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AMF

Final Report on General Meetings of Shareholders of Listed Companies

Working Group Chaired by
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FOREWORD

General meetings are a privileged opportunity for shareholders, be they individuals or institutional investors, to dialogue, obtain information and exchange views.

The organisation of general meetings and shareholder voting is governed by statutory and regulatory requirements that seek in particular to ensure the legal certainty of key decisions. This is particularly important since general meetings in France enjoy substantial powers.

In view of its duty to protect savings, the AMF pays special attention to ensuring that shareholders are able to exercise their voting rights at general meetings. One of the actions adopted under the AMF's latest Strategy Plan is to pursue discussions with issuers and shareholders on organising general meetings so that shareholders can play their full part.

In May 2011, the AMF Board decided to set up a working group of market stakeholders (issuers, institutional investors, individual shareholders, statutory auditors, lawyers, academics and securities professionals) tasked with formulating proposals on three topics: dialogue between shareholders and issuers at general meetings, the functioning of general meetings, and voting on regulated agreements. The number of topics was restricted deliberately to ensure that the group's work would not extend to the entire field of listed company governance or give rise to proposals that could be implemented quickly.

Before presenting the findings of the working group, it should be stressed that the group's members, as well as several of the experts they questioned – especially institutional investors that attend general meetings in other countries, in particular the United States and the UK – expressed positive views on the way that general meetings function in France.

Given this broadly positive response, the working group did not seek to call into question the existing checks and balances but to identify developments that might be desirable in specific areas, based on situations sometimes observed by shareholders.

This report presents the findings of the working group in four sections.

The first part deals with **dialogue between shareholders and issuers.** It stresses the need for ongoing dialogue both before and after the general meeting. One important aspect of that interaction is the possibility for shareholders to express their concerns. They can do so through draft resolutions or agenda items, as well as by asking written or oral questions. The group also underscored the additional efforts needed to clearly explain the content of and reasons for the resolutions put by the board to the meeting.

In terms of **voting**, the group proposed introducing a "third way" for shareholders to express themselves; this would be done by enshrining a true abstention vote in French law, separate from "for" and "against" votes. It also proposed improvements to the mechanism for transmitting the votes of non-resident shareholders. The present system is fairly complex, more because of the circuits it uses than because of the law that governs it. The group also put forward practical measures concerning possibilities for electric voting that would benefit all shareholders, residents and non-residents alike.

The deliberations on the **"committees"** set up for general meetings sought to clarify some of the existing practices and put them on a formal footing. The group wants formal recognition of the role played by the "centraliser" in compiling attendance sheets. And it proposed that committee members should refrain from taking part in decisions that concern them personally.

The group considers that efforts are needed to make **regulated agreements** more transparent and easier to understand. The respective roles of the various parties involved in approving and ratifying these agreements must be reiterated and, in some cases, strengthened. The group calls on boards of directors to explain their reasons for authorising regulated agreements. It also proposes improvements to the way that the scope of regulated agreements is defined, possibly by excluding agreements with wholly owned subsidiaries. By contrast, agreements between a senior manager or a director and a subsidiary should be brought to the attention of the parent company's shareholders and, in certain cases resulting from factual circumstances, be subject to the regulated agreement procedure at parent company level.

Rules governing the convening, functioning and powers of general meetings are laid down in company law. Consequently, some of the group's proposals would entail legislative or regulatory amendments. However, when formulating such proposals, the group sought to avoid burdening the existing legal framework, amended recently when the European directive on shareholder rights was transposed into French law.

Some proposals are aimed directly at the market participants concerned, especially listed companies. The group paid particular attention to small and mid-capitalisation companies, which, because of their characteristics, need not adopt the proposals intended for larger companies – although they may voluntarily decide to follow them or take inspiration from them in practice. The proposals not intended for small and mid-caps (unless they adopt them of their own accord) are listed in the header section of the report.

All the group's proposals can be applied by the market participants concerned – notably listed companies – as soon as possible, except where legislative or regulatory modifications are necessary. The working group also considers that, subject to the same caveat on legislative or regulatory amendments, the AMF could recommend implementing the report's proposals at the general meetings to be held from 1 January 2013.

The group examined several areas for progress in the course of its meetings, and the proposals it finally adopted reflect a broad consensus among its members. It must be pointed out, however, that none of the members is personally accountable for the proposals, since some may have expressed opinions that departed from the consensus.

I extend my warmest thanks, on behalf of the AMF and personally, to all the members of the working group for their involvement and active contributions. The meetings enabled me to appreciate their professional and personal qualities. Thanks to those qualities, the discussions – though often lively – always took place in a courteous and mutually respectful atmosphere, despite differences of culture, origin and viewpoint.

Working Group Chairman
Olivier Poupart-Lafarge
Member of the AMF Board

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Proposal 1

- Establish an ongoing dialogue between shareholders and companies before draft resolutions are published and after the general meeting as well, to help resolve possible disagreements on points of voting policy for different categories of shareholders.
- Develop new ways of dialoguing after the notice of meeting has been published, and allow time for discussion.
- After the general meeting, to the extent possible, meet personally with shareholders who wish to discuss any disagreements on important points brought up at the meeting, with a view to drawing lessons for the next general meeting.

Proposal 2

- Extend the practice of the issuer announcing the date of the following year's general meeting (or even the dates of the next two AGMs) at the end of the current year's meeting. The date(s) is (are) then published on the issuer's website in the same section as its (their) calendar for future financial reports.
- Ensure that the issuer's updated articles of association are posted on its website so that each shareholder has access to full information from the company.

Proposal 3

- Facilitate the exercise of a shareholder's right to put items or proposed resolutions on the agenda of the general meeting.
- Amend the regulations in the Commercial Code to allow companies to include in their articles of association lower thresholds than those currently provided in the Commercial Code for shareholders submitting draft resolutions and/or agenda items.
- Adopt a broad conception of agenda items that extends beyond what lies strictly within the decision-making powers of the general meeting. It would be sufficient for agenda items to relate to the purpose of the company or to the content of the literature provided to the general meeting.
- Sequence the general meeting so that agenda items and proposed resolutions relating to the same subject are debated together, not separately.

Proposal 4

- Make the titles of resolutions proposed at general meetings more understandable and improve the wording of the statement of reasons for each proposed resolution in order to clarify what is to be voted on and what is at stake in the decision. Accordingly, these explanations ought not to consist merely in recasting the legal terms of the resolution in plainer language. They should present the issues and the reasons for the proposed resolution in a way that enlightens and informs the shareholder vote.
- To achieve this goal of instructive presentation, call on the professional associations concerned (issuers and shareholders) to draft a guide that explains the issues and rules for each type of financial authorisation.
- Post the statements of reasons included in the board’s report on the proposed resolutions on the issuer's website at the same time that the “meeting notice” is published in the legal gazette (BALO – Bulletin des Annonces Légales et Obligatoires), not later than 35 days before the meeting. Include a link to the issuer's website in the AGM notice published in the BALO.
- At the general meeting, present and explain the proposed resolutions before they are voted on.

Proposal 5

- Justify new requests for authority to issue securities within the framework of the company's business strategy, with due regard for the confidentiality of financial offerings.
- As soon as the meeting notice is published, post on the issuer's website, along with the board's statement of reasons for the proposed resolutions, the summary table on how previous financing authorisations have been used, if need be with explanations to aid understanding.

Proposal 6

- Post a summary report on the general meeting on the company's website within two months of that meeting.
- Draw up the minutes as soon as possible after release of the summary report on the meeting, and no later than four months after the meeting.
- In information meetings that take place after the AGM, devote an agenda item to summarising the discussions that took place at the meeting.

II. Voting at general meetings

Proposal 7

- Institute a true vote of abstention in French law through new legislation.
- Redesign the mail-in voting form to clarify the intent of each vote, in particular to distinguish it from powers granted without specifying the name of the proxy.

Proposal 8

Take measures that give importance to non-resident shareholders:

- When communicating with investors, issuers should pay particular attention to non-resident shareholders (if any), notably by providing English translations of the main general meeting documents (agenda, draft resolutions, statements of reasons, management report).
- Large issuers with an international shareholder base should systematically put a suitable person in charge of relations with non-resident investors in order to answer questions relating to the general meeting. The name and contact details of this person should be provided in the issuer’s financial disclosures.

Proposal 9

- Ensure that non-resident shareholders are better informed about the key stages of the voting procedure by providing them with clear, comprehensive documentation put together by issuers and other participants in the French securities holding system.
- Where possible, make non-resident investors more aware of the advantages of registering their shares directly with the issuer, to be sure of receiving relevant information before and after a general meeting and of having their votes counted.

Proposal 10

Without prejudice to other countries’ laws, align the information on non-resident investors with that required for resident shareholders. To this end, ensure that the global mail-in voting forms sent via registered intermediaries include a file giving details of the identity and votes cast of the shareholders concerned.

Proposal 11

- Put in place one or more electronic voting platforms that can provide prompt, reliable handling of data flows between issuers and all their shareholders. Enable non-resident shareholders to benefit from this system by encouraging all participants in the voting chain to take the steps needed to connect to these platforms as quickly as possible.
- As soon as the electronic voting system makes it possible for non-resident shareholders to vote, encourage them to use it directly or via voting service providers.

Proposal 12

Upon prior request from the persons concerned, provide any person or nominee registered directly on the issuer's books, with a document confirming that their votes have been properly taken into account.

Proposal 13

Study the feasibility of a system that would enable resident and non-resident shareholders to be informed that their voting rights have been duly exercised where the voting is done electronically.

III. General meeting committee: constitution, duties and practices

Proposal 14

- Insert the principle, in either the legislative or regulatory part of the Commercial Code, that a general meeting committee must be established and in place at the general meeting.
- In the regulatory part of the Commercial Code, specify that this committee is chaired by the same person who presides as chair of the general meeting, except in the case of an impediment as provided in Proposal 16 below, and that the committee's decisions are taken by a majority of its members.

Proposal 15

- Put in place a general meeting committee composed of a chairperson and two scrutineers, unless circumstances duly explained in the meeting minutes make this impossible.
- To the extent possible, identify in advance the persons likely to be named as scrutineers, so that they can familiarise themselves with the role they will play and the difficulties the committee may encounter during the general meeting.

Proposal 16

- Prohibit a member of the general meeting committee from taking part in any decision within the committee's powers that would affect that member, such as a decision on suspending voting rights, amending a resolution or proposing a new resolution. Designate an alternate who would take the place of the committee member prevented from participating in such circumstances.
- Write this prohibition and this provision for designating alternates into the legislative or regulatory part of the Commercial Code.

Proposal 17

- Remind the general meeting of the role of the "centraliser". On the attendance sheet, mention that the scrutineers have signed this document on the basis of the information provided by the centraliser under the terms of its contract with the issuer.
- Ask the professional associations concerned, issuers and shareholders to draft a code of conduct for the meeting centraliser that identify best practices, particularly on managing potential conflicts of interest.

Proposal 18

Enshrine the policing power of the general meeting committee in the regulatory section of the Commercial Code. Specify that this committee:

- ensures orderly debate. Accordingly, it may have to ensure orderly management of answers to shareholders' questions (in particular by distributing floor time);
- if necessary, decides whether to suspend the session, that is, to halt deliberations of the general meeting momentarily;
- enforces the applicable rules on denial of voting rights based on evidence presented to it, but without making a precise legal characterisation.

IV. Voting on regulated agreements

Proposal 19

Update the 1990 study by Compagnie Nationale des Commissaires aux Comptes (CNCC) on intra-group agreements. Senior managers use this document, among other things, to determine what is covered by the notion of "agreements on current operations entered into under normal terms and conditions". The CNCC could initiate an update in collaboration with the Haut Conseil du Commissariat aux Comptes (H3C) and the AMF, working in liaison with organisations representing issuers and shareholders. The new guide could cover agreements concluded both within and outside a corporate group.

Proposal 20

- Have companies establish an internal charter to define an agreement and submit it to the regulated agreement procedure. The charter would set forth the criteria adopted by the company, which would adapt the CNCC guide to its own situation, in agreement with its statutory auditors.
- Submit this charter to the company's board of directors for approval and make it public.

Proposal 21

Amend the law so that agreements between a listed company and its 100% directly- or indirectly-owned (or equivalent) subsidiaries at the time the agreement is signed are excluded from the regulated agreement regime. This derogation applies to the parent company as well as the subsidiary.

Proposal 22

Retain the definition of "indirectly involved person" suggested by the Paris Chamber of Commerce and Industry[1]: "A person not party to an agreement is considered to be indirectly involved in that agreement if, by virtue of his or her links to the parties and of his or her powers to influence their conduct, he or she derives a benefit from it".

Proposal 23

When they are not agreements on current operations entered into under normal terms and conditions, describe agreements concluded by a directly- or indirectly-owned subsidiary, and that concern directly or indirectly, a senior manager and/or director of the listed company, or a shareholder owning more than 10% of the capital of the listed company, in the report to the general meeting and also in the registration document, if any.

Proposal 24

- Have the board of directors give its reasons for authorising a regulated agreement by explaining how the company stands to benefit from the agreement and the related financial terms and conditions. These reasons would be recorded in the meeting minutes and brought to the attention of the statutory auditors when they are notified of the agreement;
- Should the merits of the agreement be not, or not sufficiently, explained, ask the statutory auditors to make comments in their special report, on the understanding that the auditors assess neither the advisability nor the usefulness of entering into the agreement;
- Amend the regulatory section of the Commercial Code to make it mandatory for the board of directors to give reasons for their decision, to transmit those reasons to the statutory auditors and to have them set them out in the auditors' special report.

Proposal 25

- Encourage the board of directors to appoint an independent appraiser whenever entering into a regulated agreement may have a very significant impact on the balance sheet or results of the company and/or the group.
- Refer to the board of directors' request for an independent appraisal in the special report and make it public, with the exception of any factors that might compromise business secrecy.

[1] Contribution by the Paris Chamber of Commerce and Industry to the industry initiative on *"enhancing the effectiveness of the regulated agreement procedure"*, September 2011.

Proposal 26
In exceptional cases in which prior authorisation from the board of directors could not be obtained, have the board ratify any agreements not previously authorised before they are submitted to the general meeting for approval, barring specific circumstances in which all the directors have a conflict of interest.

Proposal 27
Have the board of directors conduct an annual review of regulated agreements having a long-lasting effect on the company.

Proposal 28
- Enhance the content of the information provided in the statutory auditors' special report so that shareholders can better appreciate the issues involved in agreements that have been concluded. In particular, any information that might enable shareholders to assess the merits of entering into agreements and commitments should be provided, especially in the case of service agreements with directors. Achieving this objective will be facilitated if the board of directors transmits a clear, precise document explaining why the agreement is in the company's interest (see Proposal 24);
- Specify the persons concerned by the agreements and state their function, including for ongoing agreements;
- Clarify the presentation of the terms and conditions of regulated agreements in the report in order to identify more easily the issues involved for the issuer and the senior executives concerned. In this respect, the report on regulated agreements should be organised into three sections:
    - o agreements with shareholders;
    - o agreements with companies that share senior managers, specifying the equity links between those companies (i.e. ownership percentages);
    - o other agreements with senior managers.
- Present the financial details of these agreements, making a distinction between income, expenses and commitments and specifying the amounts involved.

Proposal 29
Submit any significant regulated agreement, authorised and concluded after the financial year-end, to the approval of the next meeting, provided that statutory auditors have been able to analyse the agreement in time for the publication of its report.

Proposal 30
Establish a link, if any, between the consolidated financial statement note concerning related parties with the information presented on regulated agreements.

Proposal 31
Where the company prepares a registration document, the special report should be included so that shareholders can promptly access relevant information.

Proposal 32
Encourage submission of a separate resolution to shareholder vote whenever the agreement is of a significant importance to one of the parties and that it directly or indirectly involves a senior manager or shareholder, as required by law for certain deferred commitments for the benefit of senior management.

Proposal 33
Present the new agreements submitted for approval in the board of directors' report to the general meeting and reiterate that only these agreements are to be voted on at the meeting.

Prefatory remark regarding the scope of proposals addressed directly to issuers in terms of their shareholding structure, size and organisation

Most of the proposals set forth here are addressed directly to issuers and their boards.

Issuers should assess the scope and application of these proposals in terms of their shareholding structure, size and organisation.

In this regard, several of the working group's proposals are not in principle intended for small and mid-sized issuers, although these companies may voluntarily decide to follow them or take inspiration from them in practice. The proposals meant primarily for large issuers are:

- ongoing dialogue between shareholders and issuers: proposals 1, 2, 3 and 6;
- expression of votes in general meetings: proposals 8 and 9;
- general meeting committee: proposal 15;
- voting on regulated agreements: proposal 20.

I. Ongoing dialogue between shareholders and issuers

The remit of the working group was to debate the dialogue between shareholders and issuers at general meetings, in particular the following aspects: how companies communicate on the resolutions they propose at general meetings and their objectives in those resolutions; the meeting agenda and how shareholders can contribute to it; and how questions from shareholders are adressed.[2]

A. Devote time to preparing for the general meeting

The board has a duty to take stock of the previous year's general meeting and set the agenda for the upcoming one. It is essential that

- the board devote the time needed to work closely with senior management and the issuer's legal and finance departments on preparing the draft resolutions. Where resolutions identical to those put forward in previous years are to be proposed again, the board should review the voting outcome.
- all directors attend the general meeting.

The board and its committees may accordingly need to debate the following items that may be submitted for their opinion or review:

- the structure and presentation of the resolutions, with a view to ensuring that the resolutions and the grounds for them are presented clearly and any consequences for the company's capital structure and dilution of shareholder rights are mentioned in the statement of reasons;
- the conduct of the general meeting, especially the agenda, the sequence of speakers and debates, the handling of written and oral questions during the session, the presentations to be made, and how committee chairs might intervene if the board so decides;
- the arrangements for calling the general meeting and permitting shareholders to attend it;
- providing shareholders with answers to written questions for the general meeting received in advance; these answers are examined and approved by the board as soon as possible before the meeting begins and posted in a special section of the company's website, as now provided by law (Article L225-108, paragraph 4 of the Commercial Code).

B. Develop ongoing dialogue between shareholders and issuers

Many issuers have already developed a constructive, ongoing dialogue with their investors – not necessarily linked to the general meeting – although further improvement is still possible. This dialogue can reduce the

[2] Many references are made to Directive 2007/36/EC of 11 July 2007 on the exercise of certain voting rights of shareholders of listed companies. The directive requires several changes in shareholder rights having to do with the dialogue between the issuer, the shareholders and proxy voting agencies. This directive was transposed into French law by Decree 2010-684 of 23 June 2010, Order 2010-1411 of 9 December 2010 and Decree 2010-1619 of 23 December 2010.

number of challenged resolutions and provide explanations to the shareholders who ask for them. Some investors already participate in dialogue with issuers, and it is important that they remain active in this way.

During its discussions, the working group advanced the idea of a complementary effort to look into establishing a code for institutional investors, along the same lines as the Stewardship Code published in July 2010 in the United Kingdom or the EFAMA Code of May 2011[3].

Dialogue with individual shareholders – besides responses provided by the dedicated shareholder relations departments at large issuers and "Shareholder Letters" sent out periodically – could be fostered by setting up shareholder committees or communication committees that would meet regularly, with the board chair present.

Lastly, the issuer-shareholder dialogue should not be suspended once the legal documentation for the general meeting has been sent out.

Proposal 1

- **Establish an ongoing dialogue between shareholders and companies before draft resolutions are published and after the general meeting as well, to help resolve disagreement on points of voting policy for different categories of shareholders.**
- **Develop new ways of dialoguing after the notice of meeting has been published, and allow time for discussion.**
- **After the general meeting, to the extent possible, meet personally with shareholders who wish to discuss any disagreements on important points brought up at the meeting, with a view to learning lessons for the next general meeting.**

The working group also discussed introducing a ban on proxy solicitation by persons convicted of criminal charges or disciplined by an AMF sanction in the past[4]. Some members of the group consider the power to represent shareholders and vote on their behalf as being incompatible with a judgment issued against an individual for financial violations (offences or infringements). However implementing such a prohibition would raise numerous questions (scope of the sanctions that would be covered, statute of limitations, etc.), so the working group did not proposed one.

C. Announce the date and agenda of the general meeting as early as possible

The working group found that the dates[5] of 2011 annual general meetings of CAC 40 companies and, more broadly, SBF 120 companies, were highly concentrated. However, the working group also recognised that in practice, companies in the same business sector already have procedures for coordinating among themselves to avoid scheduling AGMs on the same date at the same time of day. The working group encourages this kind of coordination.

[3] "EFAMA Code for External Governance – Principles for the exercise of ownership rights in investee companies".

[4] In this connection, the possibility of extending this prohibition to the role of the scrutineer was also discussed.

[5] The annual general meeting must take place within six months of the close of the financial year (Article L225-100 of the Commercial Code) under penalty of law (Article L242-10 of the Commercial Code). Article R225-73 of the Commercial Code on the notice announcing the date of the AGM says that the meeting must not be held sooner than thirty-five days after publication of the notice and provides (by reference to Article R. 225-66, paragraph 1 of the Commercial Code) that the notice must indicate the date, time of day and place of the meeting. The convening notice published not later than fifteen days before the meeting (Article R225-69 of the Commercial Code) must also indicate the date(s), time of day and place of the meeting as well as its nature (ordinary, extraordinary or special) and the meeting agenda (Article R225-66, paragraph 1 of the Commercial Code).

Proposal 2

- **Extend the practice of the issuer announcing the date of the following year's general meeting (or even the dates of the next two AGMs) at the end of the current year's meeting. The date(s) are then published on the issuer's website in the same section as its calendar for future financial reports.**
- **Ensure that the issuer's updated articles of association are posted on its website so that each shareholder has access to full information from the company.**

The working group notes that a number of listed companies voluntarily publish their meeting notice 45, 60, or even 70 or more days before the meeting date (rather than the legal minimum of 35 days).

Moreover, the working group emphasised the importance of informal dialogue well in advance between the company and its proxy advisors. The working group also noted that, in its Recommendation 2011-06 on proxy advisory agencies, the AMF recommended allowing a comment period of at least 24 hours after the agency has sent its draft report to the company, provided the company has sent the agency certain documents at least 35 days before the AGM date. Inasmuch as this AMF recommendation was issued in March 2011, the working group did not wish to revisit its content, although some members said that a 24-hour comment period seemed somewhat short.

D. Be more forthcoming about requirements for proposed shareholder resolutions and agenda items

The representativeness requirements for requests to put items or resolutions on the agenda of the AGM (0.5%[6] of shares in issue for SBF 120 companies) were a subject of debate within the group. Some participants found the threshold too high, both for agenda items and for new resolutions, but no consensus emerged from the debates.

That said, the working group recommends that Article R.225-71 of the Commercial Code be amended to permit companies, and particularly those with substantial capitalisation (CAC 40 companies) that wish to facilitate the exercise of this right by their shareholders, to adopt thresholds in their articles of association that are lower than those provided for in the Commercial Code.

More generally, the working group emphasises the importance of the right of shareholders to put items and draft resolutions on the AGM agenda, and it recommends issuers to ensure these provisions are observed and to facilitate the exercise of this right in practice.

1. Adopt a broad conception of agenda items and better coordinate debates during the meeting

A request to put an item on the agenda is broader than one proposing a resolution, since it gives a shareholder a means of addressing the issuer and other shareholders at the general meeting.

The working group believes that agenda items should be of general interest, not specific to any one shareholder, and should relate to the purpose of the company or the contents of the literature provided to the general meeting.[7] There can be no question of admitting an off-topic agenda item bearing no relation to the company's business purpose (eccentric subject matter, current politics, ideological slogan, etc.) or to the documents sent to

[6] Article R225-71 of the Commercial Code:
"A demand by shareholders representing at least 5% of the authorised share capital to put items or proposed resolutions on the agenda of the general meeting shall be sent to the company's registered office by registered letter with acknowledgment of receipt requested or by electronic telecommunication. However, where the share capital of the company is greater than 750,000 euros, the percentage of capital required to be represented for application of the preceding paragraph is reduced as follows:
a) 4% on the capital up to 750,000 euros;
b) 2.50% on the capital between 750,000 and 7,500,000 euros;
c) 1% on the capital between 7,500,000 and 15,000,000 euros;
d) 0.50% on the capital in excess of 15,000,000 euros."

[7] Documents (reports of the board of directors and the statutory auditors) sent to shareholders to inform their decisions.

shareholders for the meeting. In this context, and when the board refuses to admit an item to the agenda, the chair may explain the reasons for refusal to the meeting.

In practical terms, the working group recommends that debates on agenda items during the AGM should be concentrated in the time slots reserved for discussions of proposed resolutions on the same subjects, to avoid making the conduct of the session even more cumbersome.

Proposal 3

- **Facilitate the exercise of a shareholder's right to put items or proposed resolutions on the agenda of the general meeting.**
- **Amend the regulations in the Commercial Code to allow companies to include in their articles of association lower thresholds than those currently provided for in the Commercial Code for shareholder submissions of proposed resolutions and/or items on the agenda.**
- **Adopt a broad conception of agenda items that extends beyond what lies strictly within the decision-making powers of the general meeting. It would be sufficient for agenda items to relate to the purpose of the company or to the content of the literature provided to the general meeting.**
- **Sequence the general meeting so that agenda items and proposed resolutions relating to the same subject are debated together, not separately.**

2. Simplify and clarify the proposed resolutions and statements of reasons, and put them in perspective

2.1 Pay attention to the wording of resolution titles, clarify the statements of reasons and put them in perspective

In the working group's estimation, the titles of proposed resolutions are not always explicit enough for shareholders to understand them properly.

Their significance could also be made much easier to grasp by improving the quality of writing in the statements of reasons appearing in the board's report on proposed resolutions. These statements ought to be more instructive.

However, the working group does not want to encourage the use of summaries or abstracts.[8] Although not enforceable from a strictly legal standpoint, such outlines, which can at times be overly concise and/or incomplete, could still be invoked against the corresponding resolution.

Proposal 4

- **Make the titles of resolutions proposed at general meetings more understandable and improve the wording of the statement of reasons for each proposed resolution in order to clarify what is to be voted on and what is at stake in the decision. Accordingly, these explanations ought not to consist merely in recasting the legal terms of the resolution in plainer language. They should present the issues and the reasons for the proposed resolution in a way that enlightens and informs the shareholder vote.**
- **To achieve this goal of instructive presentation, call on the professional associations concerned (issuers and shareholders) to draft a guide that explains the issues and rules for each type of financial authorisation.**
- **Post the statements of reasons included in the board's report on the proposed resolutions on the issuer's website at the same time that the "meeting notice" is published in the legal gazette (BALO), not later than 35 days before the meeting. Include a link to the issuer's website in the AGM notice published in the BALO.**
- **At the general meeting, present and explain the proposed resolutions before they are voted on.**

[8] Recall that the AMF recommendation of April 2006 on shareholder participation at general meetings encouraged the use of such outlines. The working group proposes to take back this recommendation.

2.2 Avoid multiplying the number of resolutions providing for the delegation of authority and authorisation, and make sure that the summary tables are clear

The working group observes that "broad-brush" resolutions authorising issuance of securities have proliferated and their content has inflated. The need for quick reaction in the market partly explains the existence of such sweeping resolutions.

The law[9] requires the board to report on the use of such authorisations. Furthermore, in their registration document (provided to the general meeting) issuers must have a summary table on their utilisation of financing authorisations. The working group points out that industry associations have issued recommendations on this topic.

Proposal 5

- **Justify new requests for authority to issue securities within the framework of the company's business strategy, with due regard for the confidentiality of financial offerings.**
- **As soon as the meeting notice is published, post on the issuer's website, along with the board's statement of reasons for the proposed resolutions, the summary table on how previous financing authorisations have been used, if need be with explanations to aid understanding.**

2.3 Favour a more educational presentation of amendments to resolutions and resolutions submitted during the meeting

The amendments to proposed resolutions that may be presented by shareholders or to the shareholders must be limited to issues on the agenda.

Amending a proposed resolution is an exercise of the general meeting's power to modify any proposal presented to it; this power is not limited to approving or rejecting a proposed resolution.[10] No majority or percentage-of-capital requirements have to be met to propose amendments or resolutions during the general meeting[11].

Because the general meeting is sovereign, the right of amendment is fundamental. The working group noted the importance of the order in which resolutions and amendments are put to vote and problems such as passing two contradictory resolutions. To avoid such problems, amendments should be grouped with the resolutions to which they relate, and the chair should explain clearly how voting will proceed.

The working group stressed the importance of presenting amendments in an educational way during the session.

E). Affirm the importance of questions asked by shareholders

1. Avoid commercial questions during the general meeting.

Issuers should be able to handle certain questions, such as those relating to commercial issues and that concern an individual shareholder, through a channel other than the general meeting. Thus, alongside the general meeting, issuers might have staff from the business side on hand to answer questions of a strictly commercial nature.

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[9] Articles L225-129-5 and R225-116 of the Commercial Code.

[10] Legal doctrine recognises that the general meeting has this power to amend, which can be considered to flow from the very broad language of the law (Articles L225-98 and L 225-105 of the Commercial Code), for example as regards the statutory accounts or the appointment of directors and statutory auditors. The general meeting has the power to amend proposed resolutions, certainly in part and even *in toto*, provided it does not stray from the agenda to do so.

[11] Resolutions may not be submitted during the course of a shareholders meeting except as provided in Article L.225-105-3 of the Commercial Code, which states that *"The meeting cannot deliberate on an item which is not on the agenda. It may nevertheless remove one or more directors or supervisory board members from office and replace them, in any circumstances".*

2. Improve the handling of written questions received before the general meeting

2.1 Address the most relevant written questions at the general meeting

The working group debated the practice – now recognised in law (Article L225-108, paragraph 4 of the Commercial Code) – of posting responses to written questions on the company's website ahead of the general meeting. If used properly, this practice can improve the dialogue during the general meeting, which can then focus more closely on essential matters. If necessary, the chair can always have the response to a much anticipated question read out at the session, even if it has already been addressed and posted on the company's website.

2.2 Do better at communicating responses to written questions[12]

The working group emphasised the difficulty of the board's job in responding to such questions exhaustively, given the late deadline (four days before the general meeting) that the regulation sets for sending in questions before the general meeting.

Shareholders should therefore send their written questions as far in advance as possible so that issuers can put them on the agenda for a board meeting ahead of the meeting.

Posting responses to written questions on the Internet before the general meeting, so that shareholders can read them before the AGM is held, and attaching the full response to the written questions to the minutes of the AGM, are both good practices that are worth mentioning.

3. Do more to democratise speaking time at the general meeting

Every shareholder should have the possibility of taking the floor at the general meeting. However, both the shareholders and the issuer must adopt a reasonable attitude. Before the session devoted to questions from the floor begins, the chair should specify exactly how much time is allowed, in order to democratise the process and encourage speakers to be concise. In keeping with best practices in this area, there should also be a time limit for responding to questions.

Shareholders could be encouraged to read all the responses to the written questions or to make more use of that procedure themselves, in order to free up speaking time during the general meeting.

[12] Article L225-108 of the Commercial Code:
"… any shareholder shall be entitled to submit written questions, to which the board of directors or the management, as the case may be, shall required to reply in the course of the meeting." Such written questions are to be sent to the company's registered office by registered letter addressed to the chair of the board of directors or the management board, with return receipt requested, or by electronic means to the address indicated in the convening notice, not later than four business days preceding the date of the general meeting. French law is already in compliance with the Directive on this point. However, Order 2010-1511 of 9 December 2010 ("the Order") makes two changes to the legal framework:
(i) The Order states explicitly that a common answer may be provided to written questions where the substance is the same, thereby restating a position that was previously allowed.
It adds that *"a response to a written question is deemed to have been given once it appears on the company's website in a section devoted to questions and answers".* (ii)

F. Encourage greater post-AGM transparency

1. Develop video transmission of general meetings[13]

The working group wants to encourage the development of live video transmission of AGMs and eventually the participation of shareholders attending via video feed. In time, it should be possible for shareholders to vote remotely in real time and be counted in quorum calculations. The working group is aware, though, that the technologies currently used for real-time remote voting do not seem far enough advanced to support a proposal as this stage, and the working group declines to make one. Video transmission will also keep an additional shareholder communication channel open after the general meeting.

In any event, it is the working group's view that the unity of debate at the general meeting must be assured from a legal standpoint, even if the shareholders are physically in different halls or other venues.

2. Ensure transparency of general meeting voting results

The working group believes that traceability[14] can and must be ensured throughout the voting process[15].

Furthermore, if they wish, shareholders should be able to receive confirmation that their votes have been exercised, especially where the company offers an electronic voting service.[16]

3. Provide the voting results, summary report and minutes of the general meeting promptly

The working group stressed the difficulties caused by delayed publication of voting results[17] in cases where votes are contested, and it notes that the new Article R225-106-1 of the Commercial Code (Decree of 23 June 2010) requires issuers to publish AGM voting results within 15 days.

Issuers are encouraged to make the voting results, summary report and minutes of the general meeting promptly and systematically available to all shareholders.

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[13] If the articles of association of the company allow, shareholders make take part in debates and vote during the session by means of electronic communications. Shareholders participating by such means are deemed to be present at the meeting for purposes of calculating quorum and majority (Article L225-107 II of the Commercial Code).
Note that only the following means can be used:
- videoconferencing, via the Internet or the telephone network, that enables shareholders to appear on a screen in the hall where the meeting is being held;
- secure means of telecommunication that permit identification of shareholders participating remotely at the general meeting.

Companies whose articles of association allow shareholders to vote at general meetings by electronic telecommunications must set up a website exclusively for this purpose. Shareholders cannot access this website until they have identified themselves using a code provided to them in advance of the meeting (article R. 225-98 of the Commercial Code).

[14] To bring French law into conformity with Article 14 of the EU Directive of 11 July 2007 on shareholder rights, Article R225-106-1 of the Commercial Code (inserted by the aforementioned Decree 2010-684 of 23 June 2010), requires companies listed on a regulated market to post the results of shareholder votes on their website, in the section devoted to information for shareholders pursuant to Article R210-20 of the Commercial Code, within 15 days after the general meeting. This article specifies that listed companies must post voting results on their website with at least the following information:
- number of shareholders present or represented at the general meeting;
- number of votes held by shareholders present or represented at the general meeting;
- for each resolution, the total number of votes cast, with details of the number of shares and proportion of the share capital that they represent; the number and percentage of votes in favour of the resolution; and the number and percentage of votes against the resolution, including abstentions.

[15] *"Improving the exercise of shareholder voting rights in France"*, AMF, September 2005.

[16] Point advocated in the AFG Code, *Recommendations on corporate governance, January 2011.*

[17] Not later than 15 days after an ordinary AGM: posting on the company's website of the voting results (including at least the detail called for by Article R225-106-1 of the Commercial Code, in particular: number of shareholders present or represented; for each resolution: total number of votes cast, percentage of votes in favour, percentage of votes against, percentage of capital on each side of the vote.

3.1 Observe the 15-day time limit for releasing voting results

The results of votes by shareholders of a company listed on a regulated market must be published on the Internet within 15 days after a general meeting.

3.2 Expand the practice of providing summary reports and shorten the time period for releasing the minutes[18]

The working group supports the idea that a summary report of the general meeting should be posted on the company's website within two months after the meeting.

The working group encourages this practice, among companies with a diluted shareholder base, in the form of report that would include, for example, a summary of the oral questions and answers considered to be the most important.

Written minutes of the general meeting must be drawn up after each meeting. This obligation stems indirectly from the Commercial Code, which gives shareholders the right to obtain such a document (Article L225-117) and lays down requirements for drafting, signing and retaining meeting minutes (Article R225-117). The documents covered by this right of ongoing communication are those relating to the past three financial years (Articles L225-117 and R225-92). In the working group's opinion, it would be appropriate to include those drawn up for the current financial year, allowing a reasonable period of time to prepare them. The minutes of a general meeting are not intended for public release. They are to be provided to shareholders who ask for them (Article L225-117 of the Commercial Code). Failure to draw up the minutes can lead to the annulment of the meeting’s deliberations (Article L225-114-3 of the Commercial Code).

The members of the working group consider that the time limit for making the minutes available should be reasonable and the deadline should come shortly after the summary report is made available. A time limit of four months was suggested.

Apart from providing a summary report and the minutes of the meeting, the working group emphasises that listed companies have the obligation to provide information on an ongoing basis that leads them to disclose to the public any privileged information given during the meeting or that results from a decision of the meeting, such as the rejection of a resolution.

The working group concluded its discussions on this subject by indicating that it was in favour of improving the quality of AGM minutes and by referring back to an article on this topic that appeared in the monthly bulletin of the COB[19].

4. Expand post-AGM communication by issuers

The working group noted the substantial expansion of issuers' post-AGM communication efforts in recent years (communication via the Internet, letters to shareholders, information meetings in cities where the AGM is not held, etc.) and encourages issuers to continue their efforts in this area.

Also noted was the fact that a large number of financial information meetings are held throughout the year, especially in cities where the AGM is not held, and that shareholders can initiate a dialogue with the senior managers present at these meetings.

[18] The first paragraph of Article R225-106 of the Commercial Code says that *"the minutes of the deliberations of the general meeting shall indicate the date and place of the meeting, the means by which it was convened, the agenda, the composition of the general meeting committee, the number of shares participating in the voting, the quorum attained, the documents and reports submitted to the general meeting, a summary of the debates, the texts of the resolutions put to vote and the results of the votes. The minutes shall be signed by the members of the general meeting committee."*

[19] The article in question was published in April 1974 in the monthly bulletin of the COB under the title, *"Le compte rendu de l’assemblée générale".*

Proposal 6

- **Post a summary report on the general meeting on the company's website within two months of that meeting.**
- **Draw up the minutes as soon as possible after release of the summary report on the meeting, and no later than four months after the meeting.**
- **In information meetings that take place after the AGM, devote an agenda item to summarising the discussions that took place at the meeting.**

II. Voting at general meetings

A. Enable shareholders to cast a true "abstention vote"

1. Highlight the merits of casting a true abstention vote

1.1 Drawbacks of treating abstention as an "against vote"

1) Abstention is treated by the law as an "against" vote

The Commercial Code provides that shareholders' decisions are taken by majority vote of those shareholders present or represented.[20]

The basis for the calculation is the sum total of votes of shareholders who are present at the general meeting, or have voted by mail or have delivered a proxy document.

In positive law, abstentions are thus automatically treated as "against" votes. This is expressly stated in Article L225-107 of the Commercial Code[21], with specific reference to postal voting.

Approval of resolutions consequently requires the full backing of a majority of the shareholders, since the votes in favour have to exceed not just the votes against but also the abstentions.

2) This treatment has certain drawbacks

The current system tips the balance towards the opposition, since it requires a higher number of "for" votes to attain the majority for passing the resolution.

It forces the shareholder to make a "binary" choice: for or against. Thus, a shareholder with no opinion, or no desire to express one, can only approve the resolution or reject it.

In practice, the only way for shareholders to abstain is not to participate in the general meeting, so that their votes will not be included in the denominator when the majority is calculated.

The clarity of a system, which treats abstaining in the same way as voting against, has been criticised, especially by US and UK investors, who do not understand it.

[20] Article L225-96 of the Commercial Code:
"It [the extraordinary general meeting] rules on a majority of two thirds of the votes held by the shareholders present or represented." and Article L225-98 of the Commercial Code: "It [the ordinary general meeting] rules on a majority of the votes held by the shareholders present or represented."

[21] Article L225-107 of the Commercial Code:
"Forms not indicating any vote or expressing an abstention shall be considered negative votes."

1.2 Instituting a true abstention vote would give shareholders a more graduated choice.

1) Instituting a true vote of abstention is technically feasible

This would mean that only the number of votes cast for or against would be included in the denominator. Thus, abstentions would be counted as such but would hardly influence the result of the vote, which would be obtained by dividing the number of "for" votes by the sum of "for" and "against" votes. In the current system, the denominator includes the votes for, the votes against and also abstentions.

2) It would give shareholders a more graduated choice

Abstention would thus be a "third way" for shareholders to express an opinion by voting.

It would not be without significance or impact as it could be correctly interpreted as a warning signal to management and the board.[22] For this reason, instituting a true abstention vote would be unlikely to relieve shareholders of their responsibility. On the contrary, it would enable them to express their position on a given subject in a new form.

As a simple illustration, a shareholder who is opposed in principle to combining the functions of board chair and CEO but who does not wish to vote against renewing the incumbent CEO's seat on the board – for example, because his management of the company has not been called into question – could now choose to abstain. In this particular case, abstention would be a signal in favour of renewing the CEO's term of office (the shareholder is not opposing re-election to the board) but also a sign of opposition to the dual roles (the shareholder is not voting in favour of renewing the term of office). Here, abstention becomes a new way of dialoguing with the company.

Although this reform could make resolutions easier to pass by mathematically lowering the threshold for a majority, it would not reverse the current situation. Rather, it would tend to rebalance it, by not putting a premium on "for" votes.

2. Support recognition of a true abstention vote in EU law

2.1 Constraints set by the EU directive of 13 December 1976

Under Article 40.1 of the Second Council Directive of 13 December 1976,[23] *"The laws of the Member States shall provide that the decisions referred to in Articles 29 (4) and (5) [elimination of pre-emptive subscription rights], 30, 31 [capital reductions], 35 and 38 [redemption of capital] must be taken at least by a majority of not less than two-thirds of the votes attaching to the securities or the subscribed capital represented."*

According to the working group' analysis, current French legislation is in compliance with Article 40.1. French law even extends the rule of calculating the denominator on the basis of shares represented, prescribed by the directive only for certain cases, to all decisions taken by the general meeting.

As explained previously, the suggested reform amounts to determining a majority on the basis of a smaller denominator than under the current system. Thus, for the decisions set forth in Article 40.1, the suggested reform would seem not to be in line with the working group's interpretation of the EU directives that specify a minimum majority based on the number of shares represented.

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[22] Report of the AMF on improving the exercise of shareholder voting rights in France: *"Recommendation 16: To increase voting, abstentions should be counted separately from "yes" and "no" votes. This will require major legal and technical changes."*

[23] Directive on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent.

2.2 Compliance with the European company statute

It should be pointed out, however, that this reform would be consistent with the method of calculating the majority, established as a principle in Articles 57[24] and 58[25] of Regulation (EC) n° 2157/2001 of 8 October 2001 on the Statute for a European company. These two articles provide that the majority is calculated only on the number of votes validly cast, which includes neither abstentions nor blank or spoilt ballots.[26]

2.3 Reflections prompted by the suggested change

When the EU rule – or its interpretation – evolves to the point that a change in the French system can be initiated, the following measures will have to be considered.

- Since the rules for calculating the majority are laid down in the Commercial Code, changing them will require new legislation and/or amendment of existing law, possibly supplemented by regulatory provisions.[27]

At the technical level, reforming the way abstentions are taken into account will require:

- redesigning the mail-in voting form to clarify the intent of the vote cast – abstention would then be equivalent to a "neutral" vote, unlike a proxy form with no name in the box, which will result in a Yes or No vote depending on the position taken by the board – and altering the associated data processing system; and
- ensuring that abstentions are logged properly and systematically in any type of electronic voting system that might be used at a general meeting.

Proposal 7

- **Institute a true vote of abstention in French law through new legislation.**
- **Redesign the mail-in voting form to clarify the intent of each vote, in particular to distinguish it from powers granted without specifying the name of the proxy.**

[24] *"Save where this Regulation or, failing that, the law applicable to public limited-liability companies in the Member State in which an SE's registered office is situated requires a larger majority, the general meeting's decisions shall be taken by a majority of the votes validly cast.".*

[25] *"The votes cast shall not include votes attaching to shares in respect of which the shareholder has not taken part in the vote or has abstained or has returned a blank or spoilt ballot paper."*

[26] Note also that positive company law already establishes calculation of the majority on the number of votes expressed for the category of workers' co-operatives.
Article L225-265 of the Commercial Code:
"The general meeting of the workers' co-operative shall take valid decisions only if, at the first time of asking, two thirds of the members of the co-operative are present or represented at the meeting. The memorandum and articles of association shall fix the requisite quorum for a meeting held at the second time of asking. If the memorandum and articles of association contain no such provisions, the quorum shall not be less than half the members of the co-operative, present or represented.
The general meeting shall take decisions on a simple majority of votes cast. Where a secret ballot is held, blank votes shall not be included in the count.
Nevertheless, for amendments to the memorandum and articles of association and other decisions listed thereby, the quorum shall not be less than half the members of the co-operative. Furthermore, the same decisions shall be taken on a two-thirds majority of votes cast. Where a secret ballot is held, blank votes shall not be included in the count."

[27] During the discussions, it was pointed out that the implementation of this reform could lead to the adoption of a resolution even with a high abstention rate. Moreover, a member of the working group said that a true abstention vote could not be introduced in French law without also raising the majority required for adoption of resolutions in ordinary and/or extraordinary general meetings. This member also expressed the opinion that powers granted without specifying a proxy, which in practice are exercised by the chair, should be eliminated. The working group did not take up these suggestions, however, and maintained this proposal.

B. Facilitate voting by non-resident shareholders

1. Bear in mind the importance of voting by non-resident shareholders at general meetings of listed companies

A study by the Banque de France in its Bulletin for second quarter 2011[28] reveals that as of 31 December 2010, 42.4% of the market capitalisation of the 37 French companies in the CAC 40 was held by non-residents. This amounts to a net holding of €395.5 billion on a total market capitalisation of €933.2 billion for these companies. Geographically, the majority of non-resident holders are based in Europe and North America.

Given the magnitude of non-resident shareholding in CAC 40 companies, issuers should pay particular attention to this segment of their shareholder base.

Proposal 8

Take measures that give importance to non-resident shareholders:

- **When communicating with investors, issuers should pay particular attention to non-resident shareholders (if any), notably by providing English translations of the main general meeting documents (agenda, draft resolutions, statements of reasons, management report).**
- **Large issuers with an international shareholder base should systematically put a suitable person in charge of relations with non-resident investors in order to answer questions relating to the general meeting. The name and contact details of this person should be provided in the issuer's financial disclosures.**

2. Improve the effectiveness of voting by non-resident shareholders

2.1 Reforms already implemented

The working group recognised the difficulty of adapting the processes generally used for non-resident shareholder voting to France's particular requirements, since these processes are linked closely to characteristics of international markets (especially the US market) and have been developed by foreign investors and their service providers. This said, the working group wishes to underscore the efforts that French market participants have already made to facilitate voting by non-resident shareholders.

Since 2001, the French market has sought to make it easier for shareholders, including non-resident investors, to vote their shares. New laws and regulations to this end include the following:

- Act 2001-420 on 15 May 2001 on new economic regulations (paragraph II of Article L225-107 of the Commercial Code), introducing pre-meeting electronic voting.
- Decree 2002-803 of 3 May 2002 implementing the third part of Act 2001-420 of 15 May 2001 on new economic regulations, which allows shareholders to be convened via the Internet provided they are contacted in writing. This contact requirement has effectively restricted this option to shareholders listed by name on the company's share register.
- Decree 2006-1566 of 11 December 2006 amending Decree 67-236 of 23 March 1967 on commercial companies, which allows an issuer to set up a special website for pre-meeting electronic voting, if the company's articles of association so authorise, and simplifies the electronic signature process.
- The same December 2006 decree also introduces a record-date rule to replace the existing share-blocking mechanism, which providers of proxy voting services deemed too close to the general meeting date but which ensured that the person voting was indeed a shareholder.

In addition, France's transposition of the EU directive on the rights of shareholders of listed companies, authorised by Act 2010-1249 of 22 October 2010 (Banking and Financial Regulation Act) and implemented by Order 2010-1511 of 9 December 2010 and various decrees in 2010, has permitted:

- designating proxies by electronic means,

[28] Banque de France, Bulletin 184 – *"Non-resident shareholding of CAC 40 French companies at year-end 2010."*

- allowing proxy designations to be revocable,
- allowing any person, including a non-shareholder, to be named as proxy,
- establishing the notion of "active solicitation" of proxy powers and a framework of rules for it (Article L225-106-2 of the Commercial Code).

2.2 Provide information about the main features of a complex process

The difficulty of gathering votes from non-resident shareholders is attributable to the technical complexity of a system that has to cover the long chain of service providers used by non-resident institutional investors and their account-keepers. The system's overall complexity is not always fully understood by the shareholders themselves.

The longer the chain of service providers, the greater the operational risks of mishaps. From this standpoint, investors who hold a relatively stable equity stake in an issuer and who want to make sure their votes are always counted would do well to favour certain methods of holding their shares. Some are better suited to this purpose than others.[29] Non-residents shareholders who have their shares of French issuers held by a custody account-keeper established in France (of French or foreign nationality) reduce the chain of service providers to its simplest form.

Shares can be held in custody directly by the issuing company in registered form, as book entries in its share register, or by an intermediary custody account-keeper in bearer form. An in-between option in France is to have the shares registered with the issuer but administered by an intermediary (i.e. held in "administered" registered form). In all these cases, a sale order can be executed extremely quickly. An investor who holds shares in registered rather than bearer form can be certain of receiving relevant information from the issuer both before and after the general meeting, ensuring that the investor's vote is taken into account.

Proposal 9

- **Ensure that non-resident shareholders are better informed about the key stages of the voting procedure by providing them with clear, comprehensive documentation put together by issuers and other participants in the French securities holding system.**
- **Where possible[30], make non-resident investors more aware of the advantages of registering their shares directly on the issuer's books, to be sure of receiving relevant information before and after a general meeting and of having their votes counted.**

2.2.1 Bear in mind the key role of voting intermediaries

Voting by non-resident shareholders, especially US investors, is increasingly inseparable from the role of the service providers that handle the logistics of voting or the analysis of the draft resolutions, or both.

In this regard, it should be remembered that the infrastructure systems used to route voting information across national borders must first send the available information to investors and then send investors' instructions back to the issuer. As a rule, these systems do not set up specific voting processes on a market-by-market basis.

Besides providing logistic services, proxy advisors analyse resolutions proposed at shareholder meetings and issue voting recommendations to their investor clients. Accordingly, issuers must not only establish solid relations with their investors but also ensure that these proxy advisors have properly understood the reasons for the resolutions.

The swiftness of the communication process is vital if investors and their intermediaries are to analyse the

[29] The Commercial Code explicitly provides that *"the transferable securities issued by joint-stock companies take the form of bearer securities or registered securities, with the exception of companies in respect of which the law or the articles of association impose the registered form only for some or all of the capital".* (Article L228-1, paragraph 3 of the Commercial Code). Where the securities are in registered form, a distinction must be made according to whether they are held in a securities account maintained directly by the issuer, in which case the securities are said to be in "pure" registered form, or held in a mirror account maintained by a custody account-keeper, in which case they are said to be in "administered" registered form (Articles R211-2 et seq. of the Monetary and Financial Code and Article 521-1 of the AMF General Regulation). Where the securities are in bearer form, they are held in a securities account maintained by an authorised financial intermediary.

[30] Some observers note that the so-called omnibus account practices among (sub)custodians in many countries can be an obstacle to the registration of shares held by non-resident investors.

documentation and decide how to vote, company by company and resolution by resolution. In the case of France, foreign service providers are critical of what they see as unduly tight time constraints in the process.

Bear in mind here that the process is constrained by the following requirements:

- Publication of the "meeting notice" in the BALO – equivalent to the "convocation" within the meaning of the 11 July 2007 EU directive, and therefore requiring all the information specified in that directive – must occur not later than 35 days before the general meeting.
- The "convening notice" (in its French meaning, that is, the confirmation of the convocation initiated before the 35-day deadline) is to be published in the BALO or other newspaper of record for legal notices not later than 15 days before the general meeting. This second notice includes any items or draft resolutions that entitled shareholders have moved to put on the agenda. This system, actually quite favourable to shareholders, is often misunderstood by foreign intermediaries.
- The right to participate in the general meeting is evidenced by the shares held being recorded either in registered form, i.e. in a securities account in the name of the shareholder or the shareholder's nominee on the issuer's books, or in bearer form, i.e. in a securities account maintained by a financial intermediary, at 0:00 hours CET on the third business day preceding the general meeting.

In practice, CAC 40 companies publish their "meeting notice" (i.e. convocation in the EU sense) 50 days before the general meeting, or even 65 or 75 days before – well ahead of the regulatory deadline. This somewhat makes up for the tight deadlines in the voting process that foreign intermediaries responsible for putting forward pre-GMA information sometimes complain of. Except when circumstances make it impossible, this should be the standard procedure for French companies with a substantial non-resident shareholder base. On the question of how the information is presented and published, please refer to Proposals 4 and 5**.**

2.2.2 Identify the principal stages in the circuit

The non-resident shareholder voting process is complex for all the parties involved, especially during the stage when the voting forms are returned. Until very recently, these were still supposed to be signed by hand by the shareholder or the shareholder's nominee.

2.2.2.1 Facilitate the process of sending out information on the general meeting

In practice, as soon as the issuer's AGM information is made public, specialised custodians working on behalf of institutional investors, especially non-resident investors, summarise the main features of the general meeting and the substance of each resolution. They generally send this summary information by SWIFT message to every institutional client with a position in the stock in question. On a dedicated website, they put all the detailed documentation that the global custodians will then need to forward to the investors and proxy voting agencies.

Coordination between global custodians and proxy voting agencies is essential. The custodians distribute information, but the agencies analyse all the information needed to determine what the position of each of their clients should be on each of the resolutions. Each of the protagonists sets its own procedures and time limits for the process.

Proxy voting agencies can, if they agree, dialogue with the issuer as soon as the meeting is announced, before deciding on their position. This is especially desirable because an analysis of recent general meetings shows that the time elapsing between the meeting notice (notice of convocation in the EU sense) and the convening notice remains highly stable, at 35 and 15 days before the AGM date respectively. The working group is in favour of having proxy voting agencies provide their analyses of draft resolutions to issuers as soon as possible after the meeting notice – indeed, of having as much dialogue as possible before the general meeting, including informal discussion before the meeting notice. The working group reminds issuers of the AMF's recommendation on this subject, published 18 March 2011. [31]

The global custodian, depending on its contractual relation with its investor clients, then determines which of its clients should be informed about the forthcoming general meeting. If it is the investor's policy to vote, the global custodian waits for a signed voting form to be returned after the proxy voting agency has made its voting

[31] AMF Recommendation 2011-06 of 18 March 2011 on proxy advisory agencies.

recommendations to the client.

2.2.2.2 Ensure end-to-end electronic transmission of voting forms

The global custodian relies on a network of local custodians operating directly in national markets. A global custodian that has registered as the clients' intermediary can group its clients' votes and send them to the issuing company or the French financial intermediary at which its account is held. The voting forms, accompanied by the custodians' attestations of entitlement to vote, are routed either to the issuing company or to the centralising bank.

French issuers sometimes engage proxy solicitors to ensure that foreign shareholders have been informed of the general meeting and responded to the meeting notice. In some cases, it may be hard to trace votes that have apparently been returned, especially for the following reasons:

- There is a time delay between when an investor accepts the firm's proposal and when that firm actually has the voting forms in hand.
- An investor will often have positions in the same stock at several funds which do not all have accounts at the same custodian.

Furthermore, it must be recognised that there is a distortion in France regarding anonymity. Voting non-residents enjoy de facto anonymity through the registered intermediary system, whereas voting residents are required to reveal their identity.

In some other countries, Italy being one, this asymmetry does not exist. The investors and the various service providers in the voting chain are similar to those operating in France, but all shareholder voting is by name of the registered holder, and the platforms transmit all the information.

The technical resources for handling this type of information does exist in France: as it is, registered intermediaries send their French custodian a global mail-in voting form compiled by them on the basis of positions and voter identities retrieved and processed by the platform or the proxy, except where Objecting Beneficial Owners (OBOs) have declined to be identified. In other words, the information is largely there and it is processed but it is not systematically transmitted; it needs be transmitted only if the issuer voluntarily initiates a legal procedure to indentify its true non-resident shareholders.

Proposal 10
Without prejudice to other countries' laws, align the information on non-resident investors with that required for resident shareholders. To this end, ensure that the global mail-in voting forms sent via registered intermediaries include a file giving details of the identity and votes cast of the shareholders concerned.

To send the voting forms, most global custodians use voting platforms that are in general highly automated. French voting forms used to require special handling by the proxy voting agencies when signatures on paper ballots had to be processed manually. With the deployment in France of an electronic platform for voting bearer shares (Votaccess) and simplification of the disclosure formalities, especially for electronic shareholder identification,[32] notable progress has been made in facilitating voting by residents and non-residents. The objective is to enable votes to be recorded electronically in a secure virtual "ballot box" while ensuring that the votes correspond to positions entitled to vote. Authorisation to digitise paper voting forms will also facilitate transmission to the centraliser.

Global custodians and proxy voting agencies sometimes delay sending in votes because pursuant to French corporate law, unlike some other markets, once investors have made an initial choice as to how to participate in the vote at a general meeting, they cannot then choose another way unless the issuer's articles of association state otherwise.

Given the complexity of the procedure for non-resident shareholder voting and the numerous intermediaries involved in various roles along the chain, operational errors can arise from many different sources that are hard to

[32] See Decree 2011-1473 of 9 November 2011.

identify precisely. Errors may occur at any of the following levels, although the list is not exhaustive:

- the shareholder,
- the shareholder's immediate custodian, which may have failed to comply with the orders received from the shareholder,
- the proxy voting agency, which may have neglected or mishandled the shareholder's instructions at its level,
- the global custodian / intermediary of record, which may (for example) have failed to sign or forward the voting instructions to the intermediary in France,
- the intermediary in France, which may (for example) have received the voting instructions too late or which does not have custody of the shares in question.

The working group notes that the errors encountered are often operational and typically result from manual handling. It should be noted, though, that errors can also be generated by differences in the legal systems under which the numerous intermediaries in the chain operate.

Proposal 11

- **Put in place one or more electronic voting platforms that can provide prompt, reliable handling of data flows between issuers and all their shareholders. Enable non-resident shareholders to benefit from this system by encouraging all participants in the voting chain to take the steps needed to connect to these platforms as quickly as possible.**
- **Once the electronic voting system makes it possible for non-resident shareholders to vote, encourage them to use it directly or via voting service providers.**

2.2.2.3 Confirm to shareholders that their votes have been cast and counted.

The working group noted that, in studies conducted among non-resident investors, their main concern when voting at a French general meeting was not necessarily with the voting procedure itself, which is generally considered efficient, but with the absence of feedback to confirm that their votes have been duly cast. Non-resident shareholders may feel disgruntled if they fail to receive acknowledgment that their voting instructions have been received and executed. In this regard, a point mentioned above bears repeating: shareholders for whom this is a concern would benefit by holding their shares in registered form on the issuer's books or in bearer form with a custody account-keeper established in France.

Proposal 12

Provide any person or nominee registered directly on the issuer's books, upon prior request from the persons concerned, with a document confirming that their votes have been properly taken into account.

Proposal 13

Study the feasibility of a system that would enable resident and non-resident shareholders to be informed that their voting rights have been duly exercised where the voting is done electronically.

2.3 Anticipate forthcoming regulatory changes

Article 7.3 of the directive on shareholder rights (Directive 2007/36/EC of the European Parliament and the Council of 11 July 2007) provides that the record date for shareholder voting cannot be more than 30 days before the general meeting and must be set at least 8 days after the last date for convocation of the general meeting. The rule currently in effect in France is laid down by Article R225-85[33] of the Commercial Code, which specifies that the record date is 0:00 hours CET on the third day before the issuing company's general meeting.

[33] Article R225-85 I of the Commercial Code:
"I. Any shareholder of a company whose shares are admitted to trading on a regulated market or to performing transactions of a central depositary is entitled to participate in a general meeting of the shareholders of such company provided that the shares he holds in that company are registered in that shareholder's name, or in the name of the registered intermediary on the shareholder's behalf, as set out in L228-1, seventh paragraph, of the Commercial Code, not later than three business days before the date of the shareholders' meeting at 00:00 hours Paris time, either with the company or the company's share registrar for shares registered in the name of the shareholder, or with a registered intermediary mentioned in Article L211-3 of the Monetary and Financial Code."

This time period had been chosen for consistency with the deadline for settlement of trades of financial instruments under Article 570-2[34] of the AMF General Regulation, which is also the date that determines when ownership of securities has been transferred by a trade. This rule ensures that all persons entitled to vote at the general meeting are necessarily the owners of the securities that confer the right to vote.

Paragraph II of Article L211-17-1 of the Monetary and Financial Code, resulting from the Banking and Financial Regulation Act of 22 October 2010, provides that this time period will shrink from three days to two. This provision will take effect *"on the date that an equivalent harmonisation provision at EU level comes into force".* This change is therefore set to come about when the draft EC regulation *"on improving securities settlement in the European Union and on central securities depositories (CSDs)",* which reduces the settlement period from three days to two, is adopted and comes into force.[35]

Keeping the record date aligned with the settlement period and the transfer of ownership in a trade is likely to generate operational problems when the settlement period is shortened. In view of these problems, an industry-wide study group should set to work quickly to examine whether these two notions ought to be treated separately. Adopting separate procedures could mean accepting the principle that persons who are not shareowners on the date of the general meeting would nevertheless be allowed to vote.

III. The general meeting committee: constitution, duties and practices

A. Clarify the requirements regarding the constitution, composition and operation of the general meeting committee

1. Establish the principle that a general meeting committee must be constituted

The law does not directly state that companies are required to constitute a committee (*bureau*) at a general meeting.

The regulatory part of the Commercial Code contains several provisions on this matter, however.

First, the meeting committee may attach the proxy forms and mail-in voting forms to the attendance sheet.[36]

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[34] Article 570-2 of the AMF General Regulation:
"For a trade involving financial instruments referred to in II of Article L. 211 of the Financial and Monetary Code, on a market mentioned in Title or Title II of Book V, the transfer of ownership mentioned in Article L. 211-17 of the Financial and Monetary Code shall result from the entry of the transaction in the account of the buyer. This account entry takes place on the effective trade settlement date specified in the operating rules of the settlement system, when the account of the buyer's custody account-keeper, or the account of the agent of this custody account-keeper, is credited on the books of the central depository. Barring the exceptions provided for in Articles 570-3 to 570-8 and 322-65, the date on which the trade is effectively settled and, simultaneously, the account entry is made at the central depository, shall occur three trading days after the order execution date. The same date shall apply when the financial instruments of the buyer and the seller are recorded on the books of the same custody account-keeper."

[35] Article 5. Settlement periods: *"Any participant to a securities settlement system buying or selling, on its behalf or on behalf of a third party, transferable securities which are admitted to trading on regulated markets or traded on MTFs or OTFs shall settle its obligation no later than on the second business day after trading takes place."*

[36] Article R225-95 of the Commercial Code:
"[…] The general meeting committee may attach to the attendance sheet the proxy or mail-in voting form bearing the last name, first name and home address of each shareholder voting by proxy or by mail, the number of shares held and the number of votes attached to those shares. In such case, the committee shall indicate the number of proxy or mail-in voting forms attached as well as the number of shares and voting rights corresponding to the attached forms. The proxy and mail-in voting forms shall be communicated at the same time and on the same conditions as the attendance sheet.
The attendance sheet, duly initialled by the shareholders present and the proxies of those not present, shall be certified as accurate by the general meeting committee."

Article R225-101[37] of the Commercial Code provides for the composition of the general meeting committee: a secretary and two scrutineers in addition to the chairperson. The committee members must sign the minutes of the general meeting, which lists the members of the meeting committee.[38]

Lastly, if a general meeting is unable to deliberate for want of the required quorum, the Code provides that the meeting committee shall nevertheless draw up minutes of this meeting.[39]

Despite the presence of these provisions, nowhere does the law explicitly establish the principle that a general meeting committee must exist.

2. Clarify the issue of who chairs the meeting committee

In practice, the chair of the committee is also the chair of the general meeting, who is either the chair of the board of directors or the supervisory board, as noted by Article R225-100 of the Commercial Code.[40] In the chair's absence, the person designated by the articles of association presides as chair of the general meeting. Failing this, the general meeting shall itself elect a chairperson.

Although the universal practice is for the chair of the general meeting to chair the meeting committee, there is no specific legal provision.

3. Affirm the principle that committee decisions are taken by majority vote

Under the regulatory part of the Code, the general meeting committee is composed of three voting members: a chairperson and two scrutineers. In practice, decisions are taken by majority,[41] but nowhere does the law prescribe this as the rule.

Proposal 14

- **Insert the principle, in either the legislative or regulatory part of the Commercial Code, that a general meeting committee must be formed and established at the general meeting.**
- **In the regulatory part of the Commercial Code, specify that this committee is chaired by the same person who presides as chair of the general meeting, except in the case of an impediment as provided for in Proposal 16 below, and that the committee's decisions are taken by a majority of its members.**

4. Bear in mind the collegial nature of the committee

The two members of the committee other than the chair, who serve as scrutineers, are the two shareholders present in the hall controlling the greatest number of votes (personally or as proxy) at that moment, provided they agree to serve.

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[37] Article R225-101 of the Commercial Code:
"The two members of the general meeting having the greatest number of votes at their disposal shall be the scrutineers of the meeting, if they accept to serve in this capacity.
The general meeting committee shall appoint the secretary, who may be chosen from outside the body of shareholders, barring provision in the company's articles of association to the contrary."

[38] Article R225-106 of the Commercial Code:
"The minutes of the deliberations of the general meeting shall indicate the date and place of the meeting, the means by which it was convened, the agenda, the composition of the general meeting committee, the number of shares participating in the voting, the quorum attained, the documents and reports submitted to the general meeting, a summary of the debates, the texts of the resolutions put to vote and the results of the voting. The minutes shall be signed by the members of the general meeting committee (…)".

[39] Article R225-107 of the Commercial Code:
"If, for want of the requisite forum, a general meeting cannot validly deliberate, this shall be recorded in minutes by the meeting committee for this meeting."

[40] Article R225-100 of the Commercial Code:
"General meetings of shareholders shall be chaired by the chair of the board of directors or the supervisory board, as applicable, or in the absence of this person, by the person designated in the articles of association. Failing this, the general meeting itself shall elect a chairperson. In the case of a general meeting called by the statutory auditors, a court-appointed administrator or the liquidators, the meeting is chaired by the person or one of the persons who called it."

[41] In the scenario where the meeting committee consists of the chairperson and only one shareholder, it would be desirable to provide that in the event of a split vote, the vote of the chair prevails.

In practice, if the shareholders present with the greatest number of votes at their disposal decline to serve as scrutineers, this office is then proposed to the shareholders present who come next in order of the number of votes they can cast, and so on until two agree to serve.

Although several members of the working group underscored the importance of the collegial nature of the meeting committee, others highlighted a practical consideration: a rule that the committee must necessarily be composed of three members could be difficult to enforce, especially for small and mid-capitalisation companies.

Members of the working group also reflected on possible changes to the scrutineer designation rules, but failed to identify any satisfactory alternative to those in existing law. One change considered was to maintain the designation of a first scrutineer according to the greatest number of votes and agreeing to serve while introducing a system whereby the second scrutineer is drawn by lot. In order to make this system work, shareholders wishing to serve as committee members would be asked to inform the company of this fact at least ten days before the meeting. Lots would be drawn on the basis of this list. The working group eventually abandoned this idea, as it seemed unnecessarily complicated. Furthermore, a majority or the working group considered that the fact that scrutineers were shareholders obtaining the most votes at the meeting constituted a guarantee that the committee would indeed take account of shareholders' collective interests.

5. Prepare the formation of the committee in advance

The working group recommends that, to the extent it is physically feasible to do so, companies should identify in advance the persons likely to be named as scrutineers – that is, not only the two shareholders with the greatest number of votes to cast, but also the other shareholders with significant numbers of votes who would be asked to serve if either or both of top two decline – so that they can familiarise themselves with the role they will play and the difficulties the committee may encounter during the general meeting.

Proposal 15

- **Put in place a general meeting committee composed of a chairperson and two scrutineers, unless circumstances duly explained in the meeting minutes make this impossible.**
- **To the extent possible, identify in advance the persons likely to be named as scrutineers, so that they can familiarise themselves with the role they will play and the difficulties the committee may encounter during the general meeting.**

6. Prevent conflicts of interest on the committee

The general meeting committee exists in part to sort out difficulties that arise during the course of the general meeting and, acting as a group, to take any needed decision within its powers.

In the working group's view, however, a member of the meeting committee should not to be able to take part in any decision in which the member himself or herself would be affected and would thus have a conflict of interest. This would be the case in a decision that would suspend the member's voting rights or one regarding new proposed resolutions (on regulated agreements, appointments or dismissals) concerning the member.

In such circumstances, the member concerned should temporarily withdraw from the committee and, if necessary, be replaced by an alternate – chosen from among the other shareholders present – for the purposes of this decision.

Proposal 16

- **Prohibit a member of the general meeting committee from taking part in any decision within the committee's powers that would affect that member, such as a decision on suspending voting rights, amending a resolution or proposing a new resolution. Designate an alternate who would take the place of the committee member prevented from participating in such circumstances.**
- **Write this prohibition and this provision for designating alternates into the legislative or regulatory part of the Commercial Code.**

B. Specify the duties and powers of the committee

1. Highlight the role of the centraliser in carrying out tasks assigned to the committee

The members of the general meeting committee sign the meeting minutes[42].

Moreover, Article R225-95 of the Commercial Code provides that the meeting committee certifies the accuracy of the attendance sheet, duly initialled by the shareholders present and by the proxies of those not present.

At the general meetings of a large number of issuers, however, an outside institution acting as "centraliser" is brought in to count shareholder votes and compile the attendance sheet.

In view of the nature of the centraliser's role in the process, the working group recommends that those attending the general meeting be reminded of it. In addition, the attendance sheet should clearly state that the scrutineers have signed and certified it on the basis of information gathered by the centraliser.

Proposal 17
- Remind the general meeting of the role of the "centraliser". On the attendance sheet, mention that the scrutineers have signed this document on the basis of information provided by the centraliser under the terms of its contract with the issuer.
- Ask the professional associations concerned, issuers and shareholders to draft a code of conduct for the meeting centraliser that identify best practices, particularly on managing potential conflicts of interest.

2. Enshrine the committee’s policing powers

Legislative and regulatory provisions detailing the powers of the general meeting committee are, if not absent altogether, certainly sparse.

However, a degree of consensus seems to have formed on the view that the committee is in charge of “policing" the meeting, even though no law expressly says so.

As part of this policing power, the general meeting committee:

- ensures orderly debate. Accordingly, it may have to ensure orderly management of answers to shareholders’ questions (in particular by distributing floor time);
- if necessary, decides whether to suspend the session, that is, halt deliberations of the general meeting momentarily;
- sees to it that the applicable rules on exercise of shareholders' voting rights – primarily, the rules prescribed by law on denial of voting rights – are enforced.

In the working group's view, this policing power, as defined above, should be recognised by enshrining it in regulations. In contrast, the working group also feels that the power to adjourn a meeting, meaning to postpone discussion to another date and close the meeting in progress, falls outside the committee’s remit and notes that there is no law or regulation setting out the legal basis for such adjournment.

Regarding the rules on exercise of voting rights more specifically, the working group believes that, in the light of recent court rulings, the general meeting committee cannot take upon itself to suspend a shareholder's right to vote, except in obvious cases where only a purely physical finding of fact is required, without further factual or legal assessment on its part. Thus, assuming for example that a change in a major shareholding has not been

[42] Article R225-106 of the Commercial Code.

notified pursuant to Article L233-7[43] of the Commercial Code, the general meeting committee will have to apply the suspension of voting rights prescribed by Article L233-14[44] of the same Code on the basis of objective factual information in its possession.

On the other hand, the meeting committee is not empowered to deem that an action in concert exists where none has been declared or where the presumed concert parties would contest its existence.

Proposal 18
Enshrine the policing power of the general meeting committee in the regulatory section of the Commercial Code. Specify that this committee:

- ensures orderly debate. Accordingly, it may have to ensure orderly management of answers to shareholders' questions (in particular by distributing floor time);

- if necessary, decides whether to suspend the session, that is, to halt deliberations of the general meeting momentarily;

- enforces the applicable rules on denial of voting rights based on evidence presented to it, but without making a precise legal characterisation.

To facilitate the exercise of this power to suspend voting rights and head off situations during the general meeting that could result in litigation, the working group recommends that companies prepare for them in advance by identifying any situations or facts that could entail suspension of voting rights. This presupposes that, for example, the company has accurate information on the shareholder base at the record date, has made a list of known cases of changes in major holdings not reported to the company, and also has a detailed statement of all changes that were reported to the company during the year, with mention of any delay in notification.

The working group also believes that it would be useful to undertake in advance of the general meeting the task of identifying and verifying situations and information that could entail legal suspension of voting rights, so that they can be transmitted to the committee on the day of the meeting.

[43] Article L233-7 of the Commercial Code:
"I. - When the shares of a company having its registered office in France are admitted to trading on a regulated market or a financial instruments market which permits trading in shares which may be entered in the books of an authorised intermediary as provided for in Article L211-4 of the Monetary and Financial Code, any natural person or legal entity, acting alone or jointly, who comes into possession of a number of shares representing more than one twentieth, one tenth, three twentieths, one fifth, one quarter, one third, one half, two thirds, eighteen twentieths or nineteen twentieths of the capital or voting rights shall inform the company of the total number of shares or voting rights it holds within a time limit determined in a Conseil d'Etat decree commencing on the day on which the equity participation threshold was exceeded."

[44] Article L233-14 of the Commercial Code:
A shareholder who has not made the declaration referred to in VII of Article L233-7 is stripped of the voting rights attached to the securities exceeding the fraction of one tenth or one fifth referred to in that same paragraph for any shareholders' meeting held within two years of the date of effective notification."

3. Encourage the development and use of best practice guides for committee members

For the working group, guides to best practices are a good way to ensure that general meeting committees operate on the basis of consistent, widely shared rules. Ideally, best practice guides are developed as a joint effort with the various participants in general meetings (issuers, shareholders, centraliser institutions, etc.), and they provide committee members with tools for handling issues and reliable, practical solutions to difficulties that may arise during a general meeting.

For this reason, the working group recommends that best practice guides be prepared and distributed to members of general meeting committees. As an example, the working group cites the *Vade Mecum* prepared by AFEP in liaison with ANSA, first issued in November 2005 and updated in March 2011[45].

IV. Voting on regulated agreements[46]

A. Clarify the notion and scope of regulated agreements

1. Clarify the meaning of "agreements on current operations entered into concluded under normal terms and conditions"

The regime governing so-called regulated agreements was introduced into French law to prevent conflict-of-interest situations that directors and/or significant shareholders[47] may face if they enter into an agreement with the company. The regime consists of a complex authorisation and oversight procedure[48] aimed at discouraging corrupt practices by the parties concerned. These agreements are authorised by the board of directors and approved by the general meeting of shareholders, after a special report from the company's statutory auditors has been read out.

Although convergence at European level is desirable, the procedures to be put in place must take account of country-specific governance measures.[49]

To capture the greatest possible number of conflict-of-interest situations, French law lays down broad-brush provisions that determine the scope of this procedure, which in practice is determined by the criteria stemming

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[45] *Vade-Mecum for members of general meeting committees prepared by AFEP in liaison with ANSA,* March 2011.

[46] These proposals apply to the commitments referred to in Articles L.225-102-1 and L.233-5-1, which come under the procedure referred to in Articles L.225-38 et seq. of Commercial Code, where appropriate.

[47] The scope of regulated agreements is stipulated in Article L. 225-38 of the Commercial Code:
"Any agreement entered into, either directly or through an intermediary, between the company and its general manager, one of its assistant general managers, one of its directors, one of its shareholders holding a fraction of the voting rights greater than 10% or, in the case of a corporate shareholder, the company which controls it within the meaning of Article L. 233-3, must be subject to the prior consent of the board of directors. The same applies to agreements in which a person referred to in the previous paragraph has an indirect interest. Agreements entered into between the company and another firm are also subject to prior consent if the company's general manager, one of its assistant general managers or one of its directors is the owner, an indefinitely liable partner, a manager, a director or a member of that firm's supervisory board or, more generally, is in any way involved in its management."

[48] Concerning the procedure, Article L. 225-40 of the Commercial Code provides: *"The interested party must inform the board immediately upon becoming aware of an agreement to which Article L. 225-38 applies. They may not participate in the vote on the requested prior approval of the Board. The chairman of the board of directors shall advise the auditors of all agreements authorised and shall submit them to the general meeting for approval. The auditors shall present a special report on the agreements to the meeting, which shall rule on this report. The interested party may not participate in the vote and their shares shall not be taken into account for the calculation of the quorum and the majority".*

[49] See Annex 2: extract from the Green Paper on corporate governance concerning relations with related parties and the answers in the feedback statement published in November 2011.

from Articles L. 225-38 and L. 225-39 of the Commercial Code[50], in particular the notion of "agreements on current operations entered into under normal terms and conditions" (Article L. 225-39), which draws a distinction between "regular" agreements and those subject to the authorisation procedure (Article L. 225-38).

Combining these criteria results in a multiplicity of regulated agreements, even though no potential conflict-of-interest situation exists.

The European Corporate Governance Forum has recommended applying "materiality" criteria when scrutinising agreements and transactions that might have a significant impact on a company's assets. However, owing to the diversity of situations to be dealt with, it would be difficult to determine what materiality criteria to select. Whatever the outcome, if the idea of introducing materiality criteria were adopted, the Commercial Code would have to be amended accordingly.

Proposal 19
Update the 1990 study by Compagnie Nationale des Commissaires aux Comptes (CNCC) on intra-group agreements. Senior managers use this document, among other things, to determine what is covered by the notion of "agreements on current operations entered into under normal terms and conditions". The CNCC could initiate an update in collaboration with the Haut Conseil du Commissariat aux Comptes (H3C) and the AMF, working in liaison with organisations representing issuers and shareholders. The new guide could cover agreements concluded both within and outside a corporate group.

Proposal 20
- Have companies establish an internal charter to define an agreement and submit it to the regulated agreement procedure. The charter would set forth the criteria adopted by the company, which would adapt the CNCC guide to its own situation, in agreement with its statutory auditors.
- Submit this charter to the company's board of directors for approval and make it public.

2. Exclude intra-group agreements in the strict sense of the term (agreements between a parent and its wholly owned subsidiaries) from the scope of regulated agreements

Agreements between an issuer and its wholly-owned subsidiary:

- make up the bulk of the agreements presented in the special report (subject to the regulated agreement procedure simply because the two entities have a common director);
- fall in the scope of regulated agreements only if there are senior managers in common (otherwise, they are exempt from the authorisation procedure);
- do not present real conflicts of interest.

The group questioned the relevance of continuing to classify agreements between directly -or indirectly- owned 100% or 99.9% subsidiaries (statutory requirements on a specific number of partners have to be taken into account) as regulated agreements.

Proposal 21
Amend the law so that agreements between a listed company and its 100% directly -or indirectly- owned (or equivalent) subsidiaries at the time the agreement is entered into are excluded from the regulated agreement regime. This derogation applies to the parent company as well as the subsidiary.

3. Define what is meant by an "indirectly involved person"

The current regulated agreements regime covers only those agreements concerning a person who has an interest directly, indirectly or through an intermediary:

[50] Article L. 225-39 Commercial Code:
"The provisions of Article 225-38 are not applicable to agreements relating to current operations entered into under normal terms and conditions."

The notion of an "indirectly involved" person, referred to in the second paragraph of Article L. 225-38 of the Commercial Code, is not defined precisely in law.

Proposal 22

Retain the definition of "indirectly involved person" suggested by the Paris Chamber of Commerce and Industry[51]: *"A person not party to an agreement is considered to be indirectly involved in that agreement where, by virtue of his or her links to the parties and of his or her powers to influence their conduct, he or she derives a benefit from it".*

4. Give information about agreements between a senior manager and a subsidiary of the issuer

Regarding agreements entered into between a senior manager and/or director of a company, on the one hand, and a subsidiary, on the other hand, the working group took note of the analysis of the AMF. The French regulator considers that, in certain cases, the factual circumstances are such that these agreements are likely to be subject to the authorisation of the board of the parent company and to the vote of its shareholders, on the grounds that they might be straw party agreements. This is the case in particular when the senior manager of the parent who has entered into an agreement with a subsidiary is actually paid for services to the parent.

In the other cases, the group proposes that these agreements should be brought to the attention of the parent company's shareholders but should not be subject to the procedure involving board authorisation and a shareholder vote.

Proposal 23

When they are not agreements on current operations entered into under normal terms and conditions, describe agreements concluded by a directly -or indirectly- owned subsidiary, and that concern directly or indirectly a senior manager and/or director of the listed company, or a shareholder owning more than 10% of the capital of the listed company, in the report to the general meeting and also in the registration document, if any.

B. Underscore the role of the board of directors in spelling out the merits of agreements[52]

Under Article L. 225-38 of the Commercial Code, the board is required to consent to regulated agreements. This provides it with an opportunity to assess the merits of entering into such agreements. The working group expressed regret that the factors behind the board's decision to authorise a regulated agreement are not presented to the statutory auditors and shareholders.

Proposal 24

- **Have the board of directors give its reasons for authorising a regulated agreement by explaining how the company stands to benefit from the agreement and the related financial terms and conditions. These reasons would be recorded in the meeting minutes and brought to the attention of the statutory auditors when they are notified of the agreement;**
- **Ask the statutory auditors to make comments in their special report in the event that the merits of the agreement is not, or not sufficiently, explained, on the understanding that the auditors assess neither the advisability nor the usefulness of entering into the agreement;**

[51] Contribution by the Paris Chamber of Commerce and Industry to the industry initiative on *"enhancing the effectiveness of the regulated agreement procedure"*, September 2011.

[52] Where reference is made to approval by the board of directors, it should be noted that in companies with a dual governance structure (i.e. executive board / supervisory board), it is the supervisory board that gives the approval. Accordingly, the working group's proposal applies *mutatis mutandis* to the supervisory board.

- **Amend the regulatory section of the Commercial Code to make it mandatory for the board of directors to give reasons for their decision, to transmit those reasons to the statutory auditors and to have them set them out in the auditors' special report.**

The board may decide to call in an independent appraiser if it believes that the terms and conditions of the agreement will have a material impact on the company. In this case, the board will inform the shareholders of the decision.

Proposal 25
- **Encourage the board of directors to appoint an independent appraiser whenever entering into a regulated agreement may have a very significant impact on the balance sheet or results of the company and/or the group;**
- **Refer to the board of directors' request for an independent appraisal in the special report and make it public, with the exception of any factors that might compromise business secrecy.**

Since the board of directors has to consent to agreements before they are implemented, it must organise its meetings in good time. Moreover, the board of directors has to authorise all regulated agreements. Failing this, the fact that the agreements are in breach of the authorisation requirement must be mentioned in the statutory auditors' report, but the situation can still be remedied by the general meeting. Barring exceptional circumstances where all the directors have a conflict of interest, such a situation seems unsatisfactory since the board, whether deliberately or not, is shirking its responsibility as regards the conclusion of the agreement. It is therefore proposed to leave the present legal position unchanged (i.e. prior board authorisation for regulated agreements) but to encourage companies to obtain board ratification for agreements where prior authorisation was not possible before the meeting to which they are to be submitted takes place.

Proposal 26
In exceptional cases in which prior authorisation from the board of directors could not be obtained, have the board ratify any agreements not previously authorised before they are submitted to the general meeting for approval, barring specific circumstances in which all the directors have a conflict of interest.

Concerning authorised agreements that remain in effect for several years, it may be useful to conduct an annual review of the conditions in which such agreements were entered into. This review could be an opportunity to consider whether, in the light of altered circumstances, a contract is still a regulated agreement at all.

Proposal 27
Have the board of directors conduct an annual review of regulated agreements having a long-lasting effect on the company.

C. Improve disclosure of information to the general meeting

1. Improve the information disclosed by the statutory auditors in their special report

1.1 Promote a clear, detailed presentation by the statutory auditors of the terms and conditions of regulated agreements and their import for the company

Pursuant to the regulatory section of the Commercial Code, the main characteristics of agreements must be presented in the special report. Further, any information that could help shareholders assess the merits of new agreements must also be provided. Specifically, Point 6° of Article R. 225-31 of the Commercial Code states that the special report of the statutory auditors must contain in particular "the essential modalities of these agreements and commitments […] and, where such is the case, any other indications that allow shareholders to assess the interest of entering into the agreements and commitments being analysed".

The group considered that there was no need to amend the wording of the article but that issuers and statutory auditors ought to give closer consideration to its meaning and scope so that shareholders are able to assess all the interests at stake. Care should also be taken to ensure that the disclosure requirements set out in Articles R-225-31 and R-225-58 of the Commercial Code are properly implemented.

Proposal 28

- **Enhance the content of the information provided in the statutory auditors' special report so that shareholders can better appreciate the issues involved in the agreements entered into. In particular, any information that might enable shareholders to assess the merits of entering into agreements and commitments should be provided, especially in the case of service agreements with directors. Achieving this objective will be facilitated if the board of directors transmits a clear, precise document explaining why the agreement is in the company's interest (see Proposal 24);**
- **Specify the persons concerned by the agreements and state their function, including for ongoing agreements;**
- **Clarify the presentation of the terms and conditions of regulated agreements in the report in order to identify more easily the issues involved for the issuer and the senior executives concerned. In this respect, the report on regulated agreements should be organised into three sections:**
  - **agreements with shareholders;**
  - **agreements with companies that share senior managers, specifying the equity links between those companies (i.e. ownership percentages);**
  - **agreements with other senior managers.**
- **Present the financial details of these agreements, making a distinction between income, expenses and commitments and specifying the amounts involved.**

1.2 Encourage disclosure in the special report of regulated agreements concluded after the financial year-end

In principle, an ordinary general meeting approves only those agreements authorised during the financial year for which the accounts have been submitted for approval (i.e. for a standard accounting period, all agreements entered into and authorised before 31 December).

The group looked into the situation of new, material agreements authorised and concluded after the year-end but before the annual general meeting (generally between January and May or June). It concluded that these agreements should be submitted for approval to the next meeting rather than the meeting to be held the following year (in other words 14, 15 or even 18 months after they have been concluded).

Proposal 29

Subject any significant regulated agreement, authorised and concluded after the financial year-end, to the approval of the next meeting, on condition that the statutory auditors have been able to analyse the agreement in time for the publication of its report.

2. Improve disclosures by the company

2.1 Clarify the link between regulated agreements and relations with related parties

At present, no link is established between the information concerning regulated agreements and the information presented in the consolidated financial statement notes concerning relations with related parties (IAS 24), even though some agreements are presented on both counts.

It should be noted, however, that the scope of the requirements are not exactly the same. For example, the purpose of IAS 24 is to present all significant relations with related parties at the level of the group, whereas regulated agreements present the agreements entered into by the company.

Proposal 30
Establish a link, if any, between the consolidated financial statement note concerning related parties with the information presented in regulated agreements.

2.2 Make the special report easier to access

In most cases, listed companies post the special report prepared for the shareholder general meeting on their websites. In future, web-posting of the report should be systematic. Note that under Article R. 225-83 of the Commercial Code, the special report must be made available to shareholders, and it must now be made public on the issuer's website at least 21 days before the ordinary general meeting (new article R. 225-73-1, Commercial Code).

Proposal 31
Where the company prepares a registration document, the special report should be included so that shareholders can promptly access relevant information.

D. Bear in mind the arrangements and procedures for voting at general meetings

1. Emphasise that resolutions concerning regulated agreements can be presented separately

Voting on regulated agreements generally consists of a single "block vote" on the resolution covering regulated agreements. It should be remembered that there is no legal requirement to present resolutions separately, unless they concern senior executive compensation.

In some cases it may be preferable to separate resolutions, thereby improving disclosure (each separate resolution contains its own statement of reasons) and avoiding a general abstention from voting by the persons concerned by the agreements covered by the single resolution (as required under Article L. 225-40 of the Commercial Code). Separate voting is therefore an option to promote in some cases. It should not be taken up systematically, however, because this would needlessly weigh down the meeting agenda in other cases.

Furthermore, shareholders are entitled to ask, in particular before the meeting is held, for a separate vote on one or other of the agreements.

Proposal 32
Encourage submission of a separate resolution to shareholder vote whenever the agreement is of a significant nature for one of its parties and that directly or indirectly involves a senior manager or shareholder, as required by law for certain deferred commitments for the benefit of senior management.

2. Bear in mind that the meeting's approval covers new agreements only

Although the second section of the special report mentions pre-existing agreements still in effect, for information purposes, only new agreements have to be approved. And yet voting is based on the full statutory auditors' report. There is thus a hiatus, underscored by the special report.

Proposal 33
Present, in the board of directors' report to the general meeting, the new agreements submitted for approval and reiterate that only these agreements are to be voted on at the meeting.

MEMBERSHIP OF THE WORKING GROUP

Chairman

Olivier Poupart-Lafarge, Member of the AMF Board

AMF representatives

- Benoit de Juvigny – Managing Director – Corporate Finance Division
- Edouard Vieillefond – Managing Director – Regulatory Policy and International Affairs Division
- Olivier Douvreleur – Managing Director, Legal Affairs
- Patrick Parent – Executive Director, Corporate Accounting and Auditing

Working group members

- Anne-France Arnoux-Saugnac, deputy general counsel, risks and compliance, Bureau Veritas
- François Basset-Chercot, board secretary, L'Oréal
- Francine Bobet, audit partner, Ernst & Young; chair of the CNCC's Commission on Legal Studies
- Odile de Brosses, head of legal department, AFEP
- Alain Couret, professor at the law school of the Sorbonne (Université Paris 1); partner, CMS-BFL
- Philippe d'Hoir, partner, FIDAL
- Philippe Haudeville, secretary general, AF2I
- Michael Herskovich, head of corporate governance, BNP Paribas Asset Management
- Pierre Dinon, head of corporate governance, Allianz Global Investors France
- Michel Léger, chairman, BDO
- Viviane Neiter, honorary chairperson, APAI
- Colette Neuville, chairperson, ADAM
- Pascal Pommier, head of corporate and issuers, BNP Paribas Securities Services
- Fabrice Rémon, chief executive officer, Deminor France
- Jean-Paul Valuet, secretary general, ANSA
- Jérôme Vitulo, assistant general counsel, Lafarge
- Caroline Weber, general director, Middlenext and Frédérique Desroches, Middlenext

- Aude Ab-Der-Halden, assistant director for business law in the Directorate for Civil Affairs and the Seal, Ministry of Justice
- Ronan Guerlot, head of the business law bureau, Justice Ministry
- Adrienne Isaac, business law bureau, Justice Ministry
- Hubert Gasztowtt, legal advisor to the director general of the Treasury
- Yasmina Moubachir, deputy supervisor, Financial Stability, Accounting and Corporate Governance, Directorate General of the Treasury

AMF rapporteurs

- Antoine Colas - Regulatory Policy and International Affairs Division
- Maryline Dutreuil-Boulignac - Regulatory Policy and International Affairs Division
- Leslie Lançon - Regulatory Policy and International Affairs Division
- Marine Corrieras - Corporate Finance Division
- Florence Priouret - Corporate Finance Division
- Delphine Charrier-Blestel - Corporate Finance Division
- Etienne Cunin - Corporate Accounting and Auditing Division
- Anne Gillet - Corporate Accounting and Auditing Division
- Patricia Choquet - Legal Affairs Division
- Quentin Durand - Legal Affairs Division
- Stéphane Fékir - Legal Affairs Division
- Xavier Jalain - Legal Affairs Division
- Michel Karlin - Asset Management and Markets Division

The following were also interviewed

- Jean-Pierre Hellebuyck, Member of the AMF Board, vice-chairman, AXA Investment Managers
- Daniel Lebègue, chairman; IFA; and Alain Martel, secretary general, IFA
- Laurent Rouyrès, chairman, Labrador, and Lé Quang Tran Van, marketing director, Labrador
- Carl Rosen, executive director, ICGN
- Pierre-Henri Leroy, chairman, Proxinvest
- Me Eric Bernard, partner, Arago
- Charles Paris de Bollardière, board secretary, Total SA
- Gilles Hengoat, partner, national audit director, Grant Thornton
- Olivier de Guerre, partner, chairman and manager, Phitrust Active Investors, Denis Branche, partner, deputy CEO and manager, Phitrust Active Investors, and Luis de Lozada, legal director, Phitrust Active Investors
- Pierre Mahieu, director, Euroclear France, and Mohamed M'Rabti, director, Euroclear
- James O'Regan, General Manager, Broadridge, and Charlotte Crawley, Broadridge
- Jean-Philippe Grima and Emmanuel de Cursay, AFTI.

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ANNEX 2 EUROPEAN COMMISSION GREEN PAPER ON CORPORATE GOVERNANCE IN THE E.U.

The European Commission published on 5 April 2011 a Green Paper on corporate governance in the European Union. The paper stated in particular: “Controlling shareholders and/or boards can extract benefits from a company to the detriment of minority shareholders’ interests in many ways. The main way is through ‘related party’ transactions.
“Current EU rules already cover some aspects of related party transactions, basically accounting and disclosure. Companies are required to include in their annual accounts a note on transactions entered into with related parties, stating the amount and the nature of the transaction and other necessary information.
However, some investors with whom discussions were held during the preparation of this Green Paper argue that the rules are insufficient. They believe that disclosure of related party transactions is not enough in all situations and is not always timely.
“It has been suggested that, above a certain threshold, the board should appoint an independent expert to provide an impartial opinion on the terms and conditions of related party transactions to the minority shareholders.
“Significant related party transactions would need approval by the general meeting. The publicity associated with general meetings might dissuade controlling shareholders from some transactions and give minority shareholders the chance to oppose the resolution approving the transaction. Some propose that controlling shareholders should be precluded from voting”.

The feedback statement from consultation contained this answer:

“*QUESTION 22*
Do you think that minority shareholders need more protection against related party transactions? If so, what measures could be taken?

The slight majority of respondents that provided an answer to this question, in particular companies, business federations, the banking and financial services sector, share the view that sufficient safeguards are already in place and that, accordingly, there is no need for regulatory intervention. In their view, the focus, if any, should be on clarifying and simplifying existing rules on related party transactions. Furthermore, respondents suggest first to assess the impact of new regulation before taking new measures into consideration. Some respondents stress that the general meeting is not the right place to discuss transaction agreements.

The slight minority of respondents in favour of more protection consider that more and better information on related party transaction is necessary. They also share the view that related party transactions above certain thresholds (at least) should be subject to ex ante board or shareholder approval with interested parties being excluded from voting. Many respondents think that common principles should be introduced at EU level on the basis of the ECGF Statement5. Some respondents insist on the need of an independent opinion on the transaction or wish to see the auditors' role extended and strengthened. Others, in particular retail investors, suggest the introduction of an EU procedure when shareholders are squeezed-out.”