

CORONAVIRUS RESOURCE CENTER

French Financial Markets Watchdog Response to the COVID-19 Market Crisis

April 3, 2020

Following the outbreak of the COVID-19 pandemic, the *Autorité des marchés financiers* (the French Financial Markets Authority or the “AMF”) has:

- banned the creation or increase of any net short position on shares admitted to trading on French trading venues;
- created some flexibility regarding publication deadlines under the Transparency Directive;¹
- reminded issuers of their information obligations pursuant to the Market Abuse Regulation;² and
- recommended that French issuers take actions in respect of the organization of their annual shareholder meetings.

Restrictions Regarding Net Short Positions

Following sharp losses on the French stock markets, the AMF has taken emergency measures aimed at restraining the impact of the COVID-19 pandemic on the financial markets.³

¹ Directive n° 2004/109/EC of December 15, 2004 on the harmonization of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market (the “Transparency Directive”).

² Regulation (EU) n° 596/2014 of April 16, 2014 on market abuse (the “Market Abuse Regulation” or “MAR”).

³ Following the outbreak due to the COVID-19 pandemic, the CAC 40 (the French main stock market index) decreased by 27.2% between March 2 and March 16, 2020.

After having temporarily banned short selling on 92 companies' shares for the day of March 17, 2020,⁴ the AMF has decided, pursuant to the Short Selling Regulation,⁵ to ban any person from entering into transactions that might constitute or increase a net short position on shares. Similar decisions have been taken on March 16, 2020 by the *Comisión Nacional del Mercado de Valores* in Spain, and the *Commissione Nazionale per le Società e la Borsa* in Italy, on March 17, 2020 by the Financial Securities and Markets Authority in Belgium, on March 18, 2020 by the Hellenic Capital Market Commission in Greece and the *Finanzmarktaufsicht* in Austria.

The French ban is currently effective from March 18, 2020 until April 16, 2020. The prohibition applies to:

- net short positions on shares admitted to trading on French trading venues for which the AMF is the relevant competent authority within the meaning of the Short Selling Regulation, as long as the most liquid market for such shares is located in France. Such trading venues comprise Euronext Paris, Euronext Growth Paris and Euronext Access Paris. The AMF has published on its website an indicative list of shares covered by the ban;⁶
- related instruments included in the calculation of the net short position, such as saving/preferred shares, derivatives, depositary receipts or index-related instruments;
- transactions executed both on a trading venue or over the counter; and
- natural or legal persons, domiciled or established within or outside of the European Union.

The prohibition does not apply to the following activities:

- market making activities, as defined in Articles 2.1(k) and 17 of the Short Selling Regulation;
- the creation of, or increase in, net short positions when the investor who acquires a convertible bond has a delta-neutral position between the equity component of the convertible bond and the short position taken to cover that component;

⁴ The ESMA considers that this measure is less adequate to address the threat to confidence on the French market, as it can be applicable for a few days only and is limited to short selling without covering any opening or increasing of net short positions.

⁵ Regulation (EU) n° 236/2012 of March 14, 2012 on short selling and certain aspects of credit default swaps (the "Short Selling Regulation").

⁶ See: <https://www.amf-france.org/sites/default/files/2020-03/2020-03-25-liste-actions-concernees-ss-ban-amf-fr-rendue-publique-le-26.pdf>.

- the creation of, or increase in, net short positions through index-related instruments or baskets of financial instruments, not composed by a majority of shares included in the ban; and
- the creation of, or increase in, net short positions where the creation of, or increase in, the short position in shares is hedged by a purchase that is equivalent in terms of proportion on subscription rights.

Almost concomitantly with such ban, on March 16, 2020, the European Securities and Markets Authority (the “ESMA”) issued a decision temporarily requiring net short positions holders in shares traded on a European Union regulated market to notify the relevant national competent authority if the position reaches or exceeds 0.1% (instead of 0.2%) of the issued share capital. This decision entered into force on March 26, 2020.

Flexibility Regarding Publication Deadlines under the Transparency Directive

On March 27, 2020, the ESMA published a public statement promoting coordinated actions among national supervising authorities. The AMF has published a similar statement on March 30, 2020.

Both authorities acknowledged the difficulties for European issuers to fulfil in a timely manner the information requirements under the Transparency Directive because of the COVID-19 pandemic.

They also reiterated the following Transparency Directive requirements which apply to issuers whose securities are admitted to trading on a regulated market:

- publication of an annual financial report at the latest four months after the end of each financial year: for financial years ending on December 31, 2019, the deadline is April 30, 2020;
- publication of a half-yearly financial report at the latest three months after the end of the first half of the financial year: for a first semester that ended on December 31, 2019, the deadline was March 31, 2020.

The AMF has invited issuers who anticipate a delay in their publication to inform the AMF and the market of such delay. Pursuant to the ESMA’s recommendation, the AMF will not take any supervisory action against issuers for a period of two months or one

month after the applicable reporting deadline, for annual reports and half-year reports⁷ respectively.

Reminder of MAR Requirements

The AMF published two press releases, one on February 28, 2020 and the other on March 23, 2020, to remind French issuers of their permanent information obligations pursuant to MAR, in particular the obligation to disclose *as soon as possible* any inside information that relates directly or indirectly to them, i.e. all non-public information of a precise nature that is likely to have a significant influence on the prices of their listed securities.

Consequently, the AMF recommends issuers to periodically assess the epidemic's anticipated impact on their activities, performance or outlook and any knowledge of a significant impact should be disclosed as soon as possible.

In addition, the AMF encourages issuers, who have no precise information to be disclosed, to specify, when disclosing their outlook for 2020, which assumptions they used in preparing this outlook, with respect to the potential impacts of the epidemic.

It is anticipated from such press releases and from the public statement from the ESMA, that national financial market authorities will closely control the satisfaction of such disclosure requirements by issuers whose financial performance will be impacted or who will outperform because of the COVID-19 pandemic.

Organization of Shareholders Meetings

Pursuant to an ordinance of the French government dated March 25, 2020,⁸ general shareholders meetings may be held behind closed doors and without the presence of shareholders (even by videoconference or conference call) because of the general lockdown implemented in France.

In this context, the AMF recommends that issuers disclose in a timely manner the conditions under which their shareholders' meeting will be held; and in particular:

⁷ Such flexibility applies to issuers with a fiscal year or, as applicable, the first semester, ending between December 31, 2019 and March 31, 2020.

⁸ See Debevoise Update "French Government Passes Ordinances to Adapt Its Legal Framework during the COVID-19 Epidemic" (March 30, 2020) <https://www.debevoise.com/insights/publications/2020/03/french-government-passes-ordinances-to-adapt>.

- how and where to obtain relevant information;
- whether it will be possible to attend by videoconference technology;
- the voting process: whether electronic votes will be allowed, and to detail the methods to vote by mail or proxy;
- the possibility of asking written questions in advance; and
- whether it will be possible to amend resolutions proposed to the vote of the shareholders.

The AMF encourages French issuers to stream the meeting live on their website and, as the case may be, to send emails directly to shareholders holding their shares in registered form.

In addition, another ordinance of March 25, 2020 extends by three months the period during which certain French issuers shall convene and hold their annual shareholders' meetings. Consequently, the AMF invites the issuers to consider the opportunity of a postponement of their annual meeting within such extended timeframe. In such case, they should inform the shareholders and the market as soon as possible of such postponement.

Enforcement Actions Looming?

While the AMF may potentially take the COVID-19 situation into account when assessing potential breaches of regulatory obligations, it will not be a blanket defense. The AMF made clear that it expects regulated entities to comply with their regulatory obligations.

In particular, on March 19, 2020, the AMF issued a reminder that regulated entities whose employees are working from home are still expected to comply with their usual regulatory obligations, including voice-recordings which usually turn to be key materials for the AMF enforcement division. As explained above, the AMF also reiterated that issuers must continue to disclose *as soon as possible* any inside

information that directly concerns them. The AMF usually vigorously enforce that requirement.⁹

The AMF will also probably closely monitor market abuse violations (i.e. insider trading, price manipulation and dissemination of false information). As recently explained by the U.S. Securities and Exchange Commission,¹⁰ a larger number of corporate directors or employees may have access to inside material nonpublic information as a consequence of the COVID-19 epidemic. Market authorities fear that these corporates insiders may want to use to their advantage inside information that they might have before the investing public does; especially if their companies are facing difficulties to comply with the above-mentioned MAR requirement to inform the market of inside information in a timely manner.

When the epidemic dust settles, the AMF enforcement division—or possibly the French criminal authorities for the most serious market abuse violations—may therefore decide to focus its enforcement efforts on breaches of transparency obligations by issuers and on corporate insider trading.

As a reminder, the AMF has jurisdiction to enforce market abuse prohibitions against any person trading a stock listed in France and may impose disciplinary and/or pecuniary sanctions. The statute of limitations applicable to market abuse enforcement has recently been extended from three to six years.

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For more information regarding the coronavirus, please visit our [Coronavirus Resource Center](#).

⁹ For a recent example, see AMF Enforcement Committee decision n° 2019-05 of April 29, 2019 imposing a €100,000 fine against a French telecoms company for delaying by seven days its communication to the market about a potential M&A transaction.

¹⁰ Statement of Co-Directors of the SEC's Division of Enforcement of March 23, 2020 <https://www.sec.gov/news/public-statement/statement-enforcement-co-directors-market-integrity>.

Please do not hesitate to contact us with any questions.

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