

2017 EDITION

**FINANCIAL**  
**COMMUNICATION:**  
**FRAMEWORK**  
**AND PRACTICES**

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## The Observatoire de la Communication Financière

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Created in 2005, the *Observatoire de la Communication Financière* (OCF) is an association that serves as a forum for the observation of financial communication and promotes exchanges amongst financial market professionals.

This initiative is intended primarily to provide listed companies of all sizes, for the very first time, with **a multidisciplinary perspective** on the main challenges of financial communication and to **promote best practices** in the field.

OCF members base their work on three complementary areas:

- **Observation and analysis** of changes in the financial communication landscape and their impact on listed companies' practices, through research papers and surveys.
- **Debates** about issuers' standpoints and market opinion at conferences, and **participation** in open discussions on the subject.
- **Assistance** to listed companies in resolving various types of financial communication issues, through workshops and the publication of benchmark analyses.

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# FINANCIAL COMMUNICATION: FRAMEWORK AND PRACTICES

The present edition is an enhanced version of the original publication dated April 2008 and takes into account new regulations up to June 2017.

The online version of this guide includes, in Part II, examples of press releases illustrating different financial communication situations.

*Original publication: April 2008*  
*Last update: June 2017*

# Preface

G rard Rameix – Chairman of the AMF

In the decade since the creation of the OCF, the financial information produced by listed companies for analysts, investors, shareholders and other stakeholders has changed significantly. The organisation has effectively catered to this trend.

Now more comprehensive and detailed to reflect regulatory changes, the OCF today addresses a far broader scope.

Financial statements, with their increasingly numerous and detailed disclosures in the notes, are a central pillar of financial communication, yet they are often poorly understood due to their growing complexity.

To prevent this situation, standard-setting bodies and regulators encourage companies to adopt a less "mechanical" approach and instead focus more on good judgement to assess materiality and ensure the information stays relevant. This is true both for accounting data and for alternative performance measures (APMs). The new requirements created under ESMA's new APM guidelines of July 2016 have led many large issuers to reassess their attitude towards these indicators and adopt a more restrained usage, keeping only those that are most relevant to their business.

The amount of information on corporate governance and executive compensation has also expanded significantly. We have moved from a situation where companies produced information on their boards' organisation and operations to a much more ambitious strategy based on stringent demands and strict application of the "comply or explain" principle. The same can be said for executive compensation, where companies are reporting increasingly precise and qualitative information.

Lastly, companies are now providing substantial coverage of social and environmental information, assigning CSR an increasingly prominent place in their annual reporting.

As in previous years, there were many new developments in 2016. A number of provisions were introduced to further reinforce companies' transparency obligations, such as the European Regulation on Market Abuse, which has been made much stricter in terms of identifying and monitoring insider information, as well as France's "Sapin II" Law and audit reform.

To help companies navigate this profusion of obligations, the AMF published a guide to ongoing information in 2016, followed by a guide to share buybacks in early 2017.

More specialised and technical, these guides offer a useful supplement rather than an alternative to the OCF guide, which has earned a reputation over the years as an essential resource for executives and investor relations departments.

The 2017 edition, updated to include new rules and considerations, forms a solid foundation on which the OCF's four founding members may continue their work over the next decade, where financial communication challenges are likely to be heavily influenced by the digital transformation.

June 2017

# Preface

Chris Hollis, Chairman of OCF

This is the tenth annual edition of the *Observatoire de la Communication Financière's* guide to financial communication. In the decade since its first publication, information flows have accelerated, financial markets have transformed and audiences have expanded, while expectations of transparency have grown more and more demanding. At the same time, international regulations governing financial communication have been continuously updated and strengthened, covering an increasingly broad scope.

In this environment, there is a greater need than ever for the constant observation, analysis and exchange of opinions and expertise of the members of the OCF, which brings together the complementary experience of representatives from legal advisers Bredin Prat, IR association the Cliff, the Paris stock market Euronext, audit firm PwC and analyst association SFAF. Working together, they can assist both issuers and executives who are aware of the importance of financial communication, but confronted with the increasingly complex operations of financial markets and with stakeholders' high expectations.

This publication conceived for listed companies aims to be simple, synoptic and educational. We hope it provides its users with the means to react in an appropriate manner to their daily needs in financial communication matters by supplying them the essential elements to properly execute their obligations. This guide has been translated into English in order to reach a wider and international audience.

The new 2017 edition explores major changes that were already under way in 2016 following the entry into force of the European Market Abuse Regulation, notably with regard to ongoing information and management of insider information, and the implications for financial communication. The new regulation impacts areas as diverse as information truthfulness, disclosure delays, insider lists, quiet periods, closed periods, reporting of transactions by executives, share buybacks, liquidity contracts, data rooms and codes of ethics. The guide also examines the consequences of France's "Sapin II" Law, notably in terms of oversight obligations and executive compensation, and discusses changes to prospectuses, alternative performance measures, registration document filing methods, CSR and integrated reporting information and the abolition of the press release on statutory auditors' fees, as well as helps to prevent the dissemination of false information in the wake of the Vinci fake press release scandal.

The 2017 edition has also been enhanced with the addition of a new appendix featuring a glossary of financial communication terms used in the guide. Previously, this glossary was published separately and updated less regularly.

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!

June 2017

# 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 each 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 part of this guide outlines the general principles of financial communication; the second part presents the framework of financial communication and different circumstances to which it is applied; and the third part discusses financial communication practices.

# Contents

Introduction	8
<b>1. General Principles of Financial Communication</b>	<b>12</b>
1 I Notions of periodic information, ongoing information and regulatory information	14
2 I Principle of equal access to information	17
3 I Principle of consistency	18
4 I Dissemination of accurate, true and fair information	18
5 I Requirement for market disclosure of "insider information" concerning the issuer	19
6 I Complete and effective dissemination of regulatory information	23
7 I Archiving and transparency of regulatory information	25
8 I Financial communication language	26
<b>2. Framework for Financial Communication</b>	<b>30</b>
1 I Disclosures of periodic information	33
2 I Disclosure of estimates or prospective information	52
3 I Events associated with a company's business	57
4 I Corporate governance	60
5 I Events affecting the shareholding structure	69
6 I Risks and litigation	79
7 I Rumours and leaked information	81
8 I Mergers and acquisitions	82
9 I Financial transactions	97

3. Financial Communication Practices	107
1 ■ Calendar and organisation	111
2 ■ Financial marketing and targeting	119
3 ■ Implementation of financial communication	124
4 ■ Providing management with feedback on market perceptions	138
Appendix: Registration document	142
Index: Regulatory texts	151
Alphabetical index	158
Glossary	163

## 1

## General Principles of Financial Communication

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

<b>1</b>	<b>Notions of periodic information, ongoing information and regulatory information</b>	14
	Periodic information	14
	Ongoing information	15
	Regulatory information	15
	Transaction-related information	16
<b>2</b>	<b>Principle of equal access to information</b>	17
<b>3</b>	<b>Principle of consistency</b>	18
<b>4</b>	<b>Dissemination of accurate, true and fair information</b>	18
<b>5</b>	<b>Requirement for market disclosure of "insider information" concerning the issuer</b>	19
<b>6</b>	<b>Complete and effective dissemination of regulatory information</b>	23
<b>7</b>	<b>Archiving and transparency of regulatory information</b>	25
<b>8</b>	<b>Financial communication language</b>	26
	Regulatory information	26
	Prospectus	27
	Other information disseminated by the issuer	29

## 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 can be added (iv) specific transaction-related information.

In October 2016, the AMF published an overview of the various information requirements that listed companies must fulfil (AMF Position/Recommendation no. 2016-08 – Guide to ongoing information and the management of insider information, p. 3 and AMF Position/Recommendation no. 2016-05 – Guide to periodic information published by listed companies on a regulated market, p. 3).

"Mid-cap" issuers (i.e., compartment B and C issuers on Euronext and Alternext) may refer to the AMF Policy Handbook for Mid-Caps, published in November 2016, which outlines the main rules governing financial reporting and disclosures.

### 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>1</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>2</sup> (*Code de commerce*).

On October 26, 2016, the AMF published a guide to periodic information published by listed companies on a regulated market<sup>3</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").

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

1 – Articles L. 451-1-2 *et seq.* of the French Monetary and Financial Code.

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

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

## 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 information and the management of insider information<sup>4</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 Alternext and Marché Libre. Marché Libre is an organised multilateral trading facility which is present in Paris and Brussels and managed by market operator Euronext (Euronext Paris SA for Marché Libre in Paris). The Marchés Libres meet 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 Alternext. More than 250 companies are currently listed on the Marché Libre in Paris.

## 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.

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 article L. 225-102-3 of the French Commercial Code;

4 – AMF Position/ Recommendation no. 2016-08 – AMF Guide to ongoing information and the management of insider information.

5 – The "Sapin II" Law authorises the French government to take measures by way of orders, up to December 9, 2017, to simplify, reorganise and modernise all or part of the information contained in the management report and the chairman's report. The latter currently encompasses the composition of the board of directors or supervisory board and the application of the principle of equal representation of men and women within the board, the conditions of preparation and organisation of the board of directors or supervisory board's work and the internal control and risk management procedures put in place, as well as the financial risks related to the effects of climate change and the measures taken by the company to mitigate them, the specific terms and conditions of shareholder participation in shareholders' meetings, the principles and rules for determining executive compensation and the company's procedures for implementing corporate governance codes.

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

- the chairman's report on internal control and risk management<sup>5</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 notice describing how a prospectus is made available;
- insider information listed in application of article 17 of the Market Abuse Regulation<sup>6</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 Alternext or Marché Libre, then "regulatory information" only refers to:

- a description of share buyback programmes;
- a notice describing how a prospectus is made available; and
- insider 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 on April 15, 2013, for additional details on how to file regulatory information with the AMF.

## TRANSACTION-RELATED INFORMATION

Finally, in addition to periodic and ongoing information, it should be noted that issuers are required to provide **market information prior to carrying out any transaction**. Such information could include the publication of a prospectus when an issuer's securities are offered to the public or admitted 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).

## 2 | PRINCIPLE OF EQUAL ACCESS TO INFORMATION

In order to ensure perfectly equal access to information for shareholders, when communicating insider information to a third party<sup>7</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.

Assuming that 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).

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 stock market products 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.

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

### 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>8</sup>.

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

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Information provided to the public by the issuers must **be accurate, true and fair**<sup>9</sup>, which means without errors. 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 must also be **true**, that is to say, 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>10</sup>.

8 – AMF Position no. 2015-12 on alternative performance measures.

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

10 – AMF Position/ Recommendation no. 2016-08 – Guide to ongoing information and the management of insider information (section 1.5.1). See also Supreme Court Commercial Chamber, November 18, 2008, no. 08-10.246.

Information provided 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.

## 5 | REQUIREMENT FOR MARKET DISCLOSURE OF "INSIDER 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.

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 insider information<sup>11</sup>.

Article 7 of the Market Abuse Regulation defines **insider 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 prices** of those financial instruments or on the price of related derivative financial instruments.

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

11 – AMF Position/ Recommendation no. 2016-08 of October 26, 2016 – Guide to ongoing information and the management of insider information.

same judgement, the Court of Justice reaffirmed that the definition of insider 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, Alternext or Euronext Marché Libre<sup>12</sup>.

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 insider 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>13</sup>. ESMA has issued guidelines that provide a non-exhaustive and indicative list of legitimate interests of issuers to delay disclosure of insider 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>14</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;
  - 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 insider 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 insider 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 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.

12 – Article 17.1 of the Market Abuse Regulation.

13 – AMF Position/Recommendation no. 2016-08 of October 26, 2016 – Guide to ongoing information and the management of insider information, section 1.2.2.1.

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

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

According to the ESMA and the AMF, delay of disclosure of insider information is likely to mislead the public where the insider 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 insider 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 insider information from accessing said information;
- take the necessary measures to ensure that all persons with access to insider 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 insider information;
- deploy the processes necessary for ensuring immediate, accurate, true and fair disclosure if it is unable to ensure confidentiality<sup>15</sup>, especially when there is a sufficiently detailed rumour referring explicitly to the insider information whose disclosure has been delayed (see Part II, Section 7 "Rumours").

To maintain control of insider information, the issuer is required to establish, maintain and promptly update lists of all persons having access to insider 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 III, Section X "Insider lists").

In its Guide to ongoing information and the management of insider 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>16</sup> (see Part III, Section 1 "Financial communication calendar").

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>17</sup>, reproduced by the AMF in its Guide to ongoing information and the management of insider information, any issuer who delays the disclosure of insider information must inform the AMF *"immediately after disclosure of the information"* in writing by sending an email

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

16 – AMF Position/ Recommendation no. 2016-08 – Guide to ongoing information and the management of insider information (sections 2.1.2.4 and 2.1.1, respectively).

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

to differepublication@amf-france.org<sup>18</sup> once the information in question has actually been disclosed. The issuer is required to 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 insider 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 insider information;
- the date and time of the decision to delay the disclosure of insider information;
- the identity of all persons responsible for the decision to delay the public disclosure of insider 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 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 insider information.

Under the terms of article 17.5 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 insider 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 insider 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 17.6 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 insider information meets the three conditions provided for in the above-mentioned article 17.4 (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).

Pursuant to 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 insider information<sup>19</sup>, the issuer must get in touch with their contact person at the AMF's issuer management department, who will inform them of how to proceed in a secure manner.

<sup>18</sup> – AMF Instruction no. 2016-07 on the notification procedure for delaying disclosure of insider information.

<sup>19</sup> – AMF Instruction no. 2016-07 on the notification procedure for delaying disclosure of insider information.

Lastly, issuers setting up an equity line programme who have decided to delay the disclosure of insider information should immediately suspend execution of their equity line programme. The AMF has reiterated that being in possession of insider 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 insider information must immediately suspend execution of this programme until such time as the information has been published<sup>20</sup>.

## 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 April 15, 2013.

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>21</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>22</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" page. The issuer's statutory financial statements and its subsidiaries' financial statements should be clearly identified as such<sup>23</sup>.

Issuers are also required to file their regulatory information with the AMF in electronic format 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. The issuer will also issue financial communication in the written press according to a timetable it considers appropriate<sup>24</sup>. Such communication may reuse, when appropriate, all or part of the regulatory information that has already been disseminated electronically, but the content is more general and malleable than the regulatory information that is sent to the media in full

20 – AMF Position/ Recommendation no. 2012-18 – Market information when setting up an equity line programme (sections 3 and 5).

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

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

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

24 – Article 221-4 VI of the AMF General Regulations.

and in plain text format. When information is disseminated to the written press, the AMF recommends that the issuer inform readers that comprehensive financial performance information is available on its website<sup>25</sup>.

Issuers whose securities are admitted – or subject to a request for admission – to trading on Alternext must also ensure the complete and effective dissemination of all regulatory information according to the same rules as issuers listed on Euronext Paris (see revised article 221-4 of the AMF General Regulations). The same applies for issuers whose securities are admitted – or are subject to a request for admission – to trading on Euronext Marché Libre.

### PREVENTING THE DISSEMINATION OF FALSE INFORMATION

Following the dissemination of false information regarding the Vinci share in November 2016, the AMF began studying best practices regarding the dissemination of information. The AMF recommends that issuers:

- 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;
- 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.

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 March 23, 2017.

25 – AMF Position/  
Recommendation  
no. 2016-05  
– Guide to periodic  
disclosures by  
companies listed  
on a regulated  
market (section  
13.8).

## 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>26</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 five years, all insider information they are required to disclose publicly.

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

- annual financial reports;
- half-yearly financial reports;
- reports on payments to governments<sup>27</sup>.

ESMA's Questions and Answers of October 22, 2015 specify that reports published in the five years prior to November 26, 2015 must be kept for ten 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 insider 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](http://www.info-financiere.fr), for a period of ten years.

The Transparency Directive (Directive 2013/50/EU) provides for a centralised archive storage facility which will take effect at EU level in 2018.

26 – 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 information and the management of insider information, and section 13 of AMF Position/ Recommendation DOC-2016-05 – Guide to periodic disclosures by companies listed on a regulated market.

27 – 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.

## 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>28</sup>

The AMF reiterates that 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 their filing with the competent commercial court<sup>29</sup>.

In accordance with article L. 123-22 of the French Commercial Code, the AMF recommends that the choice of language for periodic information be consistent over the long term and take into consideration its 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>30</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<sup>31</sup>.

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

29 – AMF Position/ Recommendation no. 2016-05 – Guide to periodic disclosures by companies listed on a regulated market (section 13.1).

30 – AMF Position/ Recommendation no. 2016-05 – Guide to periodic disclosures by companies listed on a regulated market (section 13.1).

31 – In practice, that language is English.

## PROSPECTUS<sup>32</sup>

In this case as well, several different situations should be differentiated.

To maintain the competitiveness of the Paris stock market, article 212-12 of the AMF General Regulations gives companies the option of drawing up a prospectus in a language commonly used by the financial community other than French, even in the event of an initial public offering in France, in the following cases:

**In the case of a public offering of securities in France**, if, in accordance with European law, the AMF is the competent authority for the certification of a prospectus (as would be the case if the issuer is headquartered in France and the public offering concerns equity securities), the prospectus shall be written in French. It may, however, be written in a language commonly used by the financial community other than French in the following circumstances:

- The securities are being admitted to a regulated market or a multilateral trading facility for the first time in France only or in one or more other European Union Member States or countries party to the agreement on the EEA;
- The issuer's prospectus, which was drawn up when the securities were first admitted to trading on a regulated market, is written in a language commonly used by the financial community other than French;
- The public offering concerns debt securities and is carried out in France only or in one or more other European Union Member States or EEA member countries;
- The issuer's statutory headquarters are located in a non-EEA member country and the public offering is for employees of the issuer working at subsidiaries or establishments in France.

In such case, the summary of the prospectus is translated into French.

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 – *Code monétaire et financier*) 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 and capital increases are the three main types of transactions that constitute the placement of securities.

Carrying out an initial public offering involves that the issuer fulfil certain requirements regarding financial information.

32 – Article 212-12 of the AMF General Regulations; AMF Position/ Recommendation no. 2015-02 on initial public offerings (section 6).

In the case that the public offer 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. Those regulatory authorities are only able to require that a summary of the prospectus be translated in their official language.

**In the case that securities are admitted to a regulated market in France or in one or more other European Union Member states or EEA member countries** (hypothetically without a public offering), if, in accordance with European law, the AMF is the competent authority for the certification of the prospectus (which would in particular be the case if the issuer is headquartered in France and if the request for admission is for equity securities), the prospectus must be written in French or in another language commonly used by the financial community. In the latter case, the summary of the prospectus must be written in French, except when the admission to trading is applied for in the professional compartment for admissions without a prior public offering.

**In the event that securities other than equity securities, with a par value of at least €100,000<sup>33</sup>**, are admitted to trading on a regulated market in France (hypothetically without a public offering), the AMF-certified prospectus must be written in French or in another language commonly used by the financial community.

**In the case of a public offering of securities and/or application for admission to trading of securities on a regulated market in one or more European Union Member States or one or more EEA member countries with the exception of France**, when, in application of European law, the AMF is the competent authority for the certification of the prospectus (which would in particular be the case when the issuer's headquarters are registered in France and its prospectus concerns equity securities), the prospectus must be written either in French or in another language commonly used by the financial community.

The prospectus must also be made available to the regulatory authorities of the other countries in a language commonly used by the financial community. Those regulatory authorities are only able to require that a summary of the prospectus be translated in their official language.

Finally, if the AMF is not the competent authority to provide a certification of the prospectus (most notably regarding the issue of equity securities by an issuer whose registered office is located within the territory of another EEA member country), in the case of a public offering of securities or an application for admission to trading of securities on a regulated market in France only or in one or more other European Union Member States or EEA member countries, the prospectus must be written in French or in another language commonly used by the financial community. In the latter case, the summary of the prospectus must be written in French, except when the securities are admitted to trading in the professional compartment for admissions without a prior public offering.

33 – This €100,000 threshold could change, as the European Parliament and the European Council reached a tentative agreement in December 2016 regarding the proposed regulation intended to replace the Prospectus Directive 2003/71/EC. The agreement seeks to raise the prospectus exemption threshold enjoyed by debt security offerings to include those with a par value of at least €1,000,000..

As a general rule, the AMF recommends that the choice of language be consistent over the long term and take into consideration the company's corporate shareholder strategy.

#### **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 of 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 I, which was devoted to the principles of financial communication, Part II 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.

### **1 | Disclosures of periodic information** 33

---

Disclosure of annual results	33
Disclosure of half-yearly results	41
Disclosure of quarterly or interim information	44
Components related to periodic disclosures	45

### **2 | Disclosure of estimates or prospective information** 52

---

Disclosure of qualitative prospective information	52
Disclosure of quantitative prospective financial information	53
Disclosure of estimated financial data	54
Profit warnings	56

### **3 | Events associated with a company's business** 57

---

Sales and marketing	57
Production	58
Research & development	58
Employee-related events	58
Financial difficulty	59

### **4 | Corporate governance** 60

---

Reference to a corporate governance code	60
Composition of the executive, board of directors or supervisory board	60
Activities of the executive board, board of directors or supervisory board	62
Compensation and benefits	63
Shareholders' meetings	67

### **5 | Events affecting the shareholding structure** 69

---

Changes in the shareholding structure	69
Buyback and/or disposal by the issuer of its own shares	73
Liquidity contract	76
Dividends	77

## **6** | Risks and litigation 79

---

Risks related to changes in macroeconomic factors	79
Risks specific to the issuer	80
Litigation	80

## **7** | Rumours and leaked information 81

---

Rumours	81
Leaked information	81

## **8** | Mergers and acquisitions 82

---

Acquisitions and disposals	82
Mergers, de-mergers, partial mergers	86
Takeover bids	89

## **9** | Financial transactions 97

---

Capital increases and other issues of securities providing access to capital	98
Financing contracts, debt and securitisation	101
Initial public offerings (IPOs)	104

## 1 ■ DISCLOSURES OF PERIODIC INFORMATION

Disclosures of periodic information are major events in the financial communication of an issuer. Through these disclosures the listed company sends, 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>34</sup>, which takes up the main financial reporting obligations applicable to issuers listed on the Euronext Paris market and includes a section on Alternext.

### DISCLOSURE OF ANNUAL RESULTS

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 sales results, 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 four months following the financial period closing date
Registration document	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	Mandatory	Electronic transmission to the BALO (Bulletin of legal announcements)	Within 45 days of the annual shareholders' meeting held to approve the accounts
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 two months of the approval if filed through electronic means	

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

Companies listed on Alternext shall, within four months of the 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. This information shall be posted on the websites of the issuer and Alternext for a two-year period.

### Press releases

#### *Press releases announcing annual results*

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

- analysis of the variation in consolidated sales 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 II, 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 II, 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).

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 the 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>35</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 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>36</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>37</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 III, Section 1 "*Data confidentiality*".

### Press releases on annual revenue

As annual revenue is likely to be considered insider 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>38</sup>.

### Information meetings

The issuer may present its annual results during information meetings which are held for its main audiences (buy-side or sellside analysts, legal managers, investors, shareholders, journalists, etc.), or through conference calls or webcasts. In its Guide to periodic disclosures by companies listed on a regulated market<sup>39</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.

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

37 – Questions and Answers on the Market Abuse Regulation – ESMA/2016/1129, Section 2 "Managers' transactions" (July 13, 2016).

38 – AMF Position/ Recommendation no. 2016-05 – Guide to periodic disclosures by companies listed on a regulated market (section 5).

39 – AMF Position/ Recommendation no. 2016-05 – Guide to periodic disclosures by companies listed on a regulated market (section 6.3.3).

40 – AMF Position/ Recommendation no. 2016-05, Guide to periodic disclosures by companies listed on a regulated market (section 6.3.3).

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

42 – Article L. 451-1-2-1 of the French Monetary and Financial Code detailed in article 222-3 of the AMF General Regulations.

43 – AMF Position/ Recommendation no. 2016-05 – Guide to periodic disclosures by companies listed on a regulated market (section 6.1).

44 – 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.

In order to ensure wide and continuous dissemination, some issuers broadcast these meetings using either live or delayed transmission, by conference call or on their website through a webcast.

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>40</sup>.

### Financial notice

Besides the press release on annual revenue, the issuer may disclose information about its annual results in the written press 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 reports

Issuers are required to publish an annual financial report<sup>41</sup> and file it with the AMF within four months following their financial period closing date<sup>42</sup>. In corporations with an executive board and supervisory board, the executive board shall approve the financial statements within three 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>43</sup>.

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>44</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 aforementioned **management report** included in the annual financial report shall contain at least the following information:

- the information referred to in article L. 225-100 of the French Commercial Code, i.e., an analysis of the company's business development, results and financial position; the key financial and non-financial performance indicators relevant to the company and the business, such as information pertaining to environmental issues and personnel matters; the main risks and uncertainties the company faces and indications concerning the company's use of financial instruments;

- information regarding the company's capital structure and information likely to have an impact in the case of a public offering (article L. 225-100-3 of the French Commercial Code);
- information referred to in article L. 225-211 of the French Commercial Code related to the number of shares sold and purchased during the financial period within the framework of a share buy-back programme and the nature of the transactions;
- should the issuer be required to prepare consolidated financial statements, the information referred to in article L. 225-100-2 of the French Commercial Code related to the consolidated management report.

Like the registration document (defined below), the annual financial report may serve as the annual report submitted to the shareholders' meeting if it also includes the following information, in particular:

- employee profit-sharing plan (article L. 225-102 of the French Commercial Code);
- compensation and benefits in kind paid to each corporate officer (article L. 225-102-1 of the French Commercial Code);
- a list of all the remits and functions performed by each corporate officer (article L. 225-102-1 of the French Commercial Code);
- information on the way in which the company takes account of the social and environmental impact of its business activities, including the consequences of its business activities and the use made of its goods and services on climate change, as well as its societal commitment to sustainable development, the circular economy, combating food waste and discrimination, and promoting diversity. It must also indicate the collective agreements in place within the company and their impact on the company's economic performance and on employees' working conditions (article L. 225-102-1 of the French Commercial Code<sup>45, 46</sup>);
- 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 table of the current powers granted in connection with capital increases (article L. 225-100 of the French Commercial Code);
- a summary statement of the transactions in company shares made by its executives (article 223-26 of the AMF General Regulations and article L. 621-18-2 of the French Monetary and Financial Code);
- the chairman's report on internal control. This report must be approved by the board of directors or the supervisory board (articles L. 225-37 and L. 225-68 of the French Commercial Code);
- the amount of dividends distributed for the previous three 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);
- agreements between executives or major shareholders and subsidiaries (article L. 225-102-1 of the French Commercial Code);
- significant stakes in companies headquartered in France (article L. 233-6 of the French Commercial Code);

45 – This article was amended by Law no. 2015-992 of August 17, 2015 and by Law no. 2016-138 of February 11, 2016. Article R. 225-105-1 I of the French Commercial Code sets out the information to be disclosed.

46 – "Sapin II" Law no. 2016-1961 of December 9, 2016 authorises the government to take measures up to December 9, 2017 to reorganise and modernise all or some of the information contained in the chairman's report and in the management report.

- 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, any research and development activities (article L. 232-1 II of the French Commercial Code). Existing subsidiaries are also mentioned;
- pension and other annuity commitments contracted on behalf of corporate officers (including details of how these commitments are calculated and an estimate of the potential annuities payable to each corporate officer and the related charges, articles L. 225 102-1 and D. 225-104-1 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 (article L. 225-102-3 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 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 annual shareholders' meeting, which may also include:

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

Furthermore, issuers may add to the annual financial report the chairman's report on internal control as well as the statutory auditors' report on the chairman's report. By doing so, they are exempted from the requirement to disclose that regulatory information separately.

In addition to being filed with the AMF, the annual financial report must as a rule be disseminated through electronic means in accordance to the dissemination methods for regulatory information<sup>47</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>48</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. As part of the directive implementation process, ESMA published a feedback statement in December 2016 in which it recommends using the Inline XBRL format as the European Single Electronic Format (ESEF). All companies listed on regulated markets in the EU will be required to use this format as of January 1, 2020. This format applies to IFRS financial statements only; annual financial reports should be available in XHTML (Extensible Hyper Text Markup Language). A standard on technical issues should be put to the vote of the European Commission during 2017.

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

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

## Registration document

The registration document contains a summary of all legal, economic, financial and accounting information relating to an issuer for a given financial period. The production of a registration document 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 on a regulated market. The production of a registration document can facilitate such transactions and increase the speed of the process.

The contents of the registration document are governed by:

- an AMF Instruction dated October 21, 2016 (AMF Instruction no. 2016-04), which also prescribes the methods for filing the registration document;
- European Prospectus Regulation no. 809/2004;
- Delegated Regulations no. 2014/383 and no. 2016/301 supplementing the Prospectus Directive;
- AMF recommendations; and
- ESMA recommendations.

In particular, the AMF has issued the following recommendations on the topic:

- the Guide for compiling registration documents (AMF Position/Recommendation no. 2009-16, updated on April 13, 2015); and
- the Guide for compiling registration documents specific to medium-sized companies (AMF Position/Recommendation no. 2014-14, updated on April 13, 2015).

There is no deadline imposed by regulations for the production of a registration document. Nonetheless, in practice, the registration document is usually disclosed before the annual shareholders' meeting and within four months of the issuer's financial period closing date to serve as the annual financial report and the management report. When the registration document 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 registration document is disseminated electronically and (ii) the document is archived on the issuer's website, or on a referenced archive site, for a period of ten years (*an example of a press release is set out in Appendix 11 to the Guide to filing regulatory information with the AMF and to its dissemination*). Additional information concerning the preparation of the registration document is presented in the Appendix.

Since Delegated Regulation (EU) no. 2016/301 came into effect on March 25, 2016, issuers are encouraged to file their registration document electronically at [AMF\\_Doc\\_Ref@amf-france.org](mailto:AMF_Doc_Ref@amf-france.org).

## 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, registration document, CSR report, etc.

Hence, the idea of the "integrated report", recently put forward by some bodies, which would have the benefit of presenting 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 emerging international practices, some issuers in France have started to publish an integrated report 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.

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 registration document *"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"*.

### **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 four 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 annual shareholders' meeting:

- (i) a statement that the financial statements were approved without modification by the annual 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, accompanied by the certification of the statutory auditors; and
- (ii) the decision regarding the allocation of net profit.

See also the BALO publication obligations regarding the shareholders' meetings in Chapter 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 two 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<sup>49</sup>;
- the statutory auditors' report on the annual financial statements and, where applicable, the consolidated financial statements;
- the chairman's report on internal control and the statutory auditors' report on the aforementioned report<sup>49</sup>;
- a summary table of powers granted in connection with capital increases;
- the proposed allocation of net income and the resolution approved at the shareholders' meeting.

## 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.

49 – "Sapin II" Law no. 2016-1961 of December 9, 2016 authorises the government to take measures up to December 9, 2017 to reorganise and modernise all or some of the information contained in the chairman's report and in the management report.

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 three 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 registration document on this occasion. The disclosure of half-yearly results, which should take place within three 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 meetings	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 three months following the end of the first half-year period
Updates of the registration document	Optional	Posted on the issuer's website and sent to the AMF	No regulatory deadline

Issuers listed on Alternext shall disclose a report covering the first half-yearly period within four months after the end of the second quarter. Such reports include a balance sheet, an income statement and a commentary on the period and shall be posted on the issuer's and Alternext's website for a two-year period.

## Half-yearly financial report

Issuers are required to disclose half-yearly financial reports and file them within three months of the end of the first half-year of their accounting period<sup>50</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 consolidated 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 reference to the fairness and conformity of the information given in the half-yearly management report with the information provided in the financial statements.

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.

- when 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 provide a misleading view of the assets, the financial position and the 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>51</sup>.

50 – Article L. 451-1-2 III of the Monetary and Financial Code and article 222-4 of the AMF General Regulations.

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

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>52</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 registration document 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>53</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>54</sup>.

Finally, if the issuer releases an update of its registration document which includes all information required in the half-yearly financial report within three 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.

### 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>55</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.

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

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

54 – Article 221-4 V of the AMF General Regulations; an example of a press release is provided in Appendix 7 of its Guide to filing regulatory information with the AMF and to its dissemination dated April 15, 2013.

55 – AMF Position/ Recommendation no. 2016-05 – Guide to periodic disclosures by companies listed on a regulated market (section 4).

## 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 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 of financial partners in any country whatsoever, this information must be immediately brought to public attention by a press release disseminated according to the methods set out in articles 221-3 *et seq.* of the AMF General Regulations and, in particular, via the issuer's website;
- The quarterly financial information at the issuer's disposal may constitute insider information and, as such, must be disclosed as part of ongoing information requirements (see Part I, Section 5 "*Requirement for market disclosure of 'insider 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.

## COMPONENTS RELATED TO PERIODIC DISCLOSURES

### Disclosure of alternative performance measures

Performance indicators not defined by accounting standards, otherwise known as Alternative Performance Measures (APM) 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 regulations, 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 ESMA guidelines issued in June 2015 and reiterated in an AMF Position intended to enhance the comparability, reliability and understandability of APMs (Position no. 2015-12 of December 3, 2015). 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.

On January 27, 2017, ESMA also published its Questions and Answers on alternative performance measures guidelines, particularly stating that these apply to quarterly and interim information.

### 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 subsegments at risk when communicating results to the market<sup>56</sup>.

	<b>IFRS 8</b>
General principle for determining operating segments	Segments are determined on the basis of internal reporting
Quantitative information	At least revenue, segment profit, 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)<sup>57</sup>

AMF Recommendation no. 2013-08, revised on April 15, 2016, summarises this topic. 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.

The pro forma disclosures required will differ depending on whether they are to be included in a prospectus, registration document or (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	Annex II of the European Regulation	Material changes in gross values	25% <sup>58</sup>	Current period, most recent prior period, and/or most recent interim period	No detailed definition, however the possibility exists of providing: balance sheet, income statement and supporting notes, statement of changes in shareholders' equity, cash flow statement	Yes
Registration document	AMF Instruction no. 2005-11	Material changes in gross values	25% <sup>58</sup>			
Financial report	AMF Recommendation 2013-08	Change in consolidation scope	25% <sup>59</sup>	At least the current period (period concerned)	Disclose 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 sales 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 income and the balance sheet of prior years, however no comparable balance sheet)	None (information is disclosed in the notes to the financial statements)

57 – AMF Recommendation no. 2013-08 regarding pro forma information requirements.

58 – The threshold should be assessed on a transaction-by-transaction basis.

59 – The threshold should be assessed based on all transactions.

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:

	<b>Financial report</b>	<b>Registration document</b>	<b>Prospectus</b>
Regulatory texts	Information required by AMF Recommendation no. 2013-08	Information required by Annex II of the European Regulation and AMF Instruction no. 2005-11	Information required by Annex II of the European Regulation
Transaction occurred during the financial year or period concerned	Provide income statement intermediate balances in addition to the information required by accounting requirements	No additional information required except for information concerning acquisitions of isolated assets or disposals, or significant financial commitments not included in financial statements (intended sale) or sale of businesses which cross the 25% threshold but the business transferred is not considered to be closed 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 ER <sup>1</sup> Prospectus + Specific report from the statutory auditors	

<sup>1</sup>ER: European Regulation

### Change of reporting date

Changing the reporting date (financial period closing date) for a financial period results in the presentation of asymmetrical financial information to the market. In its Recommendation no. 2013-08, the AMF recommends the provision of pro forma information on a comparable basis for the main accounting aggregates, to allow the information to be used for forward-looking purposes. If restated information cannot be produced, an explanation for this must be provided in the notes to the financial statements.

By way of an example, the AMF explains that if an issuer decides to change its reporting date from March 31 to December 31, the new financial period will be for a duration of nine months. In such a case, the AMF recommends that the issuer provide restated financial information for the main accounting aggregates based on the 12-month period ending on the new reporting date.

### 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 to 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 the nature of the error, as well as, if such is the case, the financial impact on objectives that may have been communicated.

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.

Regarding the entry into force of new accounting standards (for example, IFRS 15 on revenue recognition, IFRS 16 on leases and IFRS 9 on financial instruments), ESMA and the AMF recommend reporting on expected major impacts on the financial statements and gradually expanding the financial communication on these impacts as the entry into force approaches<sup>60</sup>.

### Financial communication calendar

The AMF recommends that issuers define and publish their tentative 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 below, "*Change in the dividend payment date*").

In any case, the communication calendar is to be updated each year (AMF Position/ Recommendation no. 2016-05 – Guide to periodic disclosures by companies listed on a regulated market).

### Information on Corporate Social Responsibility (CSR)

Pursuant to article L. 225-102-1 of the French Commercial Code, companies whose securities are admitted to trading on a regulated market or whose sales exceed €100 million and who employ over 500 people, must provide details in their management report of initiatives and actions taken by the issuer – or by its subsidiaries or by the companies that it controls within the meaning of article L. 233-3 of the French Commercial Code – to take account of the social and environmental impact of their business activities, including the consequences of its business activities on

climate change, as well as its societal commitment to sustainable development, the circular economy, combating food waste and discrimination, and promoting diversity.

Details of the information to be disclosed, together with the way in which the information is presented, are set out in article R. 225-105-1 of the French Commercial Code, as amended by the decree of August 19, 2016. Required disclosures include information on accidents in the workplace, equal treatment, compliance with International Labour Organisation conventions, the extent of sub-contracting practices, anti-corruption measures and adapting to the consequences of climate change. To facilitate comparability between different periods, data for both the current and prior reporting periods should be presented.

Issuers should also list the information set out in article R. 225-105-1 of the French Commercial Code "*that cannot be produced or does not appear relevant along with all useful explanations*" in a contextualised manner adapted to the company's specific situation.

The AMF's various recommendations on the presentation of social, societal and environmental information by companies listed on Euronext Paris have been consolidated in a single document (AMF Recommendation no. 2016-13 dated November 28, 2016). In its Recommendation, the AMF insists on the need to improve the transparency, relevance and concision of non-financial information as well as the transparency of the approach adopted.

These disclosures must be checked by an independent third-party verifier who issues (i) a statement certifying the presence of all information required in the management report as well as any information omitted or not accompanied by the required explanations, and (ii) an opinion submitted to the shareholders' meeting at the same time as the management report of the board of directors or executive board.

European Directive 2014/95/EU on non-financial information, which is currently being transposed into French law, is expected to introduce new obligations for companies that will be applicable to financial periods beginning on or after January 1, 2017. The scope of companies concerned may be extended to include non-listed companies (French SAS and SARL companies who exceed certain quantitative criteria) and new disclosures may be required, including:

- a description of the business model;
- material CSR risks related to the company's business activities as well as its business relations and its products and services;
- a description of the policies applied in respect of such risks, along with 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; and
- an addition to the annual report consisting of a statement regarding the company's CSR performance which would also be available for consultation free of charge on the website of the issuer concerned.

Generally speaking, once the directive has been transposed into French law, companies will be required to provide more detailed disclosures about the policies in place as well as the results of those policies.

### Oversight plan of parent companies and contractors

Since the entry into force of French Law no. 2017-399 of March 27, 2017 on the duty of oversight 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 an oversight plan (see below for more details) along with a report on the implementation of this plan. These two documents should be included in the report presented to the shareholders' meeting referred to in article L. 225-102 of the French Commercial Code for financial periods beginning on or after March 29, 2017.

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 general 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 total company as made up of companies included in the consolidation]*"; article L. 232-1 II: "*The management report describes [...] the foreseeable developments [of the company]*");

- in the registration document in application of items 20.9 "Significant changes in the issuer's financial or trading position" and 12.2 "Trend information" of Annex I of the Prospectus Regulation (item 20.9: "Describe any significant change in the financial or trading position of the group which has occurred since the end of the last financial period for which either audited financial statements or interim financial statements have been published, or provide an appropriate negative statement item". Item 12.2: "Provide information on any known trends, uncertainties, commitments or events that are reasonably likely to have a material impact 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 II, 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.

### 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>61</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".

61 – 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 the case of financial data classified by an issuer as "forecasts" (versus "objectives") in the registration document, they should be accompanied by a description of the underlying assumptions as well as a report from the statutory auditors.

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.

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, it must be accompanied by a description of the underlying assumptions and a report from the statutory auditors. That report certifies that the forecasts were established on the basis of the provided assumptions and that the accounting methods used are in accordance with those applied by the issuer for the establishment of its financial statements. It should be noted that the Prospectus Regulation defines 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"*.

The notion of "profit forecasts", as defined by the Prospectus Regulation, was the subject of AMF Position no. 2006-17 dated July 10, 2006 and of a Question and Answer document dated October 23, 2007 (AMF Position no. 2007-17). The AMF most notably stated the analytical criteria to be used in order to determine whether prospective financial information qualified as a profit forecast within the meaning of the Prospectus Regulation. It also expressed recommendations concerning the treatment of profit forecasts in the registration document in the case that such is incorporated within a prospectus.

#### **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 companies listed on a regulated market and the principles outlined in its Position/Recommendation no. 2004-04 as amended on December 4, 2013 (AMF Position/Recommendation no. 2004-04, Disclosures of estimated financial data), including in particular the following principles:

- all financial information other than revenue, which is 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;
- 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 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;
- if an issuer communicates estimated financial data in a prospectus that predates the closing of its financial statements by the authorised body, the AMF recommends that the report of the estimated profits be written by its statutory auditors;
- if an issuer communicates estimated financial data in a prospectus that post-dates the closing of its financial statements by the authorised body and predates the report of the statutory auditors on the consolidated or parent company financial statements, the AMF recommends that issuers make the declarations required by the Prospectus Regulation, obtaining a written statement from the statutory auditors to the effect that the estimated financial data is substantially compliant with the definitive figures to be disclosed in the audited financial statements.

Should the issuer choose to include a results estimate in a prospectus, such an estimate must include a description of the underlying assumptions and a report from

the statutory auditors. The report certifies that the estimates were established on the basis of the said assumptions and that the accounting methods used are in accordance with those applied by the issuer for the preparation of its financial statements.

## 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 insider 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>62</sup> that issuers take particular care to respect the obligation of disclosing insider 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.

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, 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.

### 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 its 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 and 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 (sales, 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 social consequences (recruitment, organisational restructuring, etc.), especially on the geographical area concerned (country, region, etc.);
- the business sector of the issuer (for example: 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 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 and the presentation of the contract, commercial agreement or partnership and its impact on sales. An introduction of the customer or partner can 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, the opening or closing of a production line or a 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 as well as 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, license 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 insider 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 or redundancies, 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 information/consultation of 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 information on employee representative bodies must also be complied with.

### FINANCIAL DIFFICULTY<sup>63</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.

Further, 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.

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

## 4 ■ CORPORATE GOVERNANCE

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### REFERENCE TO A CORPORATE GOVERNANCE CODE

The provisions of Directive 2013/34/EC establishing the "comply or explain" principle transposed into article L. 225-37 of the French Commercial Code stipulate that "*when a company refers voluntarily to a code of corporate governance drawn up by organisations representing companies, the report specified in this article shall also set out the provisions that have been ruled out and the reason for this decision*".

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 and the Middlednext Code.

The November 2016 version of the AFEP-MEDEF Code sets out all these recommendations as does the AMF which also recommends that issuers disclose this information in a specific section or table in the registration document or annual report<sup>64</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 2016 Report on corporate governance and executive compensation*).

### COMPOSITION OF THE EXECUTIVE, 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 a board of directors or supervisory board is communicated in periodic information (such information is included in the management report, in the chairman's report on internal control and in the registration document).

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.

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 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 registration document, the chairman's report on internal control and the management report provided for by 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.

#### **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. 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>65</sup>.

65 – AMF Recommendation no. 2010-19 on audit committees dated July 22, 2010. Since June 17, 2016 and the application of European Regulation (EU) 537/2014, the role of audit committees has been expanded.

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 chairman's report relating to the conditions of preparation and organisation of the company's registration document). 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 condemnation pronounced against an executive is, in principle, communicated in the registration document<sup>66</sup>.

In addition, whenever an executive is placed under formal investigation or, more generally, finds himself 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 ability to perform his functions or on the business of the issuer.

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

#### **Executive management or executive board meetings**

In practice, meetings of executive 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 chairman's report on internal control (in the registration document, where

applicable, indicating, in particular, board or committee members, responsibilities and activities during the financial year).

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 a legitimate interest in doing so and the absence of communication is not likely to mislead the public.

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 in listed companies, which was revised in November 2016 ("**AFEP-MEDEF Code**"), recommends that non-executive directors meet periodically outside the presence of 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.

## 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 management report required by the French Commercial Code, in the financial statements, in the chairman's report on internal control and the registration document). 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 25.1).

To avoid the fragmentation of information, the AMF also recommends that companies ensure that explanations provided to justify certain components of executive compensation components 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 registration document or the annual report for the financial period concerned (2016 Report by the AMF, Annual Report on Corporate Governance and Executive Remuneration, p. 45).

The guides for compiling registration documents for compartment A companies (AMF Position/Recommendation no. 2009-16, updated on April 13, 2015) and for compartment B and C companies (mid-caps) (AMF Position/Recommendation no. 2014-14, also updated on April 13, 2015) set out how the "Compensation and

benefits" section of registration documents should be presented. The annual report must also include a chapter on informing shareholders of the compensation received by executive officers. In this respect, the AMF recommends adopting the standard presentation set out in Annex 3 of the AFEP-MEDEF Code for all components of executive compensation.

The allocation and payment of compensation has been increasingly regulated and is now subject to various conditions. The "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 mandate and before any payment is made to him. 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 approving any such deferred compensation is posted on the company's website no later than five days following the board meeting and may be consulted throughout the beneficiary's term of office. 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.

The 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.

### "Say on pay" for shareholders

Under the "Sapin II" Law no. 2016-1691 of December 9, 2016, as from 2018, shareholders at annual shareholders' meetings are required to vote on compensation and benefits of any kind paid or awarded to company executive officers for the past financial period ("**ex-post**" vote). The Law also introduces the principle of an "**ex-ante**" vote for shareholders at annual shareholders' meetings held in 2017 to approve the 2016 financial statements.

### Ex-post vote

The principle of an ex-post advisory vote of the annual ordinary shareholders' meeting on compensation components paid or awarded to each company executive officer in respect of the previous financial year already existed in the AFEP-MEDEF Code. This recommendation in respect of voting on executive compensation will apply for the last time in 2017 to corporations (*sociétés anonymes*) listed on a regulated market. For shareholders' meetings held in and after 2018, the ex-post vote will be governed by article L. 225-100 of the French Commercial Code.

The AFEP-MEDEF Code Application Guide outlines the contents and form of presentations of compensation components put to the vote of the shareholders (Application Guide for the November 2016 AFEP-MEDEF Code of corporate governance for listed companies, as amended in December 2016).

Issuers can choose the way in which they present such information, provided that it is comprehensive. The High Committee for Corporate Governance nevertheless recommends drawing up a specific report, while indicating that it is also possible to include the following in the company's annual report or registration document:

- a specific paragraph detailing the compensation items that are submitted to a vote at the annual shareholders' meeting; or
- a clear, consolidated presentation of the reports from the meeting of the board of directors or supervisory board that were used to decide officers' compensation components.

Pursuant to the AFEP-MEDEF Code, if the shareholders' meeting issues a negative opinion, the board must meet within a reasonable period and examine the reasons for this vote and the expectations expressed by the shareholders. Following this consultation, the board will rule on the modifications to be made to the compensation due or awarded in respect of the previous financial year or the future compensation policy. It must then immediately publish information on the company's website indicating how it has responded to the vote at the shareholders' meeting and report on this at the next shareholders' meeting.

### Ex-ante vote

A new article of the French Commercial Code, L. 225-37-2, introduces an ex-ante vote for shareholders' meetings approving the 2017 financial statements.

Shareholders of companies whose securities are listed on a regulated market must now disclose on a yearly basis the "*principles and criteria used to determine, allocate and award fixed, variable and exceptional components of compensation and any benefits, in respect of executive officers' duties*". New articles of the French Commercial Code, R. 225-29-1 and R. 225-56-1, set out the components comprising, where applicable, total compensation and any benefits.

A report attached to the management report shall present the various resolutions put to the vote of the shareholders, setting out the principles and criteria used to determine, allocate and award fixed, variable and exceptional components of officers'

compensation. This report may be incorporated either into the chairman's report or into the report of the board of directors or supervisory board, as appropriate. An illustrative draft resolution and explanatory statement is included in ANSA Position no. 17-011 (2017 – I, Ex-ante vote on the compensation of certain corporate officers: "Sapin II" Law and implementing decree).

### 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 24.4 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 two 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 two years of compensation (fixed and annual variable) (section 24.5 of the AFEP-MEDEF Code).

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 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 remuneration;
- details of what happens to pending, open, multi-year or deferred remuneration 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).

### 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>67</sup> must notify the AMF and the issuer of any transactions conducted on their own account relating to the shares or debt instruments of that issuer or to derivatives or other financial instruments linked thereto.

67 – 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 management of insider information (section 2.2.2).

Article 10 of the Delegated Regulation (EU) no. 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>68</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 – Managers' transactions referred to in article 19 of the 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.

## SHAREHOLDERS' MEETINGS

### 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 (proposal no. 4 of AMF Recommendation no. 2012-05 of July 2, 2012, amended on February 11, 2015).

The French Commercial Code, moreover, sets out a specific framework for electronic voting by correspondence and by proxy<sup>69</sup>.

At the latest, 15 days prior to the initial notice of a shareholders' meeting (or six days in the case of a shareholders' meeting for the approval of a public offering) and, at the latest, six days prior to a second notice (or four 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>70</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, the location and the time of the shareholders' meeting through a notice published in a newspaper with national circulation. Such disclosure should be made simultaneously at the time of 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 (*an example of such a press release is included in Appendix 5 of the AMF Guide to filing regulatory information with the AMF and to its dissemination*).

### Written and oral questions from shareholders

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 insider 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.

### Meeting minutes

The AMF recommends the posting of summary minutes of shareholders' meetings on the company's website within two months of the meeting and to draw up the full report as soon as possible and within four months of the meeting (Proposal no. 6 regarding AMF Recommendation no. 2012-05 of July 2, 2012, amended February 11, 2015).

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

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

## 5 | EVENTS AFFECTING THE SHAREHOLDING STRUCTURE

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### 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 regulatory 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.

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 (articles 221-1 1 m) and 221-3 of the AMF General Regulations).

The Florange Law of March 29, 2014 introduced the automatic granting of double voting rights 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 two 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, which is also available on its website. It appears that the AMF has not yet adapted this form to all those subject to the notification requirement (see below), since the form still features a section for the party ultimately controlling the notifier.

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.

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 six 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 six 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 executive board or the supervisory board. In the event of a change in intent within six 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>71</sup>

In principle, within the framework of periodic information, the issuer discloses the composition and possible changes to its shareholding structure upon publication of its registration document.

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.

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 shareholder 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 shareholder structure.

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

### **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 (article 223-18 of the AMF General Regulations) within five trading days of the signature of the agreement in question.

However, the issuer is under no obligation to disclose to the market either the signature or termination of a shareholders' agreement of which it is the subject. In principle, the issuer's disclosure of shareholders' agreements is made in periodic information (registration document).

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 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 five 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>72</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.

### 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 registration document, 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.

### Decision to implement a share buyback programme<sup>73</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. 225-209 and L. 225-209-2 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 provisions aimed at prohibiting market abuse. 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.

72 – Article 241-1 *et seq.* of the AMF General Regulations.

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

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

- to reduce the issuer's capital;
- to meet obligations arising from debt financial instruments that are exchangeable into equity instruments; or
- to meet obligations arising from share option programmes, or 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 regarding market manipulation or attempted market manipulation does not apply to behaviour carried out for legitimate reasons set out by the competent authority in compliance with an accepted market practice. In the AMF's view, the only accepted market practice in this respect is the buyback of shares under a liquidity agreement.

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

The AMF General Regulations and Delegated Regulation no. 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 the said Regulation (buybacks qualifying for an irrefutable presumption of legitimacy) using an effective and complete form of disclosure within seven trading days of the transactions being carried out. Transactions are to be presented aggregately (by day and by market) and described in detail. Such information is to be posted on the issuer's website and must be made available to the public for five 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. Further, 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 L. 225-212 of the French Commercial Code and article 214-4 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 shall 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 II, 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 (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 III, Section 1 "Data confidentiality");
- any period during which the issuer decides to defer publication of insider 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 (AMF Position/Recommendation no. 2017-04, Guide relating to trading by issuers in their own shares and stabilisation measures, section 1.5.3).

### 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, 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 (ESMA70-145-76, April 25, 2017) which is to be taken into account by national authorities that have introduced liquidity contracts as an accepted market practice. The AMF will therefore shortly be tightening the conditions for putting in place share liquidity contracts as accepted market practice pursuant to article 13 of the Market Abuse Regulation. This is to comply with ESMA recommendations and to ensure consistent application of the Market Abuse Regulation in the European Union.

## DIVIDENDS

### Dividend payments

The draft resolution submitted to the annual shareholders' meeting concerning the distribution of a dividend is attached to 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 dividend payment may be included in the issuer's press release announcing the half-yearly or quarterly results, as appropriate.

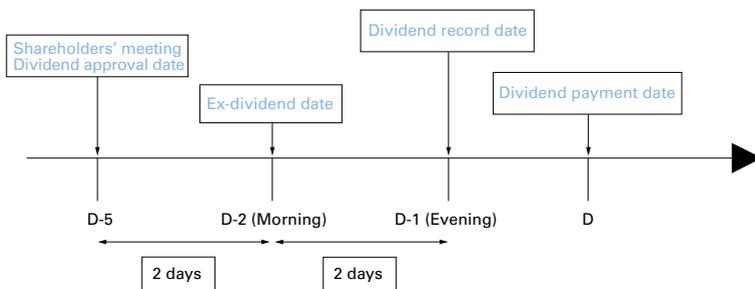
The AMF<sup>74</sup> and ESMA<sup>75</sup> have indicated that because of their potential impact on the valuation of financial instruments and the related derivatives, dividend information such as (i) information concerning the amount of the proposed and final dividend, the form of the dividend payment, 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 insider 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).

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

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

### 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 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>76</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 registration documents, the AMF sets out its recommendations for the drafting of the "Risk factors" section of registration documents.

### RISKS RELATED TO CHANGES IN MACROECONOMIC FACTORS

The issuer shall in principle disclose to the market, on a regular basis, within its periodic information, information that will enable 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" section of the registration document may refer to relevant passages of the issuer's financial statements for the description of these market risks.

In addition to this information, the chairman's report on internal control must also report on risk management procedures<sup>77</sup>. For reporting years ending on or after December 31, 2016, this 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<sup>78</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.

77 – The "Sapin II" Law authorises the French government to take measures, up to December 9, 2017, to simplify, reorganise and modernise all or part of the information contained in the chairman's report and in the management report.

78 – See article L. 225-37 of the French Commercial Code in the version in force since December 31, 2016, deriving from Law no. 2015-995 of August 17, 2015 relating to the energy transition to promote green growth. Pursuant to this law, these provisions will only apply to French companies with boards of directors. However, guidance is unanimous in considering that this was an oversight and that the report prepared by the chairman of the supervisory board should also describe these risks for financial years ended on or after December 31, 2016.

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.

### RISKS SPECIFIC TO THE ISSUER

Disclosures relative to risks specific to the issuer are provided in principle within its periodic information (the information will be shown in the management report, the annual financial report and/or the registration document or even in an updated 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 environmental regulations;
- litigation with the French or European administrative authorities;
- litigation with employees or their representatives.

In principle, the issuer's communication concerning any major litigation is made within its periodic information (registration document 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

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### 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 III, Section 3 "*Financial and digital reporting*" 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 insider information*, where a rumour explicitly relates to insider 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

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### 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 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 insider 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 insider 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 shall sign a confidentiality agreement aimed at preventing the dissemination and use of insider information. 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 sensitive confidential information communicated between the future investor(s) and the company in the prospectus. 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 insider 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 of the acquisition or disposal for the issuer.

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 and 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 made by the publication 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 2 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 transmit 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<sup>79</sup> 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 two 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 two 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 November 2016, states that in the event of a negative vote at the shareholders' meeting, the board must immediately publish a press release on its website setting out how it intends proceeding 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 afore-mentioned 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, DE-MERGERS, PARTIAL MERGERS

It should be noted that, in accordance with AMF Instruction no. 2016-04 (Information to be disseminated when financial securities are offered to the public or admitted to trading on a regulated market), in the case of a merger or partial merger, the obligation to communicate depends on the number of securities given as compensation for the transaction.

- When securities issued or disposed of in a merger or partial merger represent less than 10% of securities of the same category already admitted for trading on a regulated market, the issuer must, at the very least, draft and disseminate a press release reporting the number and nature of those instruments given, as well as the reasons and terms and conditions of the transaction prior to the shareholders' meeting called to authorise the transaction or, at the very latest, on the day of the meeting of the executive body deciding on the issue of the securities concerned. As set out in article 221-5, the press release is to be filed with the AMF prior to its dissemination and published in accordance with the rules applicable to regulatory information.
- When securities issued or disposed of in a merger or partial merger represent more than 10% of securities of the same category already admitted for trading on a regulated market, the issuer must, in addition to the steps set out hereafter, prepare a document containing the information stipulated by Annex II of AMF Instruction no. 2016-04, "Document E".

### 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 made by the publication 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. Certain takeover bids may be carried out in simplified form, which allows, for example, the review and negotiation periods to be reduced.

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.

Buyout bids (*offres publiques de retrait* – OPR) entail the withdrawal of an issuer's listing on a market via the acquisition by the majority shareholder of the shares held by minority shareholders. A buyout bid may be launched when the majority shareholder(s) hold(s) over 95% of the issuer's voting rights, if the issuer's articles of association are amended (e.g., conversion of a corporation (*société anonyme*) into a limited partnership (*société en commandite par actions*), or if the issuer's major assets are sold. The majority shareholders may be required to launch a buyout bid further to a decision of the AMF acting on a request of the minority shareholders.

Combined public offerings (*offres publiques mixtes*) comprise both an OPA and OPE.

### Events concerning the offeror

#### ■ Rumours

The reform of takeovers put in place by the March 31, 2006 Act introduced an anti-rumour mechanism ("put up or shut up") into French law, the details of which are set out in articles 223-32 *et seq.* of the AMF General Regulations.

This mechanism enables the AMF, in particular when the market in an issuer's securities shows significant unusual variations 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 six 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.

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 without foundation, 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 shall 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 works council information/consultation procedure, and (iv) whether the offeror intends to delist the target company's shares or not.

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 in response must either be published in a national daily financial newspaper or made available free of charge to the public at the offeror's registered office and at the offices of the institutions sponsoring the offer (*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 registration document, the disclosure document will essentially consist of an update of the information in the registration document.

#### ■ 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 five 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 five 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 five 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 offer document published in response 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

Upon the launch of a friendly public offering, market disclosure by the target is mandatory pursuant to applicable regulations. Its content and procedures are set by regulation.

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 offer document in response (see below, "*Offer document in response*").

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 offer document in response may not be established jointly with the offeror's offer document and must be filed separately.

#### ■ **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.

#### ■ **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 document in response.

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. Since the Florange Law was enacted on March 29, 2014, this press release must also mention the works council's opinion on the takeover bid, where applicable.

This communication is optional for the target company and may be made at its complete discretion.

#### ■ **Offer document in response**

Publication of an offer document in response is mandatory pursuant to regulations concerning public offerings. The contents of the offer document and the procedures for its dissemination are set by regulation. The Florange Law of March 29, 2014 introduced the requirement for the offer document in response to mention, where appropriate, (i) the opinion of the target company's works council, (ii) the chartered accountant's report for the company's works council, and (iii) any measures the target company has implemented or decided to implement that may frustrate the offer. Should the target company implement or decide to implement measures that may frustrate the offer after the offer document in response has already been published, it must issue a press release to inform the market.

The draft offer document in response must in principle be filed with the AMF no later than five trading days after publication of the AMF's statement certifying that the offer is compliant. As an exception, when an independent appraiser is designated pursuant to applicable regulations, the target company must file the draft offer document in response no later than 20 trading days after the offer is filed. The AMF will issue its statement of compliance for the offer no earlier than five trading days after the filing of the target company's draft offer document in response. Where there is a requirement to inform and consult the relevant companies' works councils in accordance with the Florange Law of March 29, 2014, the draft offer document in response must be filed with the AMF at the latest of the following dates: (i) when an independent appraiser is designated, 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.

As soon as the draft offer document in response has been filed with the AMF, the draft offer document in response 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 offer document in response is also published on the websites of the target company and the AMF. The definitive offer document in response is disseminated to the public after receiving the AMF's approval.

The offeror's definitive offer document in response 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 offer document in response 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 integral dissemination, specifying the procedures for access to the definitive offer document in response.

The definitive offer document in response 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 offer document in response 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 offer document in response, no later than the day before the opening of the offer. When the target company publishes a registration document, this disclosure document will consist essentially of an update of the information included in the registration document.

#### ■ 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".

An offer of securities to the public consists of:

- a communication addressed to persons which presents 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;
- the placement of securities by financial intermediaries.

A certain number of exemptions from these requirements are provided for in articles L. 411-2 *et seq.* of the French Monetary and Financial Code.

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 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.

It should be noted that simplified prospectuses are currently being reviewed at EU level. The proposed regulation intended to replace the Prospectus Directive aims to:

- (i) create a universal registration document for issuers whose securities are admitted to trading on a regulated market that give them additional time for the approval of their securities note and condensed summary; and
- (ii) create prospectuses drawn up on the basis of condensed versions for registration documents and securities notes, in the form of responses to a standardised questionnaire for equities and debt securities issued by SMEs (for which the definition will be expanded).

Since Commission Delegated Regulation no. 2016/301 dated November 30, 2015<sup>80</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 now be filed in electronic format.

80 – 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).

## 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.

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. 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 the total number of shares likely to be admitted, over a rolling 12-month period, represents less than 10% of the number of shares of the same category already admitted for trading on the same regulated market.

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 situation 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<sup>81</sup> publishing a press release indicating the amount drawn down, the issue price, the number of shares issued and the dilutive impact of the issue.

### 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, 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.

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 no. 2013-03 – Information required by companies when issuing equity securities or securities giving access to the capital of the issuer without an AMF-approved prospectus).

The proposed regulation intended to replace the Prospectus Directive<sup>82</sup> nevertheless plans to increase prospectus exemption thresholds. Pursuant to the agreement with the European Parliament in December 2016, issuers making a public offering within the European Union for a total amount of less than €1,000,000 (versus €100,000 currently) would be exempt from issuing a prospectus in accordance with the Prospectus Regulation. Each Member State would however be free to set this threshold in its national law at a total amount of between €1,000,000 and €8,000,000 within the European Union (the threshold is currently set at €5,000,000). The threshold exempting issuers from preparing a prospectus for fungible securities would also be raised from 10% to 20% of dilution.

82 – The proposed regulation of the European Parliament and of the Council concerning the prospectus to be published when securities are offered to the public or admitted to trading. On December 7, 2016, an agreement was reached between the three European institutions on the final text of the Prospectus Regulation. The Council will adopt the definitive version once the European Parliament has approved it.

## 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 registration document).

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.

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. The content and procedures for this disclosure are set 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 its periodic information (financial statements and registration document).

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 registration document).

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 OFFERINGS (IPOs)

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 communication does take place, the issuer must ensure that this communication remains institutional and that it avoids resembling a public offer prior to obtaining approval.

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>83</sup>.

### Initial public offering of the issuer: the steps in the offering

Disclosure by the issuer is mandatory pursuant to applicable regulations. The content and procedures for this disclosure are set by financial market regulation.

The issuer's communication includes dissemination of a registration document (*document de base*) and a securities note (*note d'opération*) – including a summary – whose content is set by AMF regulations.

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 date for obtaining approval for the offering. The AMF notifies the issuer of approval for registration. This approval for registration is published by the AMF. The registration document is disseminated as soon as notification of registration approval is received. The issuer may, however, postpone its publication if it is able to ensure the confidentiality of significant information that it contains in the meantime. In any case, the registration document is disseminated no later than five trading days before the planned date for obtaining approval.

The draft securities note and the summary must be filed no later than five trading days before the planned date for obtaining approval. The securities note may be disseminated as from the date of obtaining approval and must be disseminated at least six trading days before the closing of the transaction.

Any new fact that may affect investors' assessment and that occurs after registration 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 relevant approval of the prospectus (registration document and offer document) has not yet been issued by the AMF.

In practice, this period usually covers two weeks before the transaction and up to forty days after the subscription price is set. It is not the same as a quiet period (see Part III, 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.

## 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 provide 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 and operating environment;
- adding value internally by highlighting market information that is useful to management;
- ensuring the understanding of the Investor Relations role internally, notably regarding the management of financially sensitive information.

This section of *Observatoire de la Communication Financière's* 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.

# Contents

## Part 3

### **1 | Calendar and organisation** 110

---

Financial communication calendar	110
Coordination of content and messages	111
Internal approval process	113
Security of data and information to be published	113
Data confidentiality	113

### **2 | Financial marketing and targeting** 118

---

Identification of the shareholder base	118
Targets for investor relations	119

### **3 | Implementation of financial communication** 124

---

Involvement of executive management	124
Relations with financial analysts and investors	125
Relations with individual shareholders	130
Annual shareholders' meetings	132
Financial and digital communication	135

### **4 | Providing management with feedback on market perceptions** 138

---

Dissemination of analyst research	139
Monitoring of market consensus	139
Feedback and perception surveys	139
Competitive market watch	140
Share performance	140
Informing the board of directors or supervisory board	141

## 1 ■ CALENDAR AND ORGANISATION

### FINANCIAL COMMUNICATION CALENDAR

The financial communication calendar is governed by regulatory disclosure deadlines (see Part II, 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.

In recent years, the reporting of annual and half-yearly results has been speeding up, 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. Nonetheless, many companies still do not have a consolidation process allowing them to provide results as rapidly as is required.

However, as of January 1, 2015, the regulatory disclosure obligations for listed companies have been eased following the French legal transposition of the Transparency Directive, which was revised in 2013. The regulatory deadline for the disclosure of quarterly financial information no later than 45 days following the end of the first and third quarters has been dispensed with and the legal deadline for the disclosure of half-year results has been extended to three months after the end of the first half.

Beyond the legal requirements, the AMF has issued recommendations on the disclosure of quarterly financial information and the disclosure of annual sales figures<sup>84</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 the:

- 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 a foreign country, etc.);

- simultaneity with other events organised by the company or in which it is participating (trade shows, conventions, etc.);
- "logistical" considerations, such as the availability of service providers or meeting rooms.

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 market capitalisation, free float or relative contribution to consolidated earnings), it would be desirable 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 at the very least, to coordinate their communications.

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, and in many cases issuers also mention the date of the next disclosure of periodic information in their related press releases.

## **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 corporate communication (particularly concerning media relations and internal communication), and also with other internal representatives, including those responsible for corporate social responsibility, human resources or even 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 preferable that the financial communication tools are devised in close liaison with the legal affairs department and, where required, the corporate secretary's office.

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.

In order to facilitate the sharing of information, Investor Relations officers must raise awareness among all stakeholders about their role and the relevant regulations, and this requires internal organisation through the application of established processes known to the functional and operational departments.

### **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 approval and, insofar as is possible, be present at the meeting;
- Investor Relations must play the role of instructor, and avoid using language that is overtly 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 validation of the Investor Relations officer).

### **Employee representative bodies**

Issuers with a company or group works council are legally required to provide these councils 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 the validation of information to be published and ensures its overall consistency.

## 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 and until their external publication, as part of the company's responsibility to provide periodic and ongoing information. In view of this, it is essential to perform regular audits of the reporting, approval and control processes.

## DATA CONFIDENTIALITY

### 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 understood and followed by the various people who may be in contact with analysts, the press or investors.

The coordination and approval process of the company's information should be documented. 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 and 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 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 insider information, and, with regard to executives, to 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 measures related to a financial transaction, which could be set out in a special prevention procedure<sup>85</sup>.

This code should include a definition of insider 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 insider information have been fulfilled.

The company should 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 II, 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 insider information that would breach the principles of the Regulation Fair Disclosure (Regulation FD) introduced by the SEC.

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 period - see concept of "embargo" below) prior to the publication of a company's annual and half-yearly results and, where applicable, quarterly financial information, in section 1.6.1 of its Guide to ongoing information and the management of insider information<sup>86</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 insider information. The company's main 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.

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 I, "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.

### 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.

In its Position/Recommendation regarding ongoing information and the management of insider information<sup>87</sup>, the AMF recommends introducing closed periods of 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);

86 – AMF Position/ Recommendation no. 2016-08.

87 – AMF Position/ Recommendation no. 2016-08 – Guide to ongoing information and the management of insider information.

- and all senior managers, i.e., all persons who have regular access to insider 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 insider 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 insider 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 by submitting a written request describing said 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>88</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>89</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 insider information and who are working for the issuer under an employment contract, or otherwise performing tasks through which they have access to insider information, such as advisers, accountants or rating agencies<sup>90</sup>.

The list must be kept in electronic format and retained for a period of five 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:

88 – Delegated Regulation [EU] no. 2016/522 of December 17, 2015.

89 – See Delegated Regulation (EU) no. 2016/522 of December 17, 2015, in particular article 9.

90 – Market Abuse Regulation, article 18.1.

- 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 indicate:

- the date and time at which the persons in question obtained access and ceased to have access to insider 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 insider information. A separate section entitled "permanent insiders section" may also be inserted, specifically listing the individuals who have access at all times to all insider 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

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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, suggesting 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, which contributes 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, 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 are covered only by generalists, rather than by industry specialists. Moreover, the smaller a company is, the greater the investors' desire to meet its executive management. Lastly, small companies 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. 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.

The draft EU Directive on shareholder rights, which had been under discussion since 2014 and which was finally adopted by the European Parliament on March 14, 2017, then by the Council of the European Union on April 3, 2017, upholds the right of all listed companies to know the identity of their shareholders. The European Commission is expected to adopt implementing acts in order to clarify the practical arrangements for implementing these new provisions.

## TARGETS FOR INVESTOR RELATIONS

### Sell-side: analysts and sales force

Sell-side financial analysts are employed by brokerage firms, which are generally owned by 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 contact with these sales forces, whose power 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, 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.

### **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 the funds collected from their clients (individuals, insurance policyholders, pension 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, 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 use to evaluate 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), income, momentum, index, hedge and socially responsible investment. It should be noted that this classification system applies to each fund managed by a financial institution.

The time that should be spent by management on 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 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 try to detect any unusual stock market movements that could indicate that an activist fund is in the process of acquiring stakes or any other indication of their activity on the markets, and alert 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.

### **"Passive" funds**

Passive funds, which are better known as 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 macro-economic view with a top-down approach.

### **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 pursuant to articles L. 225-102-1, R. 225-105 and R. 225-105-1 of the French Commercial Code.

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.

The use of SRI data is also becoming increasingly 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 Euronext Vigeo). The agencies' clients are institutional investors, whose investment criteria are focused entirely or in part on this theme, and issuers seeking to add this extra dimension to their corporate communication.

Specific roadshows, coordinated with internal environmental and corporate social responsibility experts, can be organised using non-financial key performance indicators for these specialist investors.

### **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 and currency 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 specially organised 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 insider information.

### **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>91</sup> that specialised 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 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 character.

They are subject to the same legal obligations as those presented in Part I, 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.

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, on a pure registered basis, etc.).

The law sets out the methods to be used for calculating the proportion of capital held by employees<sup>92</sup>.

91 – AMF Recommendation no. 2015-09 – Communication by companies to promote their securities to individual investors.

92 – See Law no. 2015-990 of August 6, 2015, amending article L. 225-102 of the French Commercial Code. Now included in the calculation of shares transferable (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 prior to August 7, 2015.

### 3 | IMPLEMENTATION OF FINANCIAL COMMUNICATION

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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 particularly 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 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. It is increasingly common for brokers to offer to organise corporate access with executives in order to better position themselves in the eyes of the investors. Such meetings may give rise to an increase in stock market orders.

## **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 the investment relations department reveals information that may be considered insider information, a press release should be promptly published to publicly disclose that information. 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 published by the AMF<sup>93</sup> 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.

### **Telephone meetings**

Analysts frequently contact issuers in order to update their valuation models, confirm an assumption or react to some 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 dissemination of insider information.

### Information meetings

An information meeting (see Part II, Section 1) with financial analysts, investors and, if applicable, journalists, is usually organised for the publication of annual and half-yearly 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 physical meetings, although new communication channels make it possible to hold conference calls, particularly for the quarterly and half-yearly results. These meetings may be held in either the morning or afternoon depending on whether North American analysts and investors are to participate.

During the preceding quiet period (see Part III, Section 1), Investor Relations officers and management work together to prepare the meeting (see Part III, Section 3): all messages are approved (see Part III, Section 1) and all materials are put together in both French and English (press release, presentation, Q&A, consolidated financial statements, etc.).

The results press release is distributed before the meeting starts, either before the opening of the stock market or after the close of trading. A conference call may be organised with the main press agencies and it is recommended that the meeting be broadcast live over the internet (with simultaneous translation) to ensure that information is disseminated as widely as possible.

Analyst and investor presentations or slide shows should be systematically and immediately posted on the issuer's website, at the very latest at the outset 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>94</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 (*Société Française des Analystes Financiers* – 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.

## One-on-one meetings

Individual 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.

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 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.

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, 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, who may also participate in roadshows alone.

### ■ 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 experts in sustainable development.

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, an expert to explain all of the technical ramifications of the transaction.

As previously mentioned, facilitating investors' access to management teams is fundamental in establishing a strong 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.

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 small group 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.

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>95</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 registration document (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 give companies an opportunity to present their activities and answer questions.

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, etc.), a condensed annual report, and notices of shareholders' meetings. Similarly, shareholders may also be invited to discover the company's business activities (site visits), 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 of conveying the strategy and the communication tools available to them, and will 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 and financial notices, 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, and, if the shares are held for more than two years, possibly even qualify them for double voting rights or 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 place where financial and institutional communication meet.

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.

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.

### **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, including those recently recommended by corporate governance opinion leaders or issued by institutional investors themselves. 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. These advisors disclose their general voting policy each year<sup>96</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 the 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.

96 – AMF Recommendation no. 2011-06 of March 18, 2011 on proxy advisors.

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.

### **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 may also report on the duties performed by the board and its specialised committees.

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. Shareholders' meetings may also 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.

### **Communication following shareholders' meetings<sup>97</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 two 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 the financial communications calendar. 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 four months after the meeting. These recommendations do not apply to mid-cap companies, but may be used as a guideline.

Certain issuers post recordings of the speeches given by the main speakers or a replay of the webcast of the shareholders' meeting, which may or may not include the Q&A section, on their websites.

## 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 shareholders of listed companies, listed companies are required to have a website.

Corporate websites provide companies with a crucial communication tool to present their products, businesses and strategy, 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 ten years. Issuers must also comply with the requirements of article 17.1 of the MAR Regulation, according to which they must post and maintain on their website for a period of at least five years, all inside information they are required to disclose publicly.

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<sup>98</sup> which stipulates that information published on corporate websites must provide complete information, a balanced presentation, be easy to access and 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.);

98 – AMF Position/ Recommendation no. 2016-08 – Guide to ongoing disclosures and the management of insider information (section 1.6.4.1).

- 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 precedence and the level of relevance. In particular, the AMF recommends that companies follow this practice when disclosing ratings attributed by rating agencies, credit rating analyses or the relevant 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 insider 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 with a view to:

- 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 an "FAQ" section, for the most frequently asked questions;
- providing the option of contacting the financial communications department (email address, phone number);
- creating an efficient search engine and other technical features (RSS feed, 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.

### **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 materials 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.

### Webcasts

Webcasts allow issuers to broadcast events over the internet in audio or video form, either via streaming or in playback form. Users can listen to or view these events on their computer screens via a multimedia player. 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 because the event itself must be filmed by a team of specialists. Conference brokers are increasingly providing issuers with the chance to webcast their events and assume responsibility for the organisation from a technical and budgetary standpoint.

### 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>99</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" 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;

99 – AMF Position/ Recommendation no. 2016-08 – Guide to ongoing disclosures and the management of insider 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 insider 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>100</sup> that issuers can only disclose insider 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 PERCEPTIONS

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"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.

100 – AMF  
Position/

Recommendation  
no. 2016-08

– Guide to ongoing  
disclosures and  
the management  
of insider  
information  
(section 1.6.4.2).

95 – Articles 223-1  
to 223-10-1 of the  
AMF General  
Regulations.

Investor Relations officers must decide when and how to provide this information, which may depend on the topics and recipients concerned.

### **DISSEMINATION OF ANALYSTS' RESEARCH**

Investor Relations officers provide the company's executives and occasionally its board of directors with full copies of the most relevant research (and summaries of all other research).

### **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. These forecasts are collected and published by specialist private firms, which results in varying consensus. Issuers may regularly update the consensus of the analysts that regularly monitor their shares without necessarily publishing it.

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 II, 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. Some issuers post the market consensus on their website. 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.

### **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 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 a perception survey of the financial community. This survey may concern the company's financial communications or a specific problem such as the pertinence of its strategic orientations or choice of performance indicators.

### **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 communications 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 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, 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 Best Practices Guide<sup>101</sup>). 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.

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.

101 – Report on relations between executive management and boards of directors on financial communication, jointly produced by the French Institute of Administrators (IFA) and the French association of investor relations (Cliff) in September 2010.

# Appendix

## 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 registration document each year<sup>1</sup>. The registration document is an overview that serves as a communication tool disclosing all 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 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 registration document, as more than half the companies listed on Euronext Paris do so and such a document may now be prepared by companies listed on Alternext Paris. This document offers several advantages:

First, the registration document 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 deadline for approval is shortened to five days.

Second, the registration document 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 and journalists have access to complete and up-to-date information on companies.

Nevertheless, compiling a registration document 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 registration document and the filing or registration requirements are defined by AMF Instruction no. 2016-04 of October 21, 2016. This instruction is based on the following regulations:

- Commission Regulation (EC) no. 809/2004 of April 29, 2004 (Prospectus Regulation) implementing Directive 2003/71/EC, and for some sections, AMF and ESMA<sup>2</sup> positions and recommendations;
- the AMF General Regulations, in particular article 212-13.

<sup>1</sup> – Article 212-13 of the AMF General Regulations.

<sup>2</sup> – The CESR published a series of recommendations to promote the consistent implementation of the Prospectus Regulation in Europe. These recommendations were updated by the ESMA in March 2013 and are regularly supplemented by answers to frequently asked questions.

The AMF refers to these recommendations in article 212-7 of its General Regulations and in its Guide for compiling registration documents.

The AMF has published two guides for compiling registration documents:

- Position/Recommendation no. 2009-16 of December 10, 2009, amended on April 13, 2015;
- Position/Recommendation no. 2014-14 of December 2, 2014, updated on April 13, 2015 (which replaces Position/Recommendation no. 2008-12 of January 9, 2008), specifically drafted to guide mid-cap companies (companies listed on segment B or C of Eurolist) in compiling their registration documents.

## CONTENT OF THE REGISTRATION DOCUMENT

The information to be included in the registration document varies according to the type of securities listed on the regulated market of Euronext Paris.

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 Annex I of the Prospectus Regulation. The minimum disclosure requirements set out in this Annex, which is broken down into 25 items, are more extensive than those set out in the other Annexes to the Prospectus Regulation.

These other Annexes may be used by issuers with only the following listed securities:

- debt and derivative securities with a denomination per unit of less than €100,000 (Annex IV);
- asset-backed securities (Annex VII);
- debt and derivative securities with a denomination per unit of at least €100,000 (Annex IX).

Proportionate disclosure guidelines for small-cap and small- and medium-sized companies (unless the company has submitted its first request for admission to trading on Euronext) is included in Annexes XXV to XXVII of the Prospectus Regulation.

Article 222-9 of the AMF General Regulations also requires that the registration document include the chairman's report on internal control, and the statutory auditors' report related thereto.

In the event of a change in the scope of consolidation that has an impact of more than 25% on the financial statements, the issuer must also present pro forma information in the registration document (article 222-2 of the AMF General Regulations). This pro forma information must be included in the registration document if it is not included in the IFRS financial statements: in practice, when the change in the scope of consolidation is effective after the latest closing date, but before the filing of the registration document, or when the company has made significant financial commitments.

## GUIDE FOR COMPILING REGISTRATION DOCUMENTS

The AMF published an update on April 13, 2015 to the Guide for compiling registration documents (Position/Recommendation no. 2009-16), including its positions and recommendations on the following issues:

- Positions:
  - Parent-subsidiary relationships
  - Voting rights restrictions and multiple voting rights
- Recommendations:
  - Recommendation on off balance sheet commitments
    - Recommendation on risk factors
    - Recommendation on the description of main activities and markets
    - Recommendation on the description of ownership structure
    - Recommendation on the disclosure of compensation of corporate officers
    - Recommendation on the creation of shareholder value
    - Recommendation on insurance and risk hedging
    - Recommendation on pledges, guarantees and collateral
    - Recommendation on risks and disputes: provisioning method
    - Recommendation on related-party agreements

This guide does not apply to mid-cap companies for which the AMF published, on December 2, 2014 and updated on April 13, 2015, a Guide for compiling registration documents adapted to their specific needs<sup>3</sup>. The guide contains all the regulations applicable to compiling a registration document for mid-caps.

The AMF defines mid-cap companies as companies having a market capitalisation of less than €1 billion (segments B and C of Euronext Paris). However, if a company exceeds this threshold or falls below it, the change in the rules applying to the company will only apply as from the financial year following that in which the threshold was crossed.

The Guide for compiling registration documents adapted to mid-caps sets out five major principles (materiality, completeness, consistency, understandability and comparability) for the compilation of a document summarising financial information that gives meaning and relevance to disclosed information and meets the various needs of the stakeholders. The guide was prepared to take into account the specific needs of mid-caps by:

- overhauling the presentation of the registration document so as to provide a greater focus on the issuers' activities;
- limiting the number of recommendations;
- simplifying references to different sections in the registration document and to other legal documents.

<sup>3</sup> – Position/ Recommendation no. 2014-14 which replaces the guide initially published on January 9, 2008.

It also features a model for the layout of a registration document featuring six chapters and a correspondence table in compliance with European prospectus requirements and French requirements concerning the management report.

**RELATIONSHIP WITH OTHER ANNUAL PUBLICATIONS**

The registration document may take the form of a **specific document** or an **annual report to shareholders**, provided it contains all of the information required and that the promotional presentation of the issuer does not compromise the requisite objectivity of the information supervised by the AMF<sup>4</sup>.

The registration document does not have to be published within a specific period. However, if it is published within four months following the end of the financial year and includes all the information required for the annual financial report, **the registration document 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.

Publication of the registration document 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 registration document set out above, issuers may add optional information at their discretion to derive maximum benefit from their annual publications.

The table below lists all the documents that may be included in the registration document, differentiating between mandatory and optional documents.

	<b>Mandatory documents</b>	<b>Optional documents</b>
RD <sup>5, 6</sup>	<p>Content described in the "content of the registration document" section above, such as the:</p> <ul style="list-style-type: none"> <li>• Consolidated financial statements for the last three years (with the possibility of incorporating those for years Y-2 and Y-1 by reference<sup>9</sup>) and the related statutory auditors' reports</li> <li>• Chairman's report on internal control and the related statutory auditors' report</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>• 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 registration documents all mandatory information likely to be required in the period in question.

4 – AMF Instruction no. 2016-04 of October 21, 2016 (Disclosure requirements for public offerings or financial instruments admitted to trading on a regulated market).

5 – RD: "registration document".

6 – The financial statements for previous years may be incorporated by reference, provided they have already been published in a document filed with the AMF.

Depending on the documents which are included in the registration document, said document is referred to as a:

- "2-in-1" registration document when it is also used as the annual financial report (AFR); or
- "3-in-1" registration document when it includes the AFR and the full management report; or
- "4-in-1" registration document or "annual report to shareholders" when it includes all the information required for the shareholders' meeting.

The table below summarises these differences:

	Documents	Information to be included
"2-in-1" RD	1. RD 2. AFR	RD 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 Appendix I, information on the share buyback programme and items that may have an impact in the event of an offer of securities to the public)</li> </ul>
"3-in-1" RD	1. RD 2. AFR 3. Full management report	"2-in-1" RD content supplemented by information from the management report not expressly required in the RD+AFR, such as: <ul style="list-style-type: none"> <li>• Labour, social and environmental impact of the company's activities</li> <li>• Employee profit sharing</li> <li>• Summary of currently valid authorisations delegating power to increase the share capital</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" RD	1. RD 2. AFR 3. Full management report 4. Information required for the shareholders' meeting	"3-in-1" RD 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 (D135)</li> <li>• Agenda and proposed resolutions</li> <li>• Comments of the supervisory board on the executive board's report (French Commercial Code, article L. 225-68)</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 registration document, 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 are innovating by publishing 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 the form and layout of the registration document are flexible, it is possible to include these documents in the first section of the registration document (or the first volume) 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 registration document in its entirety as the annual brochure or integrated brochure are only a part of the registration document and are not subject to the AMF's visa number.

## STRUCTURE OF THE REGISTRATION DOCUMENT

According to market practices, issuers on Euronext Paris mainly use three types of structure for their registration document:

- a structure following the order of the 25 items of Annex I of the Prospectus Regulation;
- 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.

When the structure of the registration document does not follow the order of the 25 headings set out in Annex I, a concordance table must be provided which cross-references information in the registration document with the Annex of the Prospectus Regulation.

This table must list all the items and sub-items of Annex I as well as the corresponding page numbers<sup>7</sup>.

Regardless of the structure used, and given the extent of the information required, companies may incorporate information by reference to other parts, thereby avoiding duplication – provided that these cross-references are specific and do not interfere with the readability of the document.

## RESPONSIBILITY FOR THE REGISTRATION DOCUMENT

The person(s) responsible for the registration document must declare that, **having taken all reasonable care to ensure that such is the case, the information contained in the registration document is to the best of their knowledge in accordance with the facts and contains no omission likely to affect its import.**

They must also declare that they have obtained a statement from the statutory auditors affirming that they have read and verified the financial information contained

in the registration document (the *lettre de fin de travaux*) and include the auditors' observations, if any.

The statement by the person responsible for the registration document 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. 2016-04 of October 21, 2016):

- statement accompanying a single registration document;
- statement accompanying a registration document containing an annual financial report;
- statement accompanying a registration document (or update thereto) containing a half-yearly financial report.

#### AUDIT BY THE STATUTORY AUDITORS

Besides their reports on the statutory and consolidated financial statements, the statutory auditors certify that any **forecast, estimated or pro forma** information that may be contained in the registration document (where applicable, in any updates or corrected versions) has been satisfactorily prepared on the basis indicated and that the accounting basis used complies with the accounting methods applied by the issuer.

As regards the **other information contained in the registration document**, 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 registration document in which they refer to the reports issued by them and contained in said document or the updates or corrections 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 statement is drawn up at a date as close as possible to the date of certification 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 REGISTRATION DOCUMENT BY THE AMF

The registration document must be filed with the AMF. If the issuer has not yet submitted three consecutive registration documents to the AMF, the draft document is normally reviewed by the AMF, which can request changes or additional investigations before its registration and publication. If the issuer has already submitted three consecutive registration documents to the AMF, the document is reviewed by the AMF after publication.

If the AMF finds a significant omission or inaccuracy in the content of a published registration document, it informs the issuer who must file the corrections made to the registration document with the AMF. These corrections are disclosed to the public. The AMF considers as significant any omission or inaccuracy that may alter an investor's assessment of the organisation, business, risks, financial position and results of the issuer. The other observations made by the AMF are disclosed to the issuer who will take them into account in the registration document of the following year.

### UPDATES OF THE REGISTRATION DOCUMENT

After the publication of the registration document, the issuer may update it on a regular basis under the same terms. These updates relate to published accounting data and new facts on its organisation, business, risks, financial position and results.

When an update of the registration document is disclosed to the public within three months following 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.

### DISSEMINATION AND STORAGE OF THE REGISTRATION DOCUMENT

The registration document 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 paying agent for the issuer's securities on the day following its filing or registration at the latest. A copy must be sent free of charge to any person at his or her request.

The electronic version of the registration document is sent to the AMF to be posted on its website.

When the registration document 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>8</sup>, i.e.:

- "full and effective" dissemination by electronic means. A press release announces the availability of the registration document (an example of a press release is set out 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 ten 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](http://www.info-financiere.fr).

In addition, the press release announcing that the registration document is available must also include the list of regulatory information included in the document, particularly the chairman's report on internal control, a description of share buyback programmes and the documents for the shareholders' meeting<sup>9</sup>.

To ensure equal treatment of shareholders, most companies, especially those with international shareholders, publish an English translation of the registration document. The translation must be available online at the same time as the original version of the registration document.

The registration document can be incorporated in a prospectus for up to 12 months, provided it has been updated 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.

### REGULATORY TEXTS FINANCIAL DISCLOSURE:

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#### I. REGULATORY TEXTS CONCERNING OFFERS OF SECURITIES TO THE PUBLIC

##### A. European sources

1. **Directive 2003/71/EC** of the European Parliament and of the Council of November 4, 2003 on the prospectus to be published when securities are offered to the public or admitted to trading, and amending Directive 2001/34/EC (the Prospectus Directive). Amended by **Directive 2010/73/EU and Directive 2010/78/EC** of November 24, 2010 and supplemented by Commission Delegated Regulations (EU) no. 486/2012 of March 30, 2012 and no. 392/2014 of March 7, 2014
2. **Regulation (EC) no. 809/2004** of the Commission of April 29, 2004 implementing Directive 2003/71/EC of the European Parliament and of the Council concerning information contained in prospectuses as well as the format, incorporation by reference and publication of such prospectuses and the dissemination of information of advertisements. **Commission Delegated Regulations (EU) no. 486/2012** of March 30, 2012, **no. 862/2012** of June 4, 2012, **no. 759/2013** of April 30, 2013 and **no. 2016/301** of November 30, 2015
3. **Recommendations – March 2013** - Update by the ESMA of the CESR recommendations in preparation of a coherent application of the European Commission's Ruling on Prospectus no. 809-2004 (Ref.: ESMA/2013/319)
4. **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)
5. **Questions & Answers:** positions that are jointly accepted by the Members of ESMA (26<sup>th</sup> version – December 2016)

##### B. French national sources

1. **Articles L. 411-1 to L. 412-3 and articles L. 621-8 to L. 621-8-3 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 1 (Offer of securities to the public or admission to trading of securities on a regulated market) of Book II (Issuers and financial disclosure)
4. **AMF Recommendation no. 2009-11 of June 8, 2009** on the preparation of financial transactions submitted for AMF approval
5. **AMF Position no. 2006-17 of July 10, 2006** on the notion of profit forecast
6. **AMF Position no. 2007-17 of October 23, 2007: Questions & Answers** relating to profit forecasts

7. **AMF Position/Recommendation no. 2009-16 of December 10, 2009** (updated on April 13, 2015): Guide for compiling registration documents
8. **AMF Position/Recommendation no. 2010-03 of September 16, 2010 (updated on May 5, 2011)**: AMF Q&A regarding the transfer to Alternext of a company listed on Euronext
9. **AMF Position no. 2013-03 of February 4, 2013** 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
10. **AMF Position/Recommendation no. 2014-14 of December 2, 2014** (updated on April 13, 2015): Guide for compiling registration documents for mid-caps
11. **AMF Instruction no. 2016-04 of October 21, 2016** on disclosure requirements for public offerings and financial instruments admitted to trading on a regulated market

## II. REGULATORY TEXTS CONCERNING ONGOING DISCLOSURES

### A. European sources

1. **EU Regulation no. 596/2014** of the European Parliament and of the Council of April 16, 2014 on market abuse and 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 (in force since December 20, 2016)

### 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 (Period and ongoing disclosure obligations) of Book II (Issuers and financial disclosure)
2. **AMF Instruction no. 2007-03 of May 31, 2007** (updated July 8, 2013) relative to the methods of filing regulatory information electronically
3. **AMF's practical guide** relating to the filing of regulatory information at the AMF and to its dissemination on November 28, 2007 (updated on April 15, 2013)
4. **AMF Position/Recommendation no. 2004-04 of October 12, 2004** (updated on December 4, 2013) on the communication of estimated financial data
5. **AMF Recommendation no. 2015-09 of November 26, 2015** on communication by companies designed to market their shares to individual investors

6. **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
7. **AMF Position/Recommendation no. 2016-08 of October 26, 2016:** Guide to ongoing disclosures and the management of insider information
8. **AMF Instruction no. 2016-07** on notification procedures to the AMF of any delay in the publication of insider 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 on the harmonisation of transparency requirements concerning disclosures by issuers whose securities are admitted to trading on a regulated market. 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. **Commission Recommendation 2014/208/EC** of April 9, 2014 on the quality of corporate governance reporting ("comply or explain")

#### 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. 225-100-3, articles L. 225-102 to L. 225-102-2, article L. 233-6, article R. 225-102, R. 225-104 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 *et seq.* (in the version currently in force and the version to be published on December 31, 2016) and L. 225-68 paragraph 7 *et seq.* of the French Commercial Code** (the chairman's report on internal control)
5. **Article L. 621-18-3 of the French Monetary and Financial Code** (publishing the chairman's report on internal control)
6. **Articles L. 232-1 to L. 232-7 of the French Commercial Code** (annual financial statements)

7. **Articles L. 225-184 and L. 225-197-4 of the French Commercial Code** (special report related to free shares and share purchase options)
8. **Articles R. 225-34-1 and R. 225-60-1 of the French Commercial Code** (notice on the granting of deferred compensation to executives)
9. **Article R. 232-11 of the French Commercial Code** (periodic publications in the BALO)
10. **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 II (Periodic information) of Title II (Period and ongoing disclosure obligations) of Book II (Issuers and financial disclosure)
11. **AMF Instruction no. 2007-03 of May 31, 2007** (updated July 8, 2013) relative to the methods of filing regulatory information electronically
12. **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
13. **AMF Recommendation no. 2010-16 of July 22, 2010:** reference framework on internal risk management and social control plans
14. **AMF Position/Recommendation no. 2009-16 of December 10, 2009** (updated on April 13, 2015): Guide for compiling registration documents
15. **AMF Recommendation no. 2010-19 of July 22, 2010 on the audit committee**
16. **AMF Recommendation no. 2012-02 of February 9, 2012** (updated on December 22, 2015) 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 (merger of Recommendation nos. 2012-14, 2013-15 and 2014-08)
17. **AMF Recommendation no. 2013-08 of May 17, 2013** (updated on April 15, 2016) on pro forma financial information
18. **AMF Position/Recommendation no. 2014-14 of December 2, 2014** (updated on April 13, 2015): Guide for compiling registration documents for mid-caps
19. **AMF Recommendation no. 2010-16 of July 22, 2010:** reference framework on internal risk management and control plans
20. **AMF Guide of June 2015** on the relevance, consistency and readability of the notes to the financial statements
21. **AMF Report no. 2016 of November 17, 2015** on corporate governance and the compensation of corporate officers of listed companies
22. **AMF Position no. 2015-12 of December 3, 2015** on non-GAAP performance measures
23. **AMF annual study on chairman's reports on internal control and risk management procedures for 2014,** published on February 16, 2016
24. **AMF Position/Recommendation no. 2016-05 of October 26, 2016:** Guide to ongoing disclosures by companies listed on a regulated market
25. **AMF Recommendation no. 2016-13 of November 28, 2016** on social, societal and environmental responsibility
26. **AMF Position/Recommendation no. 2016-08 of October 26, 2016:** Guide to ongoing disclosures and the management of insider information

#### IV. TEXTS RELATING TO SPECIFIC CASES IN WHICH THE DISSEMINATION OF FINANCIAL DISCLOSURE 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 March 20, 2015) on takeover bids
5. **Instruction no. 2009-08 of October 1, 2009** on the oversight of public offerings

##### 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 disclosure) 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 Regulation on Market Abuse
5. **AMF Position/Recommendation no. 2016-08 of October 26, 2016**: Guide to ongoing disclosures and the management of insider information

#### D. Share buyback programmes

1. **Regulation (EC) no. 2273/2003** of the Commission of December 22, 2003 on the implementation of Directive 2003/6/EC of the European Parliament and of the Council concerning exemptions for share buyback programmes and the stabilisation of financial instruments, repealed on July 3, 2016 by **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. **Decision of March 24, 2011** – accepted market practice no. 2011-07 on liquidity contracts amending the decision of October 1, 2008 on the adoption by the AMF of liquidity contracts as accepted market practice
5. **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
6. **AMF Position/Recommendation no. 2017-04**, Guide relating to dealings by issuers in their own shares and stabilisation measures
7. **ESMA**, *Points for convergence in relation to MAR accepted market practices on liquidity contracts*, ESMA70-145-76, April 25, 2017

#### E. Disclosure of shareholder agreements

1. **Article L. 233-11 of the French Commercial Code**
2. **AMF General Regulations**, article 223-18 (information relative 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 insider information

## H. Insider lists

1. **EU Regulation no. 596/2014** of the European Parliament and of the Council of April 16, 2014 on market abuse and repealing Directive 2003/2014/EC
2. **Implementing Regulation (EU) no. 2016/347 of March 10, 2017** 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 insider information

# Index

## Alphabetical

### A I

Abstention period	76
Accounting restatements	50
"Activist" funds	121
Acquisitions	20, 48, 49, 57, 74, 82, 85, 127, 136, 137, 156
Alternative performance measures	4, 6, 18, 34, 45, 47
Analyst day	130
Annual financial report	14, 15, 19, 25, 33, 35, 36-38, 39, 41, 44, 73, 76, 79, 80, 123, 131, 145, 146, 148, 166, 169, 175
Annual results	33-36, 41, 42, 54, 77, 110
Appointment	21, 60-62, 71, 93, 174, 175
Archiving	25, 136, 149, 165

### B I

BAL0	33, 41, 44, 67, 68, 133, 154, 166, 169, 175
Black out period	114
Board of directors	16, 33, 34, 35, 37, 42, 44, 51, 55, 60-66, 75, 94, 96, 111, 114, 115, 134, 138, 139, 141, 148, 164, 165, 166, 168, 171, 176
Bond issue	102, 122, 173
Brokers	125, 128, 129, 137, 141
Buyback of own shares	5, 6, 16, 70, 73-76, 145, 146, 150, 156, 170
Buy-side	35, 120, 129, 130, 167, 171

### C I

Cancellation of own shares	75
Capital increase	27, 37, 41, 67, 98-100, 173, 174, 175
Capital Markets Day	130
Chairman's report on internal control	16, 37, 38, 41, 60, 61, 62, 63, 79, 143, 145, 150, 153, 164, 165, 166, 169, 175
Closed periods	6, 21, 35, 76, 115-116, 152
Clubs and advisory committees	131
Code of ethics	113-114
Competing bid	83, 85, 92, 96
Competitive market watch	140
Conference calls	35, 126, 133, 136
Conferences	111, 129-130, 139
Consensus	56, 136, 139
Consolidation scope	34, 48, 84
Contract	57, 84, 88, 99, 101-102
Corporate access	125, 128
Corporate disclosure policy	113-114
Credit analysts	122
Crossing of legal thresholds	69, 71
Crossing of thresholds established by the company's articles of association	72
CSR	4, 6, 40, 50-51, 121, 142, 178

Custodial services	118, 130, 132, 173
Customer	57, 58

## **D I**

---

Data room	6, 82-83
De-mergers	86, 170
Disclosure of periodic information	14, 60, 111
Dismissal	60-61
Disposals	20, 49, 74, 82, 136, 137
Dissemination of analyst research	139
Dissemination of regulatory information	23-24, 152, 154
Dividends	34, 37, 77-78, 123, 131, 153, 157, 174

## **E I**

---

Embargo period	114-115
Employee representative bodies	58-59, 111, 112
Employee savings plans (PEE)	159
Employee shareholders	123
Estimated financial data	53, 54-55, 152
Executive board	35, 36, 51, 55, 60-62, 71, 75, 114, 115, 146, 148, 166, 176
Executive compensation	4, 6, 16, 60, 63-65, 154, 178
Executives	4, 6, 7, 37, 107, 114, 115-116, 124-125, 127, 128, 129, 137, 138, 139, 140, 180

## **F I**

---

Feedback	119, 128, 130, 138, 139, 140
Field trips	130
Financial communication calendar	21, 50, 110-111
Financial communication language	26
Financial notices	41, 132, 165, 167
Financing contracts	101, 102
Forecasts	34, 46, 53, 54, 56, 120, 139, 140, 151

## **G I**

---

Global debt renegotiation	103
---------------------------	-----

## **H I**

---

Half-yearly financial report	14, 15, 25, 42, 43-44, 48, 135, 148, 149, 176
Half-yearly results	41-42, 110, 115, 126

## **I I**

---

Identification of the shareholder base	118
Improved offer	92, 96-97

Individual shareholder	122-123, 130-132, 142, 174
Industrial investment	58
Information meetings	33, 35, 41, 42, 126
Informing the board of directors or supervisory board	141
Initial public offerings (IPOs)	104
Insider trading	17, 114, 169
Insider lists	6, 21, 116-117, 157
Integrated report	6, 33, 39-40, 146, 147
Internal communication	111, 112
Investor Day	130
Investor targeting	118, 128
Issuance of shares	100, 152
Issuance of bonds	101, 102

---

**L I**

Leaked information	81-82, 138
License	58
Liquidity contract	6, 76-77, 156
Litigation	79-81
Loan covenants	102

---

**M I**

Market sentiment	138
Media	8, 23, 24, 81, 110, 111, 112, 113, 115-116, 136, 137, 138, 165, 167
Meeting minutes	68
Mergers	20, 48, 82, 86, 137, 170
Mid-caps	14, 63, 124, 144, 152, 154, 166

---

**N I**

Non-GAAP performance measures	154
-------------------------------	-----

---

**O I**

Objectives	21, 34, 50, 53-54, 56, 60, 71, 75, 83, 99, 125, 129
Offer document	16, 89, 90-95, 104, 105, 171
One-on-one meetings	119, 127, 137, 139, 171
Ongoing information	5, 6, 14-16, 18, 19, 20, 21, 23, 25, 44, 45, 56, 59, 113, 114, 115, 126
Online voting	134
On-site visits	130, 132
Oversight plan	52

---

**P I**

Partial mergers	86
Partnership	57, 89, 131
"Passive" funds	121
Patent	57, 58

Perception surveys	139
Periodic disclosures	14, 24, 25, 26, 33, 34, 35, 36, 44, 45, 47, 50, 55, 59, 61, 62, 153
Periodic information	14-15, 19, 26, 33, 53, 60, 62, 63, 71, 72, 79, 80, 84, 101, 102, 103, 108, 110, 111, 152, 154
Periodic meetings	130, 131
Portfolio managers	107, 120
Press release	6, 17, 24, 33-36, 38, 39, 40, 41, 42, 44, 45, 47, 50, 54, 57, 58, 60, 61, 63, 66, 68, 69, 71, 73, 74, 75, 76, 77, 80, 81, 83, 84, 85, 86, 88, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 111, 115, 122, 125, 126, 130, 136, 138, 139, 141, 149, 150, 165, 171, 178
Private Investment in Public Equity (PIPE)	99
Pro forma information	48-49, 84, 143, 148
Production site	58
Profit warning	53, 54, 56, 139, 172
Prospective information	34, 52-54, 122
Prospectus	6, 16, 19, 27-28, 39, 46, 47, 48, 49, 53, 54, 55, 62, 73, 83, 89, 97, 98, 99, 100, 101, 102, 105, 142, 143, 145, 147, 150, 151, 152, 155, 171, 172
Proxy	68, 133, 145, 172-173
Public offering	16, 27, 28, 29, 37, 39, 67, 68, 83, 89, 90, 91, 93, 94, 97, 98, 99, 100, 102, 104, 105, 106, 114, 145, 152, 155, 163, 165, 171, 172, 173

## Q I

Quarterly information	14, 16, 44-45, 47, 61, 76, 77, 110, 112, 115, 126, 127, 132
Questions & Answers	124, 126, 135, 151, 152, 173
Quiet period	6, 115, 113, 114-115, 126

## R I

Rating agencies	116, 121-122, 127, 130, 136, 173
Redundancies	58
Registration document	6, 33, 37, 39-40, 42, 44, 48, 49, 53, 54, 60, 61, 62, 63, 64, 65, 71, 72, 73, 79, 80, 91, 95, 97, 101, 102, 103, 105, 123, 131, 142-150, 152, 154, 165, 171, 172, 173, 178
Regulatory information	14-16, 23, 24, 25, 26, 33, 35, 38, 39, 40, 42, 44, 46, 57, 68, 69, 73, 75, 76, 83, 86, 90, 91, 95, 98, 102, 112, 136, 138, 145, 149, 150, 152, 154, 165
Resignation	60-61
Restructuring plans	58
Reverse roadshows	129
Risks	16, 36, 44, 51, 52, 79-81, 84, 94, 96, 112, 120, 138, 144, 149, 178
Roadshows	21, 98, 106, 111, 119, 122, 127-129, 138, 139
Rumours	21, 81-82, 89, 93, 106, 138

## S I

Sales and marketing	57
Say on pay	64
Securitisation	101, 104

Segment organisation	47
Sell-side	119, 120, 130, 139
Share buyback programmes	5, 6, 16, 73-76, 145, 146, 150, 156
Share Capital	16, 69, 71, 72, 75, 98, 100, 103, 119, 146, 152, 155, 174
Share performance	132, 140, 174
Shareholder representative associations	122
Shareholders' agreements concerning a subsidiary	72
Shareholders' agreements concerning the issuer	72
Shareholders' meetings	16, 41, 64, 65, 67-68, 119, 123, 131, 132-135, 136, 137, 164, 165, 170, 172, 173
Social media	81, 137-138
Social networks	23, 111, 113, 131, 136, 137-138
Specialised committee	33, 61-62, 134
Spin-offs	20, 48, 86-88
SRI analysts	121
Statutory auditors' fees	6, 40
Stock options	63, 146
Strikes	58
Supervisory Board	16, 33, 34, 35, 36, 37, 42, 44, 60-66, 71, 79, 94, 96, 114, 115, 141, 146, 164, 165, 166, 168, 171, 176

## T I

---

Takeover bid	81-82, 89, 90, 93, 94, 155
Telephone meetings with analysts and investors	125
Telephone meetings with individual shareholders	131
Termination payment	66
Transactions by executives	6, 15, 37, 66, 85, 115-116, 146, 155
Transparency Directive	25, 38, 44, 110, 135, 149, 176, 178

## V I

---

Videoconferences	136-137
Voting rights	16, 69, 70, 71, 72, 75, 89, 90, 93, 132, 144, 174

## W I

---

Webcasts	35, 126, 137
Websites	17, 34, 68, 91, 95, 101, 105, 135-136, 165
White knight	96
Withdrawal of an offer	92
Written and oral questions from shareholders	68

## **AFEP-MEDEF Code**

A corporate governance code for listed companies drawn up by the *Association Française des Entreprises Privées* (AFEP) 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);
- regulated markets for emissions trading (Book VII).

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.

### **Chairman's report on internal control**

Document to be prepared by companies listed on a regulated market and attached to the management report. In his/her report, the chairman of the board of directors (or supervisory board) notably discusses:

- the contents of the board's work and the conditions for preparing and organising it;
- the internal control and risk management procedures put in place by the company, notably detailing procedures relative to the preparation and processing of accounting and financial information for the annual financial statements and, where applicable, the consolidated financial statements;

- the corporate governance code to which the company adheres;
- any limitations that the board may impose on the powers of the chief executive officer;
- the principles and rules adopted for determining compensation and any benefits payable to corporate officers;
- particulars relating to the attendance of shareholders at shareholders' meetings;
- the disclosure of information likely to have an impact in the event of a public offering.

The report must be approved by the board of directors (or supervisory board). As regulatory information, the chairman's report is subject to the dissemination and archiving methods set out in the AMF General Regulations. The contents of the report are governed by articles L. 225-37, L. 225-68 and L. 226-10-1 of the French Commercial Code.

In an attached report, the statutory auditors present their remarks on the internal control and risk management procedures relating to the preparation and processing of accounting and financial information described in the chairman's report on internal control.

### **Communication medium**

A method used by a company to communicate. Communication media consist mainly of:

- financial notices/financial advertising;
- press releases;
- shareholders' guides/shareholders' letters; annual reports/registration documents;
- 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 four 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.

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.

### **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 Midlenext Code for SMEs and mid-caps.

The chairman's report on internal control is now required to 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).

### **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.

### **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.

**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, which is gradually converging towards IFRS.

**Issuer**

A legal entity (companies, the State and local authorities) which creates securities and offers them to the public for subscription.

**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 report by the chairman of the board of directors (or supervisory board) on the conditions for preparing and organising the board's work, and on risk management and internal control procedures.

In an attached report, the statutory auditors present their remarks on the internal control procedures relating to the preparation and processing of accounting and financial information described in the chairman's report on internal control.

Pursuant to the Order of December 8, 2008, audit committees are responsible for monitoring the effectiveness of internal control procedures.

### 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 five years and a €100 million fine (the fine may amount to up to ten times the profits made). Insider trading is when "insiders" use insider 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 insider 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 insider 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.

### 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 <http://balo.journal-officiel.gouv.fr>.

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 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 profit.

- 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 bond holders, 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 insider 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 insider 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 Alternext.

### **MIF**

Markets in Financial Instruments Directive (MiFID) 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, while other European guidance provided that Member States were to transpose MiFID II into law no later than July 3, 2017 in order to be applicable as from January 3, 2018. The main changes introduced by MIF II to the former MIF I 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.

### **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 ("offer document in response"). 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 offer document in response 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. 2016-04 of October 21, 2016.

A securities note together with a registration document which includes information relating to the issuer as well as an executive summary, constitutes the AMF-approved prospectus, which is to be published prior to any public offering of securities.

### **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 insider information.

### **Par value**

The par value of a share is the share of capital it represents.

### **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 insider 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 disclosure” 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 includes a registration document, a securities note and a summary note 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 by the AMF General Regulations).

### **Prospectus Directive**

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). A European regulation in application of the Prospectus Directive sets out the contents and structure of prospectuses. This regulation has been applicable in France since July 1, 2005.

On November 30, 2015, the European Commission published its proposal for a European regulation to replace Prospectus Directive 2003/71/EC. A tentative agreement was signed by the European Parliament on December 7, 2016 as regards the text of the regulation, which is still to be adopted by the Parliament and subsequently by the Council.

### **Prospectus Regulation**

EU Regulation no. 809/2004 of April 29, 2004 in application of the Prospectus Directive. The Prospectus Regulation sets down the structure of the prospectus and the disclosures required therein, along with the means by which it is to be made available to the public.

### **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 new European Directive on the rights of shareholders, which was adopted in spring 2017 and is to be transposed into law by Member States no later than 2019, 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.

### **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. In the case of administered registered shares, the securities account is managed by a financial intermediary.

### **Securities note**

Document intended to inform the public which is draw up in the context of a public offering (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 registration document.

### 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 six 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 six 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. In companies listed on a regulated market, the statutory auditor also draws up a report on the chairman's report on internal control. The 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 six 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*).

### 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 four 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.



# OCF ACHIEVEMENTS

Since its creation in 2005, the achievements of the *Observatoire de la Communication Financière* have aimed at promoting best practices in the field of financial communication in compliance with regulatory requirements.

## Monitoring and analysing financial communication trends

Monitoring and analysing financial communication trends, which has resulted in the publication of several surveys and research studies:

- impact of the transition to IFRS
- stakes of the Transparency Directive
- analysis of press releases of the SBF 120 companies
- benchmarking of European executive compensation
- how financial communication talks about risk

## Interfacing between issuers and market opinions

Through debates, addressing financial communication issues in a context where there is an increasing demand for flexibility and reactivity. The debates are organised in conjunction with the *Les Echos* financial newspaper or within the scope of the Paris Europlace international financial forum, and address in particular:

- challenges and risks associated with new transparency measures
- the impact of the economic crisis on financial communication
- financial communication and new information flows
- financial information and investor psychology
- disintermediation of the bond market and its impact on issuers
- how CSR matters can enhance financial communication

## Supporting issuers

Through the disclosure of registration documents available online at [www.observatoirecomfi.com](http://www.observatoirecomfi.com) and on member sites:

- Glossary of financial communication terms
- Financial Communication: Framework and Practices

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For a listed company, communicating with the market is of strategic importance.

Increasing requirements in terms of transparency and the growing complexity of regulatory constraints in the field have highlighted the need for a document setting out the general guidelines for issuers.

The *Observatoire de la Communication Financière* has thus taken the initiative to meet the challenge and capitalise on the expertise of its members for the preparation of this guide:

### "FINANCIAL COMMUNICATION: FRAMEWORK AND PRACTICES"

In addition to serving investor relations professionals as a tool for decision making, this document has the objective of encouraging executives to reflect upon the stakes involved in their relationship with the market. It also aspires to contribute to enhancing Paris' reputation as a financial centre.

The guide is available in electronic format on the OCF's website ([www.observatoirecomfi.com](http://www.observatoirecomfi.com)) as well as on its members' websites. It is updated regularly and is available in both English and French.

The founding members of the OCF – Bredin Prat, Cliff, PwC and the SFAF – as well as Euronext, which also participated in the preparation of this guide, sincerely hope that it will serve issuers as a genuine source of reference.

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Investor Relations

 EURONEXT

 pwc

 SFAF  
LA SOCIÉTÉ FRANÇAISE  
DES ANALYSTES FINANCIERS