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**REPORT BY THE AMF ON
SHAREHOLDER ACTIVISM**

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Report by the Autorité des Marchés Financiers on Shareholder Activism

The debate concerning the behaviour of "activist" funds is not new, but it regained intensity in 2019 due to a few particularly emblematic cases of activism, and a number of proposals that were made in several public reports to govern these practices better.

While a relative consensus view recognises shareholder activism as being useful in the process of price formation, in improving corporate governance and in defending the interests of minority shareholders, these reports considered that improved supervision should be put in place to prevent excesses which unduly destabilise issuers, harm the orderly functioning of markets, and ultimately penalise investors.

As regulator, the AMF has attentively monitored these reports concerning subjects that are directly linked to the exercise of its duties of regulation, monitoring, supervision and enforcement. Moreover, several recommendations from these reports specifically concern the powers and resources of the AMF.

In light of the implications for the Paris marketplace, the AMF Board intends to make a contribution to the debate. It considers that the current legal framework **requires no major change, but it proposes several targeted measures**, described below, designed primarily to :

- **improve the transparency of the long positions taken by investors**, by adapting the regulations relating to the crossing of legal thresholds (at the very least lowering them for large companies) and statutory thresholds (by making them public) ;
- **ensure improved transparency regarding investors' financial exposure**. Regarding this, the AMF considers that it would be advisable to supplement the reporting of net short positions in equities, when this is required, by information on debt instruments, and in particular bonds and CDSs held simultaneously by the investor. The AMF will support such proposals on the European level ;
- **promote open, loyal and fair dialogue between issuers and their shareholders**. For this purpose, the AMF proposes, in particular, supplementing its policy in order to add to it recommendations on shareholder dialogue ;
- **increase the analysis and response capabilities of the AMF in the case of activist campaigns**, so that the regulator may be able to provide swift and appropriate answers, including repressive responses, when the circumstances so require. The AMF proposes measures that could increase its capacity for responding in the case of activist campaigns.

Shareholder activism, which has been a topical issue for several months now, has become a marketplace issue in which market participants and their representative organisations, as well as the authorities, have become involved. This subject has been discussed by several recent public reports,¹ which have all made recommendations aimed at supervising more closely

¹ Report of 2 October 2019 published in the conclusion to the work of a "fact-finding mission on shareholder activism", set up by the Finance Committee of the French Parliament, which had as co-rapporteurs Eric Woerth and Benjamin Dirx (hereafter the "Woerth Report") ; the report of 7 November 2019 entitled "Shareholder Activism" written by an *ad hoc* committee of the Legal Experts Club chaired by Michel Prada (hereafter the "Report of the Legal Experts Club") ; the report of 10 December 2019 entitled "Shareholder Activism" published by the French private enterprise organisation "Association Française des Entreprises Privées" (hereafter the "AFEP Report") ; the report of 9 January 2020 of a Europlace working group, which consists of two documents entitled "Shareholder Governance and Market Practices" and "Responsible Shareholders" (hereafter the "Europlace Report").

certain "activist" practices that are considered (to varying degrees, depending on the report) liable to harm the orderly functioning of financial markets.

As regulator, the AMF has attentively monitored these works concerning subjects that are directly linked to the exercise of its duties of regulation, monitoring, supervision and enforcement. Moreover, several recommendations from these reports specifically concern the powers and resources of the AMF.

In light of the implications for the Paris marketplace, the AMF Board intends to make a contribution to the current debate concerning shareholder activism by presenting, on the one hand, the AMF's approach on this subject, and also its proposals and recommendations in this respect.

I. The AMF's approach regarding shareholder activism

The AMF's approach regarding shareholder activism falls within the framework of its fundamental duties.

The AMF's action regarding shareholder activism falls within the framework of and complies with its fundamental responsibilities, as defined in Article L. 621-1 of the Monetary and Financial Code, according to which it oversees in particular *"the protection of savings invested in financial instruments"* and *"disclosure to investors and the orderly operation of markets in financial instruments"*, while *"taking account of the objectives of financial stability throughout the European Union and the European Economic Area and convergent implementation of the domestic and European Union provisions"*.

Shareholder activism is a multiform phenomenon which does not call for a uniform response from the regulator.

Shareholder activism covers a variety of situations and practices, as illustrated by the conventional dichotomy between *"long activism"*² and *"short activism"*.³ So-called activist campaigns are extremely heterogeneous, both in their modalities (disparate acquisitions of stakes ; private or public discussions with the issuer ; soliciting the support of the other shareholders or not ; actions carried out within a corporate framework or a judicial framework, etc.) and in their goals (challenging the strategy, corporate governance or even the managers, or the ESG policy⁴ of an issuer ; advocating a strategic reorganisation of the company's business or scope ; requesting changes in the terms and conditions of a financial transaction, etc.)

In addition to its multiform nature, activism is also an intrinsically ambivalent phenomenon as regards its potential effects on financial markets. Because they are presumed to acquire positions in issuers for the purpose of prompting them to change their strategy, financial communication or governance, activist investors may contribute to proper price formation in markets, and to an improvement in the corporate governance and management of the issuers, especially in a context characterised by a surge in the number of passive investors and a reduction in the diversity of research and market participants.

However, the excesses of some activist behaviour can be destabilising to an abnormal extent, both for the issuers and for orderly market functioning : lack of adequate transparency

² Schematically, when an investor is convinced that a company is undervalued and acquires a stake in the issuer in order to demand significant changes, notably in terms of governance or strategy, with a view to profiting from the rise in the share price as a result of those changes.

³ Schematically, when an investor is convinced that a company is overvalued and acquires short positions in the stock in order to profit from the downward adjustment in the share price, while publicly taking position concerning the issuer's situation.

⁴ For example, some activist investors demand that issuers give more consideration to social and environmental issues and impacts.

regarding their positions, their intentions or their conflicts of interest ; destabilisation of companies at key moments in their corporate life ; dissemination of false or misleading information ; price manipulation, etc.

On the academic level, several studies have highlighted the positive effects of activist behaviour, in both the United States and Europe. These studies mostly analyse "long" activist behaviour. Other studies, however, analysing other types of activist behaviour, lead to more contrasted findings, confirming the multiform nature of shareholder activism and the complexity of the questions that it raises.

In this context, it is incumbent on the regulator to adopt a balanced, pragmatic approach to activist behaviour.

The actions taken by activist shareholders usually consist merely of exercising legal prerogatives belonging to all shareholders (written questions to the board of directors; questions to the chairman of the board of directors or the management board concerning one or more of the company's management operations ; active solicitation of proxies ; requests for the inclusion of items or draft resolutions on the agenda of the annual general meeting, etc.). Shareholder involvement in the corporate life of an issuer is necessary for its satisfactory functioning. It has accordingly been encouraged by the regulator. The challenge raised by activist practices is not how to prevent activism, but how to control its excesses.

In this regard, the regulator gives a reminder that it closely supervises not only the listed issuers coming within its competence, but also market interventions by investors, including activist investors, notably to ensure compliance with the regulations governing the communications of the various players involved. The gradual increase in the data available to the AMF is reinforcing its analysis facilities and its capacity for reaction in this respect. The AMF's intervention aims in particular to ensure compliance with the transparency rules (major holding notifications, statements of intent), the provisions of the delegated regulation on "investment recommendations"⁵ (indication of conflicts of interest and objective presentation) and, more generally, the rules applicable to market abuse, and in particular the prohibition of the dissemination of false information.

Regarding this, the AMF carries out a systematic examination of published information concerning the securities falling within its jurisdiction and cross-checks it against the evolution of the market performance of the security. Publications impacting the price of securities (especially those of the issuers but also those of third parties, such as activist investors) undergo an in-depth analysis of their content and of the market for the security in order to ensure compliance with the applicable regulations, and in particular the Market Abuse Regulation.⁶ In the case of activist campaigns, the AMF also pays special attention to compliance with the obligations of major holding notification and statement of intent.

More specifically in the case of "short" activism, the AMF analyses the disclosures of net short positions received in accordance with the regulation on "short selling".⁷ These disclosures are cross-checked with the available data concerning pending settlement and delivery transactions and the lending and borrowing market for the securities in question, and with the public announcements of activist investors, made notably on social media. In situations of market tension, the AMF also requests information from those reporting net short positions in order to check their compliance with the provisions of the regulation on short selling. A suspected breach of the regulations may lead to various types of action by the AMF, ranging

⁵ Commission Delegated Regulation (EU) No. 2016/958 of 9 March 2016 supplementing Regulation (EU) No. 596/2014 of the European Parliament and of the Council with technical standards for regulations defining the technical conditions for objective presentation of investment recommendations or other information recommending or suggesting an investment strategy and the disclosure of particular interests or the existence of conflicts of interest.

⁶ Regulation (EU) No. 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse.

⁷ Regulation (EU) No. 236/2012 of the European Parliament and of the Council of 14 March 2012 on short selling and certain aspects of credit default swaps.

from a request for further information to the proposal to open an investigation when the suspicion is sufficiently substantiated.

Finally, in the case of activist campaigns, the AMF has been able to demand, and obtain, greater transparency or additional information from issuers on subjects relating to their governance, accounts, debt burden or strategy. The AMF has also been able to intervene regarding statements made by third parties, especially when those statements were covered by the regulations applicable to investment recommendations. Regarding this, the AMF has checked and, in some cases, demanded, that these publications comply with all the provisions in force, notably those relating to the "objective presentation of recommendations" and those relating to "the disclosure of interests and conflicts of interest".

Shareholder activism calls for no major change in the regulations in force, which largely come within the European framework.

The legal framework relating to activist behaviour has been amply defined on the European level, notably by the regulations on "market abuse", "investment recommendations" and "short selling". These directly applicable European regulations, which have the advantage of creating an area of regulation and fair competition, do not allow authorities to exercise normative prerogatives separately on the national level in the fields covered by European regulations.

Although certain adjustments to the regulations might seem advisable, the AMF considers, in light of its experience of these activist situations, that the prevailing legal framework is sufficiently flexible and robust to enable the regulator to intervene when investor activities that are potentially destabilising for the market and issuers are detected.

Besides, while so-called activist campaigns frequently make sensational news for the media, they are still relatively few in number, even though they have been increasing recently. Among so-called activist campaigns identified for over ten years now, campaigns conducted by "*short activists*" are an exception. Nearly all the activist campaigns that have taken place in France in the past ten years involved "long" activists. More generally, the available data show that France is not a special case, at least in quantitative terms, with regard to shareholder activism.

For these reasons, the AMF considers that shareholder activism calls for no major change in the regulations in force, whether it be the European or French standards. As regards purely national standards, any additional regulations specific to the Paris marketplace, notably regulations significantly increasing the obligations incumbent on all the market participants, including investors, might have undesirable effects, especially concerning its attractiveness.

However, following on from the reports produced on the subject, the AMF has adopted several proposals. These aim to improve the orderly functioning and transparency of markets, but also to increase the AMF's capacity for analysis and response in the case of activist campaigns.

II. AMF proposals with regard to shareholder activism

Firstly, the AMF is not in favour of adopting a legal definition of shareholder activism, which comes in a great variety of forms. To attain their goals, activist shareholders may use the legal means available to all shareholders, so that no irrefutable criterion seems capable of intrinsically defining an "activist" shareholder and making an indisputable distinction between them and a simply "active" shareholder. Questioning or disputing the governance, strategy or performance of an issuer forms part of the right to criticism available to all shareholders.

Due to the heterogeneous nature of activist practices and the difficulty of defining the specific nature of the activist shareholder, the AMF therefore shares the view of some of the works mentioned above, that a legal definition of "*activism*" or an "*activist*" would not be advisable

and would in any case be relatively inoperative, given the issues of legal qualification that such a definition would inevitably raise. It follows from this that the AMF is not in favour of establishing a specific legal framework for activist shareholders.

1. Transparency on stake-building and knowledge of the shareholders

The issue of transparency on stake-building by activist shareholders appears in the various marketplace reports mentioned above. Regarding this, some have proposed **adding a legal threshold for notification of major holdings of 3%** of the capital or voting rights.

In fact, France is the only "big" country to have limited itself to the 5% threshold provided for by the European directive ; thresholds of 1%, 2% or 3% have been introduced in numerous European countries,⁸ notably Germany, Spain, the Netherlands, the United Kingdom and Italy, with, in the latter case, a specific factor introduced during the Covid-19 crisis to be able to monitor changes in the share ownership structure in this period of collapsing share prices.

Thresholds for notification of major holdings in Europe

Autriche	3 % si les statuts l'ont prévu et le seuil a été notifié à la FMA (il devient alors le seuil légal ou, par défaut, 4 %, 5 % 10 % ...)
Irlande	3 % pour les émetteurs irlandais puis 4%, 5 % ...;
Allemagne	3 % pour les droits de vote 5 % autrement
Pays Bas	3 % du capital ou des droits de vote
Italie	3 % de détention effective hors PME 5 % autrement avec une flexibilité donnée à la CONSOB de le réduire pour les sociétés non contrôlées de capitalisation élevée ; ce dernier critère a été levé de façon temporaire le 10 avril et actuellement les seuils sont de 1 % pour 104 sociétés et de 3 % pour les autres avec une déclaration d'intention à effectuer au seuil de 5 %M (au lieu de 10 %)
Espagne	3 % des droits de vote
Royaume Uni	3 % des droits de vote pour les émetteurs du RU 5 % autrement
Portugal	2 % des droits de vote pour les sociétés de droit portugais

Moreover, the constraints inherent in such a lowering of the legal threshold could be significantly reduced if this did not apply to all securities (e.g. by exempting stocks listed on a growth market for SMEs) or all holders (e.g. by exempting UCITS), or if it only concerned voting rights.

The lowering of thresholds is not directly related to a desire to regulate activism, insofar as activists readily disclose their acquisition of a stake in an issuer, whatever the level of their holding, because they generally endeavour to exert influence on the issuer publicly or carry the other shareholders along with them. However, it contributes to a better knowledge of the share ownership structure and therefore to market transparency.

In addition to from the possible introduction of an additional legal threshold, enriching the content of the major holding notifications could be considered, by including extra information to be provided by the reporting entities concerning their holdings of financial instruments with an optional component for hedging purposes (e.g., put or call options).

The debates on transparency also concern the system of statutory major holding notifications. Regarding this, the AMF considers that contractual freedom should remain the

⁸ For a presentation of the various thresholds currently applicable in EU Member States, see the note by ESMA, *Practical Guide - National Rules on notifications of major holdings under the Transparency Directive*, 31 July 2019.

essence of this system, and that issuers should be able to choose to introduce such thresholds and determine their level. Nevertheless, it seems advisable to provide for a **uniform calculation method regarding statutory major holding notifications, taking into account the cases of assimilation provided for in Article L. 233-9 of the French Commercial Code**. Furthermore, the **civil sanctions** applicable in the case of undeclared statutory major holding notifications, which are the subject of policy debates, **require clarification**.⁹ Lastly, in the interest of transparency and satisfactory market information, it seems advisable to stipulate, at the very least for issuers whose shares are admitted to trading on a regulated market, that they must **make public**, on their website, any statutory major holding notifications that are sent to them. The responsibility would mainly weigh on investors who would have a legal obligation to report any statutory threshold crossing to the issuer, it being incumbent on the issuer in question to make any report received from the latter public on their website. Accordingly, an administrative sanction could be provided for in cases of failure by the investor or the issuer to comply with their obligations.

Lastly, the AMF considers that it would be useful, as recommended in one report, to "*encourage private innovation – marketplace initiatives, development of technological solutions, etc. – designed to ultimately enable any listed company to know simply, rapidly and inexpensively the composition of its share ownership structure*",¹⁰ complementing the recent legal and regulatory measures which should enhance the efficiency of the identifiable bearer securities procedure.¹¹

2. Equality of arms and shareholder dialogue

The existence of transparent, regular and open dialogue between an issuer and its shareholders is undoubtedly one of the keys to preventing the excesses of activist campaigns and, where appropriate, attenuating their potentially destabilising effects. The AMF notes that many issuers already assign great importance to this dialogue and devote sometimes significant resources to it.

Regarding this, a clarification of the principles and rules that could govern such a dialogue is recommended by some of the reports mentioned above.¹² For this purpose, **the AMF will supplement its "Guide on ongoing information and management of inside information" to include certain developments and recommendations on shareholder dialogue**.¹³

At the same time, the **development of shareholder dialogue platforms** by issuers, which is recommended by one report,¹⁴ seems a good idea, because it could foster such dialogue, but also make it more inclusive, notably by allowing the effective participation of non-institutional minority shareholders in this process.

Where an activist campaign has been initiated, it is important that the debate, possibly in public, between issuers and activist investors can be conducted without the issuer in question being deprived of the opportunity of replying. Regarding this, while the AMF Position-Recommendation No. 2016-08¹⁵ was never intended to prevent an issuer from communicating - during a **quiet period** - in reply to any investor criticism, it is clear from recent public reports on activism that a clarification of the aforementioned position-recommendation along these lines could be advisable. As a consequence, **the AMF will amend its policy to specify that, subject to the Market Abuse Regulation in particular, issuers may provide the market**

⁹ See Recommendation No. 2 of the Europlace Report and Recommendation No. 6 of the AFEP Report.

¹⁰ Recommendation No. 4 of the Woerth Report.

¹¹ Article 198 of Act No. 2019-486 of 22 May 2019 on business growth and transformation (the so-called *PACTE Law*) and Article 3 of Decree No. 2019-1235 of 27 November 2019.

¹² See Recommendation No. 13 of the Woerth Report and Recommendation No. 7 in the Report of the Legal Experts Club.

¹³ Remember, in this respect, that the AMF produced a "*study on shareholder dialogue*" in its last report, published in December 2019, on corporate governance and executive compensation in listed companies (AMF, *2019 Report on Corporate Governance and Executive Compensation in Listed Companies*, 3 December 2019, pp. 28 et seq.).

¹⁴ Recommendation No. 6 in the Report of the Legal Experts Club.

¹⁵ Position-Recommendation, Guide on ongoing information and the management of inside information, DOC-2016-08.

with any necessary information, even during a "quiet period", in reply to public statements concerning them.

In order to foster loyal and fair debate between issuers and activist investors, the AMF will also add to its policy by **recommending to any shareholder who initiates a public campaign to immediately disclose to the issuer in question the material information (e.g. white papers) that it is sending to the other shareholders**. Such a practice will enable the issuer in question to reply, in detail, to the public statements made concerning it, thereby contributing to satisfactory market information.

Finally, activist campaigns pose the question of the applicability of the **investment recommendation conditions**¹⁶ to the public statements of activist investors. Given the problems that could arise from assessing the scope of application of Delegated Regulation No. 2016/958, **the AMF will approach ESMA and the European Commission to ask for clarifications**¹⁷ concerning interpretation of the scope of application of this regulation, notably in its potential application to "activist" shareholders and behaviours. **The AMF will also apply to ESMA and the European Commission to ask them for precise details concerning the extent of the information on conflicts of interest** which must be provided by the author of an investment recommendation. The AMF has noted, in practice, that this information is often generic and/or incomplete, even though it is provided for the purpose of usefully informing the market, notably regarding the positions held by those authors.

3. Short selling and regulation of securities lending

Several proposals in the aforementioned reports devoted to shareholder activism concern short selling. Although it can give rise to excesses, it is important to note that short selling activities are generally positive for the market, notably in terms of price formation and liquidity.

Regarding this, the AMF gives a reminder that Regulation (EU) No. 236/2012 has largely harmonised the rules and practices regarding short selling at the European level.¹⁸ Furthermore, the data available to the AMF show that activist campaigns based on massive short selling are very rare. Finally, the existing framework already enables the regulator to respond in the event of exceptional circumstances and market dysfunctions.¹⁹ As a result, it does not seem advisable, as things stand, to recommend a radical change in the regulations applicable in this area.

However, in order to ensure improved transparency regarding investors' financial exposure, the AMF considers that it would be advisable to supplement the reporting of net short positions in equities, when this is required,²⁰ by **information on debt instruments**, and in particular

¹⁶ As a reminder, the regulations applicable to investment recommendations were reinforced by the Market Abuse Regulation (Regulation (EU) No. 596/2014 of 16 April 2014 and its Delegated Regulation No. 2016/958 of 9 March 2016). In particular, interests and conflicts of interest must be disclosed by all those issuing recommendations and, whenever they hold a net short or long position of 0.5% or more in the capital of the company covered by the recommendation, this position must be mentioned. Investment recommendations must also comply with a strict regulatory framework designed to ensure that the sources are cited and the information is presented objectively.

¹⁷ Within the framework of the ESMA Q&A on the Market Abuse Regulation (MAR).

¹⁸ Regulation (EU) No. 236/2012 of the European Parliament and of the Council of 14 March 2012 on short selling and certain aspects of credit default swaps.

¹⁹ Regulation (EU) No. 236/2012 makes provision, in particular, for three cases of intervention by the competent authorities :

- The national authority may very temporarily restrict short selling of a financial instrument on a trading venue when a significant decline (more than 10% for a liquid stock) has been recorded on a venue in order to "prevent a disorderly decline in the price of the financial instrument" (Article 23 of the Regulation) ; the AMF activated this measure on Tuesday 17 March 2020 ;
- The national authority may increase the transparency requirements (fees demanded by security lenders) or impose restrictions which are temporary, but for a duration not strictly limited by the regulations, extending as far as prohibition, when there is a serious threat to financial stability or to market confidence in a Member State (Article 20 of the Regulation) ; this measure is hard to use for a stock subjected to activist pressure, but the AMF has used it in the case of the Covid-19 crisis to avoid adding pressure from short sellers to the fall in share prices.

- ESMA can use the preceding measures on the EU level (Article 28 of the Regulation), which it has done in the case of the Covid-9 crisis but only by lowering from 0.2% to 0.1% the threshold for disclosure to the national authorities.

²⁰ Regulation (EU) No. 236/2012 stipulates the conditions of disclosure of net short positions in equities, with (i) disclosure to the competent authority whenever one crosses the threshold of 0.2% of the company's issued share capital and each 0.1% above that, and (ii) publication whenever one crosses the threshold of 0.5% of the issued share capital and then each 0.1% above that.

bonds and CDS²¹ held simultaneously by the investor. Moreover, these reports should **also include the LEI**²² of the reporter, to ensure more precise identification of the reporting authors. The AMF will therefore support such proposals on the European level.

As regards securities lending, the AMF observes that the use of such practices by activist shareholders with a view to destabilising the annual general meetings of French issuers is marginal. However, the AMF intends to reiterate, in a recommendation, that it is **good practice for fund managers to repatriate loaned securities**²³ and effectively exercise their voting right.

Lastly, the AMF finds useful the development of any private initiative with a view to the emergence of a centralised marketplace for securities lending and borrowing, as proposed by some of the aforementioned reports.²⁴

4. Speed of procedures and role of the AMF and ESMA

While market time is not the same as investigation time, it is important that the regulator be able to provide appropriate responses, including enforcement responses, rapidly when circumstances so require.

The AMF has, on average, about fifty investigations and fifty inspections in progress at any given time. For good regulation and good administration of justice, they should be conducted as quickly as possible. In this respect, the AMF reasserts its **determination to reduce the duration of investigations and the examination of cases for repression**, insofar as this depends on the regulator.

Procedures for settlement, which are far quicker than disciplinary proceedings, can be an appropriate tool to intervene rapidly to cope with regulatory breaches (including market abuse) which may be committed by activist investors. However, the AMF takes formal note of the ruling by the Council of State on 20 March 2020, which calls into question the use of procedures for settlement, from the viewpoints of both the AMF Board and the natural person or legal entity concerned.

Regarding the establishment of "interlocutory proceedings ("procédure de référé") in the AMF" as recommended by certain reports, the AMF considers that it is not appropriate in most situations involving activist investors. Activist investors are mostly sophisticated players. Experience shows that their possible breaches of the regulations are seldom, or never, sufficiently "*obvious*" to enable an urgent procedure judge to give a ruling, even as a precautionary measure, in just a few days, on the basis of public information. However, in cases where investor information and orderly market functioning require rapid intervention by the regulator, the AMF may give a decision promptly in the event of a **dispute concerning the applicability** to a public statement of the regulations on **investment recommendations**. In such a situation, **the AMF, seized by a person having a legitimate interest, may therefore give its opinion urgently on the applicability of Delegated Regulation 2016/958 to public statements** and, where appropriate, order the investor concerned to comply with said regulations.

More generally, the AMF recommends three reforms which could enhance the efficiency of its repressive action, notably in the case of activist situations.

²¹ In the case of issuers who are in a difficult debt situation, we note a very clear negative correlation between the share price and the CDS premium.

²² The LEI (*Legal Entity Identifier*) is a unique identifier system for financial market participants.

²³ As noted by Robert Ophèle in his contribution, this recommendation appears in the AMF's 2005 report on the exercise of voting rights (Mansion Report) and is replicated extensively in the AFG's code of conduct ; in 2014 the SEC also reiterated that : "*if fund management has knowledge of a material vote with respect to the loaned securities, fund directors should recall the loan in time to vote the proxies*". R. Ophèle, *Contribution by Robert Ophèle to research on activism on the stock exchange*, 11 July 2019.

²⁴ Recommendation No. 9 of the Woerth Report and Recommendation No. 7 of the Europlace Report.

First, the AMF recommends amending Article L. 621-14 of the Monetary and Financial Code in order to provide the regulator with a **power to impose fines with regard to administrative injunctions**, which is currently possible only in the case of a legal injunction requested by the AMF. Granting such a power will have the benefit of making the AMF's administrative injunctions more dissuasive and coercive.

Furthermore, as has been proposed,²⁵ the scope of application of Article L. 621-18 of the Monetary and Financial Code – which currently concerns issuers only – could be usefully extended, to **enable the AMF to order** any investor financially exposed to the securities of a listed issuer to make **corrective or supplementary publications** if errors or omissions have been identified in its public statements. Failing that, the AMF could make such publications itself. The aim is to enable the AMF to act rapidly, especially in the event of the publication of clearly false or misleading information concerning an issuer.

Thirdly, the AMF proposes amending Article 231-36 of its General Regulation applicable in a **public offering period**, so as to extend to the shareholders (and their representatives or proxies) of the initiator or of the targeted company the obligations stipulated by this provision, and in particular an obligation of **special vigilance in their statements**. Experience shows that shareholders, especially activist ones, can play a significant role in the execution of public offerings, so that it seems a good idea to subject their communications, in this precise context, to the same obligation of vigilance as "*the persons concerned by the offering*" within the meaning of the AMF General Regulation.

Lastly, adopting the recommendation of a report suggesting clarification of the action-in-concert regime in an activist context,²⁶ the AMF will approach ESMA to request that there be defined, on the model of the "white list" published regarding actions in concert, activist behaviours which are not in themselves liable to be presumed as characterising an **action in concert**.

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Thresholds for notification of major holdings in Europe

Austria	3% if the articles of association have stipulated this and if the FMA has been notified of the threshold (it then becomes the legal threshold) or, by default, 4%, 5%, 10% etc.
Ireland	3% for Irish issuers, then 4%, 5%, etc.
Germany	3% for voting rights, otherwise 5%
Netherlands	3% of the capital or voting rights
Italy	3% of effective holdings except for SMEs. Otherwise 5%, with the CONSOB being granted flexibility to lower this threshold for non-controlled large-cap companies; the latter criterion was lifted temporarily on 10 April and the thresholds are currently 1% for 104 companies and 3% for the others with a statement of intent to be made at the 5% threshold (instead of 10%)
Spain	3% of voting rights
United Kingdom	3% of voting rights for UK issuers, otherwise 5%
Portugal	3% of voting rights for Portuguese companies

²⁵ Recommendation No. 9 in the Report of the Legal Experts Club.

²⁶ Recommendation No. 10 in the Report of the Legal Experts Club