

THE INITIAL PUBLIC  
OFFERINGS LAW  
REVIEW

FOURTH EDITION

Editor  
David J Goldschmidt

THE LAWREVIEWS

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OFFERINGS LAW  
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# PREFACE

Welcome to the fourth edition of *The Initial Public Offerings Law Review*. This publication introduces the reader to the main stock exchanges around the globe and their related initial public offering (IPO) regulatory environments, and provides insight into the legal and procedural IPO landscapes in 20 different jurisdictions. Each chapter gives a general overview of the IPO process in the region, addresses regulatory and exchange requirements, and presents key offering considerations.

The global IPO landscape is ever-changing. While several of the oldest stock exchanges, such as the New York Stock Exchange and London Stock Exchange, are still at the forefront of the global IPO market, the world's major stock exchanges now are scattered around the globe, and many are publicly traded companies themselves. IPOs take place in nearly every corner of the world and involve a wide variety of companies in terms of size, industry and geography. Aside from general globalisation, shifting investor sentiment and economic, political and regulatory factors have also influenced the development and evolution of the global IPO market.

Virtually all markets around the globe have experienced significant volatility in recent years; however, 2019 marked a year of continued strength for many IPO markets. While the number of 2019 IPOs decreased both domestically and globally, total proceeds raised were up significantly in the US, and relatively stable throughout the rest of the world, reflecting an increased proportion of IPOs by larger companies throughout the world. Despite the temperamental nature of global economics, and the potential repercussions of various ongoing and expected geopolitical events, there is continued cautious optimism for 2020 in terms of both global deal count and proceeds. The global IPO pipeline includes many well-known companies across a range of industries, and it is anticipated that these companies will seek to list on a variety of stock exchanges around the world.

Every exchange operates with its own set of rules and requirements for conducting an IPO. Country-specific regulatory landscapes are often dramatically different among jurisdictions as well. Whether a company is looking to list in its home country or is exploring listing outside of its own jurisdiction, it is important that the company and its management are aware from the outset of the legal requirements as well as potential pitfalls that may impact the offering. Moreover, once a company is public, there are ongoing jurisdiction-specific disclosure and other requirements with which it must comply. This fourth edition of *The Initial Public Offerings Law Review* introduces the intricacies of taking a company public in these jurisdictions, and serves as a guide for issuers and their directors and management.

**David J Goldschmidt**

Skadden, Arps, Slate, Meagher & Flom LLP  
New York  
March 2020

# FRANCE

*Thomas Margenet-Baudry, Jemma Lohr McPherson and Pierre Brûlé<sup>1</sup>*

## I INTRODUCTION

Founded in 1724, the Paris Bourse is one of the oldest stock exchanges in the world. Known today as Euronext Paris, it is among the largest exchanges in Europe, with approximately 900 listed companies.<sup>2</sup> The Euronext group, created in 2000, includes exchanges in Amsterdam, Brussels, Dublin, Lisbon, Oslo, London and Paris, and is the largest pan-European stock exchange as measured by market capitalisation (approximately €3.4 trillion),<sup>3</sup> with approximately 1,500 listed companies.<sup>4</sup>

Euronext Paris is the market manager for French-listed companies; it ensures proper market functioning and establishes admission requirements for companies planning to list in France. The Autorité des marchés financiers (AMF) is the French financial market regulator and is an independent body that administers and enforces French and European securities regulations. The AMF is responsible for safeguarding investments in financial instruments, ensuring that investors receive material information relating to securities issues and financial instruments and maintaining orderly financial markets in France. Further to these responsibilities, the AMF is charged with authorising prospectuses for companies applying to be listed on Euronext Paris.

With its sophisticated financial infrastructure, growing economy, strength in the high-tech sector and competitive regulatory framework, France offers an attractive capital markets framework to issuers and investors. Ongoing French and EU regulatory efforts seek to make listing in France more efficient and accessible, while maintaining rigorous market and investor protections. For example, since 2015, the AMF has, in certain cases, permitted issuers to prepare prospectuses in English, enabling French issuers to communicate more effectively and directly with the international investor community, and has in recent years moved to a digital system for filing and accessing listing and reporting documents.

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1 Thomas Margenet-Baudry is a partner and Jemma Lohr McPherson and Pierre Brûlé are associates at Latham & Watkins.

2 Euronext, 'Actions – Paris', accessible at <https://www.boursedeparis.fr/cours/actions-paris>. Last accessed 4 January 2020.

3 Euronext, 'Listing Equities', accessible at <https://www.euronext.com/en/list-products/equities>. Last accessed 4 January 2020.

4 Euronext, 'Euronext publishes Q3 2019 results', accessible at <https://www.euronext.com/en/investor-relations/financial-information/regulated-information-and-investor-news/euronext-139>. Last accessed 4 January 2020.



## II GOVERNING RULES

The laws and regulations that are applicable and relevant to IPOs and equity securities listings in France include EU directives and regulations, French laws and regulations, the rules of Euronext Paris and Euroclear, and certain US laws and regulations applicable to certain securities offerings that are open to potential US investors but not registered with the US Securities and Exchange Commission.

Mainly owing to the ongoing harmonisation of regulations within the European Union, rules and regulations applicable to securities offerings in the European Union in general – and in France in particular – have been constantly evolving in recent years. Following a consultation process and in line with its capital markets union action plan,<sup>5</sup> the European Commission adopted a new prospectus regulation in June 2017 to further improve the EU prospectus regime (the New Prospectus Regulation).<sup>6</sup> This New Prospectus Regulation replaced and repealed the Prospectus Directive and, along with the Delegated Acts<sup>7</sup> adopted by the Commission in March 2019 (the Delegated Acts) (see subsection iii), constitute a full set of new rules directly applicable in EU Member States with respect to prospectuses (collectively, the New Prospectus Regulations).<sup>8</sup> The New Prospectus Regulations have been implemented in three stages, which were completed on 21 July 2019. Despite a number of technical adjustments, the implementation of the New Prospectus Regulations has not led to significant structural changes in the way IPOs are conducted in France.

### i Main stock exchange

Euronext Paris is the sole stock exchange operator and market manager in France for equity securities. When preparing equity securities for admission to listing or trading, or both, on Euronext Paris, companies select one of its three markets: the Regulated Market, Euronext

5 European Commission, ‘Capital markets union action plan’, available at [https://ec.europa.eu/info/business-economy-euro/growth-and-investment/capital-markets-union/capital-markets-union-action-plan\\_en](https://ec.europa.eu/info/business-economy-euro/growth-and-investment/capital-markets-union/capital-markets-union-action-plan_en). Last accessed 4 January 2020.

6 Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32017R1129>. Last accessed 4 January 2020.

7 Two Commission Implementing and Delegated Acts on Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 have been adopted. First, the Commission Delegated Regulation (EU) 2019/979 of 14 March 2019 supplementing Regulation (EU) 2017/1129 of the European Parliament and of the Council (available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019R0979>. Last accessed 4 January 2020). The Commission Delegated Regulation (EU) 2019/979 supplements the Prospectus Regulation with regard to regulatory technical standards on key financial information in the summary of a prospectus, the publication and classification of prospectuses, advertisements for securities, supplements to a prospectus, and the notification portal, and repealing Commission Delegated Regulation (EU) 382/2014 and Commission Delegated Regulation (EU) 2016/301. Second, the Commission Delegated Regulation (EU) 2019/980 of 14 March 2019 supplementing Regulation (EU) 2017/1129 of the European Parliament and of the Council (available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32019R0980>. Last accessed 4 January 2020). The Commission Delegated Regulation (EU) 2019/980 supplements the Prospectus Regulation as regards the format, content, scrutiny and approval of the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Commission Regulation (EC) No. 809/2004.

8 The European Union is expected to adopt such delegated acts to supplement the new prospectus regulation and set out in further detail the requirements of that regulation.

Growth or Euronext Access. The decision of which market to list on is generally based on size (valuation, offering size or issuer revenues), applicable regulatory framework and the types of investors to be targeted.<sup>9</sup>

### ***The Regulated Market***

The eligibility requirements of the Regulated Market are the most stringent of Euronext Paris' three markets. Companies listed on the Regulated Market are subject to a number of rules that are applicable to all listings on regulated markets within the European Union, particularly in terms of financial reporting, accounting standards and ongoing disclosure obligations. For example, the European Market Abuse Regulation (MAR) applies to companies listed on the Regulated Market, as do EU securities regulations in the case of a public offering. The Regulated Market is divided into three 'compartments': Compartment A, for companies with a market capitalisation of more than €1 billion; Compartment B, for companies with a market capitalisation between €150 million and €1 billion; and Compartment C, for companies with a market capitalisation of less than €150 million.<sup>10</sup>

### ***Euronext Growth***

Euronext Growth is an alternative market for small and medium-sized companies, offering simplified access to the capital markets with fewer eligibility requirements and less stringent ongoing reporting obligations than the Regulated Market. Euronext Growth is open to investment by both professional and retail investors. It is controlled, but not regulated, in accordance with EU securities regulations, although MAR applies to companies listed on Euronext Growth, as do EU securities regulations in the case of a public offering. Companies seeking to be admitted to trading on Euronext Growth must appoint a duly accredited 'listing sponsor' to assist them during the admissions procedure and, following listing, will be responsible for advising and assisting a listed company in its interactions with the market.<sup>11</sup>

### ***Euronext Access***

Euronext Access is an alternative market for companies looking to access the capital markets without having to meet the more stringent eligibility criteria of the Regulated Market or Euronext Growth. Companies seeking to be admitted to trading on Euronext Access must appoint a duly accredited listing sponsor, and companies seeking to be listed must possess a website that includes at least two years of financial statements (which may be unaudited). Euronext Access is not regulated in accordance with EU securities regulations, although

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9 Euronext, 'Equities', available at <https://live.euronext.com/en/products/equities>. Last accessed 4 January 2020.

10 Euronext, 'Euronext Regulated Markets', available at: <https://www.euronext.com/en/regulation/regulated-markets>. Last accessed 4 January 2020. Market capitalisation, for the purposes of determining which compartment is suitable, is computed over the last two months of the previous year.

11 Euronext, 'Choosing your Market', available at <https://www.euronext.com/en/raise-capital/how-go-public/choosing-market>. Last accessed 4 January 2020.

MAR applies to companies listed on Euronext Access, as do EU securities regulations in the case of a public offering. Listed members are also required to communicate annually with Euronext's compliance department to detail compliance with regulatory obligations.<sup>12</sup>

### ***Euronext Access+***

Launched in June 2017, Euronext Access+ is a special compartment of Euronext Access that is tailored to the needs of start-ups and fast-growing small and medium-sized enterprises (SMEs). Euronext Access+ is intended to help companies transition smoothly to the demands of being a public company and adapt to market practices. Euronext Access+ has its own listing criteria, such as financial statements covering at least two years, including audited accounts for the previous year, €1 million minimum free-float and the obligation to have a listing sponsor, starting with listing and continuing throughout the market experience, and commitment to regularly communicate towards the market. Companies admitted to trading on this market enjoy special assistance and greater visibility.<sup>13</sup>

## **ii Overview of the Euronext Paris listing requirements**

To be listed on one of Euronext Paris' markets, a company must file an application with Euronext Paris and comply with its admission criteria, as detailed below.<sup>14</sup>

	Regulated Market	Euronext Growth	Euronext Access+	Euronext Access
	Initial admission			
<b>Free float</b>	25 per cent or 5 per cent (if it represents greater than €5 million on the Regulated Market)	€2.5 million	€1.0 million	Not applicable
<b>Documentation</b>	AMF-approved EU prospectus	Information document (or EU prospectus in case of public offers)		
<b>Financial statements</b>	Last three years of audited accounts (plus most recent reviewed half-yearly accounts if admission will be more than nine months after close of last full fiscal year)	Last two years of audited accounts	Last two years, including last year of audited accounts	Last two years of accounts if relevant (audited accounts not required)
<b>Accounting standards</b>	International Financial Reporting Standards (IFRS)	IFRS or French generally accepted accounting principles		
<b>Intermediary</b>	Listing agent	Listing sponsor		

12 Euronext, 'Choosing your Market', available at <https://www.euronext.com/en/raise-capital/how-go-public/choosing-market>. Last accessed 4 January 2020.

13 Euronext, 'Choosing your Market', available at <https://www.euronext.com/en/raise-capital/how-go-public/choosing-market>. Last accessed 4 January 2020.

14 Euronext, 'How to go public-IPO Guide', available at <https://www.euronext.com/en/raise-capital/how-go-public>. Last accessed 4 January 2020. The listing application contains certain details about the company and the shares to be listed, as well as undertakings from the company to be listed. Applicants for listing on Euronext Paris must also comply with Euronext's 'Know Your Customer' requirements and must provide to Euronext Paris (1) the AMF-approved prospectus, (2) constitutional and corporate documents of the company to be listed, (3) a letter from the listing agent, and (4) all press releases published in connection with the offering. Euronext Paris also may request certain other materials in connection with the offering, such as the research reports.

	Ongoing requirements			
<b>Annual financial reporting</b>	Audited annual report			In compliance with French regulations
<b>Semi-annual financial reporting</b>	Non-audited semi-annual report with auditors' limited review	Non-audited semi-annual report	Non-audited semi-annual report	Not applicable
<b>Price-sensitive information, list of insiders, market survey</b>	MAR applies			
<b>Declaration of transactions</b>	MAR applies			
<b>Declarations of breaches of threshold (withholding of capital and voting rights)</b>	Applicable		Not applicable	
<b>Anti-money laundering</b>	Applicable			
<b>Intermediary</b>	Not required	Listing sponsor		Not applicable
<b>Website required</b>	Yes			

### iii Overview of law and regulations

#### *EU securities regulations*

EU securities regulations that are applicable to French IPOs are principally composed of: the new Prospectus Regulation, the Delegated Acts, the European Transparency Directive (the Transparency Directive)<sup>15</sup> and MAR.<sup>16</sup> The Prospectus Regulation, which entered into force on 21 July 2019, is directly applicable in EU Member States and, along with the Delegated Acts adopted in March 2019, repealed and replaced the Prospectus Directive<sup>17</sup> and the Commission Regulation.<sup>18</sup> An overview of this new regulatory environment is provided below.

15 Directive 2013/50/EU of the European Parliament and of the Council of 22 October 2013, available at <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32013L0050>. Last accessed 4 January 2020. Additionally, (1) MAR, which sets out the framework regarding market abuse and use of inside information in the EU (Regulation (EU) No. 596/2014 of the European Parliament and of the Council of 16 April 2014, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014R0596>. Last accessed on 4 January 2020); (2) Directive 2001/31, which governs the admission of securities to official stock exchange listing and information to be published on such securities (Directive 2001/34/EC of the European Parliament and of the Council of 28 May 2001, available at <https://eur-lex.europa.eu/legal-content/GA/TXT/?uri=CELEX:32001L0034>. Last accessed on 4 January 2020); and (3) MiFID II, which regulates the European Union's financial markets (Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014L0065>. Last accessed on 4 January 2020), should also be taken into consideration in any French IPO process.

16 Commission Regulation (EU) No. 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation), repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC.

17 Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC.

18 Commission Regulation (EC) No. 809/2004 of 29 April 2004 implementing Directive 2003/71/EC of the European Parliament and of the Council as regards information contained in prospectuses as well as the format, incorporation by reference and publication of such prospectuses and dissemination of advertisements.

The new Prospectus Regulation is a step by the European Commission towards the implementation of its capital markets union action plan. The new Prospectus Regulation ensures that adequate and equivalent disclosure standards are in place in all EU countries so that investors can benefit from the same level of information and protection across the European Union. The new Prospectus Regulation requires a prospectus to be published by a company in connection with (1) offers of securities to the public within EU Member States<sup>19</sup> or (2) admissions of shares to be listed on a regulated market situated or operating within an EU Member State (e.g., the Regulated Market of Euronext). A prospectus is a legal document that describes, among other things, a company's business, the risks it faces, its financial and shareholding structure, as well as the securities that are being issued or admitted to trading. It provides investors with the information they need to make an informed investment decision. The new Prospectus Regulation also sets out the format and the disclosure requirements for EU prospectuses, whereas the Transparency Directive sets the disclosure obligations for issuers listed in the European Union. The Prospectus Regulation is intended to reinforce investor protection and reduce regulatory complexity and compliance costs for companies when going through the public listing and trading process and introduce certain changes to the previous regime for filing prospectuses. The key change is the introduction of the Universal Registration Document (URD), which is intended to streamline the prospectus approval process for frequent issuers. The URD can be used in lieu of the annual report and the half-yearly report, as long as the URD is published within four months of the issuer's financial year end or within three months of its half-year end. The URD should incentivise companies to go public, as it reduces the costs of being a listed company post-IPO by avoiding duplicative disclosures to the market. Other key changes include: (1) the introduction of a passportable EU growth prospectus that will be available to SMEs, certain medium-sized companies admitted to an SME growth market and other non-listed issuers where the offer of securities to the public is for a total consideration of less than €20 million per year – this prospectus is composed of a summary, registration document and securities note, and this change is intended to focus on the relevance and materiality of information for investors and the need to ensure proportionality between the size of the company and the costs of producing a prospectus; (2) prospectuses no longer have to include the auditor's report on profit forecasts and estimates, as such requirement was considered too costly for issuers compared to the protection it provided to investors; (3) simplification of prospectus summary, which may be of a maximum length of seven pages and should be written in a language that is clear, non-technical, concise and comprehensible for investors; (4) streamlining of the risk factors, which must be categorised and presented within each category in order of materiality to ensure that investors can assess the relevant risks related to their investment; and (5) introduction of a simplified disclosure regime for issuers already listed on a regulated market or SME growth market with regard to secondary issuances.

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19 Per the new Prospectus Regulation, an 'offer of securities to the public' is a 'communication to persons in any form and by any means, presenting sufficient information on the terms of the offer and the securities to be offered, so as to enable an investor to decide to purchase or subscribe to these securities; or placing of securities through financial intermediaries'. This term is unchanged compared to the previous Prospectus Directive.

### ***French securities regulations***

In addition to EU directives and regulations, French laws, rules and regulations pertaining to French IPOs and French-listed equity issuers include: the French Commercial Code (for issuers incorporated in France), the French Monetary and Financial Code, the AMF's General Regulation and the corporate governance code of listed companies (the AFEP-MEDEF Code) with respect to the governance of listed companies on a 'comply or explain' basis.

### ***US securities regulations***

In addition to preparing an EU prospectus, companies seeking an IPO in France also generally prepare an 'international offering circular' to assist with marketing the global offering outside France. The international offering circular will contain the same information as the prospectus and typically includes specific disclosure regarding, or pursuant to, US securities laws and regulations, because the global offering will be made (1) by relying on the registration exemptions provided by Rule 144A under the US Securities Act of 1933 (the Securities Act) for sales to 'qualified institutional buyers', or one of the safe harbours provided by Regulation S under the Securities Act for offshore transactions outside the United States, and (2) in compliance with US anti-fraud provisions, notably Rule 10b-5 of the US Securities Exchange Act of 1934.

## **III THE OFFERING PROCESS**

### **i General overview of the IPO process**

A standard IPO process involving an AMF prospectus approval and a listing of shares on Euronext Paris takes approximately four to six months.

The key parties in a French IPO process are as follows:

- a* the company to be listed (the issuer) and its principal and selling shareholders, if applicable;
- b* the issuer's financial advisers;
- c* the underwriters (e.g., a bank syndicate, which is led by joint global coordinators);
- d* the issuer's auditors;
- e* the legal advisers to the issuer, management, the selling shareholders and the underwriters;
- f* the AMF;
- g* Euronext Paris;
- h* a settlement or centralising bank; and
- i* a communications agency advising the issuer.

Certain participants in the IPO will take responsibility for the content of the prospectus, including (1) the issuer, who will provide an attestation to the AMF pursuant to a standard form to be included in the prospectus, which attests that the information in the prospectus is accurate and contains no material omissions, (2) the underwriters, who will provide an attestation to the AMF as to the completeness of their due diligence review and (3) the issuer's auditors, who will provide a letter to the AMF as to the completion of their work, which includes declarations regarding the financial statements and the overall review of the prospectus by such auditors.

The following are the main work streams of a French IPO process:

- a* IPO preparation and issuer readiness studies;
- b* management and document due diligence review;
- c* preparation of financial information;
- d* preparation, and AMF review and approval of the prospectus;
- e* analyst presentations and publication of research reports;
- f* pre-deal investor education, marketing and publicity;
- g* pricing, settlement and delivery; and
- h* stabilisation, if applicable.

The key documents in a French IPO are as follows:

- a* the prospectus;
- b* early look presentations (if any);
- c* analyst presentations;
- d* research reports;
- e* the international offering circular; and
- f* the roadshow or investor presentation.

These main steps and key documents are described in further detail below.

### ***IPO preparation and issuer readiness studies***

Before initiating an IPO in France, issuers need to carefully consider both the AMF review and Euronext listing processes, as well as the ongoing disclosure and compliance requirements of French-listed companies, and ensure that they are sufficiently prepared and organised to fulfil these requirements.

Particular topics for consideration pre-IPO are:

- a* implementation of a risk-mapping exercise;
- b* implementation of appropriate internal controls;
- c* preparation of adequate financial reporting for previous fiscal periods (including the completion of contemplated restatements or re-segmentations, as well as consideration of the impact of IFRS changes);
- d* compliance with relevant regulatory regimes (including industry- and geography-specific labour, tax, data and environmental laws, as well as relevant sanctions and anti-corruption laws); and
- e* corporate and offering structure, including any internal reorganisation, any plans for retail or employee offerings, and the use of primary or secondary offering structures, or both.

### ***Management and document due diligence review***

The underwriters, assisted by legal counsel, will undertake a thorough due diligence exercise early in the process to fulfil their due diligence obligations pursuant to AMF rules, as well as pursuant to Rules 144A and 10b-5. The purpose of the due diligence process is to review the issuer's books and records, and have discussions with the top management of the issuer to ensure that the prospectus and the international offering circular do not contain any

untrue statements of material fact, or omissions of material fact necessary to ensure that the statements made – in light of the circumstances under which they are made – are not misleading in connection with the purchase or sale of any security.

### ***Preparation of financial information***

The availability of finalised financial statements and the related auditors' reports will often drive the IPO timetable. The issuer's auditors will need to be involved early in the IPO process, as they will review the financial information to be included in the prospectus.

Regarding the period to be covered by the financial statements in the prospectus, the general rule for listing on the Regulated Market is inclusion of three years of audited IFRS financial statements (including auditor's audit reports), plus the most recent interim period (including auditor's limited review reports).<sup>20</sup> Although there are specific European rules with respect to the staleness of financial statements,<sup>21</sup> the largest French IPOs generally follow the '135-day rule'.<sup>22</sup>

### ***Preparation, and AMF review and approval of the prospectus***

Contrary to many other jurisdictions that use a single prospectus document, the French IPO prospectus is composed of a registration document, a securities note, a summary (contained in the securities note and provided in French and English, if applicable) and, if applicable, one or more updates to the registration document.

The different parts of the prospectus are filed on a confidential basis with the AMF for its review and comment, which generally requires multiple rounds of submission and comments. It is essential to communicate and coordinate closely with the AMF to determine the best timetable for submissions of drafts.

Once the draft registration document is complete and approved by the AMF, it will be 'registered' and made public by the issuer in accordance with applicable rules. After publication of the research reports and completion of the pre-deal investor education process (as described below), the securities note, the registration document updates (if any) as well as the summary of the prospectus are prepared and confidentially filed with and reviewed by the AMF. Ultimately, the entire prospectus is approved and receives a 'visa' from the AMF.<sup>23</sup>

The format and content of the prospectus is set out in the securities regulations.

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20 Two years of audited financial statements may be acceptable for recently incorporated companies or groups, but this decision must be taken in consultation with the AMF and Euronext Paris.

21 Annex I of the Securities Regulation sets out the rules for staleness of financial statements applicable to French IPOs. Staleness per the Securities Regulation is (1) 18 months from the date of the registration document if the issuer includes audited interim financial statements in the registration document; or (2) 15 months from the date of the registration document if the issuer includes unaudited interim financial statements in the registration document.

22 The '135-day rule', originally derived from certain US regulations and market practices, provides that if 135 days or more have passed between the date of the most recent financial statements that have been audited or reviewed, on the one hand, and the cut-off date of the comfort letter, on the other hand, the auditors cannot give negative assurance on the change period.

23 AMF approval indicates that the prospectus contains the information required for an investor to decide whether to take part in the offering. AMF approval does not constitute endorsement of the merits of the offering, or the authenticity of the accounting and financial documents presented.



The key sections of the registration document are as follows:

- a* financial information (chapters 3, 9, 10 and 20);
- b* risk factors and business information relating to the issuer and its industry (chapters 4, 5, 6, 7, 8, 11 and 17);
- c* guidance (chapters 12 and 13); and
- d* corporate governance (chapters 14, 15, 16, 18, 19, 21 and 25).<sup>24</sup>

The key sections of the securities note are as follows:

- a* risk factors relating to the securities being offered;
- b* key information about the offering (including capitalisation, working capital, material interests and purpose of the offering);
- c* information about the securities being offered;
- d* terms and conditions of the offering;
- e* information about the selling shareholders; and
- f* information about dilution resulting from the offer.

### ***Analyst presentations and publication of research reports***

In connection with the IPO, the underwriters will assist the issuer in the preparation of two analyst presentations (the first made confidentially to syndicate analysts only and the second made publicly and open to non-syndicate analysts). Following the public analyst presentation, analysts will prepare research reports on the issuer.

It is imperative that the analyst presentations do not contain any material information that is not also included in the prospectus. The AMF will review the draft analyst presentations in advance and strictly monitor compliance with this rule, which is derived from the larger principle of equality of information of all investors, including retail investors.

### ***Pre-deal investor education, marketing and publicity***

Following the publication of the research reports, pre-deal investor education will commence and, following the public launch of the IPO, marketing will be initiated, mainly conducted through roadshow or investor meetings on the basis of a roadshow or investor presentation. Similar to the analyst presentations, the roadshow or investor presentation cannot contain any material information that is not also included in the prospectus

Publicity in connection with French IPOs is closely regulated by EU, French and US securities law and regulations. Importantly, all 'advertisements' as defined in the EU securities regulations must be aligned with the disclosure in the prospectus and are subject to review by the AMF. The IPO timetable needs to take into account the time needed for alignment and review. To assist with this, publicity guidelines (including French and English versions of disclaimers for press materials) that specify measures for complying with such regulations need to be prepared early in the process by legal counsel and shared with the working group, including, particularly, the issuer. All marketing materials, advertisements, IPO websites and

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<sup>24</sup> Any updates to the registration document will include any sections that are required to appear in the registration document that need to be updated.

press releases relating to the offering, irrespective of form and distribution method, must comply with these guidelines, be provided to the AMF for review before being disseminated and include disclaimers that mention the existence of an AMF-approved prospectus.

## **ii Pitfalls and considerations**

### ***Primary and secondary offerings***

Depending on the reason for the offering, an IPO may have a primary component (an issuance of newly issued shares by the issuer to raise money in connection with the IPO) or secondary component (a sale of existing shares by existing shareholders to entirely or partially exit), or a mix of both.

### ***Corporate and tax structure considerations***

Taking a company public in France may require pre-IPO reorganisation as well as careful considerations of tax implications, in particular in a leveraged buyout (LBO) exit scenario. The aim of the corporate reorganisation is to design a group structure that will facilitate and optimise – including from a tax standpoint – the admission of the shares as well as the primary and secondary components of the transaction.

Pre-IPO reorganisations generally address the following main constraints and objectives:

- a* reconfiguring the shareholding structure of the issuer;
- b* unwinding the existing management package (including executing mergers, contributions in kind, and conversion of preferred debt and equity instruments into ordinary shares);
- c* simplifying the holding structure of the group below the issuer to facilitate dividend payments, and optimise the financing and tax structure; and
- d* ensuring tax efficiency for the shareholders and the group at IPO and going forward.

### ***Retail offerings***

AMF regulations require that, in the context of a French IPO, the offering be open not only to institutional investors but also to retail investors (the retail offering). This requirement will be met when there is a procedure by which at least 10 per cent of the overall offering amount is made accessible to retail investors, although no proactive marketing to retail investors is required by the AMF.

However, the AMF will not permit an issuer to prepare the prospectus in English if the issuer implements specific and targeted efforts to reach retail investors, such as publication in the general media outlets, including general television channels or ordinary newspapers.

### ***Concurrent financing or refinancing***

In an LBO exit scenario, a full refinancing of the issuer's group outstanding third-party debt is implemented at settlement. In this scenario, it is critical that the IPO and financing work streams are coordinated from the beginning of the process, taking both legal and commercial considerations into account.

## **iii Considerations for foreign issuers**

Under the EU securities regulations, the competent authority to review and approve a prospectus is by default the securities regulator of the Member State of incorporation of the issuer. In certain circumstances, however, and with the approval of the relevant regulators,

competence can be transferred to the regulator of the country where the listing is requested. As a consequence, the AMF would generally not be the regulator reviewing and approving the prospectus for an issuer incorporated in an EU Member State other than France, even in connection with a Euronext Paris listing. However, the EU securities regulations provide for a passporting regime whereby an issuer may prepare a single EU prospectus, have it reviewed and approved by the competent authority its home Member State and passport it into other EU Member States to be used for a listing.

With respect to non-EU incorporated issuers seeking a listing on Euronext Paris, subject to certain conditions and exceptions, the AMF may be chosen as the competent authority for purposes of the prospectus approval.

Generally, listing of non-French businesses and issuers on Euronext Paris has been greatly facilitated by the harmonisation of the European prospectus rules and regulations across the European Union and the EU passport regime, as well as the ability, under certain circumstances, to get a prospectus approved by the AMF in English.

## **IV POST-IPO REQUIREMENTS**

### **i Ongoing disclosure and reporting requirements**

Following an IPO, companies listed on the Regulated Market must fulfil certain periodic disclosure requirements, including the publication of an annual and a half-yearly report. Annual reports are to be published within four months of the end of the issuer's fiscal year. Half-yearly reports are to be published within three months of the end of the issuer's fiscal half-year. In addition, many France-listed companies elect to make limited quarterly reporting, although it is not mandatory.

In addition to these periodic disclosure requirements, companies listed on the Regulated Market also need to make disclosures at the occurrence of certain events, particularly in relation to material non-public information (defined as 'inside information' under MAR) and director dealings. Inside information is precise, non-public information that relates directly or indirectly to the issuer, which, if made public, could have a significant impact on the share price of the issuer. This type of information may relate to, among other things, trading information, one-off events, or major transactions or projects. The disclosure obligation as regards inside information is guided by the principle that inside information should generally be disclosed as soon as possible. Delay of disclosure may be permitted to protect a 'legitimate interest' if the omission is not likely to mislead the public, any person receiving inside information owes the issuer a duty of confidentiality and the issuer is able to ensure the confidentiality of the inside information.

### **ii Ongoing compliance with corporate governance principles**

Post-IPO corporate governance is generally required to be compliant with the recommendations set forth in the AFEP-MEDEF Code,<sup>25</sup> and the post-IPO corporate government structure will be described in the registration document and the identity of independent board members will be disclosed in the securities note. Thus, it is important that the post-IPO governance structure is considered by the issuer and its shareholders early in the IPO process.

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25 Listed SMEs and mid-cap companies will have a comply with an alternative corporate governance framework, the Middenext Corporate Governance Code.

Key considerations include: one-tier versus dual boards, composition of the board and committees, board parity obligations, constraints relating to employee representatives and employees shareholder representatives, and management incentives post-IPO (free share plans, IPO bonuses for key managers, employee offerings, etc.).

### **iii Governance of a French limited liability company**

French law provides for two alternative management systems in a French limited liability company (SA): one-tier board structure, with a board of directors; or dual board structure, with a management board and a supervisory board.

Many of the largest listed companies in France have selected a one-tier board structure.

In an SA with a board of directors, the position of general manager may either be held by the chair of the board of directors or by another person. One or more additional deputy general managers may also be appointed to assist the general manager in the daily general management of the issuer.

In an SA with a management board and supervisory board, all management board members are granted management powers. Within the limits of the corporate purpose of the company and those powers expressly granted by law to the supervisory board and the shareholders, the management board, as a collegial body, is vested with all powers to act in any circumstances in the name of the company. The chair of the management board and one or several management board members (if this power was granted by the supervisory board in accordance with the articles of association of the company) represent the company in regard to third parties (management board members who are granted this power are general managers of the company). The powers of the general manager and of all other managers can be limited internally by a shareholders' agreement, by-laws or the board of directors, but these limitations will not deprive the general manager of its general management powers and do not bind third parties.

Additionally, French corporate governance rules require that certain thresholds for appointment of independent directors<sup>26</sup> and female board membership for boards of directors and supervisory boards be met, as follows: (1) a minimum of 50 per cent independent directors is required if the company is not controlled by one or several controlling shareholders; (2) a minimum of 33.3 per cent independent directors is required if the company is controlled by one or several controlling shareholders; and (3) a minimum of 40 per cent female board members is required in all cases. French corporate governance rules also provide guidance as to the establishment of certain committees that should assist the work of the board, including an audit committee, a compensation committee, and a nomination and governance committee.

## **V OUTLOOK AND CONCLUSION**

Global political uncertainty translated into a small number of significant IPOs in France in 2019, as compared with previous years, with only two compartment A offerings in the Euronext Paris Regulated Market: Française des Jeux and Verallia. The IPO of Française des Jeux, undertaken in connection with the privatisation of formerly French state-owned

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<sup>26</sup> A director is independent when he or she does not have any relation of any kind with the company, its group or its management that may jeopardise his or her free judgement.

lottery company Française des Jeux was the largest French IPO in terms of offering amount since 2006. More than 500,000 French individuals invested in Française des Jeux. The other significant IPO in France in 2019 was that of Verallia, one of the world's leading producers of glass packaging for food and beverages.

In spite of slower activity in 2019, the fundamental drivers of the French IPO market remain positive. First, the New Prospectus Regulation has made the European markets generally more attractive to large national and international companies by reducing the costs associated with post-IPO disclosure, particularly with the introduction of the URD. Second, IPOs of SMEs should also grow as the New Prospectus Regulation takes effect, due to the reduced the costs associated with IPOs for SMEs. Third, general macroeconomic drivers are also benefiting from increasing political certainty in Europe following the end of the Brexit saga, which could result in an opportunity for companies wishing to go public.

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