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The AMF specifies its expectations concerning Essentially Registered Securities as the 2021 general meeting season approaches

The AMF supports market initiatives aimed at improving register-keeping for Essentially Registered Securities⁽¹⁾. During the upcoming general meeting season, it will pay greater attention to ensuring that intermediaries comply with their obligations to disclose information about holders of these securities.

Essentially Registered Securities (“valeurs essentiellement nominatives” or “VENs”) are financial securities *“which, according to the law or the articles of incorporation of the issuing entity, may only exist in registered form”*. The issuer or its authorised registrar maintains the register of shareholders for VENs by registering Statements of Nominative References (“bordereaux de références nominatives” or “BRNs”), which are separate from settlement instructions. After a stock market order has been executed, these BRNs are sent to the central securities depository by the buyers’ and sellers’ custody account-keepers before being sent to the issuer or its registrar. For each accounting day, entries resulting from acquisitions (registration BRNs) must be offset by disposals (deregistration BRNs) in order to avoid exceeding the amount of the issue. Failing this, the registrar does not enter the security buyers in the register and places the registration BRNs in the “retention” account until an equivalent quantity of deregistrations is received.

The registration of a new VEN shareholder in the register therefore depends not only on the diligence of its custody account-keeper (sending the registration BRN), but also on the

diligence of the seller's custody account-keeper (sending the deregistration BRN), and any delay adversely affects timely updates to the register.

This diligence by the buyers' and sellers' custody account-keepers is particularly important in the run-up to general meetings of VEN holders. Any delay in entering BRNs in the register may prevent shareholders who have duly acquired their securities from exercising their right to participate in the meeting. BRNs must be entered in the register before the record date, which is set at *"midnight, Paris time, on the second business day prior to the meeting"* for companies whose securities are admitted to trading on a regulated market or to the operations of a central securities depository, in accordance with the terms of Article R.22-10-28 of the Commercial Code (which replaced the former Article R.225-85 of the same code on 1 January 2021).

The AMF analysed information gathered from registrars, custody account-keepers and the central securities depository on the movement of BRNs and on register-keeping in the run-up to the 2018, 2019 and 2020 VEN general meetings. This analysis shows that, despite a fairly high degree of automation of the BRN dispatch processes at custody account-keepers, updates to the register of shareholders are hampered by delays in sending BRNs, in particular for deregistrations, and by incomplete or incorrectly completed BRNs, which result in rejections that take too long to rectify.

Recognising these shortcomings, market participants have undertaken educational initiatives to make custody account-keepers more aware of the characteristics and challenges of keeping registers for Essentially Registered Securities.

The AMF supports these initiatives and encourages stakeholders to finalise them before the start of the 2021 general meeting season.

The AMF is also committed to improving the keeping of registers of Essentially Registered Securities, particularly in the run-up to general meetings, by reminding shareholders of the obligations incumbent on custody account-keepers and proposing a technical amendment to the AMF General Regulation.

1. Reminder of custody account-keeper obligations and heightened supervision during the next general meeting season

Complying with the deadlines for sending BRNs and improving related processes are essential for ensuring that the register of VEN shareholders is properly maintained, as this is essential for shareholders to exercise their right to participate in general meetings.

The AMF reminds custody account-keepers that the first paragraph of Article 322-55 of the AMF General Regulation stipulates that they must send BRNs to the central securities depository *“no later than midday on the second trading day following the order execution date”*.

The AMF also urges custody account-keepers to monitor the quality of the BRNs they send in order to reduce the number of rejections. The AMF also requests that they significantly reduce the time taken to resolve unprocessed rejections.

The AMF will pay greater attention to compliance with these rules and to improving the processing of BRNs in preparation for the 2021 general meeting season. If necessary, the AMF will carry out inspections.

2. Amendment to the rule for entering brns in the register of shareholders

The last paragraph of Article 322-55 of the AMF General Regulation states that *“the date of the movements recorded by the issuing entity is the date specified by the central securities depository referenced in the first paragraph, on which it records the [BRN]”*. This provision does not allow the actual transfer of ownership date to be taken into account if the BRN is received late, which reduces the possibilities for clearing the “retention” account.

The study conducted by the AMF shows that the practices of registrars vary, with some applying the accounting rule set out in Article 322-55 and others already using settlement date accounting.

It was considered beneficial to harmonise the practices of the registrar and to use the settlement date, which is the transfer of ownership date, as the date on which the movements are recorded. The AMF has therefore proposed an amendment to Article 322-55 of its General Regulation to this effect, which has been sent to the Minister for the Economy, Finance and Economic Recovery for approval. In order to give issuers of VENs and their authorised representatives sufficient time to make the necessary changes to their register-keeping accounting information systems, the AMF proposes that this amendment should not become mandatory until 1 January 2022 and that, in the meantime, it may be applied earlier and on a voluntary basis by issuers and registrars.

Article 322-55 of the AMF General Regulation will therefore be amended as follows:

“The date of the movements recorded by the issuing entity is the date specified by the central securities depository referenced in the first paragraph, on which it records the

statement.”

As of 1 January 2022, the date of the movements recorded by the issuing entity is the settlement date of the financial security being executed in accordance with the order referenced in the first paragraph. This provision may be applied in advance by any issuing entity that irrevocably chooses to do so before 1 January 2022. This choice takes the form of a statement published in accordance with Article 221-3.”

With regard to general meetings, it is essential for issuers of Essentially Registered Securities to have as accurate a record as possible on the record date. As the record date is set at “midnight, Paris time, on the second business day prior to the meeting”, entry in the register of shareholders must be made no later than midnight on D-3 (D being the date of the general meeting).


In addition to the aforementioned amendment to Article 322-55, the AMF encourages issuers and their registrars to take into account, in relation to their general meetings, BRNs received between the record date and the deadline for receiving voting instructions, provided the BRNs pertain to transactions for which the transfer of ownership date is prior to the record date.

Keywords

EQUITY

[1] This concerns in particular 12 companies incorporated under French law whose shares are traded on a regulated market.

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