AUTORITÉ DES MARCHÉS FINANCIERS

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2018 report on corporate governance and executive compensation: the AMF opts for a thematic approach

For the fifteenth edition of its report, the AMF has chosen a new approach to the assessment of corporate governance practices and executive compensation at listed companies. As it does every year, the report details regulatory changes and areas of focus. However, this year's report highlights two specific areas of interest in 2018: changes in top management and say on pay. This report represented a great opportunity to provide an overview of practices on these two hot topics.

Ever since the French Financial Security Act was passed on 1 August 2003, the Autorité des marchés financiers has conducted an annual review of the disclosure of listed companies in the areas of corporate governance and executive compensation.

What regulatory changes have been introduced in respect of governance and compensation?

- Article 61 of the draft law on business growth and transformation (projet de loi relatif à la croissance et à la transformation des entreprises - PACTE law) supplements and amends existing provisions on employment and environmental issues. The biggest change pertains to Article 66, however, which transposes the Shareholders Rights Directive II into the French Commercial Code and the French Monetary and Financial Code. Article 66 also authorises the government to transpose the provisions of the directive on the

transmission of information between companies and shareholders, the facilitation of shareholder rights, and the transparency and approval of items impacting the pay of executives (say on pay) by means of an ordinance.

- In June 2018, the AFEP and the MEDEF published an amended version of their corporate governance code for listed companies. This version included new recommendations relating, among others, to the role of the board and its dialogue with shareholders, ethical rules for directors and employee directors, the corporate commitment to non-discrimination and diversity, and a stricter framework governing the departure of exécutives.

- The AMF also integrated all the proposals made by its working group on "Shareholder rights and voting at general meetings" into its corpus of reference texts.

New in the 2018 edition: a focus on two areas

- Changes in corporate officers at SBF 120 companies: a larger number of terms of office of corporate officers at SBF 120 companies expired in 2018. 43 companies, including 17 CAC 40 companies, were in a situation where one of its executive corporate officers was appointed or left the company, and/or a new one was appointed. These changes are important for companies and may have a significant impact on governance and compensation issues.

The key points studied in this report are the implementation of succession plans, potential changes in the functioning of the board and governance, and decisions on compensation and financial conditions when both appointing executives and when executives leave.

> The report shows that the level of detail provided by companies on the process used to draw up succession plans varies widely. Fewer than half of the sampled companies that have implemented a succession plan explain the process or the time line for the succession plan to their shareholders.

> Regarding new appointments, the AMF found that 11% of new corporate officers who had previously held a position in a company continued to hold an employment contract, showing a fairly significant level of non-compliance with the code.

> As for departures, the AMF found that information is often sparse, and has reminded companies that they must publish a summary of all financial conditions of the departure.

- The second theme of the report is the right to vote on compensation during the annual general meeting ("say on pay"). While legal provisions on say on pay have been gradually

implemented, the AMF analysed, for this same sample, the information published on ex ante and ex post votes on executive compensation.

> 2018 was the second year following the implementation of say on pay on an ex ante basis, but was also the year in which ex post say on pay was introduced by the Sapin II law. Overall, the AMF found that resolutions on executive compensation were widely approved at the general meetings of shareholders of the companies studied in the report.

> Amongst other findings, the AMF noted that the presentation of the compensation policy did not always provide an accurate view over the long term. Compensation awarded before the end of the previous financial year was not always disclosed because it derived from resolutions passed in previous years.

As it does every year, the AMF issues recommendations and areas for discussion for companies and relevant organisations (AFEP, MEDEF and the High Committee on Corporate Governance) so that they may take an active role in continuing to improve practices.

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