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## **Discours de Robert Ophèle, président de l'AMF - Afore Consulting – 5th Annual Fintech and Regulation - "Regulatory considerations in an era of digital acceleration", 2-4 février 2021 (en anglais uniquement)**

### **Seul le prononcé fait foi**

The global pandemic has dramatically accelerated the pace of digital and lent greater importance in our daily lives. In our social relationships, whether personal or professional, we have all used Zoom or Teams for conference calls; proof of this is today's event. In our daily life as consumers, in times of lockdown, we have witnessed an explosion in the volume of online purchases; evidence of this lies in the spectacular rise in Amazon's share price. Digital has even taken a dominant place in our wallets: in France, one out of two payments was contactless in 2020 against 35% in 2019 according to the CB Bank Card Group. This afternoon I will touch upon the changes this digital acceleration could bring about for financial markets and its players.

Two matters seem to me to be particularly relevant for the years to come: first, how the combination of data, algorithms, AI and social media will reshape financial markets, and second if and how the recourse to Distributed Ledger Technologies – DLTs – will profoundly redesign our markets. Both trends have recently demonstrated how these could bring about irrationality in the financial markets; firstly the Reddit - GameStop episode (20 \$ January 12, 350\$ on the 27) and then, take the Bitcoin saga (worth 10 000 \$ last September and 40 000 \$ at the beginning of January). However, if well managed, both trends could usher in a

greater degree of democratisation and efficiency to financial markets as a whole. Let me say a few words about each of them.

Data, algorithms, AI and social media, each and all of these have overwhelmed our private lives; they are now shaping the structure of our financial markets. How could we make better use of them?

First of all, we should ensure simple and fair access to reliable data. Data lies at the heart of the digital world. As the famous American statistician Edward Deming used to say, *"In God we trust, all the others must bring data"*. Nowadays we have a lot of it; so much that, to some extent, only big players are capable of exploiting it by first cleaning up existing databases, then developing algorithms and powering algorithms with AI. The time has come to rationalise the data set and make it accessible on an equal footing to the widest possible population of users. In Europe, with regard to market data, we have dramatically increased market transparency - be it pre- or post- trade - but usable market data is hugely expensive - far too huge: there is an urgent need for a consolidated tape; this is one of the main purposes of the MIFID review underway. Regarding issuers, we have many databases, too many to allow straightforward cross analysis; from that perspective, what is in the European pipeline is also promising: we are about to enable, in near real-time, digital access to regulated information from European issuers. First ESEF, the European Single Electronic Format, will facilitate accessibility, analysis and comparability of financial reports in a normalised electronic format and shortly, via ESAP, the European Single Access Point, thus every piece of financial and non-financial information disclosed by issuers will be easily accessible in a single and normalised database. The EU Commission has clearly indicated that a legislative proposal is about to be delivered and in order to do so, a targeted 12-week consultation has recently been launched.

Providing fair access to reliable data in a non-fragmented manner will reduce information asymmetries, expand the range of market participants and enhance an effective price-formation mechanism.

The second axis of the digital acceleration in the financial world is the rise of platforms enabling retail investors to trade and chat on line. Providing retail investors with access to trading at a very low cost is an effective way to democratise financial markets. The periods of lockdown we have experienced last year coincided, in France as in almost all countries, with a substantial increase in equity market activity from retail clients. Many of these clients are new ones, much younger than investors regularly seen to date, and they trade through online brokers. This is a far-reaching development, departing from the usual but costly European intermediation model via the banking system, with the associated duty to offer proper advice and the corresponding suitability requirements. This also paves the way for a new way of consuming financial products with the emergence of "one-stop-shops" or the

possibility for an investor to access a range of services in a single place with a comprehensive view of its assets, thanks to aggregation services, and the possibility to choose between several types of investment: crowdfunding, money market funds, crypto-assets, socially responsible investment, equities, ETFs, loans, grants, etc. So far, few companies have emerged on this segment in continental Europe because of our distribution model, which to date remains concentrated around large institutions but it is clear to me, that in Europe, online financial supermarkets will be short-lived.

Empowering customers with this near-direct access to the market is most welcome but nevertheless raises many questions. It offers new ways to distribute highly risky and leveraged products without the proper safeguards, new ways to manipulate markets by using the social media dimension available on many platforms. To some extent, intermediation through firms providing investment services has its benefits for investor protection purposes. On their own, retail customers could be more prone to embark upon some dubious investments and to feed financial bubbles. From this perspective, we should bear in mind the provision of the European Market Abuse Regulation: *“persons who produce or disseminate investment recommendations or other information recommending or suggesting an investment strategy shall take reasonable care to ensure that such information is objectively presented, and to disclose their interests or indicate conflicts of interest concerning the financial instruments to which that information relates.”*

Furthermore, the European Commission's "digital services act" initiative and the clarification this provides regarding digital platforms' and gatekeepers' responsibility for what passes via them is absolutely essential. Being an online platform where, to some extent, supply meets demand shall not exonerate from any form of legal responsibility. This principle laid down by the "digital services act" is fundamental in my view and is intended to apply to financial services in the same way as for any other type of service marketed via a digital platform.

Let me now turn to blockchain matters; the confirmed and continued development of crypto-assets makes it indispensable to rapidly regulate their market at the appropriate level. The European Commission proposal for a regulation on markets in crypto-assets, MiCA, is therefore more than welcome. However, while it is necessary to structure the regulation for products that do not qualify as financial instruments I should confess that I am equally supportive of the other legislative proposal covering crypto-assets that qualify as financial instruments: the proposal for a pilot regime, which could waive some provisions of existing regulations. MiCA will close a loophole while the pilot regime will prepare tomorrow's financial market.

So let me start with the Pilot Regime for market infrastructures based on DLT Infrastructures wishing to trade and settle transactions in financial instruments in the form of a crypto-asset. These need to be able to try out and test within a proportionate and clear regulatory framework.

The potential gains to be expected from DLT can be significant. DLT would reduce risks, both by speeding up the market chain and by its distributed nature that could mitigate some cyber risks raised by centralised market infrastructures, such as the single point of failure. The use of DLT could also decrease costs using smart contracts that could simplify many back office processes. It is also a question of keeping Europe competitive at a time when similar approaches are now being rolled out in many countries.

I am therefore glad to note that this proposal is a regime of exemption from European regulations that aims to enable experimentation for the use of DLT in the field of trading and post-trade of security tokens, where existing legislation precludes or limits their use.

Nevertheless, the Commission' draft proposal could be more audacious. Allow me to mention three improvements needed to establish a more open Pilot Regime, fostering healthy competition, offering Europe every chance in the race to technological progress.

First, the current scope of the pilot regime results in a strong bias in favor of traditional actors already approved as MTFs or CSDs. Any new entrant wishing to develop a DLT-based MTF or DLT-based SSS would have to apply first for authorization as an MTF or CSD operator, in theory based on a traditional business model. With this first authorization in hand, it will then have to apply for the exemptions sought as part of an authorization as a DLT MTF or DLT SSS.

This double process is likely to discourage new entrants, causing the pilot regime to lose some of its added value, even though this does not provide any additional protection during trials. Pilot regime eligibility should be extended to every actor.

Second, we need to broaden the range of issuers able to benefit from the listing of their securities on DLT-based infrastructures via an increase in thresholds proposed.

The Commission quite rightly intends to limit the pilot regime to illiquid stocks and bonds. The draft regulation provides for capitalization and issue size thresholds below which financial instruments will have to fall in order to be admitted to trading on a DLT MTF or admitted to the operations of a DLT SSS. I think the thresholds deserve to be raised if we want to have a meaningful experimental zone/zone for trials. At the AMF, we are for instance defending the idea, notably in the context of the MiFID2 review, that all companies with a capitalisation of less than €1 billion should be considered as SMEs. To make the pilot scheme more ambitious, it seems reasonable to extend it to this capitalisation threshold so that all European SMEs can benefit from innovations in question.

Last but not least, we could be bolder in our approach by ensuring not to prohibit certain business models from the outset and that the principle of technological neutrality is respected.

Blockchain is a fast-evolving technology. It would be a pity to limit the type of technology

that we can try out and test. That is why it would be important to clarify the possibility to test public DLT as well as Decentralized Finance – DeFI - business models into this future Pilote Regime infrastructure.

I would like to highlight that, if we limit the Pilot Regime's scope too strictly, innovative projects could leave Europe and develop their projects outside the EU.

Let me finish this speech with a few words on MiCA.

The European Union has also chosen to regulate crypto-assets that are not financial instruments, Bitcoin, Ether and the likes, through its MiCA proposal. It is high time when we look at the spectacular price variations of Bitcoin over the last few months. The MiCA regulation establishes uniform rules as well as passport mechanisms for Initial Coin Offerings issuers and Crypto-Asset Service Providers.

These new provisions will undoubtedly strengthen Capital Markets Union. In that perspective, we think that a few adjustments could be made.

ESMA should be the competent authority for this new field of regulation, including the supervision of crypto-asset service providers. First, this would be the best way to guarantee a level playing field in the EU. Second, as this regulation is brand new, it is easier to provide ESMA with competence from the outset than if this is considered at a later stage. Moreover, it would make sense to gather all the expertise within the same authority, since the cost of entry in the crypto-world is quite high.

Again on the subject of the fields of competence allocated to ESMA, MiCA establishes specific rules for 'stablecoins' distinguishing between Asset-Referenced Tokens and E-Money Tokens. While it is natural that global E-Money Tokens, replicating a single currency, would be regulated by EBA. For Asset-Referenced Tokens - very close to traditional financial instruments (UCITS shares / AIFM shares / possibly commodity-derivatives) – to be regulated by EBA is debatable.

Regarding Market Abuse provisions, the Commission's proposal provides for rules governing inside information and the prohibition of market manipulation. However, the enforcement of these rules seems to be extremely difficult. I see the need for MiCA to provide the same approach as for securities, with a transaction reporting mechanism from crypto-asset trading platforms to NCAs, as well as making an order book available to the regulator.

Further work is needed in MICA so as to ensure that the technological neutrality principle is respected. As already highlighted for security tokens, we need to ensure that all types of DLT can be used, private and public. Nor should we close the door on decentralized business

models by prohibiting or overlooking them. In my opinion, we should favor an outcome-based approach, which means that business models capable of complying with the organisational rules, conduct rules and AML-CFT rules should be admitted.

It is obvious that a process is underway that will, from many angles, profoundly change our financial markets. In any case, we should never forget their purpose to finance our economies appropriately without jeopardising financial stability.

Let's try achieve this in this new digital environment.

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