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06 January 2022

## The AMF Enforcement Committee fines an issuer's Chief Financial Officer for insider dealing

**In its decision of 29 December 2021, the Enforcement Committee imposed a fine of €60,000 on Jean-Louis Roy, the former CFO of a listed company, for breach of his obligation to refrain from using inside information relating to a significant deterioration in the issuer's annual results.**

The Enforcement Committee found that the information relating to the significant deterioration in the issuer's annual results was considered inside information.

In this respect, the Committee noted in particular, regarding the accuracy of this information, that results forecasts which appeared to be much lower than the actual results of the previous year had been communicated internally. It stressed that the fact that this data was provisional, and therefore subject to subsequent changes, did not make it inaccurate at the time it was communicated internally, since for a piece of information to be considered precise, the event to which it refers does not need to be certain to occur. It is sufficient that the event is likely to occur.

On the non-public nature of this information, the Committee noted that that no data on the issuer's annual results had been communicated before the final results were published, which meant that the information had remained confidential.

Lastly, the Committee underlined that the forecasts of financial analysts were much higher than those determined internally by the issuer, and on the importance attached by this

issuer to the communication of its results in the past, to conclude that, despite the absence of historical correlation between the issuer's share price trend and the publication of its results, this significant deterioration was an element likely to be used by a reasonable investor to make an investment or divestment decision. The information was therefore likely to have a significant influence on the issuer's share price.

The Committee then found that the respondent had sold all of his redeemable share subscription and/or acquisition warrants (BSAARs) while in possession of the inside information at stake. It also ruled that, as a primary insider, he was presumed to have made improper use of the insider information in question and that the explanations he had provided, relating to the limited validity of his BSAARs, the fact that he kept his shares in the issuer, and the need to free up cash to pay a debt that was not yet due, were not likely to rebut this presumption.

Lastly, in assessing the amount of the financial penalty imposed on Mr Roy, the Committee held, with regard to the advantage gained from the breach, that the methods for calculating the economic advantage should concretely reflect the consequences of the imbalance of information existing between the user of the inside information and the rest of the market. This involved comparing the transactions carried out by the respondents with those that could have been carried out if the information had been public. It added that in this case, as the BSAAR had very low liquidity, only the share price had a market value and the value of the BSAAR could only be calculated theoretically with reference to this value, by means of a conversion of the BSAAR into shares.

An appeal may be lodged against this decision.

### ***About the Enforcement Committee***

*The Enforcement Committee, which is made up of judges and professionals, has total freedom to make decisions. It can impose sanctions on any person or company whose practices contravene laws and regulations that fall within the jurisdiction of the AMF. It ratifies settlement agreements signed by the Secretary General and respondents. And it takes part in the AMF's educational efforts by clarifying financial regulations when explaining its decisions.*

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