclosure document that is not subject to the AMF's approval.

The disclosure document concerning the offeror's characteristics must be **filed with the AMF and made available to the public under the same conditions as the offer document, no later than the day before the opening of the offer.**

When the offeror publishes a URD, the disclosure document will essentially consist of an update of the information in the URD.

#### ■ Event taking place during the offer

During the public offering, the offeror and the target company should ensure that their actions, decisions and statements do not compromise the company's interest or investors' right to equal treatment and information.

If the offeror becomes aware of an event taking place during the offer, the offeror will assess whether a press release is necessary or timely concerning the impact of the event on the offer and/or its share price.

If the offeror judges that market disclosure is necessary or timely, the press release disseminated by the offeror should be published as soon as the event occurs and should

include a description of the event as well as an explanation of its impact on the development and/or the evaluation of the offer.

#### ■ **Competing bid**

When a third party makes a competing offer, **communication by the first offeror is optional** and at the complete discretion of the offeror unless it decides to make an improved offer or withdraw its offer (see below, “Withdrawal of an offer” and “Improved offer”).

#### ■ **Withdrawal of an offer**

The offeror may withdraw its offer:

- within 5 trading days of publication of the timetable of a competing bid or an improved competing bid; or
- if the substance of the target, because of measures that it has taken, is modified during the offer or in the event that the offer is successful, or, if the offer becomes devoid of purpose (in this case, prior authorisation from the AMF is necessary).

The offeror must inform the AMF of its decision to withdraw the offer. The AMF will, if necessary, rule on whether the offeror may withdraw. The decision to withdraw the offer may, if necessary, be accompanied by the reasons for the withdrawal. **The AMF makes public the offeror's decision to withdraw its offer.**

#### ■ **Improved offer**

The offeror may improve upon the terms of its original offer. The draft of the improved offer must be filed with the AMF no later than 5 trading days before the initial offer closes. **In the event of an improved offer, market disclosure by the offeror is mandatory.**

The offeror must disseminate a supplement to the offer document approved by the AMF. The content of this document is set by regulation.

The supplement to the offer document specifies the terms of the improved offer with regard to conditions precedent to the offer as well as changes in various items included in the offeror's offer document.

The draft supplement to the offer document with the AMF is filed concomitantly with the filing of the improved offer (and therefore no later than 5 trading days before the initial offer closes).

### **Events concerning the target**

#### ■ **Rumours**

Without prejudice to the existence of the anti-rumour mechanism mentioned above, when there is a precise rumour relating to the existence of discussions between an issuer and one or more potential offerors relative to a takeover bid, to the extent that the rumour has led to a significant disturbance in the potential target's share price, **it is the issuer's responsibility to take as soon as possible all measures that it judges necessary** to cut short this situation of uncertainty and to bring the price disturbance to an end.

If the rumour is without foundation, the issuer concerned should publish as soon as possible a release including a denial of the rumour.

However, if the rumour has a basis in truth and the draft offer cannot be filed rapidly, the issuer should publish as soon as possible a press release stating that discussions exist and indicating, if necessary, the potential offeror's or offerors' identity or identities and the state of advancement of the discussions.

### ■ Factors that may have an impact in the event of a takeover bid

Issuers are required to indicate in their **management report** a list of certain items set by regulation (clauses of change of control, capital structure, etc.) when these may have an effect in the event of a takeover bid.

It is up to the issuer to examine on a case-by-case basis and under its own responsibility whether these factors may have an impact in the event of a public offering and whether they should therefore be mentioned in the management report.

The response document published by the target should include an update of factors that may have an impact in the event of a public offering, which should be published in the management report.

In addition, issuers may include certain provisions in their **articles of association** for the neutralisation of restrictions under the articles of association or other agreements concerning the exercise of voting rights or the transfer of shares, as well as the suspension of extraordinary rights of appointment or removal from office of officers and directors in the event of a public offering. As soon as the articles of association have been modified, the issuer should inform the AMF of the introduction or deletion of the relevant clauses in order to update the AMF's website.

### ■ Launching a friendly offer

On the launch of a friendly public offering, **market disclosure by the target is mandatory** pursuant to applicable regulations. The content of and methods for issuing the disclosure are set out in regulation and an AMF Instruction<sup>195</sup>.

In the event of a friendly public offering, assuming that a fairness opinion by an independent appraiser is not required, **only one offer document is established jointly by the target and the offeror**. This joint offer document will thus contain the main items that should be included in the response document (see below, "Response document").

However, since the reform of public offerings, when the board of directors or the supervisory board of the target company has designated an independent appraiser to issue a fairness opinion, the target company's response document may not be established jointly with the offeror's offer document and must be filed separately. Furthermore, since the recent reform of the independent appraisal regime<sup>196</sup> in the context of "closing"<sup>197</sup> bids, the end of a period of at least 15 trading days should occur between the filing date of the offeror's offer document and the delivery of the report of the independent appraiser and, consequently, the filing of the target company's response document. Additionally, for any public offering, the independent appraiser must be given a sufficient period of time to prepare their report, said period being no shorter than 20 trading days.

195 – AMF Instruction no. 2006-07 updated on February 10, 2020.

196 – Following a public consultation launched by the AMF in September 2019, the AMF General Regulations, AMF Instruction no. 2006-08 and Recommendation no. 2006-15 on independent appraisals and AMF Instruction no. 2006-07 on takeover bids were amended in February 2020.

197 – "Closing" bids are bids initiated by a shareholder who, prior to the bid, holds over 50% of the target company's capital or voting rights.

### ■ Launching a hostile bid

In the event of a hostile takeover bid, it appears necessary **for the target company to publish a press release** in order to inform the market of the unsolicited nature of the offer. The press release should be disseminated rapidly upon the launch of the offer and, if possible, the day of the offer filing. In this press release, the target will indicate the unsolicited nature of the bid and may also, if it so desires, indicate the date of the meeting of the board of directors or the supervisory board called to decide on the response to the bid. The rules set out in the above paragraph on the report of the independent appraiser for friendly offers are also applicable *mutatis mutandis* to hostile bids.

### ■ Target's reasoned opinion

When an offer has been filed, the target company may disseminate a press release as soon as the offeror's press release is disseminated and no later than the dissemination of the offer response document.

This press release includes the reasoned opinion of the board of directors or supervisory board concerning the interest and/or risks of the offer and its consequences for the target company, its shareholders and its employees. It also indicates the conditions under which this opinion was reached (absent members, existence of dissenting opinions, etc.). If necessary, the press release disseminated by the target company may mention the conclusions of the report of the independent appraiser designated by the target company's board of directors or supervisory board, for the purposes of issuing a fairness opinion on the financial terms of the offer. If applicable, this press release must also mention the opinion of the social and economic committee (*comité économique et social*, formerly the works council) on the takeover bid.

**This communication is optional for the target company and may be made at its complete discretion.**

### ■ Response document

Publication of a response document is **mandatory** pursuant to regulations concerning public offerings and AMF Instruction no. 2006-07. The contents of the offer document and the procedures for its dissemination are set by regulation. The response document must mention in particular, where appropriate, (i) the opinion of the target company's social and economic committee (formerly the works council), (ii) the chartered accountant's report for the company's social and economic committee, and (iii) any measures the target company has implemented or decides to implement that may jeopardize the offer. Should the target company implement or decide to implement measures that may frustrate the offer after the response document has already been published, it must issue a press release to inform the market.

The draft response document must in principle be filed with the AMF **no later than 5 trading days after publication of the AMF's statement certifying that the offer is compliant**. As an exception, when an independent appraiser is appointed pursuant to the applicable regulations, the target company must file the draft response document no later than 20 trading days after the offer is filed. For "closing" bids, in which the offer is launched by a shareholder with over 50% of the target company's capital or voting

rights, the response document may only be filed after expiry of a fifteen trading-day period following the date on which the draft offer document is filed by the offeror. Where there is a requirement to inform and consult the relevant companies' social and economic committee, the draft response document must be filed with the AMF no later than the following dates: (i) when an independent appraiser is appointed, no later than 20 trading days after the offer is filed, and (ii) in all other cases, no later than 15 trading days after the offer is filed<sup>198</sup>.

As soon as the draft response document has been filed with the AMF, the draft response document is made available free of charge to the public at the registered office of the target company and at the offices of the organisations acting as paying agent for the target company's securities. The draft response document is also published on the websites of the target company and the AMF.

**The definitive response document is disseminated to the public after receiving the AMF's approval.**

The offeror's definitive response document must either be published in a national daily financial newspaper or made available free of charge to the public at the target company's registered office and at the offices of the organisations acting as paying agent for the target company's securities (*a sample press release is shown in appendix 14 of the Guide to filing regulatory information with the AMF and to its dissemination*).

When the definitive response document is not published in a national daily financial newspaper, the target company must either publish a summary of the offer document in a national daily financial newspaper or issue a press release by methods that will ensure effective and complete dissemination, specifying the procedures for access to the definitive response document.

**The definitive response document is posted on the AMF's website.**

■ **Disclosure document relative to characteristics of the target**

Information concerning in particular the legal, financial and accounting characteristics of the target company is not included in the response document but is published in a **separate disclosure document** that is not subject to the AMF's approval. The disclosure document relative to characteristics of the target must be filed with the AMF and made available to the public under the same conditions as the response document, no later than the day before the opening of the offer. When the target company publishes a URD, the disclosure document will essentially consist of an update to the information in the URD.

■ **Event taking place during the offer**

If the target company becomes aware of an event taking place during the offer, **it will assess** whether a press release is necessary or timely concerning the impact of the event on the offer and/or on the target's share price.

If the target company judges that market disclosure is necessary or timely, the press release issued by the target should be published as soon as the event occurs. It should include a description of the event as well as an explanation of its impact on the development and/or the evaluation of the offer.

#### ■ Organisation of alternative transactions (“white knight”)

When the target company organises alternative transactions, it is necessary to issue a **press release** as soon as the terms of the alternative transaction have been determined between the target and the “white knight.” The press release must be sent by the target to the AMF prior to dissemination.

The press release disseminated by the target should include a description of the content of the agreement reached between the target company and the “white knight” as well as an explanation of the interest presented by the competing offer for the target and its shareholders in comparison with the initial offer.

#### ■ Competing bid

In the event of the launch of a competing bid, publication of a **press release by the target** is mandatory pursuant to applicable regulations. The content and procedures for this press release are set by regulation.

When the competing bid is carried out as part of conciliation with the target, the target company may communicate jointly with the offeror of the competing bid.

The press release disseminated by the target specifies the reasoned opinion of the board of directors or the supervisory board concerning the competing offer. This opinion will concern the interest or the risks that the competing bid presents, as well as the consequences of the competing bid for the company, shareholders and employees.

The target company's press release should be published, using procedures to ensure its effective and complete dissemination, as soon as the target has made a decision and after first sending the press release to the AMF.

#### ■ Improved offer

In the event of an improved offer, **publication of a press release by the target is mandatory** pursuant to applicable regulations. The content and procedures for this press release are set by regulation.

The press release disseminated by the target specifies the reasoned opinion of the board of directors or the supervisory board concerning the improved offer.

This opinion will concern the interest or the risks that the improved offer presents, as well as the consequences of the improved offer for the company, shareholders and employees. The target company's press release should be published, using procedures to ensure its effective and complete dissemination, as soon as the target has made a decision and after first sending the press release to the AMF.

## 9 ■ FINANCIAL TRANSACTIONS

The reform of the public offering regime implemented by the Order of January 22, 2009 abandoned the *appel public à l'épargne* (public offering) concept specific to France, in favour of “admission to a regulated market” and “offer of securities to the public”.

They constitute an **offer of securities to the public** pursuant to Regulation (EU) 2017/1129 of June 14, 2017, applicable owing to the reference made by article L. 411-1 of the French Monetary and Financial Code:

- a communication to individuals or legal entities, of sufficient information on the terms and conditions of the offer and on the securities concerned in order to enable an investor to decide to purchase or subscribe for the securities;
- the placement of securities by financial intermediaries.

A certain number of waivers and exemptions from this regime are provided for in articles 1 and 3 of Regulation (EU) 2017/1129, articles L. 411-2 and L. 411-2-1 of the French Monetary and Financial Code, and article 211-2 of the AMF General Regulations.

In accordance with Regulation (EU) 2017/1129, in 2019 the European Commission adopted two delegated regulations that supplement the applicable regulation as regards:

- the format, content, scrutiny and approval of prospectuses (Delegated Regulation (EU) 2019/980 of March 14, 2019);
- key financial information which must be included in the summary, the publication and classification of prospectuses, advertisements, supplements to a prospectus, the publication and the notification portal (Delegated Regulation (EU) 2019/979 of March 14, 2019).

In March 2021, ESMA published Guidelines on disclosure requirements under the Prospectus Regulation<sup>199</sup>, which intend to help issuers comply with the disclosure requirements set out in Commission Delegated Regulation (EU) 2019/980 supplementing the Prospectus Regulation. The Guidelines relate to the presentation of issuers and securities, the subject of the prospectus.

**The Guide to preparing the prospectus and the information to be provided for public offerings or admission to trading of securities, published by the AMF on June 17, 2020**, covers all the applicable regulations in force and AMF and ESMA guidance<sup>200</sup>.

An offer of securities to the public generally requires the publication of a document (the prospectus) intended for the public that describes the content and the terms and conditions of the transaction concerned, as well as the organisation, the financial position and changes in the issuer's business activity and any underwriters of the securities concerned by the transaction. This document is drafted in French or, in the cases set forth in the AMF's General Regulations, in another language commonly used by the financial community. In principle, it includes a summary and, where applicable, must be accompanied by a translation into French of the summary.

199 – ESMA – Guidelines on disclosure requirements under the Prospectus Regulation, March 4, 2021, ESMA 32-382-1138.

200 – AMF Position/ Recommendation no. 2020-06 of June 17, 2020.

Regulation (EU) 2017/1129 of June 14, 2017, which entered into force on July 21, 2019, particularly aims to streamline this summary, stipulating that it must now be no longer than **seven sides of A4-sized paper** and can be extended by three additional sides of A4-sized paper to identifiably substitute content of key information documents of the PRIIPs regulation<sup>201</sup>. The summary must contain a maximum of **15 risk factors** and include those “specific” to the issuer, securities and, where applicable, the guarantor, as well as those “of most relevance” for sound investor decision-making.

The risk factors must also be presented in a selective manner in the prospectus in accordance with PD3, one of the objectives of which was to end the exhaustive reporting of risk factors that enabled issuers to limit their responsibility. Risk factors must therefore be:

- limited to those risks which are specific to the issuer and/or the securities and which are important for investment decision-making;
- ranked according to their probability of occurrence and the expected magnitude of their negative impact;
- presented in a limited number of categories depending on their nature.

Additionally, ESMA has published 12 guidelines to assist national authorities (including the AMF) in relation to the inclusion of risk factors in issuers’ prospectuses<sup>202</sup>.

According to these guidelines:

- the disclosure must establish a clear and direct link between the risk factor and the issuer or securities;
- the disclosure must clearly convey the materiality of a risk factor and its potential impact; the most material risk factors must be presented first within their respective risk factor category, but it is not mandatory for the remaining risk factors within each category to be ranked in order of their materiality;
- presentation of the risk factors must be focused and concise;
- the AMF must check the consistency of all information included in the prospectus (the materiality and specific nature of risk factors);
- it must ensure that the risk factors are presented under different categories depending on their nature;
- the AMF must also ensure that, when the prospectus includes a summary, the presentation of the risk factors in the summary and the prospectus are consistent.

**ESMA aims to ensure that there are no more than ten categories and sub-categories in the prospectus.** The total number of risk factors included in the summary shall not exceed 15 (article 7, paragraph 10 of the Prospectus Regulation). The issuer must therefore pay attention to the diverging requirements of (i) no more than 15 risk factors in the summary, and (ii) no more than ten categories and sub-categories of risk factors in the body of the prospectus.

It also specified that only those risks that are specific to the issuer and/or the securities and that are important for making investment decisions should be included in the prospectus. Specifying risks in this way results in the **“personalisation” of risks at the level of the issuer**<sup>203</sup>.

201 – Article 8.3 of Regulation (EU) no. 1286/2014 of November 26, 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs).

202 – ESMA 31-62-1293 FR, October 1, 2019.

203 – AMF, 2019 Annual report, page 69.



Regulation (EU) 2017/1129 also provides that issuers whose securities have been admitted to trading on a regulated market for at least the last 18 months benefit from a simplified disclosure regime (focusing on relevant information) for any secondary issuances of securities fungible with existing securities that have previously been issued, or non-equity securities.

It should be noted that PD3 also establishes a **URD**, with effect from July 21, 2019, drawing on the French registration document (*document de référence*) concept. It provides the market with comprehensive annual information and enables businesses to benefit from a **faster approval process (5 days)** if they include the document in a prospectus. The document, which is drafted by issuers whose securities are admitted to trading on a regulated market or a multilateral trading facility, must describe the issuer's organisation, business, financial position, earnings and outlook, and governance and shareholding structure (see Section 1 – “Disclosures of periodic information, Universal registration document”).

This Regulation, most of the provisions of which have only applied since July 2019, also provides for the establishment of a **simplified prospectus**, or “EU Growth prospectus”, drawn up on the basis of condensed versions for registration documents and securities notes, in the form of responses to a standardised questionnaire for SMEs listed on unregulated markets (including new “SME growth markets”)<sup>204</sup> and for small offerings of non-listed companies.

In order to support the recovery in Europe following the economic shock triggered by the COVID-19 health crisis, the Prospectus Regulation was amended in March 2021 as part of a “capital markets recovery package”. The amendments introduced a new type of short-form prospectus, known as the “**EU recovery prospectus**”. Designed for companies listed on a regulated market or an SME Growth market (e.g., Euronext Growth), this shorter prospectus makes it easier for these companies to raise capital to meet their funding needs, while ensuring adequate information is provided to investors<sup>205</sup>. The provisions apply from March 18, 2021 to December 31, 2022.

Moreover, in June 2018, the European Commission published two proposals for regulations amending the Market Abuse and Prospectus regulations with regard to promoting the use of SME growth markets; these proposals aim to increase the number of listings on SME growth markets and to enable issuers listed on these markets to attract new investors.

However, certain provisions of Regulation (EU) 2017/1129 concerning the **exemption from the obligation to prepare a prospectus** have applied **since July 20, 2017**<sup>206</sup>.

Furthermore, provisions on **national thresholds** below which a **public offering does not require a prospectus to be drawn up** will come into force on July 21, 2018:

- increasing the threshold to €8 million (compared with €100,000 previously) over a 12-month period<sup>207</sup>, beyond which it is necessary to establish a prospectus when securities are offered to the public;
- creating, for “direct” offers of unlisted securities not subject to the prospectus, an ad-hoc prospectus based on a simplified disclosure document<sup>208</sup>. An AMF Instruction

204 – In October 2019, Euronext Growth acquired the status of “SME growth market”.

205 – See in particular the new article 14a and Annex Va of the Prospectus Regulation.

206 – See page 124, “Issuance of shares or securities granting access to the share capital without publication of a prospectus”.

207 – Article 211-2 of the AMF General Regulations.

208 – New chapter II(b) of Book II of the AMF General Regulations.

sets forth the procedures (i) for presenting this information in the form of a condensed disclosure document (*document d'information synthétique – DIS*), of which a template is provided in Annex 2 of the Instruction; (ii) for submitting the document to investors and making it available on the issuer's website, if any, and (iii) for filing this document with the AMF by email<sup>209</sup>. The issuers must send the DIS (and all promotional materials) prior to any public offering, in an electronic format via email to the following address: [depotdis@amf-france.org](mailto:depotdis@amf-france.org).

Since Commission Delegated Regulation 2016/301 dated November 30, 2015<sup>210</sup> came into effect on March 25, 2016, prospectuses and attachments, or all other documents drafted as part of an exemption from issuing a prospectus, must be filed in electronic format. In view of this, the AMF updated **Instruction DOC-2016-04**, on information to be disseminated when financial securities are offered to the public or admitted to trading on a regulated market, to allow the **electronic filing of registration documents, attachments and any relevant updates**.

As a result, as of January 15, 2018, the prospectus is filed via an extranet site ("ONDE") and should no longer be filed via email, as was previously the case. On December 6, 2019, this instruction was replaced by AMF Instruction no. 2019-21, on the procedures for filing and publishing prospectuses.

## CAPITAL INCREASES AND OTHER ISSUES OF SECURITIES PROVIDING ACCESS TO CAPITAL

### Capital increase by way of a public offering: the decision

Prior to carrying out a capital increase by way of a public offering, upon the adoption by the issuer's relevant decision-making bodies of a decision to increase the share capital, the issuer may make an immediate market disclosure depending on the type, amount and/or strategic nature of the transaction.

In this situation, the **press release** disseminated by the issuer will generally indicate the planned amount of the capital increase, describe the main features of the securities and the transaction and specify the provisional timetable for the transaction.

### Capital increase by way of a public offering: the transaction

When financial instruments are issued to the public, market disclosure is mandatory pursuant to applicable regulations. Its content and its procedures are fixed by regulation.

Barring cases of exemption (see below) a **prospectus** subject to AMF approval must be established by the issuer. It cannot be distributed before obtaining approval and must be distributed no later than the opening of the subscription period.

The prospectus is posted on the AMF's website and on the issuer's website.

209 – AMF Instruction DOC-2018-07 on information to be provided to investors by any person carrying out a public offering for an amount of less than €8 million, July 19, 2018.

210 – This Delegated Regulation supplements Directive 2003/71/EC of the European Parliament and of the Council (Prospectus Directive) with technical guidelines relating to the approval and publication of prospectuses and communications of a marketing nature, and it amends Regulation (EC) no. 809/2004 (Prospectus Regulation).

The issuer must also publish a **summary of the prospectus** in one or more national or other mass-circulation newspapers, or, alternatively may publish a **press release** specifying the procedures by which the prospectus is made available (*a sample press release is shown in Appendix 9 of the Guide to filing regulatory information with the AMF and to its dissemination*).

In practice, in addition to the mandatory disclosures as required by regulation, the issuer also communicates regarding the issue by organising various communication-based events, such as analyst meetings and roadshows.

In addition, at the conclusion of the capital increase, the issuer generally publishes a press release presenting the definitive results of the capital increase, including in particular the number of shares issued and the amount raised.

### **Capital increase by way of a public offering: special case of cross-border transactions**

In the event of a capital increase by way of a public offering carried out in several countries, the disclosure requirements with which the issuer must comply will depend on the **applicable regulations in each country concerned**.

However, at EU level, the Prospectus Directive has facilitated cross-border transactions involving public offerings in several Member States of the European Union or countries party to the agreement on the European Economic Area (EEA) by instituting a mechanism for mutual recognition of the approval granted by the competent regulatory authority for the prospectus established by the issuer.

Thus, the prospectus established by an issuer whose registered office is located in France in order to carry out a capital increase may, after receiving the AMF's approval, be validly used for a public offering in other Member States of the European Union or the EEA, subject to the AMF's prior delivery of a certificate of approval to the regulatory authorities of the States concerned. The certificate will attest that the prospectus has been established in compliance with the provisions of the Prospectus Directive.

### **Capital increase reserved for a third party (Private Investment in Public Equity – PIPE)**

In the event of a capital increase or issue of securities giving access to capital reserved for third parties, **market disclosure by the issuer appears necessary**.

A press release should be published as soon as the agreement with the third party is signed. The press release should indicate the planned amount of the issue and the issue premium and describe the main features of the transaction and of the securities to be issued. It should also state the beneficiary's name and the dilution for existing shareholders that will result from the transaction and explain the reasons for the issue.

### Capital increase via a PACEO equity line programme

In the case of funding arrangements consisting of capital increases in several stages and deferred over time for the benefit of a financial intermediary who only subscribes for the shares issued with the aim of quickly selling them again on the market, the issuer must first inform the market of the fact that the resulting capital increase will ultimately be financed by the market. The issuer must also draw up a **prospectus**, unless it is exempted from doing so.

The issuer must also inform the market by way of a **press release** of the conclusion of the agreement, setting out its main features and key objectives in view of the company's financial position and whether or not there have been any changes to any of the contracts' key terms and conditions. Lastly, after each drawdown of capital, the AMF recommends publishing a press release indicating the amount drawn down, the issue price, the number of shares issued and the dilutive impact of the issue.

The AMF also recommends that issuers establish an admission prospectus upon the conclusion of the equity line contract, if it provides for the creation of more than 20% of the company's capital, so that the market can be duly informed of the scope of the transaction concerned and the potential resulting dilution<sup>211</sup>.

### Capital increase reserved for employees who are members of an employee savings plan (*Plan d'Épargne Entreprise – PEE*)

In the event of a capital increase reserved for employees, **market disclosure by the issuer appears necessary**.

The press release should be published at the conclusion of the shareholders' meeting that decides to carry out the capital increase reserved for employees.

The press release disseminated by the issuer should indicate the planned amount of the issue, the dilution for the issuer's shareholders that will result from the transaction, the discount offered to employees and the percentage of the issuer's capital held by employees.

### Issuance of shares or securities granting access to the share capital without publication of a prospectus

Certain issues of equity instruments or instruments giving access to the capital may be made **without a prospectus**, even when they take place by means of a public offering, for example when they concern shares issued in substitution for shares of the same class already issued, if the issuing of such new shares does not involve an increase in the issuer's capital (article 212-4 of the AMF General Regulations).

However, issuers must provide minimum information in the press releases announcing these transactions.

211 – AMF Position/ Recommendation DGC-2020-06 – Guide to preparing the prospectus and the information to be provided for public offerings or admission to trading of securities, June 17, 2020, which incorporates Position/ Recommendation no. 2012-18 of December 6, 2012, on market information when setting up an equity line programme, amended on January 8, 2019.

This means specifying the nature of the transaction, the type of offer, its legal framework, the amount and reasons for the issue, the planned use of the issue proceeds and impact, the number of instruments issued and the dilution expected to result from the issue, as well as the provisional calendar for the transaction. AMF Position/Recommendation no. 2019-01 included in the Guide to preparing the prospectus and the information to be provided for public offerings or admission to trading of securities<sup>212</sup>, adds the following information to that already required:

- summarised characteristics of the securities offered;
- subscription price and the discount;
- precise information concerning the planned use of the issue proceeds and the impact, where applicable, of a limitation of the latter or the non-performance of the transaction. This information includes in particular, where applicable, the impacts of the transaction in terms of liquidity risk management and financing schedule;
- the risks related to the transaction; and
- the breakdown of capital (before and after the transaction) when available.

The AMF also recommends that issuers include the following in their press releases<sup>213</sup>:

- a reference to the disclosures relating to the main risks associated with the issuer as provided in the management report;
- if it has been prepared, the document relating to the issue transaction for investors, in the body of the press release or in the appendix or information on how any person can obtain this document.

In the particular case of a **capital increase not open to the public** (known as a “private placement”)<sup>214</sup> or “open to certain categories of people”<sup>215</sup> to which (i) a major shareholder or shareholders, (ii) an executive or executives or (iii) an investor or investors related to the latter (within the meaning of IAS 24), has or have subscribed to a substantial extent, the AMF recommends that issuers provide information in this respect in the press release presenting the results of the capital increase and in particular that said press release must indicate<sup>216</sup>:

- the change in the breakdown of the issuer’s capital, as applicable, in the form of a table, identifying, in particular, the above-mentioned major shareholders, executives or the related investors;
- the share obtained represented by the major shareholders, executives or related investors if significant in the context of the capital increase;
- if applicable, the reasons (market context, financial difficulties, etc.) for which the capital increase was subscribed to by one or several major shareholders, executives or related investors to a substantial extent.

Since July 21, 2018, there has been no obligation to prepare a prospectus for offers of securities to the public for a total amount in the European Union of less than €8 million over a period of 12 rolling months.

212 – AMF Position/ Recommendation  
DOC-2020-06 – Guide to preparing the prospectus and the information to be provided for public offerings or admission to trading of securities, June 17, 2020.

213 – AMF Position/ Recommendation  
DOC-2020-06 – Guide to preparing the prospectus and the information to be provided for public offerings or admission to trading of securities, June 17, 2020, which incorporates Position/ Recommendation no. 2012-18 of December 6, 2012, on market information when setting up an equity line programme, amended on January 8, 2019.

214 – Articles  
L. 225-136 and  
L. 22-10-52 of the  
French Commercial  
Code.

215 – Article L. 225-138  
of the French  
Commercial Code.

216 – AMF Position/ Recommendation  
DOC-2020-06 – Guide to preparing the prospectus and the information to be provided for public offerings or admission to trading of securities, June 17, 2020, which incorporates Position/ Recommendation no. 2019-01 on information to be provided by companies in the event of the issuance of shares or securities granting access to the share capital where a prospectus subject to AMF approval is not published, January 8, 2019.

Furthermore, other exceptions concerning the admission of securities to trading on a regulated market, provided for in article 1, paragraph 5 of PD3, have applied since July 20, 2017, including:

- admission to trading of securities representing, over a period of 12 months, less than 20% (compared with 10% previously) of the number of securities of the same class already admitted to trading on the same regulated market; and
- admission of shares resulting from the conversion or exchange of other securities or from the exercise of the rights conferred by other securities, where the resulting shares are of the same class as the shares already admitted to trading on the same regulated market, provided that the resulting shares, over a period of 12 months, represent less than 20% of the number of shares already admitted, subject to the case mentioned above<sup>217</sup>.

The condition that shares representing less than 20% of the number of shares of the same class already admitted to trading on the same market will not apply in the following cases:

- where a prospectus was drawn up in accordance with the Regulation or the Prospectus Directive 2003/71 upon the offer to the public or admission to trading on a regulated market of the securities giving access to the shares; or
- where the securities giving access to the shares were issued before July 20, 2017.

Regarding these exemptions, the AMF reiterates that<sup>218</sup>:

- they only apply to admission prospectuses and do not apply to public offering prospectuses;
- they only apply to securities fungible with existing securities;
- they only allow the admission to trading on a regulated market of securities exempt from the obligation to produce a prospectus;
- they may be combined together, unless this might lead to an abusive exemption;
- any company that issues shares and/or securities giving access to shares that may directly, or through conversion, exceed the limit of 20% of shares admitted without publishing a prospectus over 12 rolling months should produce a prospectus, even if the shares admitted are the result of a conversion by an investor.

## FINANCING CONTRACTS, DEBT AND SECURITISATION

### Conclusion of a new financing contract

In principle, disclosures related to financing contracts are provided **within the periodic information** (financial statements and URD).

As an exception, immediately upon the conclusion of a new financing contract, the issuer will **immediately inform the market if the new financing is material with regard to the change in its debt** (in particular with regard to the amount of this debt and its maturity), the change in the cost of debt for the issuer (in particular, the fixed or floating-rate nature of the debt and its amount), the issuer's objective and the financial guarantees and sureties granted by the issuer in favour of lending banks.

217 – The threshold calculation methods are specified in the answer to question 31 of ESMA Questions and Answers on prospectuses.

218 – AMF, in-depth, Listed companies and corporate financing: Equity markets, "Entry into force on July 20, 2017 of certain provisions of the Prospectus Regulation: information from the AMF for companies listed on a regulated market", published on July 19, 2017.

In any event, immediate market disclosure appears necessary if the issuer's indebtedness is a topic of concern for the market.

In the event of immediate market disclosure, the press release disseminated by the issuer will generally indicate, on a case-by-case basis, according to the importance of these items in view of the situation, the main features of the financing contract concluded by the issuer (amount of the loan, interest rate, term of the loan, specific acceleration clauses provided for in the financing contract) as well as financial guarantees and sureties granted by the issuer in favour of the lending banks. The press release may in some cases also state the lenders' identities, the issuer's objective and the use of the funds.

### **Issuance of bonds to the public: the decision**

When the issuer's governing bodies decide to issue bonds to the public, immediate market disclosure is **optional** and may be done at the issuer's complete discretion. Such communication in advance of an issuance is rare in practice.

### **Issuance of bonds to the public: the issuance**

At the time of the issuance of bonds to the public, market disclosure is **mandatory** pursuant to applicable regulations. Its content and its procedures are fixed by regulation. A **prospectus** approved by the AMF is established by the issuer. The prospectus must not be disseminated prior to obtaining this approval. It shall be disseminated no later than the opening of the subscription period.

The prospectus is posted on the AMF's and the issuer's websites. The issuer must also publish a summary of the prospectus in one or more national or other mass-circulation newspapers, or alternatively may publish a press release specifying the procedures by which the prospectus is made available.

### **Issuance of bonds: special case of cross-border transactions**

In the event of the issuance of bonds to the public in several countries, the disclosure requirements with which the issuer must comply will depend on **applicable regulations in each country concerned**.

However, at EU level, the Prospectus Directive has facilitated cross-border transactions involving public offerings in several Member States of the European Union or countries party to the agreement on the European Economic Area (EEA) by instituting a mechanism for mutual recognition of the approval granted by the competent regulatory authority for the prospectus established by the issuer.

### **Issuance of bonds without a public offering**

In principle, disclosure relating to the issuer's debt is provided within the **periodic information** (financial statements and URD).

As an exception, when bonds are issued without a public offering, the issuer will **immediately inform the market if the bond issue is material, particularly with regard to the change in the issuer's debt** (in particular as regards the amount and maturity of the debt), the change in the issuer's cost of debt (in particular, the fixed or floating-rate nature of the cost of debt and its amount), the issuer's objective, financial guarantees and sureties granted by the issuer in favour of the lending banks and specific features of the securities being issued.

In the event of immediate market disclosure, the press release should be disseminated by the issuer as soon as an agreement with the third party has been concluded. The press release will generally indicate the amount of the issue and the main features of the issue and the securities being issued (interest rate, specific acceleration clauses, etc.). *(A sample press release is shown in appendix 4 of the Guide to filing regulatory information with the AMF and to its dissemination).*

### **Non-compliance by the issuer with bank loan covenants**

In the event of non-compliance by the issuer with financial ratios and/or commitments stipulated in its financing contracts, **immediate market disclosure** appears necessary when the impossibility of meeting the commitments and/or financial ratios becomes certain. However, the issuer may postpone informing the market, under its own responsibility, if there is a legitimate interest in doing so and an immediate announcement of its default could be prejudicial to it. However, in postponing such a disclosure the issuer must take into consideration whether the consequences of non-compliance with financial ratios and/or commitments stipulated in the issuer's contracts are sufficiently significant that the absence of communication would mislead the market concerning the issuer's financial position.

If the issuer judges it necessary to inform the market immediately, the press release disseminated by the issuer may indicate that the company intends to renegotiate its debt.

### **Issuer's rating: upgrading or downgrading**

In the event of a change in an issuer's rating, **the rating agency that made the change is responsible** for publicising the new rating. It is not the issuer's responsibility.

In practice, it is rare for an issuer to comment on a change in its rating by a rating agency. In any case, if the issuer decides to inform the public, it should be careful to make a clear distinction between the explanations given by the issuer concerning the change in its rating and the reasons given by the rating agency to justify the change.

### **Global debt renegotiation**

In principle, disclosure relating to the issuer's debt is provided within the **periodic information** (financial statements and URD).

As an exception, in the event of global renegotiation of the issuer's debt, the issuer will immediately inform the market if the renegotiation is material, particularly as regards



the change in the issuer's indebtedness (in particular with respect to the amount of indebtedness and its maturity), the change in the cost of debt for the issuer (particularly with respect to the fixed or floating-rate nature of the debt and its amount), the issuer's objective and financial guarantees and security granted by the issuer in favour of the lending banks.

If the issuer considers market disclosure necessary or timely, the issuer's press release should be disseminated either at the start of the renegotiation if renegotiation is necessary in order to avoid the issuer being in default, or after the renegotiation if renegotiation was not necessary to avoid the issuer being in default. In the latter case, the issuer may postpone informing the market if immediate market disclosure could precipitate the issuer's default or create an obstacle to the successful renegotiation of the debt, on the condition that the lack of communication would not mislead the market with regard to the issuer's financial position.

If the issuer considers that immediate market disclosure is necessary or timely, the press release disseminated by the issuer should indicate the total amount of the issuer's global debt (current and after the renegotiation) and the maturity of the issuer's debt. The press release disseminated by the issuer may also describe the main financing lines resulting from the new debt structure and the associated costs as well as the new financial guarantees and sureties granted in the framework of the renegotiation. Lastly, the press release disseminated by the issuer may describe the impact of the renegotiation on its share capital.

### Securitisation involving a public offering

When the issuer carries out a securitisation transaction and the securities issued by the debt securitisation fund (*Fonds commun de créance – FCC*) to which the issuer's receivables had been assigned are offered to the public, **market disclosure is mandatory** pursuant to applicable regulations. Its content and its procedures are fixed by regulation. Dissemination of an offer document approved by the AMF constitutes a prerequisite for the issue to the public of the securities by the debt securitisation fund.

### Securitisation without a public offering

In general, in the event that a securitisation transaction is carried out without a public offering, issuers inform the market only if the impact of the securitisation on the balance sheet structure is **material**.

If this is the case, the **press release** will generally be published as soon as the definitive decision to proceed with the securitisation has been made and will describe the main features of the securitisation transaction (securitisation vehicle, nature and volume of receivables assigned, etc.) and of the financing obtained (amount, interest rate, specific acceleration clauses, etc.).

## INITIAL PUBLIC OFFERING (IPO)

An initial public offering corresponds to the first time a company's securities are admitted to trading on a regulated market. IPOs are carried out in accordance with the rules set by a market operator and approved by the AMF, or on another market if there is a public offer.

### Initial public offering of the issuer: prior to the offering

Prior to the initial public offering, market disclosure is optional and is entirely at the future issuer's discretion. **Communication of this type is rare in practice.**

However, in the event that such disclosures are carried out, the issuer must ensure that this communication remains strictly informative and does not represent a public offer made prior to the AMF's approval of the prospectus.

Furthermore, following the AMF's work on introducing a new framework for initial public offerings, financial analysts from underwriting banks may now, by way of exception to the principle of equal access to information, access information from the issuer before the IPO operation is launched, provided that the information remains confidential (in compliance with the provisions relating to information barrier procedures stipulated in article 315-15 of the AMF General Regulations)<sup>219</sup>.

In June 2020, the AMF published an Instruction on financial analysts' access to information prior to the publication of the prospectus<sup>220</sup>.

### Initial public offering of the issuer: the steps in the offering

Disclosure by the issuer is **mandatory** pursuant to applicable regulations. The content of this disclosure and the dissemination requirements are set by financial market regulation (see below the arguments contained in the introduction of Section 9 – Financial transactions).

The disclosure must include a **registration document** (*document d'enregistrement*) **and a securities note – including a summary** – whose content is set by PD3, supplemented by its Delegated Regulations of March 14, 2019.

The draft **registration document**, which must contain all the information required for establishing the prospectus, except information pertaining to the financial instruments whose listing is requested, must be filed with the AMF **at least 20 trading days before** the planned approval date for the registration document. The approval of the registration document is made public by the AMF. The registration document is **published as soon as it has been approved by the AMF**. The issuer may, however, postpone its publication if it is able to ensure the confidentiality of significant information that it contains in the meantime.

The draft **securities note and the summary** must be filed no later than **5 trading days before** the planned date for the approval of the prospectus. The securities note may be disseminated as from the date of approval of the prospectus and a reasonable time

219 – Article 223-10-1, paragraph 2, of the AMF General Regulations and Position/Recommendation DGC-2020-06 – Guide to preparing the prospectus and the information to be provided for public offerings or admission to trading of securities, June 17, 2020, which incorporates Position/Recommendation no. 2015-02 of January 21, 2015 on initial public offerings.

220 – AMF Instruction DGC-2020-05 – Access to information prior to publication of the prospectus for financial analysts in establishments that form part of the syndicate.

before or, at the latest, at the beginning of the public offering or the admission to trading of the concerned securities. In the event of an initial public offering of a class of shares that is being admitted to trading on a regulated market for the first time, the securities note, like all documents in the prospectus, must be disseminated **at least 6 trading days before the closing of the transaction**.

Any new information that may affect investors' assessment and that occurs after the approval of the registration document must be included in the securities note.

**During the closed period** (a market practice which is becoming more widespread under the influence of the English-speaking world but which nonetheless has no legal basis in France, meaning that members of the investment syndicate agree not to make any disclosures to third party analyst firms in the period immediately before and after a financial transaction launched by an issuer), **no communications may be made to the market in respect of the IPO**, since the prospectus (registration document and securities note) has not yet been approved by the AMF.

In practice, this period usually covers the **two weeks preceding the transaction** and up to 40 days after the subscription price is set. It is not the same as a quiet period (see Part 3, Section 1).

**The registration document and securities note are posted on the AMF's and the issuer's websites.**

The issuer must also publish a **summary** in one or more national or mass-circulation newspapers, or alternatively publish a press release specifying the procedure by which the registration document and securities note will be made available.

In practice, in addition to the information required by regulation, the issuer will communicate regarding the transaction by organising analyst meetings and roadshows.

### **Initial public offering of a subsidiary or a significant business of the issuer**

In the event of an initial public offering of a subsidiary or a significant business of the issuer, **immediate market disclosure** before the initial public offering may be necessary if a **rumour** exists that may lead to disturbance in the issuer's share price (see above, "Rumours").

In this case, the issuer may disclose, prior to the offering, a description of the transaction, an indication of the strategic interest of this initial public offering for the issuer, the stock exchange chosen for listing and the planned number of shares to be issued.

**At the time of the initial public offering itself**, at each of the steps of the offering, **market disclosure is mandatory**, pursuant to applicable regulations. Its content and methods are set by regulation (see above).

In practice, in addition to the information required by regulation, communication concerning the transaction will take place through the organisation of analyst meetings and roadshows.

## 3

## Financial Communication Practices

The financial communication policy of a listed company reflects the regulatory constraints described in the previous chapters, as well as the willingness of executives to regularly communicate with financial market players in a transparent, professional and responsive fashion. Executive management relies, above all, on its Investor Relations officers to achieve this. Investor Relations officers are responsible for addressing the financial community (which primarily includes financial analysts [shares, credit, socially responsible investing], portfolio managers, institutional and individual investors and regulators) on behalf of the company, and establishing a targeted financial communication policy, in accordance with the principle of equal and consistent treatment of information.

The aim of Investor Relations is to create a trustful relationship with the markets by being a reliable source and providing relevant information that assists both investors and management in their decision-making. Given the increasing constraints imposed by the regulatory authorities and the markets, Investor

Relations plays a key role in implementing the company's financial communication objectives by:

- ensuring that, through their contacts outside the company, the market optimally values the company over the long term by explaining its strategy, business model, its operating environment and its financial and non-financial performance;
- adding value internally by bringing useful market information to management's attention;
- ensuring the understanding of the Investor Relations role internally, notably regarding the management of inside information;
- ensuring consistency across all corporate communication channels.

This section of the “Financial Communication: Framework and Practices” guide discusses the management of various aspects of financial communication practices. It starts with the scheduling of periodic information, based on the regulatory deadlines. Beyond the regulatory framework, each listed company implements a marketing strategy to target the stakeholders that are most suited to management's strategy, and uses the tools required to optimise the company's value creation. The final chapter covers the reporting of information to management, such as information concerning the company's reputation and information related to the financial markets or competitors.

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## 1 ■ CALENDAR AND ORGANISATION

### FINANCIAL COMMUNICATION CALENDAR

The financial communication calendar is governed by **regulatory disclosure deadlines** (see Part 2, Section 1) and is also determined by the **ability of a company's information systems** to provide data that are accurate, true and fair within that time frame.

Over the last decade, the reporting of annual and half-yearly results has accelerated, resulting in a concentration of publications within increasingly tight periods, usually before the end of the month following the end of the quarter or half-year period. And yet many companies still do not have a consolidation process allowing them to publish their results rapidly.

Beyond the legal requirements, the AMF has issued recommendations on the disclosure of quarterly financial information and the disclosure of annual sales figures<sup>221</sup>.

Example of a financial communication calendar based on deadlines for a reporting year ending December 31

Information	Deadline
Q4 (optional) and full-year sales	End of February
Annual results	April 30
Q1 financial information (optional)	May 15
Annual shareholders' meeting	June 30
Q2 and H1 sales (optional)	August 15
H1 results	September 30
Q3 financial information (optional)	November 15

This calendar may be adapted in accordance with other factors including:

- scheduling needs of the company's management, analysts and the publication dates of other issuers, in particular those in the same industry;
- constraints imposed by time of day or other scheduling constraints (market opening times, media deadlines, bank holidays in any foreign countries in which the company is listed or has major shareholders, etc.);
- simultaneity with other events organised by the company or in which it is participating (trade shows, conventions, conferences organised by brokers, etc.);
- "logistical" considerations, such as the availability of service providers or meeting rooms.

However, this calendar shows deadlines that have become largely theoretical. Current practice shows that a significant amount of major listed companies publish their annual results for the year ended December 31 in February. Companies that issue quarterly financial statements publish in the first quarter around April 30, the second quarter around July 30 and the third quarter around October 30.

221 – AMF Position/ Recommendation no. 2016-05 – Guide to periodic disclosures by listed companies (sections 10 and 1).

As a result of the health crisis, significant changes have taken place, including a shift to virtual meetings. Meetings take place exclusively online, often without a central location for the management team, and although these meetings are systematically accessible to all, it is difficult to measure their real impact or forge trust-based relationships.

In the specific case of companies with **listed subsidiaries**, it is important to **ensure that all financial communication calendars are synchronised**. As each case may be unique (depending on the degree of control of the subsidiary, its sector, its market capitalisation, free float or relative contribution to consolidated earnings), it is essential for information to be disclosed simultaneously, or for the listed subsidiary to disclose its information after the parent company. If this is not possible, notably in the case of a non-controlling interest, it is desirable to coordinate their communications, at the very least.

It may also be necessary to establish a **specific communication calendar in addition to this periodic calendar, particularly for financial transactions**. This specific calendar would be published in order to provide information on each stage of the transaction, including legal obligations, the approval of the board of directors and information obtained from employee representative bodies, etc.

It is recommended that the **financial communication calendar** be determined in advance and **made available to the public on the company's website**. In practice, the majority of issuers announce the full yearly calendar of periodic information months in advance.

## COORDINATION OF CONTENT AND MESSAGES

To comply with regulatory requirements related to financial information and to further enhance the company's reputation, financial communication personnel must ensure that the messages they convey are **consistent with all institutional communication** (particularly concerning media relations and internal communication), and also with other internal representatives, including those responsible for **corporate social responsibility, human resources or product marketing**. Social networks have increased the speed at which all information is disseminated, which can have a notable effect on a company's reputation, reinforcing the need to coordinate all different communication channels. Lastly, it is essential for financial communication tools to be devised in **close liaison with the legal affairs department and, where required, the corporate secretary's office**.

In order to facilitate the sharing of information, Investor Relations officers must raise awareness among all stakeholders about their role, the relevant regulations and, in particular, the processing of inside information, and this requires internal organisation through the application of established processes known to the functional and operational departments.

Investor Relations officers must be informed of (or take part in, where possible) any event that could affect the group, since information disclosed during such events may impact its share price. This includes events such as roadshows, press conferences, industry conferences and trade shows, as well as the risk of a crisis affecting the company, the company's industry or a country in which it operates, etc.



## Media relations

Although media communication generally falls under the responsibility of the company's communication department, occasionally journalists from the economic, financial or investment press take the initiative to contact Investor Relations officers directly. This is especially true where financial transactions are involved. **If the rules established by the company allow this type of relationship** – some organisations' financial communication departments do not have direct contact with the media – it is still important that the following rules of conduct are observed:

- the head of media relations must be informed, have given their approval and, insofar as is possible, be present at the meeting;
- Investor Relations must **play the role of instructor**, convey clear and concise messages, and avoid using language that is overly technical. They must also be capable of understanding the positioning of the newspaper or magazine concerned, be sensitive to journalists' deadlines and be aware that responsiveness is a key factor in the media industry;
- Investor Relations officers may request that any quotes be submitted to them for approval before the article is published.

## Internal communication

It is recommended that the internal communication department disseminate within the company the same messages that are released externally by the financial communication department, **while adapting them to a wide audience** (with the approval of the Investor Relations officer). It may also be advisable to explain how the financial markets work and how companies are valued, issues of which employees are not necessarily aware.

## Employee representative bodies

Issuers with a social and economic committee (formerly the works council) or group committee are legally required to provide these committees with quarterly and annual reports on the company's operations and financial position. This information may go beyond regulatory information relating to the results. The council is notified of and consulted on all changes made to the company's economic or legal organisation, notably prior to certain types of M&A activities, such as the acquisition or sale of a subsidiary or an asset. **The members of the council will also be made aware of the importance of coordinating the different messages and of the risks attached to the disclosure of sensitive information that is not public.**

## INTERNAL APPROVAL PROCESS

The existence of an information **approval committee** – consisting generally of representatives from the company's executive management, finance department, legal department, communication department (media relations) and Investor Relations – allows for the approval of information to be published and ensures its overall consistency. Moreover, in accordance with the requirements of the Market Abuse Regulation (see Part 1, Section 5

“Requirement for market disclosure of ‘inside information’ concerning the issuer”), a specialised committee may comprise the above-mentioned representatives, who are **tasked with identifying inside information and taking decisions on its immediate or delayed disclosure**; in the latter case, the committee must ensure that the three conditions required for delaying disclosure have been met and that any related requirements have been followed (insider lists and information relating to the delay of disclosure).

## DATA CONFIDENTIALITY

### Security of data and information to be published

It is vital for the company’s executive management to ensure that financial data are protected from the moment they are reported for consolidation purposes until their external publication, as part of the company’s responsibility to provide periodic and ongoing information. This also applies to any inside information. In view of this, it is essential to perform **regular audits** of the reporting, approval and control processes.

### Corporate disclosure policy

The effective management of the financial communication policy developed by executive management involves the definition of **internal procedures**, which should be **formalised as clearly as possible** to ensure they are known to and understood and followed by the various people who may be in contact with analysts, the press or investors.

Accordingly, Investor Relations officers draft a corporate disclosure policy, which is submitted to the executive committee and/or the management committee for approval.

The purpose of this document is to establish **guidelines for the company’s financial communication**, which must include:

- names and details of all company spokespersons;
- behaviour that operational managers and employees in general should adopt, both inside and outside the company, particularly in relation to the use of social networks;
- procedures to be followed for publication of financial information (reporting periods, quiet periods, etc.);
- approval process to be followed with respect to decisions on whether to publish information and the content thereof, the verification of factual accuracy, and timing of disclosures (see above).

### Code of ethics

The AMF recommends that issuers (i) prepare a written document in the form of a set of procedures or a code of ethics, formalising the **measures taken and the obligations incumbent upon executives or any other persons who may have access to inside information**, and, with regard to executives, (ii) distinguish between “permanent” measures, which could be covered in a specific section on preventing insider trading in the internal

regulations (or charter) of the board of directors, executive board or supervisory board, and specific measures related to a financial transaction, which could be set out in special preventive proceedings<sup>222</sup>.

This code should include a definition of inside information, describe the measures put in place by the company, and provide information about the **legal and regulatory provisions** in force as well as **the applicable penalties**. Companies must ensure that they put in place adequate internal procedures that enable them to prove, if necessary, to the AMF at a later date that the three conditions required under the Market Abuse Regulation in order to delay the publication of inside information have been fulfilled.

The company should also carry out an **assessment of the application** and effectiveness of the code of ethics and should ensure that it is **updated regularly**.

In practice, a company's corporate disclosure policy and code of ethics may be separate or contained within a single document.

### Quiet period and “embargo” period

The quiet period is a practice that originated in the United States, where it is provided for in the regulations of the Securities and Exchange Commission (SEC), and refers to a **period during which any communication by an issuer and/or the communication of information relating to said issuer, are restricted**. Quiet periods are not officially defined and mainly apply in the following two situations:

- the quiet period may correspond to the period that precedes and/or follows the completion of a transaction involving an issuer's securities (and in particular the first weeks of an initial public offering) during which the service providers that have participated or are intending to participate in the transaction concerned (and in particular the members of an underwriting syndicate) must refrain from publishing and/or disseminating analyses relating to the company involved in the transaction. The quiet period, which under these circumstances is also referred to as a “blackout” period (see Part 2, Section 9), is intended to prevent conflicts of interest;
- the quiet period may also correspond to the period during which an issuer must refrain from communicating information prior to the publication of its results. In this case, the quiet period is intended to prevent any disclosure of inside information that would breach the principles of the Regulation Fair Disclosure (Regulation FD) introduced by the SEC in October 2000.

The AMF has no official position regarding such quiet periods, with which analysts must comply during transactions involving an issuer's securities, without prejudice to the existing rules governing the management of conflicts of interest concerning financial analysis (in particular articles 313-20 *et seq.* of the AMF General Regulations) and investment recommendations (article 20 of the Market Abuse Regulation).

However, the AMF issued a specific recommendation regarding the introduction of embargo periods (quiet periods – see concept of “embargo” below) **prior to the publication of a**

222 – AMF Position/ Recommendation no. 2016-08 – Guide to ongoing disclosures and the management of inside information (section 2.1.2.2).

**company's annual and half-yearly results and, where applicable, quarterly results or financial information**, in section 1.6.1 of its Guide to ongoing disclosures and the management of inside information<sup>223</sup>. During this period, companies must refrain from contact with analysts and investors and in particular refuse to provide financial analysts and investors with new information on their business activities and results so as to avoid the risk of disclosing any inside information. The company's key managers who are likely to be approached, including its operational managers, must be made aware of this requirement.

Executives should also refrain from granting interviews with the media. It is recommended that companies adapt this practice to their own specific circumstances, and **this period can last from two weeks to one month** prior to the disclosure of their results or sales. Companies must define and inform the markets of a cut-off period covering the process for centralising and compiling financial information so as not to excessively disrupt the necessary dialogue with analysts and investors. It is useful to **mention these periods on the company's website**.

In addition, the AMF recently updated its policy to better regulate shareholder activism<sup>224</sup>. The recommendation on the quiet period for results has been amended and now specifies that the issuer may provide, in compliance with the European Market Abuse Regulation, any necessary information to the market in response to a publication or rumour arising during a quiet period.

These practices do not, however, exempt an issuer from its obligation to periodically provide the market with information concerning any important facts or events occurring during that period and likely to have a significant impact on the share price, as part of its responsibility to provide ongoing information (Part 1, "Ongoing information").

It is important not to confuse the legal concept of embargo as defined by the AMF with the **"embargo" period which refers to the period of time (a few hours) in which a press release is made available to journalists** for their analysis before the press release in question is disseminated. This allows journalists to prepare their work in advance and publish shortly after the dissemination.

**Quiet period** start and end dates may be included **in the financial communication calendar** (see above). For instance, in 2021, a little more than one-quarter of the Cliff's 120 members disclosed these dates on their website.

### Closed periods

The Market Abuse Regulation (article 19.11) **prohibits** a person discharging managerial responsibilities within an issuer from conducting **any transactions** relating to the shares or debt instruments of the issuer during a minimum closed period of **30 calendar days** before the publication of press releases announcing annual and half-yearly results<sup>225</sup>.

In its Guide to ongoing disclosures and the management of inside information (Position/ Recommendation no. 2016-08), the AMF recommends introducing closed periods of

223 – AMF Position/ Recommendation no. 2016-08.

224 – AMF – Shareholder activism: the AMF updates its policy, March 17, 2021. These amendments were integrated into AMF Position/ Recommendation no. DOC-2016-08 (Guide to ongoing disclosures and the management of inside information), and AMF Recommendation no. DOC-2012-05 (General meetings of shareholders of listed companies).

225 – ESMA has specified that closed periods do not apply to cases where persons discharging managerial responsibilities conduct transactions relating to the issuer's securities on the account of the issuer (in his or her capacity as executive), as it is a transaction carried out by the issuer itself (Q&A on the Market Abuse Regulation, question 7.10, November 12, 2018).

**at least 15 calendar days** before the publication of quarterly or half-yearly financial information (or quarterly or half-yearly financial statements).

These closed periods apply to:

- **all executives** (members of the board of directors, the chief executive officer, deputy chief executive officer, members of the supervisory board, members of the executive board);
- **all senior managers**, i.e., all persons who have regular access to inside information relating directly or indirectly to the company and the power to take managerial decisions affecting the future developments and strategy of that company.

**The AMF also recommends extending the application of closed periods to all persons who have regular or occasional access to inside information.**

In practice, the calendar for closed periods is formalised in a written document (letter or email), which is distributed to permanent insiders and directors who must sign and return it.

If the company has a stake in other listed companies, it is also recommended that all executives, as well as all other employees with regular or occasional access to inside information, refrain from buying or selling shares in these affiliates/subsidiaries.

An issuer may nevertheless authorise an executive to carry out immediate sales of the company's shares during a closed period in the event of **exceptional circumstances** that require the immediate sale of shares and providing an explanation as to why the sale of shares is the only reasonable alternative to obtain the necessary financing<sup>226</sup>. The AMF recommends that issuers establish a written procedure describing the arrangements for the implementation of this exceptional authorisation, and set out details of (i) the identity of the person to whom the authorisation request should be sent, (ii) the form of this request, and (iii) the form and deadline for replying for the person granting the authorisation. This procedure only applies during the closed periods provided for in the Market Abuse Regulation.

Certain **transactions** may however be **authorised during closed periods**, such as the granting of financial instruments under an employee scheme to a person discharging managerial responsibilities, the acquisition by such person of financial instruments under an employee savings scheme or the completion of formalities or the exercising of rights attached to shares, provided that the completion of such formalities or the exercising of such rights during the period is sufficiently justified<sup>227</sup>. A non-exhaustive list is set out in article 9 of Delegated Regulation (EU) no. 2016/522 of March 10, 2016.

### Insider lists

An insider list **records all persons who have access to inside information** and who are working for the issuer under an employment contract, or otherwise performing tasks through which they have access to inside information, such as advisers, accountants, translators or rating agencies.

<sup>226</sup> – Market Abuse Regulation, article 18.1.

<sup>227</sup> – See Delegated Regulation (EU) no. 2016/522 of December 17, 2015.

The list must be **kept in electronic format and retained for a period of 5 years** as from its creation or last update. It must be provided to the AMF as soon as possible upon its request, either by email or using a secure information exchange tool.

The following persons are required to draw up such a list:

- issuers who have requested or approved trading of their financial instruments on a regulated market in a Member State;
- issuers who have requested or approved trading of their financial instruments on a multilateral trading facility (MTF) in a Member State in the case of an instrument only traded on an MTF;
- issuers who have requested or approved trading of their financial instruments on an organised trading facility (OTF) in a Member State in the case of an instrument only traded on an OTF; and
- any person acting on behalf or on the account of such issuers.

Article 18 of the Market Abuse Regulation and Implementing Regulation (EU) no. 2016/347 of March 10, 2016 made significant changes to the rules governing **insider lists and expanded the list of information that must be included** in these lists. In addition to the identity of the person, the reason for including that person in the insider list and the date on which the insider list was drawn up and updated, it must now include the following information:

- the date and time at which the persons in question obtained access and ceased to have access to inside information;
- the insider's first name, surname and birth surname (if different);
- the insider's date of birth;
- the insider's national identification number (not applicable in France);
- the insider's home address;
- the name and address of the company where the insider is employed;
- the insider's professional telephone number (direct telephone line and mobile numbers);
- the insider's private home and personal mobile telephone number(s);
- the insider's function and reason for being an insider; and
- the date of transmission to the AMF.

The insider list is divided **into separate sections, each relating to different inside information**. A separate section entitled "permanent insiders section" may also be inserted, specifically listing the individuals who have access at all times to all inside information in the issuer's possession. The details of the persons included in this section shall not be included in the other sections of the insider list.

Annex I to Implementing Regulation (EU) no. 2016/437 of March 10, 2017 provides model templates that insider lists should now follow.

The persons included in the list must acknowledge, in writing, that they have been **informed** of their statutory and regulatory obligations, as well as the **applicable penalties**, resulting from their inclusion on the list.

## 2 ■ FINANCIAL MARKETING AND TARGETING

The role of Investor Relations is not limited to the dissemination of quantitative data at regular intervals and in accordance with regulations. It is also responsible for **identifying the company's shareholder base** as precisely as possible and then, based on a solid understanding of how the financial markets work and its own knowledge of different players, identifying particular investors who are most **suited to the company's strategy**. Should any changes be made to this strategy, investor targeting should be realigned accordingly. This approach should form part of a pro-active marketing strategy that covers the needs of investors and generally aims to:

- **diversify** the profiles of the issuer's investors, with respect to the amount of capital they manage, their investment strategy or their geographical origin;
- **create a healthy balance** between stable shareholders and those with a shorter-term investment strategy, in order to contribute to the liquidity of the company's shares;
- **support** strategic developments (sale or acquisition of business activities, diversifications, growth of a business that could have an impact on the value of the company, etc.) by adjusting the profile of the target investor;
- **anticipate** changes to the shareholder base that could affect the company's development.

With this in mind, the implementation of an effective marketing strategy is intrinsically linked to the size of the issuer and its percentage of free float; internally, these two elements often affect the resources (number of employees, budget, etc.) allocated to Investor Relations and the availability of management to meet with members of the financial community (frequency of meetings, seniority of stakeholders, etc.); externally, and especially in the **context of MiFID II**, these factors tend to have a major impact on the coverage provided by analysts, i.e., the number of research and brokerage firms covering the stock, or even the quality of the coverage. Some stocks whose capitalisation is deemed too low to be profitable are covered by generalists at best, and not by industry specialists. **Small caps require greater involvement from executive management as investors want to meet with them directly**. Lastly, small caps are less likely to attract the interest of foreign investors, which often only follow the largest stocks included in leading indices, with the exception of companies that are market leaders or are present in niches that attract special interest, such as new technologies.

### IDENTIFICATION OF THE SHAREHOLDER BASE

The ease with which shareholders are identified depends on whether the shares are primarily held in **registered form** (whereby the issuer knows the identities of the holders) or **bearer form** (whereby the identities of the holders are only known to their banks). In the first case, the share register provides detailed, complete and up-to-date information. For shares registered on a "pure registered" basis, the company ensures the provision of all custodial services. If shares are held in "administered registered form," the management of the company's shares is entrusted to a financial intermediary. In the second case (which is more common), more exhaustive and accurate identification of the company's

shareholders is not easily obtained. However, several **sources of information** remain available to the issuer:

- trading data: these data may be based on the analysis of the **identifiable bearer shares** requested by the issuer from Euroclear, the central clearing agency, at a particular period-end, and which may be exhaustive or limited by thresholds governing the number of shares held by the ultimate shareholders or the financial intermediaries interviewed. This analysis is being replaced from 2021 onwards by the new InvestorInsight service in order to meet the requirements of the Shareholder Rights Directive II (SRD II, see below). Another available source of information is service providers, who may allow a company to understand more about its shareholder base using public information and/or specific surveys conducted with institutional investors (shareholder identification);
- regulatory and statutory data: the law provides companies with various possibilities for identifying their shareholders, such as through **disclosures of upward or downward crossings of statutory and legal thresholds**, as well as registration of shares, as mentioned above;
- empirical data: companies must exploit every opportunity to **improve their familiarity with their shareholders**, including through feedback after roadshows, analysis of proxies collected at shareholders' meetings, information received directly from investors at events such as one-on-one meetings, etc.

**Listed companies should use a combination of these various tools** to obtain a more detailed understanding of the composition of and changes to their free float (the proportion of share capital of a publicly-held company) and to gain a clear picture of the composition of and changes to their shareholder base. However, the proliferation of trading platforms that are not legally obliged to provide the same information as regulated platforms, and the significant increase in high frequency trading, render shareholder identification difficult. The information obtained in this way is never totally exact, however it provides the most detailed picture possible of the shareholder base at any given time.

The frequency of these analyses will depend on the situation of each issuer. For example, a large free float and a highly volatile share could demand multiple analyses over the course of the year.

**Directive (EU) 2017/828 of May 17, 2017 on shareholder rights upholds the right of all listed companies to know the identity of their shareholders.** Pursuant to this Directive, article L. 228-2 of the French Commercial Code (as amended by the PACTE law) provides that any issuer is entitled to request, at any time and in exchange for payment by the issuer, from either the central securities custodian or another intermediary or intermediaries as referred to in article L. 211-3 of the French Monetary and Financial Code, information about the holders of its shares and of any securities conferring immediate or future rights to vote at the issuer's shareholders' meeting. This option is automatically available to companies whose shares are admitted to trading on a regulated market; any contrary provision of their articles of association will be deemed invalid.

A decree specifying the list of **shareholder information that must be provided** was issued on November 27, 2010 and entered into force on November 29, 2019<sup>228</sup>. The information includes the shareholder's name or company name, nationality, year of birth



or incorporation, postal address and, where available, email address, the number of shares held, any restrictions on the shares, the registration number for legal entities or national identifier for individuals, the date from which the shares have been held, the code indicating the shareholder's principal activity, whether the shareholder qualifies as a professional within the meaning of article L. 533-16 of the French Monetary and Financial Code, and, for holders of units or shares in a UCI, the name and registration number of the distributor having assigned the units or shares to the holder<sup>229</sup>. The same information may be requested for holders of registered shares whose identity is not known to the company, i.e., whereby the shares are registered with and managed by an intermediary.

The decree also specifies the deadlines for transmitting the information, which vary depending on the professional category of the party providing it. For example, account-keepers have **10 business days** from receipt of the request to transmit the information, while central custodians have just **5 days**<sup>230</sup>. Account-keepers must provide the information to the company, its representative or the central custodian, while the latter may only provide it to the company. The time frame granted to intermediaries acting for one or more shareholders to respond to requests for information about registered shares is 10 business days from receipt of the request<sup>231</sup>.

According to the PACTE law, any charges levied for services relating to bearer shareholder identification must be non-discriminatory and proportionate in relation to the actual costs incurred for delivering the services. Providers of these services must publish the charges for each type of service on their website<sup>232</sup>.

## TARGETS FOR INVESTOR RELATIONS

### Sell-side: analysts and sales force

Sell-side financial analysts are employed **by brokerage firms**, which are generally owned by banking networks or investment banks that distribute their research to their institutional investor clients. The decision whether or not to follow a stock depends on several criteria, such as the number of analysts employed, the strategy of the research department – especially with regard to industry coverage – and, most frequently, the market capitalisation of the listed company and its liquidity.

These research reports present a valuation of the issuer concerned, resulting in earnings forecasts, share price targets and buy-sell-hold recommendations. They are effectively a marketing tool that brokerage firms' sales forces can use to propose investment strategies to their institutional investor clients. Investment strategies are often condensed versions of the various proposals made by the analyst. It is useful for the issuer to maintain regular contact with these sales forces, whose **ability to shape the opinion of the end investor** impacts the value of the company.

Investor Relations officers are the financial analyst's point of contact within the company. They must ensure that the financial analyst clearly understands and takes into account industry fundamentals, the competitive environment within which the company operates,

229 – Article R. 228-3 of the French Commercial Code.

230 – Article R. 228-4-I of the French Commercial Code.

231 – Article R. 228-4-II of the French Commercial Code.

232 – Article R. 228-5 of the French Commercial Code.

and its strategy, outlook and the risks to which it is exposed. Investor Relations points out any factual errors made by an analyst while strictly respecting the independence of their opinion.

Since the 1990s, the Cliff and the French Society of Financial Analysts (SFAF) have provided recommendations on **issuer-analyst relations**. They have issued a joint **charter** on the subject, which was last updated in 2019. The charter is based on four fundamental principles: responsibility, integrity, quality and equal access.

### Buy-side: analysts and fund managers

Buy-side analysts are employed by **institutional investors**. Institutional investors manage financial assets (banks, insurance companies, pension funds, etc.) and invest funds collected from their clients (individuals, other policyholders, pension funds, other investment funds, etc.) in financial instruments (mainly shares and bonds), real estate and raw materials, etc. These savings may be managed collectively in the form of an open-ended collective investment fund (SICAV), mutual investment fund, or other type of investment fund, etc. The recommendations given by buy-side analysts are intended solely for their company's portfolio managers. Their analytical processes are not very different from those practised by the sell-side analysts, whose work they sometimes use to supplement their own evaluations of listed companies. For the analysts, meetings with the issuers' management are an important and often indispensable step in making the decision to invest. At some institutions, the financial analyst also acts as portfolio manager.

Investors may be classified into several categories of **investment strategy**, including growth, value, growth at reasonable price (GARP), momentum, index, hedge, socially responsible investment and event-driven. It should be noted that this classification system applies to the different funds that may be managed by a given financial institution.

The time that should be spent by management meeting these buy-side analysts depends on the profile of these investors, including their size, interest in the company, investment period, etc. It is important to meet directly with the decision-making fund managers, generally to discuss the company's strategy.

### "Activist" funds

Particular attention should be paid to these types of funds, **whose approach focuses on putting pressure on the companies in which they are investing in order to encourage them to adopt a new strategy** which they believe is more likely to create value.

Investor Relations should endeavour, where possible, to detect any unusual stock market movements that could suggest that an activist fund is in the process of acquiring stakes, whether it be market information or any other indication of their activity on the markets. Activist funds may take advantage of high volume trading days due to macroeconomic events or index rebalancing to acquire stakes without attracting attention. Information on activist funds should be passed on to the company's management, who will decide whether or not to meet them with a view to listening to their suggestions and establishing a dialogue.

In 2019, the behaviour of activist funds and the need for greater supervision of their practices attracted unprecedented attention in France. Against this backdrop, **the AMF issued proposals** for improving market operations and transparency, as well as strengthening its response to activist campaigns<sup>233</sup>:

- enhance **transparency on stake-building** and knowledge of the shareholder structure by lowering the first legal notification threshold to 3% and making public any threshold crossing reported to the company as required under the articles of association;
- ensure better information for the market regarding **investors' financial exposure** by supplementing the reporting on short positions with information on the debt instruments also held by the investor (bonds and credit default swaps, for example);
- foster an **open, fair dialogue between listed companies and their shareholders** to prevent unreasonable activist campaigns and limit any related disruption. The AMF is to supplement its Guide to ongoing disclosures and the management of inside information to include certain developments on shareholder dialogue. It will add to its policy to specify that, subject to compliance with the rules on market abuse, issuers may provide the market with any necessary information in response to public statements concerning them, even during quiet periods. It will also recommend that any shareholder who initiates a public campaign should immediately disclose to the issuer in question the material information that it intends to send to the other shareholders;
- increase **the analysis and response capabilities of the AMF** to enable swift and appropriate answers when the circumstances so require: for example, via the introduction of a power to impose fines with regard to administrative injunctions and the possibility to order any investor, and no longer only an issuer, to make corrective or supplementary publications if errors or omissions have been identified in its public statements.

Following these proposals, the AMF consulted its Consultative Commissions and announced a number of changes to its policy in March 2021<sup>234</sup>:

- the Guide to ongoing disclosures and the management of inside information was amended to specify that an issuer should not be denied the opportunity to respond to attacks or allegations by shareholder activists involving the issuer during quiet periods, a market practice whereby an issuer refrains from interacting with analysts and investors in the weeks leading up to the announcement of its results in order to reduce the risk of disclosing inside information;
- any investor initiating an activist campaign against an issuer should immediately send the issuer the plans, proposals and related documentation (white paper). It is good practice for the investor to make this information public in order to ensure that the market is well informed and that shareholders are treated equally. In addition, it is recommended that prior to any public campaign the investor concerned try to engage in dialogue with the issuer;
- fund managers are recommended to repatriate loaned securities ahead of shareholders' meetings and to effectively exercise the voting rights attached to them;
- during the period of a takeover bid as well as during the pre-bid period, it is recommended that shareholders of the bidder or of the company targeted by the bid, persons with economic exposure to the bidder or to the company targeted by the bid by virtue of agreements or financial instruments, and their managers, agents and advisers be particularly vigilant in their statements;

233 – AMF  
Communication on  
shareholder activism,  
April 2020.

234 – AMF –  
Shareholder activism:  
the AMF updates its  
policy, March 17, 2021.

- the Guide to ongoing disclosures and the management of inside information includes a section on dialogue between shareholders and issuers, highlighting the permanent nature of such dialogue;
- issuers are recommended to establish dialogue between the board and shareholders, if necessary through a lead director, on the main areas of concern to shareholders, including environmental, social and governance (ESG) issues as well as strategy and performance;
- it is recommended that the presentation materials prepared for governance roadshows be made available on the company's website. In addition, the AMF recommends that, in the event of a contested vote at a shareholders' meeting, companies should consider whether they should disclose the measures taken by the board following the vote. This recommendation, which already applied to companies declaring that they follow the AFEP-MEDEF Code, has been extended to all issuers whose financial securities are admitted – or are subject to a request for admission – to trading on a regulated market, a multilateral trading facility or an organised trading facility.

These amendments were integrated into AMF Position/Recommendation no. DOC-2016-08 (Guide to ongoing disclosures and the management of inside information), and AMF Recommendation no. DOC-2012-05 (General meetings of shareholders of listed companies).

### **“Passive” funds**

Passive funds, or **index funds**, attempt to replicate average market performance. They are less demanding in terms of arranging meetings with the company's management as their allocation policy is not specifically focused on the company's policy, but rather on a macroeconomic view with a top-down approach. These funds are also especially vigilant in terms of corporate governance, a key selection criterion for them.

### **SRI analysts and rating agencies**

In addition to purely financial performance criteria, socially responsible investment (SRI) analysts also take ethical, social and environmental issues into consideration in their research and focus their analysis on issues such as corporate governance, human resources management, environmental protection and human rights.

### **SRI funds use statutory labour, environmental and social disclosures<sup>235</sup>.**

Therefore, financial communication officers must work closely with the managers of the company's human resources, corporate social responsibility (CSR) and environment functions to be able to provide the appropriate information for this target audience, in the format and with the content they require. Special reporting processes for these data are put in place internally alongside financial reporting systems, based on the issuers' organisation.

The process of centralising data is generally carried out by the CSR department, although this role is occasionally assumed by the financial communication department.

<sup>235</sup> – Pursuant to articles L. 225-102-1, L. 22-10-36, R. 225-105 and R. 225-105-1 of the French Commercial Code.

### **The use of SRI data has become widespread among investors using traditional portfolio management services.**

The growing interest in sustainable development has given rise to new players, including specialised rating agencies, and the creation of socially responsible investment indices (e.g., FTSE4Good, DJSI and Vigeo-Eiris).

The agencies' clients are institutional investors, whose investment criteria are focused entirely or in part on this issue, and issuers seeking to add this extra dimension to their corporate communication.

**Specific roadshows**, coordinated with internal corporate social responsibility experts, can be organised using non-financial key performance indicators for these specialist investors.

Socially responsible, or ESG, investment, is now so widespread that it is seen to reflect growing investor conviction and a prerequisite for the launch of an investment vehicle.

### **Credit analysts and rating agencies**

Credit analysts assess the financial health of a company from the standpoint of the debt instruments it has issued. In addition to the usual ratios regarding the company's economic and financial performance (to which they may make certain adjustments), they attempt to **analyse the solvency of the issuer** in relation to its balance sheet, the generation of free cash flow, the structure of its debt (exposure to interest rate risk, maturity schedule and cost of debt) and the types of safety clauses or covenants that may exist.

Investor Relations officers frequently work with the corporate treasurer to ensure that **the messages provided to credit analysts are consistent**. Presentations and roadshows may be organised specifically for these types of analysts, particularly in connection with financial transactions (bond issues, private placements, etc.).

**Rating agencies** are external bodies that assess the solvency and liquidity of an issuer. There are three main rating agencies in the world, which are paid by the listed companies that have requested a rating.

Ratings are **periodically published by means of a press release** at the rating agency's initiative, when earnings are released or when any event occurs that could bring about a change in the issuer's financial position. Ratings have an impact on an issuer's cost of financing, which reflects the market's assessment of the issuer's risk.

In order for the agencies to establish their ratings, issuers provide these agencies with data, primarily prospective. As such, **the agencies may be in possession of inside information** and are therefore required to submit the data to the issuer, typically 24 hours before data are published, so the issuer may check that no inside information is present.

### **Individual shareholders and representative associations**

Developing and retaining a significant individual shareholder base, which is often considered to be more stable than an institutional shareholder base, may form part of a **company's**

**shareholding strategy.** A company's financial communication will therefore reflect this strategic approach. The study published in November 2015 on systems used by listed companies to communicate with their individual shareholders by the AMF includes a presentation of the financial communication frameworks and tools currently used as well as an overview of existing practices and the AMF's best practice guidelines with regard to this area.

With the same obligations and objectives as for relations with institutional investors, financial communication targeting individual shareholders must take into account their **specific needs**, such as separate information distribution channels, a greater need for information regarding the company's business and strategic approach, and personalised dissemination tools.

The AMF recommends<sup>236</sup> that specialist documents or headings on the issuer's website (i) contain a clear link to the presentation of the related risk factors, (ii) explain the company's strategy in a balanced, educational manner, particularly with regard to future challenges and how the company's strategy will respond to these, and (iii) systematically refer back to their universal registration document (or annual financial report), with clear details of where it may be consulted and highlighting the risk factors contained therein.

Depending on the nature of an issuer's business, it may be wise to combine its **financial communication with its institutional communication**, for example, in the case of consumer goods and services. Additionally, any company that wishes to build and retain a significant individual shareholder base must also incorporate this strategy into its financial policy (for example, by offering interim dividends and splitting the shares to make them more accessible, etc.).

Some **associations** represent the interests of individual shareholders or investment clubs. Certain associations aim to defend the rights of non-controlling interests, particularly in the case of financial transactions. Issuers may find it useful to engage in dialogue with these associations and meet with them when preparing their shareholders' meetings, in order to better identify their expectations.

### **Employee shareholders**

As is the case with communications for individual shareholders, communications aimed at informing employee shareholders must have an **educational** value.

They are subject to the same legal obligations as those presented in Part 1, especially those concerning equal treatment.

Several supporting tools may be used to communicate with employee shareholders, including in particular a dedicated employee shareholder Intranet site, a specific letter or a "Shareholder" section in any in-house publications or webzines.

The content may consist of strategy-related performance indicators, specific information concerning the employee shareholder base (percentage held, geographical breakdown, etc.), information about the share itself (earnings releases, events, comments on share price trends, dividends, etc.) and the various means by which it is held (through the employee stock-ownership programme, in pure registered, administered registered or bearer form, etc.).

<sup>236</sup> – AMF Recommendation no. 2015-09 – Communication by companies aimed at promoting their securities to individual investors.

The law sets out the methods to be used for calculating the proportion of capital held by employees<sup>237</sup>.

### 3 ■ IMPLEMENTATION OF FINANCIAL COMMUNICATION

Readers may refer to the document published on February 2, 2017 on the AMF's website entitled *Communication financière des valeurs moyennes: mieux comprendre les attentes des analystes financiers et des investisseurs professionnels* ("Financial communication for mid-caps: better understand the expectations of financial analysts and professional investors"). The document was produced in collaboration between the AMF, the French Asset Management Association (*Association Française de la Gestion Financière – AFG*) and the French Society of Financial Analysts (*Société Française des Analystes Financiers – SFAF*), and presents the main principles deriving from the regulatory framework, the expectations of analysts and managers with regard to information, and areas for improvement in current practices.

#### INVOLVEMENT OF EXECUTIVE MANAGEMENT

While regulatory, periodic and ongoing financial information constitute the starting point from which investors forge their opinion of an issuer, investment decisions also take into account other important factors. As the first criterion for investors is **confidence in the company's management**, executives are increasingly involved in the company's financial communication and in meeting investors. This can be challenging for small- and medium-sized companies.

It is the responsibility of Investor Relations to manage requests for meetings and assess their relevance in light of the executives' many other commitments. Several criteria must be taken into consideration, such as the interest that the investor represents for the company, the size and the investment strategy of the institution to which the investor is affiliated, and the historical relationship.

For executives, the aim of these meetings is to:

- **present** the results of their strategy, ensure that it has been fully understood and identify the highlights of their company's earnings;
- **share** their view of the macroeconomic and competitive environment with the investors;
- discuss more general **current issues** and respond to any questions emanating from the financial market community.

It is therefore vital that executives are well prepared, have liaised with Investor Relations to identify the **key messages that they wish to convey** to the financial community and to journalists, and that they prepare answers to questions (Q&A) relating to all subject

237 – See Law no. 2015-990 of August 6, 2015, amending article L. 225-102 of the French Commercial Code. Transferable shares (the previous condition for non-transferability of shares has been abolished) and free shares granted to employees pursuant to approval of a shareholders' meeting held after August 7, 2015 are now included in the calculation.

matters, including the most sensitive issues, while scrupulously respecting the principle of equal treatment of information, in accordance with regulations. Explanations and answers must take into account all information that has been previously provided and anticipate, insofar as is possible, their future consequences.

To ensure consistency and credibility, it is important that the Investor Relations officer be present at meetings between executives and members of the financial community since they have an understanding of all the parties as well as how the financial markets work. This ensures that the relationship is managed more effectively over the long term.

### Corporate access

For the majority of investors, meeting the company's executives is an essential step in the decision-making process. **Brokers** offer to organise corporate **access with executives** as part of one-on-one meetings, roadshows, or subject-specific or general conferences. These meetings allow brokers to better position themselves in the eyes of investors and see an increase in stock market orders or favourable votes, by way of compensation.

However, the entry into force of the **MiFID II Directive** in early 2018, which establishes a **clear separation between finding investment research and transactions**, has already significantly changed brokers' and investors' practices. Costs related to investment research, and the related activities such as organising conferences, roadshows etc., must now be itemised and separate from transactions. This provision has led brokers, based on their trading policy, to become more **selective** in their research, to pass on the cost to clients and even to reduce their monitoring of certain small-cap investments. In terms of corporate access, many issuers report difficulties in organising roadshows in certain destinations and receiving less relevant feedback. Some investors are choosing to use brokers' services less frequently, preferring to set up their own corporate access teams to contact issuers directly. In turn, investors confirm that they are being directly approached by investors more frequently.

Pending a clearer view of the situation, on January 27, 2020 the AMF published the results of its research<sup>238</sup> into the first visible impacts of MiFID II on research and corporate access. The report concludes that there has been a **deterioration in research coverage** in the sell-side market, especially for small and mid caps, and that there is a growing trend for funds to contact executives directly, without making use of brokers' corporate access services, which is further reducing the visibility of small and mid caps with investors.

### RELATIONS WITH FINANCIAL ANALYSTS AND INVESTORS

Although analysts and investors (with whom Investor Relations officers mainly communicate) have different areas of interest, a very similar approach and behaviour should be adopted in relation to them. In general, during meetings, Investor Relations officers will comment on previously published information and will be careful not to disclose any new developments that are not yet public, and in particular those that could have an impact on the share price.



**If any information is inadvertently disclosed by executives, or Investor Relations reveals information that may be considered inside information, a press release should be promptly published to publicly disclose that information.** On the basis of article 223-10-1 of its General Regulations, the AMF has, on multiple occasions, sanctioned companies that informed financial analysts of certain information for which it did not ensure equal and simultaneous access to the public<sup>239</sup>.

It is generally recommended that the various members of management involved in financial communication events be regularly reminded of the rules relating to disclosures.

The guide to financial analysis<sup>240</sup> published by the AMF outlines a number of the AMF's expectations with regard to relations between analysts and issuers, and more generally refers to several EU and French texts concerning financial analysis.

It should be noted that case law of the French *Conseil d'État* concluded that certain work and estimations provided by recognised analysts and researchers may, in some instances, constitute inside information<sup>241</sup>.

### Telephone interviews

Analysts frequently contact issuers in order to update their valuation models, confirm an assumption or react to a current event, in particular by comparing companies operating in the same industries. Investors take the same approach, often to make sure that they have a clear understanding of the issuer's strategic objectives.

Telephone interviews are usually **recorded** at the analysts' premises but also, less frequently, at the Investor Relations officers' premises, in order to guard against the unwitting dissemination of inside information.

### Information meetings

Information meetings (see Part 2, Section 1) with financial analysts, investors and, if applicable, journalists, are usually organised for the publication of annual, half-yearly and even quarterly results. These meetings represent one of the **most important opportunities for the company's management to communicate and hold discussions with the financial markets**. Typically, they take the form of meetings, conference calls or webcasts. They may be held either in the morning or afternoon depending on whether North American analysts and investors are to participate.

During the preceding quiet period (see Part 3, Section 1), **Investor Relations officers and management work together to prepare the meeting** (see Part 3, Section 3): all messages are approved (see Part 3, Section 1) and all materials are put together in both French and English (press release, presentation, script, Q&A, consolidated financial statements, etc.).

239 – For example: AMF, November 2, 2017, SAN-2017-09.

240 – AMF Position/ Recommendation no. 2013-25.

241 – CE, January 30, 2019, no. 412789: penalty imposed on an analyst having used information based on a recommendation, not prior to publication but prior to distribution to a restricted circle.

The results **press release** is published before the stock market open and sufficiently early, e.g., 7 a.m., for analysts to interpret the main points and present them to their salespeople, or after market close the day before. A **conference call may be organised with the main press agencies**. To ensure that information is disseminated as widely as possible, it is recommended that the meeting be **broadcast live** over the internet, where applicable with simultaneous translation. In 2020 and 2021, this became the **norm during the health crisis**, with videoconferences replacing face-to-face meetings. In addition, analysts and investors may be working remotely and may not be authorised by their company to go to a public place.

Analyst and investor **presentations** or slide shows should be systematically and immediately **posted on the issuer's website**, at the very latest at the beginning of the relevant meetings. It is also recommended to **distribute all slide shows to those attending the meetings** in order to avoid any discrepancies that could arise with copies downloaded from the internet<sup>242</sup>. The preparation of this meeting will entail a large number of **logistical considerations** requiring the issuer and its service providers to work in close coordination: the reservation of the meeting room, any audio and video aids that may be needed, security, copies of all presentation materials, a translation system, webcasts and even buffets and receptions must all be attended to.

The French Society of Financial Analysts (SFAF) may help organise the meeting, in particular by sending invitations to its members.

There is also the question of whether or not **journalists** should be invited to financial analyst meetings. This decision is left to the issuer, given that journalists and analysts do not necessarily share the same concerns. Irrespective of the way in which events are organised (a conference call with press agencies, analyst and journalist meetings, either together or separate), the messages must remain consistent. Providing the same documents to journalists and analysts is also advisable.

### One-on-one meetings

One-on-one meetings are held between the company's executives and Investor Relations officers or with Investor Relations officers alone, and between the analysts and/or investors. They are held at the headquarters of the company or at the investors' premises within the framework of roadshows (see below). Less time is generally spent on the formal presentation of the company so as to leave plenty of time for questions and answers. The state of health emergency in 2020 and 2021 has meant that these one-on-one meetings have been replaced by videoconferences or telephone interviews.

For investors, one-on-ones provide a valuable opportunity to go beyond the simple data and to assess **the vision that executives have for their company**, its strategy and their analysis of the competitive environment, market trends and even geopolitical conditions. They may also include human resources issues, especially the company's compensation and corporate governance policies, and any other subject that is not specifically financial in nature. Naturally, the position held by the executive being questioned will influence

the topics addressed. These meetings will always require a certain degree of preparation and the definition of a series of **questions and answers, to prevent any unwitting dissemination of inside information.**

In addition, it is the investor relations officers' responsibility, if they have been tasked with managing relations with rating agencies, to organise one-on-one meetings between the analysts from these agencies and the company's management.

## Roadshows

Roadshows consist of a series of direct meetings between an issuer's executives and investors and are organised over a given period (from one day to one week) in one or more financial markets in order to maintain a dialogue with the company's existing shareholders and to raise awareness among potential investors.

The programme generally consists of a series of **one-on-one and group meetings with investors.**

The company's executive management, in particular the chief financial officer, chairman and chief executive officer, or one of the deputy chief executive officers is generally actively involved in these meetings. The company's management is systematically supported in these meetings by the Investor Relations officers, though it may also participate in roadshows alone.

In the context of the health emergency in 2020 and 2021, video and telephone conferences have replaced travel. As a result, roadshows have been decentralised, and can take place in Europe in the morning and in the United States in the afternoon, thereby optimising the time invested by executive management. However, at virtual events it is not possible **to ensure that the audience's attention is always focused** and to adjust the message if necessary. In other words, the time saved by the executive is partly lost as the impact of their speech is potentially reduced.

### ■ Types of roadshows

Roadshows may be organised **around earnings disclosure or at another point in time** in order to maintain close contact with the financial markets throughout the year.

Roadshows are occasionally held to make a strategic announcement, or to announce a financial transaction to the market (especially acquisitions). Roadshows are also used to reach out to **SRI** and bond investors. In such cases, investor relations officers may also be assisted by the head of sustainable development. It is also worth noting that certain investors are raising ESG issues on an increasingly regular basis, even at ordinary roadshows.

**In the event of debt issues,** roadshows are also organised in order to disclose the main features of the transaction. In such cases, Investor Relations officers are responsible for representing the issuer, and are usually accompanied by the corporate treasurer or the head of ALM, an expert who explains all of the technical ramifications of the transaction.

As previously mentioned, facilitating investors' access to management teams is fundamental in establishing a **trust-based relationship** and this occupies a significant portion of the time dedicated to Investor Relations.

#### ■ Choice of destinations

The choice of destination and frequency of visits depend primarily on the value of assets managed by the local financial community, the marketing strategy and structure of the issuer's shareholder base.

Issuers have every interest in organising roadshows in financial marketplaces other than their primary markets from time to time in order to expand their shareholder base. Generally, Investor Relations are responsible for building relationships with these potential investors.

#### ■ Investor targeting, organisation and the use of brokers

The company may also decide to organise the roadshows itself, either directly – if it has the necessary means and resources in house – or by using the services of a specialised, independent third party.

Most often, however, issuers use **brokers to organise roadshows**. They may also use **independent platforms** that connect issuers with investors, or organise their roadshow with investors directly.

In order to maximise the benefits of the event, Investor Relations officers prepare a list of the investors to speak with, based on their own marketing policy and the broker's recommendations. They determine which investors to target using a detailed analysis of the shareholder base, spread across multiple dates where possible, based on a study of identifiable bearer shares.

Brokers are selected on the basis of a number of criteria: quality of research (depending on the degree of the analyst's involvement); number of investors the company has met through the broker; salesperson's knowledge of the financial marketplace; effectiveness of its organisation before and during the roadshow; and quality and promptness of feedback. The size of its sales force and the corporate access it provides may also be important criteria.

In practice, different brokers are used for different types of roadshows, in particular to widen the scope of target investors.

**Feedback** is particularly useful for **ensuring that the issuer's strategy has been properly understood by investors**, and to address any concerns and criticism investors may have. These remarks allow the company's executives to establish areas that need to be improved in future presentations. Anglo-Saxon brokers are increasingly using feedback techniques that do not specifically name those institutions that responded (which enables the brokers to obtain more honest and therefore more useful assessments).

Certain companies refuse to work with brokers whose analyst has a **sell recommendation on the stock**. However, this may provide an opportunity for the issuer to defend its position against the analyst's negative opinion.

It is increasingly the case that investors prefer not to have the broker's representative (analyst or salesperson) participate in the meeting with the issuer. This practice is known as a **"no broker policy"**. In theory, this enables managers or buy-side analysts to avoid having to reveal their analytical viewpoints (which they may consider to be strategic and therefore may wish to keep hidden from their competitors) to the sell-side analyst.

In the specific case of a transaction in progress that concerns the company's securities (a "deal roadshow") or any other financial or strategic transaction, a roadshow is organised by the broker(s) of the lead bank(s) to present the transaction. This rule is especially true when it concerns a primary market issue.

### Reverse roadshows

Brokers also organise **visits to company headquarters** with their clients (buy-side analysts and fund managers) to meet with management. This enables management to meet between 10 and 15 investors in one hour, thereby saving time and providing an opportunity to gain an understanding of the issues currently affecting the market.

### Conferences

Some brokers organise conferences, to which they invite their institutional clients to meet with listed companies as part of **industry, topical or geographical presentations**. These presentations are generally followed by one-on-one or one-to-few meetings between management and buy-side analysts and fund managers. This allows the issuer to organise a large number of meetings in a short period of time, with a wide range of institutions, contributing significantly to the company's visibility.

**Many of the company's executives take part** in these conferences and the Investor Relations officer's decision to recommend that they participate is based on criteria such as the:

- audience and its composition (buy-side analysts, local or international fund managers, etc.), the objectives in terms of diversification of the shareholder base and reputation with the financial community, the participation of active or potential investors that the company has few opportunities to meet with otherwise, etc.;
- list of other industry players that are participating, and their level of seniority (CEO, CFO, Investor Relations officer or other);
- profile of the conference within the specific industry (reputation of the broker organising it and quality of financial analysis);
- whether or not the timing of the conference is compatible with the company's communication calendar.

Since the introduction of MiFID II, issuers have found that brokers place increasing importance on top management being present. Another development is that fewer one-on-ones are held. In addition, due to the health crisis, all broker conferences have moved online, which has reduced organisational costs for brokers and eliminated travel expenses and time for investors and issuers. There has also been an increase in online

investor presence, which compensates for the lack of physical presence through a very high attendance rate at almost all conferences on a given stock. Once again, there is a downside: for an executive, it is more difficult to express a company's strategy or interact informally with peers from behind a screen.

We should note that conferences do not usually generate any formal investor feedback.

### Investor Day or Capital Markets Day

Whether it is called Investor Day, Analyst Day or even Capital Markets Day, the organisation of any such financial communication event can only be justified if the issuer has a strategic message to convey, or feels the need to improve the public's general understanding of a business, a product or a geographical region from a medium- to long-term perspective. Such events are primarily for sell-side and buy-side analysts, institutional investors, bond investors and rating agencies, although the financial press may also be invited. The event may also be combined with an on-site visit.

Given the strategic nature of the information disclosed, a **press release** should be published at the beginning of the day summarising the key points to be discussed, and the presentations delivered at the event should be made available on the company's website. The event may be broadcast online via streaming or viewed via playback, and can also be attended via conference call.

### Field trips

Site visits and technical meetings give financial analysts and investors a chance to improve their understanding of the company from an operational standpoint, beyond those events organised to present periodic financial information. It is important to choose the proper site for a visit: it must illustrate the company's strategy and competitive positioning and must provide **an opportunity to meet with operational managers**.

This type of event must be prepared just as rigorously as any other financial communication event, including by **ensuring that operational managers, who are generally unaccustomed to discussions with analysts and investors, are well prepared** in order to avoid the disclosure of any non-public information.

## RELATIONS WITH INDIVIDUAL SHAREHOLDERS

Relations with individual shareholders require **appropriate communication tools**, which are generally characterised by a less technical presentation of the company's businesses and strategy. Although investing in equities has become increasingly widespread, and the internet tends to align the needs of analysts and individual shareholders, certain financial communication tools are particularly well-suited to individual investors, including a specific section of the company's website, the publication of a shareholders' letter, an online magazine, a shareholders' guide, adverts in the financial press, periodic meetings, site visits, and custodial services provided by the shareholder services department, etc.

In all cases, individual shareholders expect a **personalised, quality relationship**, irrespective of whether their shares are held in pure registered, administered registered or bearer form.

Moreover, in November 2015, the AMF drew up recommendations to protect individual shareholders<sup>243</sup>, reiterating that companies:

- wishing to present their competitive advantages as financial investments, must provide – in the same document – a clear link to the related risk factors in order to ensure a balanced presentation of information;
- launching campaigns to promote their shares outside of financial reporting periods, must systematically refer back to their URD (or annual financial report), with clear details of where this may be consulted, and highlighting the risk factors contained therein;
- offering to hold registered shares must disclose their various custody arrangements, fees for holding pure registered shares (custody fees, management fees, brokerage fees), in the same document or under the same heading on their website.

### Telephone and email contacts

Individual shareholders may be provided with **dedicated, sometimes toll-free, telephone numbers**.

Generally managed by the financial communication department or outsourced to third parties, this type of contact requires a certain familiarity with the company and the expectations of individual shareholders. The peak calling periods generally come around the annual shareholders' meetings and when dividends are paid.

**Email** communication has evolved significantly during recent years, and is now used either in addition to or instead of postal communication and either directly or through subscriptions to numerous publications offered by the company. **Social networks** are also increasingly used by individual shareholders.

### Periodic meetings

In order to foster loyalty among shareholders and to enlarge their shareholder base, the largest listed companies – often in partnership with specialised institutions or the investment press – organise **meetings for individual shareholders in Paris and in other towns in France**. These meetings also take the form of virtual conferences (widely used in 2020 and 2021 due to the health crisis) during which companies can engage in discussion with web users. Irrespective of their format, these meetings give companies an opportunity to present their activities and answer questions.

Some issuers also organise **training** sessions, courses in the form of classroom-based sessions, webinars or MOOCs, enabling shareholders to improve their knowledge of the stock market.

They are generally held by issuers with a high percentage of individual shareholders, or those wishing to increase that percentage. The speaker may be a member of the company's executive management or the Investor Relations team.

### Clubs and advisory committees

In order to maintain contact and relationships with their individual shareholders, some companies invite their shareholders to join a club. The primary goal of this is to **report on a regular basis and in an informative manner** on company developments, results (commercial and financial) and share performance. Companies periodically provide their shareholders with documents such as shareholders' letters (quarterly, half-yearly, annual, etc.) in electronic or paper format, a condensed annual report, and notices of shareholders' meetings. Similarly, shareholders may also be invited to discover the company's business activities (site visits, which can now also be offered virtually thanks to new technology) and products (invitations to trade shows/trials, etc.). More generally, a shareholders' club reflects a company's wish to **ascertain the opinion of its shareholders and foster their loyalty**.

A minimum number of shares may be required for membership.

If the issuer wishes to develop a particularly close relationship with individual shareholders, it may consider organising an advisory committee or discussion panel comprising several individual shareholders who are representative of the shareholder base. The committee or panel will meet several times a year and will be consulted on ways to convey the strategy and the communication tools available to them. It may, as applicable, be able to offer **critical input**.

Members of advisory committees or discussion panels may have the opportunity to meet the company's management during the course of these meetings. In addition, they may help prepare certain communications, such as shareholders' letters, financial notices and integrated reports, assist in preparing shareholders' meetings or help to run stands at investment trade shows. As well as contributing suggestions to improve the company's financial communication, they often act as **opinion leaders** who advise other individual shareholders.

### Custodial services

The custodial services that an issuer may offer its registered – essentially individual – shareholders consist of **registering** (or outsourcing to a depository bank) the shares held by the shareholder **in the books of the issuer**.

Registration provides a certain number of advantages:

- allows issuers to identify their most loyal shareholders;
- allows individual shareholders to have their custodian fees paid for them, receive all information prepared by the company, qualify them for double voting rights if the shares are held for 2 years (unless otherwise provided for in the articles of association) and, where applicable, qualify them for a higher dividend, if provided for in the issuer's articles of association.

If these shares are registered on a pure registered basis, they must be reregistered as bearer shares before being sold.



## ANNUAL SHAREHOLDERS' MEETINGS

The purpose of the annual shareholders' meeting has changed over time: from a purely legal exercise, it has evolved into an opportunity to **meet with the company's management, a place where institutional and individual shareholders** can express their opinions and a crossroads for financial and institutional communication.

In order to encourage the participation of shareholders, in July 2012 the AMF published Recommendation no. 2012-05, which aims to apply some of the 32 proposals outlined in the report of the Working Group on Shareholders' Meetings published on February 7, 2012. On February 11, 2015, the AMF published a follow-up report on the implementation of these proposals, some of which were taken up by industry groups or bodies as well as the legislator, and updated Recommendation no. 2012-05. On October 24, 2017, the AMF issued new proposals for improving dialogue with shareholders and access to information following meetings.

In order to facilitate the participation of non-resident shareholders, it is recommended that issuers provide an English version of all of the documents pertaining to the annual shareholders' meeting.

Alongside the practical aspects of preparing shareholders' meetings, Investor Relations officers are increasingly involved in **communicating on corporate governance**, in particular via occasional meetings with proxy advisors, as well as by conducting dedicated roadshows for analysts and specialist investors.

### Preparation of shareholders' meetings

Shareholders' meetings are prepared well in advance.

Investor Relations officers work closely with the legal department to **update their knowledge of recent changes in shareholder/proxy advisor voting policy**. This may help establish whether or not certain resolutions should be put to the meeting.

In certain cases, Investor Relations officers organise meetings or conference calls with the managers responsible for deciding how their institutions should vote on the resolutions presented by the companies in which they are shareholders. The same approach may be taken with opinion leaders, i.e., proxy advisors, whose role is to advise investors on how to vote on resolutions<sup>244</sup>.

Since the introduction of the PACTE law, proxy advisors have been subject to the following obligations:

- **publicly disclose reference to a code of conduct** which they apply and report on the application of that code, in line with the "comply or explain" principle;
- publicly disclose, at least annually, information in relation to the preparation of their research, advice and voting recommendations, in order to adequately inform their clients about the **accuracy and reliability of their activities**;
- prevent, manage and notify without delay their clients of any **conflicts of interest** or business relationships that may influence the preparation of their research, advice or

244 – Article L. 544-3 of the French Monetary and Financial Code added further to the French PACTE law, defines proxy advisory services.

voting recommendations, and publicly disclose and notify their clients of the actions they have taken to prevent and manage any such conflicts or relationships<sup>245</sup>.

Some of these obligations overlap with recommendations made by the AMF in its Recommendation no. 2011-06 of March 18, 2011 on proxy advisors.

Any interested party may request the president of the court, acting in interim proceedings, to order, if necessary under financial compulsion, the board of directors or executive board to disclose this information<sup>246</sup>.

These meetings allow issuers to present the reasons underpinning the resolutions they are submitting to their shareholders, so that the latter may make a fully-informed decision on how to vote. This is in line with the AMF recommendations on establishing an **ongoing dialogue before the preparation of the draft resolutions and after the meeting**.

**Proxy solicitors** are occasionally used to help organise shareholders' meetings. These firms contact the shareholders of the company, to make sure that they will vote and to guarantee that a quorum will be met.

Following the publication of the notice of meeting in the BALO (35 days prior to the meeting at the latest), a notice is sent (at least 15 days before the meeting) to shareholders holding registered shares and is posted on the company's website for all shareholders to see. The notice of meeting must include information on how to attend the shareholders' meeting, a summary statement of the company's situation and its statutory financial statements, and the **draft resolutions**. In order to ensure a clear presentation, it is recommended that **summaries of the resolutions be drafted**, stating the reasons and what is at stake, which the AMF advises posting on the website at the same time as the notice of meeting.

Companies which intend to use **electronic means of communication** instead of sending the notice by post may do so, subject to the approval of holders of registered shares.

Up to 15 days before the shareholders' meeting, the projected results of the vote and the number of requests for meeting admission cards are updated based on the forms returned by the shareholders to the centralising bank.

#### ■ Online voting

At the initiative of the French Association of Securities Professionals (*Association Française des Professionnels des Titres – AFTI*) and with the help of banks, an electronic voting platform (Votaccess), shared by all account holders and issuers on the Paris stock exchange, was set up after the shareholders' meeting season in 2012. The platform connects shareholders and issuers via their centralising bodies, making it possible to collect their votes and proxies in the 15 days prior to the shareholders' meeting and up until the day before the meeting. Open to all financial intermediaries who agree to the terms and conditions, institutional investors have also been able to access this platform since 2014.

In the context of the health emergency and the extension of the exceptional measures for holding shareholders' meetings behind closed doors in 2021, and following the AMF's recommendations on maintaining the quality of shareholder dialogue, issuers have explored

<sup>245</sup> – Article L. 544-4 of the French Monetary and Financial Code.

<sup>246</sup> – Article L. 544-5 of the French Monetary and Financial Code.

solutions for live remote voting during shareholders' meetings. To our knowledge, two issuers in the SBF120 have chosen to offer this option to their shareholders this year.

### Holding of shareholders' meetings

The holding of the shareholders' meeting requires the **coordinated efforts** of the legal and financial communication departments and the corporate secretary's office. It generally includes a management report in the form of a presentation of the results of the period and the company's strategy. The chairman of the board of directors or supervisory board may also report on the duties performed by the board of directors or supervisory board and its specialised committees. In addition, the criteria for determining the components of compensation of company executive officers, as well as the compensation policy, are developed (see Part 2, Section 4 "Corporate governance, Compensation and benefits"). The statutory auditors may sometimes be called upon to present a summary of their work if warranted by the circumstances or by certain resolutions submitted to the shareholders' vote.

This presentation is followed by a **question and answer session** between management and both the individual and institutional shareholders.

Resolutions are usually voted upon **electronically** and attendance may be recorded using tablets. Shareholders' meetings may be **webcast** or viewed via playback, with an English translation. If shareholders' meetings are not webcast in their entirety, best practice dictates that the company should indicate which parts have not been webcast.

In **2020**, new **temporary provisions** governing the organisation of shareholders' meetings were introduced in response to the health crisis. These temporary provisions remain in force in 2021 (see Introduction).

### Communication following shareholders' meetings<sup>247</sup>

The AMF recommends that a **summary report** of the shareholders' meeting, **including the results of the vote on the resolutions online and confirmation of the date on which the dividend is to be paid**, be made available on the company's website no later than 2 months after the meeting. The AMF also recommends publishing the updated articles of association online, as well as including the date of the shareholders' meeting for the following year or two in both the financial communication calendar and the shareholders' meeting section. Lastly, the minutes of the shareholders' meeting should be drawn up as soon as possible following the publication of the report of the shareholders' meeting online and no later than 4 months after the meeting. These recommendations do not apply to mid-cap companies, but may be used as a guideline.

The AMF also recommends:

- providing free access to all information relating to past shareholders' meetings, for at least the previous 3 years, in a dedicated section of the issuer's website; and
- ensuring that the following information is available on the website, **for at least the previous 3 years**:

247 – AMF Recommendation no. 2012-05 of July 2, 2012 amended on April 29, 2021.

- the results of the vote for each of the proposed resolutions;
- the translations into foreign languages of all documents pertaining to shareholders' meetings (if the issuer has proceeded with such translations);
- the audio or video recordings of all or part of the shareholders' meeting (if the issuer has produced such recordings). In the case of partial recordings, the issuer must indicate that sections have been omitted.

## FINANCIAL AND DIGITAL COMMUNICATION

### Websites

Since January 1, 2011 and the transposition of Directive 2007/36/EC relating to the exercise of certain rights by their shareholders, listed companies are required to have a website.

Corporate websites provide companies with a crucial communication tool to present their products, businesses and strategy. They can even act as a platform for transactions and actively contribute to the marketing of the share by enhancing the visibility of listed companies with an increasingly large and international audience. This also saves both time and money in the dissemination of financial information. The internet is increasingly replacing all other forms of dissemination of information, particularly paper documents.

The **Transparency Directive** requires annual and half-yearly financial reports to remain publicly available for 10 years. Issuers must also comply with the requirements of article 171 of the Market Abuse Regulation, according to which they must post and maintain on their website, for a period of at least 5 years, all inside information they are required to disclose publicly (see Part 1, Section 7 "Archiving and transparency of regulatory information").

Most companies have a specific financial communication **section** on their website, which is generally called **"Finance", "Investor Relations" or "Shareholders"**. This section is subject to specific regulations regarding its content and real-time updating with the company's other forms of communication. On October 26, 2016, the AMF published a Recommendation, which stipulates that information published on corporate websites must provide complete information presented in a balanced manner, be easy to access and be archived for a reasonable period. The recommendation also stipulates that information disclosed on issuers' websites must also comply with its requirement to provide accurate, true and fair information.

In order to assist companies with the management of their websites, the AMF has also set out a number of best practices that it recommends they apply:

- access to published information: the AMF recommends that companies limit the number of clicks to access information (use of drop-down lists/menus, precise links to the page containing the information, etc.) and ease access to information viewed most by investors (creation of a glossary containing frequently used key words, providing direct access to an "Investors" or "Shareholders" section and their subsections, etc.);
- updating information on the website and its procedures: the AMF recommends that companies date, or even timestamp (e.g., in GMT), highly sensitive information so that those reading their website can establish the sequence and therefore the level

of relevance. In particular, the AMF recommends that companies follow this practice when disclosing agency ratings, analysts' reports and consensus on their websites. The AMF also recommends that companies implement procedures to comply with the requirement for the simultaneous distribution of press releases to the media and their publication online;

- archiving of published information: it is recommended that companies store sensitive information that does not constitute inside information (regulatory information, information concerning shareholders' meetings) for a sufficient length of time, adopt a reliable and consistent policy over time for each type of information in order to comply with the principle of fair information and send information no longer featured online to the centralised archive storage facility in France.

In addition, listed companies have implemented the following practices on their websites:

- easing access to the latest version of the financial calendar and the most recent press release;
- posting the value of the company's share price, in near real-time, as well as historical market data (highs, lows, transaction volumes, historical performances, etc.);
- using easily comprehensible and user friendly headings and text;
- providing a glossary and a FAQ section, for the most frequently asked questions;
- providing the option of contacting the financial communication department (email address, phone number);
- creating an efficient search engine and other technical features (subscription to receive alerts or documents, links to social networks, etc.);
- making IT teams aware of the need to set up an IT architecture that simplifies website maintenance and updates of financial information;
- more generally, facilitating access to the website via smartphone or tablet, rather than a desktop computer, through ergonomic design.

### Internet conference calls and videoconferences

When making an important announcement, in particular for earnings or for financial transactions, acquisitions and disposals, conference calls (or videoconferences) that are streamed over the internet allow information to be **disseminated rapidly and simultaneously to a large number of people**, without them having to travel, keeping time and transportation costs to a minimum and avoiding the problems associated with different time zones.

By circulating detailed information more quickly, and being available to answer the questions of both analysts and investors at the same time, these e-communications provide a valuable addition to – and sometimes even replace – the traditional physical meeting. Any member of the public may participate in these conferences, which are announced via press releases; details are also posted in advance on the company's website. They are archived and placed at the disposal of the public, in particular the international financial community working in different time zones, and may be consulted for some time after the event. They are generally held in English.

Videoconferences may also be used to allow management to hold one-on-one meetings with foreign investors, organise analysts' meetings with a physical presence at one site and a "video presence" at another, etc. They are easy to organise, using either the company's own equipment or equipment rented from specialised service providers who also ensure that the meeting is satisfactory from a technical standpoint. **They can never fully replace face-to-face meetings, however, particularly for a company's first contact with a potential investor or new analyst**<sup>248</sup>. Nevertheless, in 2020 and 2021, these methods of communication replaced in-person meetings due to the health crisis.

### Webcasts

Webcasts allow issuers to broadcast events over the internet in audio or video form, either via streaming or in playback form. This allows events to be **broadcast to a wider audience without physical restrictions**, and complies with the principle of equal access to information. The playback feature is also greatly appreciated by users. It is used by issuers to broadcast events such as shareholders' meetings, presentations of earnings and of one-off transactions such as acquisitions, disposals, mergers, etc. Webcasts are generally broadcast in French with simultaneous translation in English, or are broadcast directly in English.

Webcasting is often provided by a specialised service provider. It is relatively costly to put in place and is organised on a case-by-case basis. The issuer must choose between an audio webcast and a video webcast. The latter is more costly as it is technically more complicated and the event itself must be filmed by a team of specialists. Conference brokers are increasingly providing issuers with the opportunity to webcast their events and assume responsibility for the organisation from a technical and budgetary standpoint.

In the context of the health emergency in 2020 and 2021, this method of communication was widely used, as were video and telephone conferences.

### Social networks

With the continued expansion of social networks (Twitter, LinkedIn, Facebook, etc.), financial information and business information **spread rapidly, irrespective of industry or geographic location**. In this respect, the AMF published a number of recommendations on the use of social networks<sup>249</sup>:

- the disclosure of financial statements on social networks: the AMF recommends that companies indicate to users that **their financial statements can be found on their website** under a specific section visible from the homepage or on a "Finance" or "Investors" page;
- authentication and access to information: the AMF recommends that companies **authenticate social network accounts** (e.g., certification of Twitter accounts), set out a **charter on the terms of use** of personal accounts on social media for executives and employees and inform executives that they remain liable as officers of the company even when using personal accounts on social media;

248 – AMF Position/ Recommendation no. 2016-08 – Guide to ongoing disclosures and the management of inside information (section 1.6.4.1).

249 – AMF Position/ Recommendation no. 2016-08 – Guide to ongoing disclosures and the management of inside information (section 1.6.4.2).

- monitoring procedures: companies should **actively monitor** social media in order to stay abreast of information concerning them on social media and to quickly react to hacking;
- message formats: the AMF recommends that disclosures should be **contextualised** so as to avoid claims that they are misleading and that links should systematically be provided to the **related press releases or sources of information published in their entirety**, allowing users to easily locate a comprehensive account of the information;
- possible and/or necessary actions, in accordance with regulations, for **rumours** or leaked information: if a rumour has only appeared on one social media site and the denial of the rumour is not considered inside information, a company may refute the rumour on the social media site on which it originated without issuing a full press release. In all other cases, the company's response to the rumour should be in the form of a full press release. It should be noted that in April 2013 the SEC authorised the disclosure by American companies of regulatory information via social media such as Facebook and Twitter, provided that investors are informed of the social media strategy.

In France, the AMF confirmed<sup>250</sup> that issuers can only disclose inside information on social media if, and only if, the information has been previously disclosed in a full press release and if the information disclosed by the issuer, irrespective of the channel used, is accurate, true and fair in accordance with the requirements of the AMF General Regulations. In the opinion of the AMF, social media is an **additional channel for market information** but cannot be the only or main channel of such information.

In addition to taking into account the AMF's recommendations, issuers should also take care to **ensure that employees are informed** of the risks involved in disclosing information about their company via social networks.

## 4 ■ PROVIDING MANAGEMENT WITH FEEDBACK ON MARKET PERCEPTION

**"Market sentiment"** includes investors' and analysts' perception of the strategy, activities, performance and outlook of the company and of the credibility of its management.

Investor Relations officers play a key role in reporting market sentiment upwards to executives. The challenge lies in recognising **when analysts' and investors' individual opinions become a general, shared impression** – through conversations, roadshows, emails, the publication of sector notes, etc. – which it shares with the company's executive management, or even the board of directors or supervisory board.

Investor Relations officers must decide when and how to provide this information, which may depend on the topics and recipients concerned.

<sup>250</sup> – Articles 223-1 to 223-10-1 of the AMF General Regulations.

## DISSEMINATION OF ANALYST RESEARCH

Investor Relations officers provide the company's executives, and occasionally its board of directors or supervisory board, with full copies of the most relevant research (and summaries of all other research).

It should be noted that recent case law of the French *Conseil d'État* concluded that certain work and estimations provided by recognised analysts and researchers may, in some instances, constitute inside information<sup>251</sup>.

## MONITORING OF MARKET CONSENSUS

The consensus is the arithmetic average of sell-side financial analysts' forecasts in relation to the key indicators (sales, operating income or EBIT, net income, earnings per share, etc.) of listed companies. In order for market consensus to be representative, it must incorporate the estimates of all of the analysts that actively monitor the shares. The median of the same indicators may also be provided.

Market consensus should be **monitored regularly throughout the year**, updated prior to the release of any earnings or sales figures and provided to management.

The purpose of this is to anticipate the market's reactions prior to the release of any information, so that the issuer can make any appropriate adjustments to its public announcements. It may be necessary to issue a press release **if a significant difference** is observed between the consensus and the company's internal data (see Part 2, Section 2 "Profit warnings").

Market consensus may be **drawn up by Investor Relations officers** based on different estimates of which they are aware, **or by independent service providers specialised** in the dissemination of financial information. Internal consensus, in which the source of the data used can clearly be identified, have more significance than those carried out externally which have the disadvantage of being inconsistent regarding the indicators used (results before/after non-recurring items, calculations based on a diluted/undiluted number of shares, etc.) and which often include data that may not have been updated. In its policy, the AMF accepts the publication of an "in-house" consensus, provided that the methodology used is consistent over time. Some issuers post the market consensus on their **website** (internal consensus or carried out by a third party). As well as being distributed internally, it can also be distributed to analysts – all of them or simply to those who contributed.

## FEEDBACK AND PERCEPTION SURVEYS

In addition to the investor relations officers' role of keeping management informed of market reactions and expectations, it is also very useful, following roadshows, conferences and one-on-one meetings with investors and analysts, to obtain feedback or a snapshot of the participants' opinion as quickly as possible in order to **improve financial communication**

<sup>251</sup> – CE, January 30, 2019, no. 412789: penalty imposed on an analyst having used information based on a recommendation, not prior to publication but prior to distribution to a restricted circle.



**and develop the investor database** for subsequent meetings. Participants interviewed are asked by the broker, or by the company itself, about the quality of the answers provided to their questions, their perception of the company's management, its strategy, any subjects of concern, etc.

As part of its market activities, the company may also wish to conduct one or more **perception surveys** of the financial community. These may concern the company's financial communication or a specific problem such as the pertinence of its strategic orientations or choice of performance indicators. Perception surveys may be performed prior to a specific publications, such as a company's annual results, or a strategic announcement by management (new strategic plan, Investor Day), to ensure that market considerations are being taken into account in the messages conveyed by the company.

## COMPETITIVE MARKET WATCH

In addition to reporting market feedback to management, Investor Relations officers are increasingly monitoring market competition by following the financial communication of companies operating in the same sector, including stock market news, comparisons of share prices, transaction volumes, shareholder bases and tracking analysts and valuation criteria. This can apply to a company's direct competitors, its main clients or its main suppliers.

This survey may also include a sample of stocks that are comparable in terms of company **size, industry or strategy** (capital structure, change of management, crisis, etc.). The competitive market watch may cover trends in the market performances of these companies or the ways in which they communicate with the markets: strategic messages, choice of performance indicators, existence and horizon of earnings forecasts, frequency and content of current information regarding the company (newsflow), schedule of publications, choice of financial communication tools, availability of corporate management, etc.

## SHARE PERFORMANCE

The financial communication department monitors certain daily metrics tracking the behaviour of its listed shares, including all **changes** in the share price (in absolute value and in comparison with one or several benchmark indices); transaction **volumes** in number, in value and as a percentage of capital exchanged; liquidity, and market capitalisation. These metrics can help companies to identify unusual movements in their shares and to try to find out the cause from either external correspondents, such as brokerage firms, or internal sources, such as the treasury department.

Although this sort of information is increasingly difficult to identify with any certainty due to the dispersion of liquidity over multiple markets, it may nevertheless be vital that it be brought to the attention of the company's executives.

This monitoring process may be carried out internally using databases available to the issuer, including Euronext, or with the assistance of brokers or the liquidity provider, where applicable.

### INFORMING THE BOARD OF DIRECTORS OR SUPERVISORY BOARD

The board of directors or supervisory board must be provided with all the necessary information **to fulfil one of its assignments** which consists in ensuring, via the audit committee, the proper preparation and control of financial information (see the September 2010 Best Practices Guide “Report on relations between executive management and boards of directors on financial communication”). The board of directors may be provided with various types of information on a regular or periodic basis, such as share price trends of the company and its main competitors, summary or exhaustive financial analyses, summaries of the main market issues and trends.

Prior to the release of any financial disclosures, especially those concerning earnings or financial transactions, draft press releases may be submitted to the board of directors or supervisory board.

The head of Investor Relations may be required to present the company’s financial communication strategy to the board of directors or the supervisory board.

# Appendix

## The universal registration document

All issuers of securities authorised to trade on a regulated market or on an organised multilateral trading facility (article 524-1 of the AMF General Regulations) may prepare a universal registration document (URD) each year<sup>252</sup>. Following Regulation (EU) 2017/1129 of June 14, 2017 (known as “PD3”) repealing the Prospectus Directive, the URD replaced the registration document as of July 21, 2019. The URD is an **overview** that serves as a communication tool which discloses all of the information required by different stakeholders (financial analysts, investors, individual shareholders, etc.) to form an opinion on the business, financial position, results and outlook of the issuer. It contains all of the legal, economic, financial, accounting and non-financial information required to provide a comprehensive presentation of a company for a given year.

Although it is **not mandatory**, it has become a standard practice to file a URD, as more than half the companies listed on Euronext Paris do so and such a document may now be prepared by companies listed on Euronext Growth Paris. This document offers several advantages:

First, the URD **facilitates financial transactions on the market**. It may form part of the prospectus, in which case the issuer only has to prepare a securities note and, where appropriate, a summary note. It also speeds up the prospectus preparation process and the timeframe for approval is shortened to 5 days.

Second, the URD meets the financial community’s **information quality requirements**:

- financial analysts can use the information to make industry and multi-year comparisons;
- a series of non-financial information and indicators are available to CSR analysts;
- it is an appreciated source of information for institutional investors;
- individual shareholders, journalists and academics have access to complete and up-to-date information on companies.

Nevertheless, compiling a URD is a **difficult and time-consuming task**. In view of the numerous regulations to be considered and the quantity of information to be provided, it requires the involvement of several departments within the company and the implementation of a **coordinated preparation, review and approval process**.

### PREVAILING REGULATIONS

The content of the URD and the filing or registration requirements are set out in the following regulations and documents:

- Regulation (EU) 2017/1129 of June 14, 2017 (known as “PD3”), repealing Directive 2003/71/EC;
- Delegated Regulation 2019/980 of March 14, 2019;
- Delegated Regulation 2019/979 of March 14, 2019;
- ESMA Guidelines relating to the Prospectus Regulation published on July 15, 2020;
- ESMA Questions and Answers on the Prospectus Regulation (ESMA, 31-62-1258) updated March 31, 2021;
- the AMF General Regulations, in particular article 212-13.

<sup>252</sup> – Article 212-13 of the AMF General Regulations.

In January 2021, the AMF published a Guide for compiling universal registration documents (AMF Position/Recommendation DOC-2021-02), which is presented in more detail below.

## CONTENT OF THE URD

The information to be included in the URD varies according to the type of securities listed on the regulated market of Euronext Paris and the type of issuer.

Issuers whose shares (or other securities redeemable, exchangeable, convertible or otherwise exercisable for shares) are listed must comply with the minimum disclosure requirements set out in Annexes 1 and 2 of Delegated Regulation 2019/980. The minimum disclosure requirements set out in Annex 1, which are broken down into 21 sections for equity securities, are more extensive than those set out in the other Annexes to the Prospectus Regulation:

- 1° Persons responsible, third party information, experts' reports and competent authority approval;
- 2° Statutory Auditors;
- 3° Risk factors;
- 4° Information about the issuer;
- 5° Business overview;
- 6° Organisational structure;
- 7° Operating and financial review;
- 8° Capital resources;
- 9° Regulatory environment;
- 10° Trend information;
- 11° Profit forecasts or estimates;
- 12° Administrative, management and supervisory bodies and senior management;
- 13° Remuneration and benefits;
- 14° Board practices;
- 15° Employees;
- 16° Major shareholders;
- 17° Related party transactions;
- 18° Financial information concerning the issuers' assets and liabilities, financial position and profits and losses;
- 19° Additional information;
- 20° Material contracts; and
- 21° Documents available.

The other Annexes of Delegated Regulation 2019/980, which are less stringent in terms of disclosure requirements, may be used by issuers for the following purposes:

- secondary issuances of equity securities (annex 3);
- units of closed-end collective investment undertakings (annex 4);
- depository receipts issued over shares (annex 5);
- retail non-equity securities (annex 6);

- wholesale non-equity securities (annex 7);
- secondary issuances of non-equity securities (annex 8);
- asset-backed securities (annex 9);
- non-equity securities issued by third countries and their regional and local authorities (annex 10).

Under article 222-9 of the AMF General Regulations, **the corporate governance report and the related statutory auditors' report** may be included in the URD.

In addition to the information previously required in the registration document, PD3 introduces requirements for more detailed information and/or information to be presented differently in the URD on **strategy, non-financial information and risk factors** for issuers. Concerning the presentation of risk factors, in accordance with article 16 of PD3, companies must, as of July 21, 2019:

- assess the materiality of the risk factors based on the probability of their occurrence and the expected magnitude of their negative impact;
- present the risk factors in a limited number of categories, depending on their nature;
- mention the most material risk factors first in each category;
- describe each risk factor adequately, explaining how it affects the issuer (or the securities being offered or to be admitted to trading).

In order to assist competent national authorities in their review of URDs<sup>253</sup>, ESMA has published guidelines on the presentation of risk factors under PD3. The guidelines encourage them to focus, in particular, on the specificity and materiality of risk factors, as well their presentation across categories depending on their nature, and concision.

## GUIDE FOR COMPILING REGISTRATION DOCUMENTS

In January 2021, the AMF published a Guide for compiling universal registration documents (AMF Position/Recommendation DOC-2021-02), which aims to:

- present the regulations applicable to universal registration documents filed with the AMF since July 21, 2019;
- specify how issuers should present the required disclosures in their universal registration document; and
- consolidate the positions and recommendations of the AMF and ESMA in this area. AMF recommendations are provided in black text boxes and ESMA Guidelines in burgundy red text boxes with a paperclip, while the other items presented in the guide provide reminders of the relevant texts for information purposes.

The guide covers the following topics:

- the general principles relating to the preparation of universal registration documents and the relationship between URDs and other information documents published by issuers (annual financial report, integrated report, non-financial performance statement, corporate governance report, etc.);

253 – ESMA, Final report, Guidelines on risk factors under the Prospectus Regulation, 31-62-1217, March 29, 2019.

- the presentation of the various sections of the universal registration document, as set out in Annexes 1 and 2 of Delegated Regulation 2019/980, and the ESMA and AMF recommendations, as set out in Position/Recommendations DOC-2009-16 (Guide for compiling registration documents) and DOC-2014-14 (Guide for compiling registration documents for mid-caps);
- specific recommendations for certain types of issuers (biotechnology companies, real estate companies, start-ups, etc.) and for pro forma financial information.

Three new recommendations have been added: they concern the content of the cross-reference table, cross-references to other sections and links between the registration document and the report containing financial and non-financial data. The AMF's policy on the "presentation of compensation" has also been updated following the publication on November 28, 2019 of Order no. 2019-1234 and the recommendations on the pay ratio published in the 2020 report on corporate governance and executive compensation published by the AMF on November 24, 2020.

The AMF has also published a Practical guide for filing a universal registration document or an amendment thereto with the AMF (January 29, 2021) to help issuers and their advisers file their universal registration document or an amendment thereto with the AMF via its extranet ONDE.

## RELATIONSHIP WITH OTHER ANNUAL PUBLICATIONS

The URD may take the form of a **specific document** or an **annual report to shareholders**, provided it contains all the required information and that the promotional presentation of the issuer does not compromise the required objectivity of the information supervised by the AMF.

The URD does not have to be published within a specific period. However, if it is published within 4 months following the end of the financial year and includes all the information required for the annual financial report, **the URD may be used as the annual financial report**. Issuers are then exempt from having to publish a separate annual financial report provided they meet the conditions relating to the publication and storage of regulatory information<sup>254</sup>.

Publication at least 35 days prior to the date of the annual shareholders' meeting is considered good practice by both institutional investors and proxy advisors.

In addition to the mandatory content of the URD set out above, issuers may add optional information at their discretion to derive maximum benefit from their annual publications. However, the URD *"should not contain information which is not material or specific to the issuer and the securities concerned, as that could obscure the information relevant to the investment decision and thus undermine investor protection"*<sup>255</sup>.

<sup>254</sup> – Regulation (EU) 2017/1129, art. 9.

<sup>255</sup> – Recital 27 of the Prospectus Regulation.

The table below lists all the documents that may be included in the URD, differentiating between mandatory and optional documents.

	Mandatory documents	Optional documents
URD	<p>Content described in the “content of the URD” section above, such as the:</p> <ul style="list-style-type: none"> <li>• Consolidated financial statements for the last 3 years (with the possibility of incorporating those for years Y-2 and Y-1 by reference, provided these financial statements have already been published in a document filed with the AMF) and the related statutory auditors’ reports</li> </ul>	<ul style="list-style-type: none"> <li>• Issuer’s financial statements for the past year</li> <li>• Full management report – French Commercial Code</li> <li>• Report on the environmental impacts of the issuer’s business</li> <li>• Corporate governance report and the related statutory auditors’ report</li> <li>• Description of share buyback programme</li> <li>• Documents required for the shareholders’ meeting</li> </ul>

An increasing number of issuers choose a **“one-stop shop” approach** and include in their URDs all mandatory information or information likely to be required in the period in question.

Depending on the documents included in the URD, said document is commonly referred to as a:

- “2-in-1” URD when it includes or is also used as the annual financial report (AFR); or
- “3-in-1” URD when it includes the AFR and the full management report required by the French Commercial Code (including the corporate governance report); or
- “4-in-1” URD or “annual report to shareholders” when it includes all the information required for the shareholders’ meeting, including information and documents intended for shareholders.

The AMF recommends that, in order to ensure that the content of the above-mentioned documents can be reconstructed, companies clearly indicate, for example by means of a cross-reference table, whether the URD includes<sup>256</sup>:

- the management report (including, if applicable, the non-financial performance statement and the duty of care plan) and the corporate governance report, and/or
- all of the information required for the shareholders’ meeting.

The table below summarises these differences:

	Documents	Information to be included
"2-in-1" URD	1. URD 2. AFR	URD content supplemented by the following: <ul style="list-style-type: none"><li>• Issuer's financial statements for the past year and the related statutory auditors' report</li><li>• Items of the management report required in the AFR (when the company must comply with Annex I, information on the share buyback programme and information from the corporate governance report accompanying the management report)</li></ul>
"3-in-1" URD	1. URD 2. AFR (including the corporate governance report) 3. Full management report	"2-in-1" URD content supplemented by information from the management report not expressly required in the URD+AFR and information included in the corporate governance report accompanying the management report, particularly: <ul style="list-style-type: none"><li>• Labour, social and environmental impact of the company's activities</li><li>• Employee profit sharing</li><li>• Description of any installations covered by the Seveso Directive</li><li>• Crossing of disclosure thresholds and ownership structure</li><li>• Summary of trading in the company's shares by executives</li><li>• The business activities of subsidiaries and minority investments and the portion of ownership</li></ul>
"4-in-1" URD	1. URD 2. AFR (including the corporate governance report) 3. Full management report 4. Information required for the shareholders' meeting	"3-in-1" URD content supplemented by the information required for the shareholders' meeting, such as: <ul style="list-style-type: none"><li>• Five-year financial summary (French Commercial Code, article R. 225-102)</li><li>• Appropriation of income/loss</li><li>• Agenda and proposed resolutions</li><li>• Statutory auditors' special reports (on stock options, free share grants, share buyback programmes, cancellation of pre-emptive subscription rights, etc.)</li></ul>

In addition to the URD, some companies prepare a **separate annual report** (or corporate brochure), which is distributed at the annual shareholders' meeting.

The format of this document, sometimes called an activity and corporate responsibility report, is not regulated. However, it typically presents the group, its strategy, governance, activities, markets, sustainable development and innovation commitments and its key financial and non-financial figures. Other companies publish an **integrated report**, which presents a concise and educational version of their short-, medium- and long-term strategy for creating value, be it financial or non-financial, as well as stakeholder relations.

As the form and layout of the URD are flexible, **it is possible to include these documents in the first section of the URD** with additional information in a second regulatory section. This solution allows issuers to improve consistency between their annual publications while maintaining the publication of a separate and extensive first section. However, companies must ensure that both sections are designated as the URD in its entirety, as the annual brochure or integrated brochure are only a part of the URD and do not have to include the AMF approval number.



## STRUCTURE OF THE URD

According to market practices, issuers on Euronext Paris mainly use **three types of structure** for their URD:

- a structure following the order of the items in Annexes 1 and 2 (Part A) of Delegated Regulation (EU) 2019/980 of March 14, 2019 (Level 2 Regulation clarifying Regulation (EU) 2017/1129 of June 14, 2017);
- a topic-based structure in six to ten chapters;
- a two-part structure, including a first part in the form of an institutional brochure (or integrated report if more widely used), and a second part that presents all other financial and legal information.

If the structure of the URD does not follow the order of the items set out in Annexes 1 and 2 (Part A), a concordance table must be provided to cross-reference information in the URD with that set out in Delegated Regulation (EU) 2019/980.

Given the extent of the information required in the URD, companies may **use cross-references to other sections of the document**, thereby avoiding duplication – provided that these cross-references are specific and do not interfere with the readability of the document. The only exception to this principle is provided by Delegated Regulation 2019/980: any material and specific risks must be included in the risk factors section. This section must also include an adequate description of the risk factors defined in article 16 of the Prospectus Regulation.

## RESPONSIBILITY FOR THE URD

The person(s) responsible for the URD must declare that, **having taken all reasonable care to ensure that such is the case, the information contained in the URD is, to the best of their knowledge, in accordance with the facts and contains no omission likely to affect its import.**

The statement by the person responsible for the URD may only be signed by the chairman of the executive board, the chairman and chief executive officer, or, if the positions are separated, by the chief executive officer or a deputy chief executive officer for companies with a board of directors.

The AMF has published samples of such statements corresponding to the following situations (AMF Instruction no. 2019-21 of December 6, 2019):

- statement accompanying a URD;
- statement accompanying a URD containing an annual financial report;
- statement accompanying a URD (or update thereto) containing a half-year financial report.

## AUDIT BY THE STATUTORY AUDITORS

In addition to their reports on the statutory and consolidated financial statements, the statutory auditors certify that any **pro forma information** contained in the URD (or in any amendments thereto) has been satisfactorily prepared on the basis indicated and that the accounting basis used complies with the accounting methods applied by the issuer. The obligation to include a statutory auditors' report on profit forecasts and estimates ceased to apply as of July 21, 2019<sup>257</sup>.

As regards the **other information contained in the URD**, the statutory auditors examine the document for any information deemed inconsistent based on their general knowledge of the issuer acquired during the engagement.

The statutory auditors draw up a *"lettre de fin de travaux"* for the URD, in which they refer to the reports issued by them and contained in said document or the amendments thereto and state any observations based on their examination of the document as a whole and any verifications made in accordance with professional accounting standards. This letter must be dated no more than 2 trading days before the URD is filed with or approved by the AMF. As it is a private document, it is not published in the document but is provided to the issuer which forwards a copy to the AMF.

## REVIEW OF THE URD BY THE AMF

If the issuer has not yet submitted two consecutive URDs to the AMF, the draft document is subject to a **pre-publication review** by the AMF, which can request changes or additional investigations before its approval and publication. If the issuer has already submitted two consecutive registration documents **to the AMF**, the URD is simply filed with the AMF and may be **reviewed after publication**. If the issuer subsequently chooses not to file a URD one year, it loses the right to file its subsequent URDs without pre-publication approval and must first resubmit two new URDs to the AMF for approval before it is eligible for this program.

If the AMF finds a significant omission or inaccuracy in the content of a published URD, it informs the issuer, who must file an **amendment to the URD** with the AMF. These amendments are disclosed to the public. The AMF considers any omission or inaccuracy that may alter an investor's assessment of the organisation, business, risks, financial position and results of the issuer to be significant. Any other observations made by the AMF are disclosed to the issuer who will take them into account in the URD of the following year.

Prior to PD3, regulations required three consecutive registration documents to have been subject to a pre-publication review. PD3 provides for a grandfathering clause, under which issuers having had at least two consecutive registration documents approved by the AMF before July 21, 2019 may file a URD without prior approval.

## AMENDMENTS TO THE URD

After publication of the URD, the issuer may amend it on a regular basis under the same terms. These amendments relate to published accounting data and new facts on its organisation, business, risks, financial position and results.

When an amendment to the URD is disclosed to the public within 3 months of the end of the first half and includes the half-yearly financial report, the issuer is exempt from having to publish a separate half-yearly financial report<sup>258</sup>.

## DISSEMINATION AND STORAGE OF THE URD

The URD is made available free of charge to the public at the registered office of the issuer and at the offices of the organisations acting as a paying agent for the issuer's securities on the day following its filing or approval at the latest. A copy must be sent free of charge to any person at his or her request.

**The electronic version of the URD is sent to the AMF to be posted on its website.**

When the URD is also used as the annual or half-yearly financial report, it is subject to the dissemination and storage requirements applicable to regulatory information<sup>259</sup>, i.e.:

- “full and effective” dissemination by electronic means. The issuer publishes a press release announcing the availability of the URD (an example is provided in Appendix 11 to the Guide to filing regulatory information with the AMF and to its dissemination);
- under the revised Transparency Directive, issuers are required to archive registration documents on their website over a period of 10 years. As from January 6, 2009, the AMF sends the document to the DILA which is responsible for archiving it via its website: **www.info-financiere.fr**.

In addition, the press release announcing that the URD is available must also include **the list of regulatory information included in the document**, particularly the corporate governance report, a description of share buyback programmes and the documents for the shareholders' meeting<sup>260</sup>.

To ensure equal treatment of shareholders, most companies, especially those with international shareholders, publish an **English translation** of the URD. The translation must be available online at the same time as the original version of the URD.

The URD can be incorporated in a prospectus for **up to 12 months**, provided it has been amended on a regular basis. The prospectus can benefit from the European Passport in the event of an offer of securities to the public or admission to trading on the regulated market of a Member State of the European Community other than France.

258 – Regulation (EU) 2017/1129, article 9 and Delegated Regulation of March 14, 2019.

259 – Article 221-3 of the AMF General Regulations.

260 – Guide to filing regulatory information with the AMF and to its dissemination.

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## Regulatory texts

### REGULATORY TEXTS FINANCIAL DISCLOSURE

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#### I. REGULATORY TEXTS CONCERNING OFFERS OF SECURITIES TO THE PUBLIC

##### A. European sources

1. **Regulation (EU) 2017/1129 of June 14, 2017** on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, repealing Directive 2003/71/EC, supplemented by the Delegated Regulations (EU) of March 14, 2019
2. **Commission Delegated Regulation (EU) 2019/979** of March 14, 2019 supplementing Regulation (EU) 2017/1129 of the European Parliament and of the Council with regard to regulatory technical standards on key financial information in the summary of a prospectus, the publication and classification of prospectuses, advertisements for securities, supplements to a prospectus, and the notification portal, and repealing Commission Delegated Regulation (EU) 382/2014 and Commission Delegated Regulation (EU) 2016/301
3. **Commission Delegated Regulation (EU) 2019/980** of March 14, 2019 supplementing Regulation (EU) 2017/1129 of the European Parliament and of the Council as regards the format, content, scrutiny and approval of the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Commission Regulation (EC) No 809/2004
4. **Commission Delegated Regulation (EU) 2021/528** of December 16, 2020 supplementing PD3 (EU) 2017/1129 as regards the minimum information content of the document to be published for a prospectus exemption in connection with a takeover by means of an exchange offer, a merger or a division
5. **Recommendations – March 2013** – ESMA update of the CESR recommendations in view of the consistent implementation of Commission Regulation 809/2004 (Ref.: ESMA/2013/319)
6. **Commission Recommendation of April 27, 2004** concerning certain components of the simplified prospectus described in schedule C of Annex I of Council Directive 85/611/EEC (text with EEA relevance) (referenced under number C(2004) 1541/2) (OJEU L 144 of April 30, 2004, pp. 45-58). **Questions & Answers**: positions that are jointly accepted by the Members of ESMA (28<sup>th</sup> version – March 2018)
7. **Technical advice under the Prospectus Regulation** – March 2018 – ESMA (Ref.: ESMA31-62-800)
8. **ESMA Questions & Answers** on the Prospectus Regulation, updated on March 31, 2021 (Ref.: ESMA31-62-1258)
9. **ESMA Guidelines** on risk factors under the Prospectus Regulation – October 2019 (Ref.: ESMA31-62-1293)
10. **ESMA Guidelines** on disclosure requirements under the Prospectus Regulation – March 4, 2021 (Ref.: ESMA32-382-1138)

## B. French national sources

1. **Articles L. 411-1 to L. 412-3 and L. 621-8 to L. 621-9 of the French Monetary and Financial Code**
2. **Articles D. 411-1 to D. 411-4 of the French Monetary and Financial Code** (list of qualified investors)
3. **AMF General Regulations**, articles 211-1 *et seq.*, Title I (Admission of financial securities to trading on a regulated market and offer of securities to the public) of Book II (Issuers and financial disclosure)
4. **AMF Position/Recommendation DOC-2021-02 of January 8, 2021**: Guide for compiling universal registration documents
5. **AMF Position/Recommendation no. 2010-03 of September 16, 2010 (updated on May 5, 2011)**: AMF Q&A regarding the transfer to Euronext Growth of a company listed on Euronext
6. **AMF Guide**: Practical guide for filing a universal registration document or an amendment thereto with the AMF, January 29, 2021
7. **AMF Position/Recommendation no. 2019-01 of January 8, 2019** on information to be provided by companies in the event of the issuance of shares or securities granting access to the share capital where a prospectus subject to AMF approval is not published
8. **AMF Position/Recommendation no. 2020-06 of June 17, 2020**: Guide to preparing the prospectus and the information to be provided for public offerings and admission to trading of securities
9. **AMF Instruction no. 2019-21** on the procedures for filing and publishing prospectuses
10. **AMF Instruction no. 2018-07** on information to be provided to investors in connection with a public offering for an amount of less than €8 million
11. **AMF Position/Recommendation no. 2019-01** on information to be provided by listed companies in the event of the issuance of shares or securities granting access to the share capital where a prospectus subject to AMF approval is not published
12. **AMF Position/Recommendation no. 2020-06 of June 17, 2020** on preparing the prospectus and the information to be provided for public offerings and admission to trading of securities

## II. REGULATORY TEXTS CONCERNING ONGOING DISCLOSURES

### A. European sources

1. **Regulation (EU) no. 596/2014** of the European Parliament and of the Council of April 16, 2014 on market abuse, repealing Directive 2003/2014/EC
2. **Commission Delegated Regulation (EU) no. 2016/522** of December 17, 2015 supplementing Regulation (EU) no. 596/2014 of the European Parliament and of the Council, as regards an exemption for certain third countries' public bodies and central banks, the indicators of market manipulation, the disclosure thresholds, the competent authority for notifications of delays, the permission for trading during closed periods and types of notifiable managers' transactions
3. **ESMA Guidelines** on the Market Abuse Regulation of October 20, 2016 (Ref.: ESMA/2016/1478) ESMA Question and Answers on the Market Abuse Regulation, updated March 29, 2019 (Ref.: ESMA70-145-111)

### B. French national sources

1. **AMF General Regulations**, articles 221-1 *et seq.* included in Chapter I (Common provisions and dissemination of regulatory information) of Title II (Periodic and ongoing disclosure obligations) of Book II (Issuers and financial disclosure); articles 223-1 *et seq.* included in Chapter III (Periodic information) of Title II (Periodic and ongoing disclosure obligations) of Book II (Issuers and financial disclosure)
2. **AMF Instruction no. 2007-03 of May 31, 2007** (updated on July 8, 2013) relative to the methods of filing regulatory information electronically
3. **AMF Practical guide** relating to the filing of regulatory information with the AMF and to its dissemination on November 28, 2007 (updated on March 26, 2019)
4. **AMF Recommendation no. 2015-09 of November 26, 2015** on communication by companies designed to market their shares to individual investors
5. **AMF Position no. 2015-10 of November 26, 2015** on communication by companies in relation to fees for holding securities on a pure registered basis
6. **AMF Position/Recommendation no. 2016-08 of October 26, 2016** – Guide to ongoing disclosures and the management of inside information
7. **AMF Instruction no. 2016-07** on notification procedures to the AMF of any delay in the publication of inside information

### III. TEXTS RELATING TO PERIODIC DISCLOSURES

#### A. European sources

1. **Directive 2004/109/EC** of the European Parliament and of the Council of December 15, 2004 on the harmonisation of transparency requirements concerning disclosures about issuers whose securities are admitted to trading on a regulated market (amending Directive 2001/34/EC) and Directive 2007/14/EC of March 8, 2007 on the implementation of certain provisions of Directive 2004/109/EC. Amended by Directive 2011/0307 of the European Parliament and of the Council dated October 25, 2011 and Directive 2013/50/EU of the European Parliament and of the Council dated October 22, 2013
2. **Directive 2013/34/EU** of the European Parliament and of the Council of June 26, 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC
3. **Regulation (EU) 2017/1129 of June 14, 2017** on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, repealing Directive 2003/71/EC
4. **Commission Recommendation 2014/208/EC** of April 9, 2014 on the quality of corporate governance reporting ("comply or explain")
5. **ESMA, technical advice no. 31-62-800** of March 28, 2018
6. **ESMA Guidelines on Alternative Performance Measures** (Ref.: ESMA2015/1057)
7. **ESMA Questions & Answers Guidelines on Alternative Performance Measures**, April 2020 (Ref.: ESMA32-51-370)

#### B. French national sources

1. **Articles L. 451-1-2 *et seq.* of the French Monetary and Financial Code**
2. **Articles L. 225-100 to L. 225-102-3, articles L. 22-10-34 to L. 22-10-37, article L. 233-6, articles R. 225-102, R. 225-104, R. 22-10-29 and R. 225-105 to R. 225-105-1 of the French Commercial Code** (management report)
3. **Article 243 bis of the French Tax Code** (information related to dividends included in the management report)
4. **Articles L. 225-37 paragraph 6 to L. 225-37-5, L. 22-10-8, L. 22-10-11 and L. 22-10-20 of the French Commercial Code** (corporate governance report)
5. **Article L. 621-18-3 of the French Monetary and Financial Code** (disclosing the corporate governance report)
6. **Articles L. 232-1 to L. 232-7 of the French Commercial Code** (annual financial statements)
7. **Articles L. 225-184, L. 225-197-4 and L. 22-10-59 of the French Commercial Code** (special report related to free shares and share purchase options)

8. **Article R. 232-11 of the French Commercial Code** (periodic publications in the BALO)
9. **AMF General Regulations, articles 221-1 *et seq.*** included in Chapter I (Common provisions and dissemination of regulatory information) of Title II (Periodic and ongoing disclosure obligations) of Book II (Issuers and financial disclosure); articles 222-1 *et seq.* included in Chapter III (Periodic information) of Title II (Periodic and ongoing disclosure obligations) of Book II (Issuers and financial disclosure)
10. **AMF Instruction no. 2007-03 of May 31, 2007** (updated on July 8, 2013) relative to the methods of filing regulatory information electronically
11. **AMF Position/Recommendation no. 2010-18 of February 9, 2010** (updated August 1, 2012) on the presentation of assessment items and real-estate assets of listed companies
12. **AMF Recommendation no. 2010-16:** reference framework on internal risk management and control plans
13. **AMF Position/Recommendation no. 2009-16 of December 10, 2009** (updated on April 13, 2015) – Guide for compiling universal registration documents
14. **AMF Recommendation no. 2012-02 of February 9, 2012** (updated on December 3, 2019) on corporate governance and executive compensation in companies referring to the AFEP-MEDEF Code, a consolidated presentation of the recommendations published since 2009 by the AMF in its annual reports (2018 report on corporate governance and executive compensation; 2010 to 2017 reports on corporate governance and executive compensation; report of December 8, 2009 on corporate governance and internal control; report of July 9, 2009 on executive compensation in listed companies and the implementation of AFEP-MEDEF Code recommendations)
15. **AMF Position/Recommendation no. 2021-02** – Guide for compiling registration documents, applicable at January 8, 2021
16. **AMF Position/Recommendation no. 2014-14 of December 2, 2014** (updated on April 13, 2015) – Guide for compiling registration documents for mid-caps
17. **AMF Guide of June 2015** on the relevance, consistency and readability of the notes to the financial statements
18. **AMF Position no. 2015-12 of December 3, 2015** on alternative performance measures (applicable since July 3, 2016)
19. **AMF Position/Recommendation no. 2016-05 of October 26, 2016** – Guide to periodic disclosures by listed companies listed (updated on January 8, 2021)
20. **AMF Recommendation no. 2016-13 of November 28, 2016** on social and environmental responsibility
21. **AMF Position/Recommendation no. 2016-08 of October 26, 2016** – Guide to ongoing disclosures and the management of inside information
22. **AMF Position/Recommendation no. 2019-13** relating to the 2019 financial statements and review of the financial statements
23. **AMF Recommendation no. 2019-13**, 2019 financial statements and review of the financial statements



#### IV. TEXTS RELATING TO SPECIFIC CASES IN WHICH THE DISSEMINATION OF FINANCIAL DISCLOSURES IS REQUIRED

##### A. Takeover bids

1. **Directive 2004/25/EC** of the European Parliament and of the Council of April 21, 2004 concerning takeover bids
2. **Articles L. 433-1 to L. 433-4 of the French Monetary and Financial Code**
3. **AMF General Regulations**, articles 223-32 *et seq.* included in Section VII (Statement of intent in the event of preparations for a takeover bid) of Chapter III (Ongoing disclosures) of Title II (Periodic and ongoing disclosure obligations) of Book II (Issuers and financial disclosure); articles 231-1 *et seq.* included in Title III (Takeover bids) of Book II (Issuers and financial disclosure)
4. **AMF Instruction no. 2006-07 of July 25, 2006** (updated on February 13, 2020) on takeover bids
5. **Instruction no. 2009-08 of October 1, 2009** on the oversight of public offerings
6. **AMF Instruction no. 2006-08** on independent appraisals (updated on February 10, 2020)
7. **AMF Recommendation no. 2006-15** on independent appraisals in the context of financial transactions (updated on February 10, 2020)

##### B. Crossing of shareholding thresholds

1. **Directive 2013/50/EU** of the European Parliament and of the Council of October 22, 2013, amending Directive 2004/109/EC of the European Parliament and of the Council on the harmonisation of transparency requirements concerning disclosures about issuers whose securities are admitted to trading on a regulated market, Directive 2003/71/EC of the European Parliament and of the Council on prospectus disclosure requirements when securities are offered to the public or admitted to trading, and Directive 2007/14/EC of the Commission on the implementation of certain provisions of Directive 2004/109/EC
2. **Articles L. 233-7 to L. 233-15 of the French Commercial Code**
3. **Articles R. 233-1 to R. 233-2 of the French Commercial Code**
4. **AMF General Regulations**, articles 223-11 *et seq.* included in Section II (Crossing of shareholding thresholds) of Chapter III (Ongoing disclosures) of Title II (Periodic and ongoing disclosure obligations) of Book II (Issuers and financial disclosure)
5. **AMF Instruction no. 2008-02 of March 31, 2008** (updated on February 7, 2013) on the disclosure of thresholds in respect of share capital

### C. Reporting of transactions made in shares of listed companies by executives

1. **Implementing Regulation** (EU) 2016/523 of March 10, 2016
2. **Articles L. 621-18-2 and R. 621-43-1** of the French Monetary and Financial Code
3. **AMF General Regulations**, articles 223-22 *et seq.* included in Section V (Transactions by executives and persons mentioned in article L. 621-18-2 of the French Monetary and Financial Code) of Chapter III (Ongoing disclosures) of Title II (Periodic and ongoing disclosure obligations) of Book II (Issuers and financial disclosure)
4. **Instruction no. 2016-06** on transactions by managers and persons mentioned in article 19 of the European Market Abuse Regulation
5. **AMF Position/Recommendation no. 2016-08 of October 26, 2016** – Guide to ongoing disclosures and the management of inside information

### D. Share buyback programmes

1. **Regulation (EU) no. 596/2014** of the European Parliament and of the Council of April 16, 2014 on market abuse
2. **Articles L. 225-209 to L. 225-211 of the French Commercial Code** (share buyback programmes)
3. **AMF General Regulations**, articles 241-1 *et seq.* (description of a buyback, weekly and monthly information on the implementation of a share buyback) included in Title IV (Share buyback programmes and reporting transactions) of Book II (Issuers and financial disclosure)
4. **AMF Instruction no. 2017-03 of February 2, 2017** on the methods for notifying transactions carried out as dealings by listed issuers in their own shares and stabilisation measures
5. **AMF Position/Recommendation no. 2017-04** – Guide relating to trading by issuers in their own shares and stabilisation measures
6. **ESMA, Points for convergence in relation to MAR accepted market practices on liquidity contracts**, ESMA70-145-76, April 25, 2017
7. **AMF Decision no. 2018-01 of July 2, 2018** on the introduction of liquidity contracts on shares as an accepted market practice and Public Notice pursuant to article 13(5) of Regulation (EU) no. 596/2014 on market abuse: Establishment of liquidity contracts as a market practice accepted by the AMF
8. **ESMA, Report to the Commission on the application of accepted market practices**, January 15, 2019.
9. **Letter from the Chairman of the AMF** to the Director-General of FISMA, January 17, 2019

## E. Disclosure of shareholder agreements

1. **Article L. 233-11 of the French Commercial Code**
2. **AMF General Regulations**, article 223-18 (information relating to shareholder agreements) included in Section III (Shareholder agreements) of Chapter III (Ongoing disclosures) of Title II (Periodic and ongoing disclosure obligations) of Book II (Issuers and financial disclosure)

## F. Transfers and acquisitions of significant assets

1. **AMF Position/Recommendation no. 2015-05 of June 15, 2015** on transfers and acquisitions of significant assets by listed companies

## G. Dividends

1. **Questions & Answers published by ESMA on April 1, 2016** (ESMA2016/419 Questions and Answers on the common operation of the Market Abuse Directive)
2. **AMF Position/Recommendation no. 2016-08 of October 26, 2016** – Guide to ongoing disclosures and the management of inside information

## H. Insider lists

1. **Regulation (EU) no. 596/2014** of the European Parliament and of the Council of April 16, 2014 on market abuse, repealing Directive 2003/2014/EC
2. **Implementing Regulation (EU) no. 2016/347 of March 10, 2016** laying down technical standards with regard to the precise format of insider lists and for updating insider lists
3. **AMF Position/Recommendation no. 2016-08 of October 26, 2016** – Guide to ongoing disclosures and the management of inside information

# Glossary

## **AFEF-MEDEF Code**

A corporate governance code for listed companies drawn up by the *Association Française des Entreprises Privées* (AFEF) and the *Mouvement des Entreprises de France* (MEDEF) business associations. This code summarises and sets out all principles ensuring the due and proper operation of, and effective transparency in, listed companies.

## **AMF (Autorité des Marchés Financiers – French financial markets authority)**

France's only stock exchange authority, created by the Law on Financial Security of August 1, 2003 and resulting from the merger of the COB (*Commission des Opérations de Bourse*), the CMF (*Conseil des Marchés Financiers*) and the CDGF (*Conseil de Discipline de la Gestion Financière*), is responsible for:

- safeguarding investments in financial instruments and in any other product resulting in a public offering;
- providing information to investors;
- maintaining orderly financial markets.

The AMF has regulatory, oversight and disciplinary powers. It also has the power to take autonomous decisions.

## **AMF General Regulations**

Official, general-purpose regulations issued by the AMF and published in the French official journal following their approval by the Ministry of the Economy.

The AMF General Regulations set out the rules applicable to:

- the functioning of the AMF (Book I);
- issuers and financial disclosure (Book II);
- service providers (investment service providers, asset management companies, clearing houses, etc.) (Book III);
- collective investment products (Book IV);
- market infrastructures (Book V).

Book VI dealing with market abuse was repealed by the entry into force of the directly applicable Market Abuse Regulation.

## **AMF guidance**

The AMF publishes a range of guidance clarifying interpretations of certain applicable regulations or encouraging the adoption of certain best practices. There is a given hierarchy for any guidance issued.

An instruction is an interpretation of the provisions set out in the AMF General Regulations and specifies the basis of application and conditions of implementation. It informs market participants about the procedures to follow and rules to apply. A position is an interpretation of legislative and regulatory provisions dealing with matters falling within the remit of the AMF. It indicates the way in which such provisions are applied to individual cases and is designed to improve transparency and reduce uncertainty.

A recommendation encourages companies to adopt certain behaviour or comply with a rule which the AMF considers useful in helping to achieve goals, or meet general principles or standards on matters falling within its remit. Nonetheless, a recommendation does not rule out the fact that other behaviour or rules may be equally compatible with such general principles or standards. Accordingly, AMF recommendations are not mandatory. However, the fact that a company complies with a recommendation generally helps create the presumption that it complies with applicable regulations. In certain cases, the provisions set out in a recommendation may, given the prevailing circumstances, represent one of the aspects taken into account when assessing an individual case, for example a request for accreditation or approval. Generally speaking, however, failure to apply a recommendation does not in itself constitute a breach of the regulations. Market practice as accepted by the AMF, whose remit does not only concern market manipulation, creates a presumption of legitimacy with regard to compliant market participants.

### **Bearer share**

A share registered in an account in the name of the shareholder with an accredited financial intermediary, who alone is aware of the identity of the holder (except in the event of an identifiable bearer share).

### **Board of directors**

A consensus-based managing body existing in corporations (*sociétés anonymes*) with between three and up to 18 members (up to 24 members in the event of a merger, regardless of whether or not the company is listed). The board of directors determines the company's business strategy and ensures that it is duly implemented. Subject to the powers expressly conferred on shareholders' meetings and provided it is compatible with the corporate purpose, the board may address any matters pertaining to the proper management of the company and settle all items of business relating thereto.

Unless otherwise stipulated in the articles of association, the board's internal rules and regulations allow for all board meetings to be held by videoconference or other telecommunications technologies, except those meetings adopting the statutory and consolidated financial statements and management report.

The board of directors is the typical management structure found in corporations.

Corporations may also choose to have a two-tier management structure in which the board of directors is replaced by an executive board and a supervisory board.

### **Communication medium**

A method used by a company to communicate. Communication media consists mainly of:

- financial notices/financial advertising;
- press releases;
- shareholders' guides/shareholders' letters;
- annual reports/URDs;
- integrated reports;

- slideshows and various presentations made to investors;
- the global website and/or website for shareholders and financial intermediaries.

The proliferation of communication media means that companies need to be particularly cautious as regards both the internal consistency of information published on these media and as regards compliance with the principle of equal access to disclosed information in space and time. Regarding equal access, websites are a preferred communication medium that allow companies to promptly provide readers with comprehensive information on all current and historical developments.

### **Consolidated financial statements**

Consolidated financial statements are designed to present the financial position of a group of companies as though they were a single entity. Consolidated financial statements are governed by articles L. 233-16 *et seq.* of the French Commercial Code.

Companies listed on a regulated market must prepare their consolidated financial statements in accordance with IFRS if they control or jointly control one or more entities, or if they exercise significant influence over other entities. The consolidated accounts include the financial statements and the notes to the financial statements, which are an integral part thereof.

Since IAS 1 was revised in 2007, a complete set of financial statements includes:

- a statement of financial position (balance sheet);
- a statement of comprehensive income (income statement and a statement of items recognised directly in equity);
- a statement of changes in equity;
- a statement of cash flows.

Companies listed on a regulated market are required to publish their consolidated financial statements as part of their annual financial report, which must be disseminated within 4 months of the financial period closing date. A notice must also be published in the BALO within 45 days of the shareholders' meeting, indicating that the financial statements have been duly approved by the shareholders.

### **Corporate governance**

Corporate governance is the system of processes, rules, laws and institutions affecting the manner in which a company is directed and controlled. France's main existing corporate governance codes are the AFEP-MEDEF Code for large companies and the Mollenet Code for SMEs and mid-caps.

The corporate governance report must specify the code to which the company adheres, any provisions that have not been complied with and the reasons for this ("comply or explain" rule).

### Corporate governance report

Mandatory document to be prepared by companies listed on a regulated market, pursuant to Order no. 2017-1162 of July 12, 2017 for periods beginning on or after January 1, 2017.

The report, which accompanies the management report and is drawn up by the company's board of directors or supervisory board, contains information on:

- compensation policy (articles L. 225-37-2 and L. 225-82-2 of the French Commercial Code);
- compensation (article L. 225-37-3 of the French Commercial Code), which includes total compensation and benefits in kind paid by the company during the financial year and all commitments undertaken by the company on behalf of corporate officers;
- governance (article 225-37-4 of the French Commercial Code), such as the composition, conditions of preparation and organisation of the board of directors' or supervisory board's work, and any limitations that the board of directors may impose on the powers of the chief executive officer; and
- any factors likely to have an impact in the event of a takeover bid or public exchange offer (article L. 225-37-5 of the French Commercial Code).

As regulatory information, the corporate governance report is subject to the dissemination and archiving methods set out in the AMF General Regulations.

### Euroclear

An international clearing house for financial institutions, providing settlement for domestic and international traded bonds, shares and investment funds. Euroclear offers its services to major financial institutions in over 80 countries. It acts as the leading international central securities depository (ICSD) as well as the central securities depository (CSD) for UK, French, Irish, Dutch and Belgian securities.

Euroclear France is the central depository and clearing house for securities in France. It offers companies bearer shareholder identification services using the identifiable bearer share procedure, which became the InvestorInsight service in 2021 to meet the requirements of the Shareholder Rights Directive II.

### Executive board

Consensus-based managing body that may be set up in corporations with a two-tier management structure featuring an executive board and supervisory board. The executive board's duties are overseen by the supervisory board. An executive board can have up to five members, or up to seven members if the company's shares are admitted to trading on a regulated market.

### **Financial analyst**

Financial analysts are individuals or legal entities providing financial analyses such as defined in article L. 544-1 of the French Monetary and Financial Code.

Generally speaking, a financial analyst exploits and interprets economic and financial data about listed companies which it uses as a basis for formulating and disclosing to the public and/or its clients its overall assessment of companies' financial positions and an opinion on how their position is likely to evolve in the future in the form of share price targets and investment recommendations. A financial analyst working for a stock broker and issuing share recommendations to its clients is known as a "sell-side" analyst, while an analyst employed exclusively by an entity who determines whether investments are suitable for the firm's investment portfolio is known as a "buy-side" analyst.

Since the French Law on Financial Security of August 1, 2003, the profession has been regulated in France with the aim of preventing market abuse (articles 315-1 *et seq.* of the AMF General Regulations). The 2003 Market Abuse Directive also tightened the regulations applicable to financial analysts by setting down rules ensuring the fair presentation of recommendations and requiring financial analysts to disclose any conflicts of interests with the issuer.

### **Financial notice**

A communication medium which can be purchased in the written media or on the radio. There are two types of financial notice: financial notices meeting regulatory disclosure obligations and financial notices published at the issuer's initiative and concerning information that helps in an assessment of the company's value by its stakeholders (earnings, strategy, corporate governance, business-related events) and which represents financial advertising.

### **IASB (International Accounting Standards Board)**

Created in 1973 by the accounting institutions of nine countries including France, the IASB, which replaced the International Accounting Standards Committee following the reform of the institution in 2001, develops and publishes international financial reporting standards for the presentation of financial statements. It also promotes the use and application of these standards across the globe. Standards published by the IASB are known as International Financial Reporting Standards, or IFRS. Standards issued prior to April 1, 2001 continue to be known as International Accounting Standards, or IAS.

The role of the IASB is also to publish IFRIC interpretations developed by the International Financial Reporting Interpretations Committee (IFRIC), previously known as the Standing Interpretations Committee (SIC). These interpretations are designed to clarify the applicable accounting treatment for a given transaction/operation when the standards are not sufficiently specific in this regard.



### **Identifiable bearer share**

An enquiry conducted by Euroclear of financial intermediaries holding a company's securities. The enquiry is conducted at the company's request, at a given date, and allows the personal details of the holder to be identified, along with the number of securities held.

The cost of such a procedure is proportionate to the number of shareholders identified, since financial intermediaries surveyed are paid on the basis of the number of holders reported with a guaranteed yield. A company may conduct a comprehensive enquiry or only establish shareholding thresholds per financial intermediary and/or shareholder.

This service became the InvestorInsight service in 2021 to meet the requirements of the Shareholder Rights Directive II.

### **IFRS (International Financial Reporting Standards)**

New international accounting standards drafted by the IASB (International Accounting Standards Board).

European Regulation "IFRS 2005" (EC no. 1606/2002) requires listed companies to publish their consolidated financial statements in accordance with IFRS for financial periods beginning on or after January 1, 2005. Under this regulation, Member States may authorise or require companies other than listed companies to prepare their consolidated financial statements in accordance with IFRS as from that date. In France, this option is available to non-listed companies (Order of December 20, 2004).

The regulation also offers Member States several other options, including the option to authorise or require all listed and non-listed companies to prepare their statutory financial statements in accordance with IFRS. This option is not available in France, where statutory financial statements must be prepared in accordance with the French chart of accounts.

### **Insider trading/insider misconduct**

A criminal offence under articles L. 465-1 *et seq.* of the French Monetary and Financial Code that may be punishable by a prison sentence of up to 5 years and a €100 million fine (the fine may amount to up to ten times the profits made). Insider trading is when "insiders" use inside information to carry out transactions before such information has been publicly disclosed or provided to third parties. Insider trading also includes persons other than "insiders" having made use of inside information in full knowledge of the facts. Insider trading can constitute a criminal offence and a breach of the AMF General Regulations regarding insider misconduct. However, in a decision of March 18, 2015, the French constitutional court ruled out the accumulation of criminal and administrative sanctions in the case of insider trading. French Law no. 2016-819 of June 21, 2016 reformed the prevention aspect of market abuse by creating a "referral" procedure involving the public prosecutor and the AMF.

Insider misconduct is governed by article L. 465-1 of the French Monetary and Financial Code. Insider misconduct is defined as using inside information to purchase or sell (or attempting to purchase or sell), on one's own behalf or on behalf of other parties, the financial instruments to which such information relates. Unlike insider trading, which takes into account the intention of the accused, insider misconduct occurs when the person concerned infringes the provisions of the French Monetary and Financial Code, regardless of whether or not this was done intentionally.

### **Internal control**

Internal control consists of the measures put in place by a company to ensure its compliance with laws and regulations, due implementation of the rules and strategies set down by executive management, the proper operation of the company's internal processes, and the reliability of financial information. Generally speaking, internal control helps a company manage its business activities, ensure that its operations are efficient and use its resources effectively.

Companies whose securities are listed on a regulated market must prepare a corporate governance report on the conditions for preparing and organising the board's work, and a management report setting out the risk management and internal control procedures relating to the preparation and processing of accounting and financial information.

Pursuant to the Order of December 8, 2008, audit committees are responsible for monitoring the effectiveness of internal control procedures.

### **Issuer**

A legal entity (companies, the State and local authorities) which creates securities and offers them to the public for subscription.

### **Legal filings**

BALO (*Bulletin des Annonces Légales Obligatoires*): a publication and section of the French official journal (*Journal Officiel de la République Française*) published every Monday, Wednesday and Friday or whenever the body responsible for official journals deems necessary. Legal notices published in the BALO may be consulted as soon as they appear, online at <https://www.journal-officiel.gouv.fr/balo/>.

Companies listed on a regulated market are required to publish the following in the BALO:

- Within 45 days of the shareholders' meeting, a statement that the annual financial statements were approved without modification by the shareholders' meeting and indicating the date of dissemination of the annual financial report or, in the event of modification, in relation to the financial statements published in the annual financial report, the approved annual financial statements and consolidated financial statements, certified by the statutory auditors, as well as the decision regarding the allocation of net income.

- Certain information, including notices of shareholders' meetings (date of the meeting, location, agenda, draft resolutions, etc.), planned mergers or de-mergers, planned capital reductions by means of share buybacks, certain corporate transactions relating to holders of debt securities (designation of the representatives of the body of bondholders, etc.), and the start of liquidation proceedings.

### **Market Abuse Directive**

Directive 2003/6/EC of January 28, 2003 introducing a single EU-wide framework for combating the use of inside information regarding listed companies, insider dealing, market manipulation and the dissemination of misleading information.

The provisions of the Market Abuse Directive were transposed into French law by the Law of July 20, 2005, the "Breton" Law of July 26, 2005, and the AMF General Regulations (amended by the Decree of September 1, 2005).

The provisions of the Market Abuse Directive were repealed by the entry into force of the Market Abuse Regulation on July 3, 2016. On the same date, the new directive dealing with market abuse also entered into force (Directive 2014/57/EU of April 16, 2014 on criminal sanctions for market abuse).

### **Market Abuse Regulation ("MAR")**

Regulation (EU) no. 596/2014 of the European Parliament and of the Council dated April 16, 2014 on market abuse, applicable as of July 3, 2016. This regulation did not introduce any major changes to the definition of inside information existing in France but extends the application of the market abuse regime and significantly increases the disclosures to be included in the insider list.

### **Middlenext**

An independent French association founded in 1987 and representing SMEs and mid-caps (market capitalisation of €1 billion or less) listed on Euronext or Euronext Growth.

### **MIF**

Markets in Financial Instruments Directive (MiFID II) and Markets in Financial Instruments Regulation (MiFIR)

The 2007 MIF I Directive introduced a European regulatory framework for the orderly execution of investor transactions by stock exchanges, other trading platforms and investment companies. This directive puts in place a single passport for investment companies, allowing them to work throughout the European Union with minimum formality and enhanced client protection.

In May 2014, European lawmakers adopted a new MIF II framework for markets in financial instruments (the revised MiFID II Directive and the MiFIR Regulation). These two texts supersede the 2007 MIF Directive. MiFIR came into force on January 3, 2017 and MiFID II on January 3, 2018.

The main changes to the former framework concern product governance, compensation and benefits accruing to market participants, the notion of “independent advice”, market structure and transparency, transaction disclosure and reporting, high-frequency and algorithm-based trading and commodity-based financial products.

### **Non-financial performance statement**

Information on corporate social responsibility for listed and non-listed companies that exceed certain thresholds.

The statement provides information on how the company takes into account the social and environmental impact of its business. It is presented in a dedicated section within the management report.

The information contained in the statement must be verified by an independent third party when the company has net assets or net sales of more than €100 million and has more than 500 employees.

### **Offer document**

Information prepared in the context of a public offering (takeover, public exchange offer, standing offer, etc.) by (i) the offeror and (ii) the target company (“response document”). When the public offering is a friendly offer, an associated offer document may be drawn up by the offeror and the target company.

In particular, the offer document prepared by the offeror describes the context and terms and conditions of the offer, along with the goals and intentions of the offeror.

The response document notably includes the opinion of the target company’s board of directors or supervisory board on the merits of the offer and the consequences thereof for the target company, its shareholders and its employees.

The content of offer documents is governed by articles 231-18 and 231-19 of the AMF General Regulations, as clarified by AMF Instruction no. 016-04 of October 21, 2016.

### **One-on-one meeting**

A meeting between an issuer’s representative (generally the head of Investor Relations and/or several members of executive/financial management) and a representative from a financial institution (legal manager and/or buy-side analyst) or institutional investor. During such one-on-one meetings, the issuer must respect investors’ equal access to information and not divulge inside information.

### **Par value**

The par value of a share is the share of capital it represents.

**PD3**

Regulation (EU) 2017/1129 of June 14, 2017 known as “PD3” lays down requirements for the drawing up, approval and distribution of the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market situated or operating within a European Union Member State.

It repeals Directive 2003/71/EC and was supplemented by Delegated Regulations 2019/979 and 2019/980.

**Press release**

A press release is a communication medium used by listed companies. It is disseminated electronically through major press agencies. Press releases have become more common owing to the transparency obligations introduced for companies listed on regulated markets (disclosure obligations).

Press releases are to be sent to the AMF no later than the date they are disseminated on the market. Only promotional press releases prepared during an offering or pre-offering period must be sent to the AMF prior to their dissemination (articles 212-28 and 231-36 of the AMF General Regulations).

**Profit warning**

This is when an issuer informs the market of a changed financial outlook which could have a significant impact on its share price and therefore may represent inside information for as long as it is not published. Profit warnings are dealt with in article 17.1 of the Market Abuse Regulation and Chapter III “Ongoing disclosures” of Book II, Title II of the AMF General Regulations and in particular, article 223-2 of those regulations.

**Prospectus**

Information document about a financial transaction, which may take the form of a single document or maybe consist of a registration document or a universal registration document (URD), a securities note and a summary setting out information on the assets and liabilities, business activity, financial position, results and outlook of the issuer, along with a description of the characteristics of the securities offered.

The prospectus, which is submitted to the AMF for approval, must be prepared by all public or private issuers based within or outside France, in the event of a public offering of financial instruments to the public or the admission to trading on a regulated market (barring the exemptions provided for in PD3).

**Prospectus Directive and PD3 Regulation**

Directive 2003/71/EC introducing a single EU framework applicable to prospectuses to be disseminated by issuers making a public offer of securities.

The Prospectus Directive was transposed into French law by the “Breton” Law of July 26, 2005 and the new AMF General Regulations (ratified by the Decree of September 1, 2005). The Prospectus Directive was repealed by Regulation (EU) 2017/1129 of June 14, 2017 (“PD3”), supplemented by the Delegated Regulations (EU) of March 14, 2019.

### **Proxy advisors or proxy solicitors**

A service provider providing institutional investors with an analysis of the resolutions put forward at shareholders' meetings and voting recommendations in relation to these resolutions.

Besides this analysis and recommendation role, the proxy advisor generally proposes logistics services by providing information on shareholders' meetings through an electronic interface and by enabling voting using an electronic platform.

The European Directive on the rights of shareholders, which was adopted in spring 2017, requires greater transparency from proxy advisors. Proxy advisors must disclose the methodology and sources of information used to prepare their voting recommendations, along with their strategy for preventing and managing existing or potential conflicts of interests. The French PACTE law (Action Plan for Business Growth and Transformation) transposes these requirements.

### **Q&A**

An issuer's internal document which is not generally published and is used to prepare various financial reporting events. It summarises information the issuer wishes to use in response to various questions that may be asked by its financial audience. A Q&A document is generally used by the company's spokespersons as guidance for meetings.

### **Rating agency**

An independent organisation whose business is to evaluate the creditworthiness of an issuer and particularly its solvency risk. The ratings as determined based on a scale specific to each agency can directly impact the financial conditions under which the issuer is able to access debt markets. The main rating agencies such as Fitch Ratings, Moody's and Standard & Poor's are global organisations. Certain agencies are specialised in rating issuers on non-financial (corporate social responsibility) matters.

On January 16, 2013, the European Parliament adopted a Directive amending its 2009 Regulation on credit rating agencies. This notably reduced regulators' reliance on credit ratings by combating conflicts of interest more effectively, stimulating competition between agencies and introducing new rules specific to sovereign debt ratings.

### **Registered share**

A share registered in an account in the name of the shareholder and managed by the issuer. For shares registered on a "pure registered" basis, the company ensures the provision of all custodial services. If shares are held in "administered registered form", the management of the company's shares is entrusted to a financial intermediary.

### **Registration document**

Since July 21, 2019, the registration document has been replaced by the new universal registration document (URD), whose content stems from Regulation (EU) 2107/1129 of June 17, 2017, supplemented by Delegated Regulation (EU) 2019/980 of March 14, 2019 specifying the information that must be included in the URD.

### **Securities note**

Document intended to inform the public which is drawn up in connection with an offer of securities to the public or admission of securities to trading on a regulated market (initial public offering, capital increase, bond issue, etc.). The securities note contains information on the financial instruments concerned by the operation and on the operation itself (timeframe, terms and conditions, etc.), a summary of the main characteristics of the company and, where applicable, information on its business activities and financial position if these have changed since the publication of the URD.

A securities note together with a URD which includes information relating to the issuer, as well as a summary constitutes the AMF-approved prospectus, which is to be published prior to any public offering of securities.

### **Share capital**

Legal and accounting concept relating to a portion of the capital contributed by shareholders upon the creation of a company or in connection with subsequent capital increases. The remaining capital primarily comprises additional paid-in capital.

### **Shareholders' letter**

A communication medium intended to inform individual shareholders in an educational manner about major events in the company's life, its strategy, its commercial and financial results, its share performance and any new products. Shareholders' letters are issued at varying intervals, but typically every 6 months.

### **Shareholders' meeting**

A private meeting held at least once a year and involving all company shareholders.

- An ordinary shareholders' meeting must take place within 6 months of the financial period closing date and is an opportunity for the company's managing bodies to report on their management over the past year. The shareholders vote on the financial statements, on the amount of dividends payable, and occasionally, on appointments and re-elections of company officers.
- An extraordinary shareholders' meeting may be called at any time to take decisions, concerning in particular a change to the articles of association or a request to increase the share capital by issuing shares.
- A combined ordinary and extraordinary shareholders' meeting involves each of the above two meetings held on the same date.

In order for its deliberations to be valid, shareholders present or represented at the meeting must account for a certain number of shares and voting rights (quorum). The quorum required on the first call of an ordinary shareholders' meeting is 20% of the shares carrying voting rights. On second call, no quorum is required (article L. 225-98 of the French Commercial Code). The quorum required on the first call of an extraordinary shareholders' meeting is 25% of the shares carrying voting rights, while the quorum required on the second call of such a meeting is 20% (article L. 225-96 of the French

Commercial Code). The articles of association of companies which have not offered their securities to the public and whose securities are not admitted to trading on any regulated market may provide for higher quorum requirements.

The majority conditions required to adopt a resolution vary depending on whether the decision falls within the scope of the ordinary meeting or the extraordinary meeting. Decisions falling within the scope of the ordinary meeting are taken on the basis of a simple majority of shareholders present or represented (i.e., 50% plus one vote). Decisions falling within the scope of the extraordinary meeting are taken on the basis of a two-thirds majority of shareholders present or represented.

### **Statutory auditor**

A statutory auditor is engaged to certify that a company's financial statements present a true and fair view of the results of a company's operations for a given year, and of its financial position and assets and liabilities for the year then ended. Auditors are engaged to certify both the statutory and the consolidated financial statements.

At the shareholders' meeting called to approve the financial statements, the statutory auditor presents to the shareholders its audit report on the statutory and, where applicable, consolidated financial statements (article L. 823-9 of the French Commercial Code), along with its special report on related-party agreements. The statutory auditor may also be asked to conduct one-off assignments and prepare a specific report in certain situations provided for by law (capital increase, securities issue, etc.).

The statutory auditor is appointed by the ordinary shareholders' meeting for 6 financial years. The AMF is informed of proposed appointments or re-election of statutory auditors and may make any observations in this regard, which will then be brought to the attention of the shareholders' meeting.

Statutory auditors have a duty to inform the AMF in the event of a disclosure of an opinion on the financial statements, triggering phase 2 of the alert procedure, and when they bring irregularities and inaccuracies to the attention of the shareholders' meeting.

Oversight of the audit profession is provided by the French Auditing Board (*Haut Conseil du Commissariat aux Comptes – H3C*).

### **Statutory or "individual" financial statements**

Statutory or "individual" financial statements denote the financial statements of a company excluding those of any of its subsidiaries, unlike consolidated financial statements.

Statutory accounts are generally drawn up in accordance with French accounting principles and include the financial statements and the notes to those financial statements, which are an integral part thereof.



Companies listed on a regulated market are required to publish their statutory financial statements as part of their annual financial report, which must be disseminated within 4 months of the financial period closing date. A notice must be published in the BALO within 45 days of the shareholders' meeting, indicating that the financial statements have been duly approved by the shareholders.

### **Supervisory board**

A consensus-based supervisory body existing in corporations (*sociétés anonymes*) with a two-tier management structure. The supervisory board has between three and 18 members (up to 24 members in the event of a merger, regardless of whether or not the company is listed). Unlike the board of directors, the supervisory board is solely responsible for overseeing the company's management by the executive board.

The supervisory board verifies and oversees the financial statements drawn up by the executive board. At any time during the year, it may conduct the checks it deems necessary and request the documentation it considers it needs to fulfil its duties. The executive board is required to present a quarterly report to the supervisory board.

Unless otherwise stipulated in the articles of association, the supervisory board's internal rules and regulations allow for all supervisory board meetings to be held by videoconference or other telecommunications technologies, except those meetings verifying the statutory financial statements.

Since January 1, 2009, supervisory board members are no longer required to be shareholders.

### **Transparency Directive**

Directive 2004/109/EC harmonises ongoing and periodic disclosure requirements for companies listed on regulated European markets, providing in particular for:

- more detailed annual and half-yearly financial reports including a statement by management;
- enhanced information on the interests of major shareholders;
- more widespread (across the EU) and faster publication of information to allow investors non-discriminatory access to information in good time.

These provisions were transposed into French law by the "Breton" Law and have been applicable since January 20, 2007.

The revised Transparency Directive (2013/50/EU) came into force at the end of 2015.

**Universal registration document (URD)**

An optional annual summary that sets out all the information required by the different stakeholders to form an opinion on the operations, financial position, results and outlook of the issuer. The document contains all the legal, economic, financial, accounting and non-financial information regarding the company for a given year.

If the URD meets the various regulatory requirements, it can be used as an annual financial report, management report or annual report to shareholders.

Established by PD3, the URD replaced the French registration document with effect from July 21, 2019, and is extended to all European companies subject to certain thresholds.

Delegated Regulation (EU) 2019/980 of March 14, 2019 specifies the information that must be included in the URD.



Financial communication is a vital component of market transparency and constitutes a key element for investor confidence and the credibility and quality of a financial marketplace as a whole.

The framework of financial communication by issuers changes every year and the regulation is very heterogeneous: some aspects of an issuer's financial communication are defined by very precise rules, while other aspects are covered by the application of broad principles that may be interpreted under the responsibility of the issuer.

The increased transparency required in the financial markets and the increasing complexity of regulatory constraints, imposing information burdens upon issuers, have led the largest listed companies to structure their financial and non-financial information into specialised departments, whose responsibilities have been broadening incessantly in recent years and whose functions are continually evolving.

Under these conditions, it has become important that every person who participates in the preparation of an issuer's financial communication has a guide listing market practices.

This "Financial Communication: Framework and Practices" guide has been designed principally as an informative tool for senior management and the persons in charge of financial communication within listed companies.

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