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## The AMF publishes a position-recommendation on the preliminary consultation of shareholders and market information about major asset acquisitions and disposals of listed companies

**As part of the development of SFR-Vivendi and Alstom transactions, the AMF Board expressed its desire in May 2014 for a group to be set up under the chairmanship of Christian Schricke, a Board member, in order to consider the possible creation of a more organised process for overseeing the disposal of major assets of listed companies. This option was later expanded to cover acquisitions.**

Under the current legislation, disposals of a listed company's assets are not submitted to a takeover bid process, or to the fundamental principles that govern it, and are therefore not subject to securities regulations. They are mainly covered by corporate law, which in France leaves wide scope for the board of directors or the supervisory board and the executive bodies.

There are myriad issues involved in the supervision of these transactions: the need for reliable and timely financial information, the prevention and management of potential conflicts of interest, respect for corporate interest, but also the protection of shareholders and their capacity to express their opinion when a company undergoes a radical change in "profile" or "investment contract" without its corporate purpose necessarily being modified. These considerations must, however, be weighed against the recognised freedom of



management structures which determines the responsiveness and sustainability of a business.

Following a public consultation on the conclusions of the group, the AMF is publishing a position-recommendation in order to reinforce the guidelines for transactions concerning the disposal and acquisition of major assets. It recommends, in the first instance, that listed companies consult their shareholders (during an ordinary general meeting) prior to the disposal of at least 50% of their assets, with this threshold being reached if at least two of the five following ratios reach 50% over a period of two years:

- the turnover recorded by the asset(s) or activity transferred in relation to the consolidated turnover;
- the sale price of the asset(s) in relation to the market capitalisation of the group;
- the net value of the transferred asset(s)<sup>(1)</sup> in relation to the total on the consolidated balance sheet;
- the net operating income before tax generated by the assets or activities transferred in relation to the consolidated net operating income before tax;
- the number of employees in the divested business in relation to the worldwide workforce of the group.

In order to better oversee all transactions relating to the disposal of major assets by listed companies, the AMF has included measures put forward by the group which aim to reinforce market information and to promote best practice, especially demonstrating that the transaction is in the corporate interest of the issuer in question. The latter provisions are extended to significant acquisition transactions, which are also likely to substantially change the profile of a company.

These measures relating to market information and to best management practice affect a range of disposals and acquisitions of wider scope than for the consultation of the general assembly. They cover all transactions relating to major assets which are therefore not necessarily determined, according to the criteria mentioned above, to be for the consultation of the shareholders' general meeting during the disposal of the majority of assets and may be slightly below 50% of the assets of a company.

The very principle of information on the disposal and acquisition of major assets, on the circumstances and motives which have led to the consideration and launch of a transaction, as well as the context and negotiation of an agreement arises directly from the obligations



weighing on listed companies under ongoing information and communication of inside information and in this way constitutes a position, whose outreach is compulsory for the companies in question. The information required by companies in this respect, as well as the desired best practices for such transactions are, however, put forward as a recommendation.


This position-recommendation also invites industry groups to develop their corporate governance code on this matter.

[ 1 ] Only liabilities relating to disposed assets should be taken into consideration for the establishment of these criteria and not the overall liabilities of a company.

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