

## AMF Instruction 2005-11

### Disclosure requirements for public offerings or financial instruments admitted to trading on a regulated market

Background regulations: Book II, Title I of the AMF General Regulation and Commission regulation (EC) No 809/2004 of 29 April 2004

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## **Chapter I - Filing the prospectus, registration document, base document, and approval by the AMF**

### **Section 1 – Prospectus**

#### **Article 1 – Filing the draft prospectus**

I. – The persons or legal entities mentioned in Article 211-1 of the AMF General Regulation seeking to have their prospectus approved by the AMF shall file 5 copies of a draft prospectus that complies with Regulation (EC) 809/2004 of 29 April 2004, along with the following items:

1° A current copy of the articles of association or, for foreign issuers, their articles of incorporation;

2° For French issuers operating under private law, a current copy of the certificate of incorporation (K-bis) from the trade and companies register; for foreign issuers operating under private law, the current copy of their registration document;

3° A certified copy of the minutes of the shareholders' general meeting or any equivalent body under foreign law that approved the resolution giving rise to the creation of the financial instruments for which admission to trading on a regulated market is being sought or which authorises the creation of the financial instruments to be issued, along with related statutory auditors's report;

4° A certified copy of the minutes of the meeting of the board or any equivalent body under foreign law that authorised the admission or issue of the financial instruments in question and, as appropriate, any meeting that set out the terms and conditions for the transaction, along with any supplementary reports from the statutory auditors where appropriate;

5° Unless they have already been filed with the AMF, a copy of the latest parent company and consolidated financial statements, as approved by the board or the shareholders' general meeting or any equivalent body under foreign law depending on the transaction date. If these statements are included in the draft prospectus, the issuer shall make an explicit statement to that effect and it shall not be required to include them in its application;

6° Unless they have already been filed with the AMF, the statutory auditors' general and special reports on the latest parent company and consolidated financial statements. If these reports are included in the draft prospectus in full, the issuer shall make an explicit statement to that effect and shall not be required to include them in its application;

7° In the cases stipulated by Regulation (EC) 809/2004 of 29 April 2004, and unless they have already been filed with the AMF, the interim financial statements published and, as appropriate, the statutory auditors' reports;

8° As appropriate, and unless they are included in the draft prospectus, profit forecasts and estimates and/or pro-forma financial information compiled in accordance with the provisions of Regulation (EC) 809/2004 of 29 April 2004, along with the statutory auditors' statements, and any other financial information compiled for the purposes of the transaction;

9° As appropriate, the application for approval by the AMF pursuant to Article 212-39 of the AMF General Regulation.

10° A French translation of the summary note in the cases provided for in Article 212-12 of the AMF General Regulation.

11° The list of annexes to Regulation (EC) 809/2004 of 29 April 2004, pursuant to which the draft prospectus has been compiled and the list of any information items that have not been documented;<sup>12°</sup> When the prospectus does not present the information in the order stipulated in the relevant annexes to Regulation (EC) 809/2004, the correlation table presented in Article 25.4 of the AMF General Regulation,

which should present all the items of the said annexes in the same order;

13° For issuers with their registered office in a State that is not party to the European Economic Area Agreement, the name of the national regulator and the identity and contact details of the issuer's correspondent at the regulator if the financial instruments are already admitted to trading on a market;

14° A digital version of the draft prospectus.

If the documents stipulated in points 1 to 7 of this Article were filed with the AMF during the first public offering, the first admission of financial instruments to trading on a regulated market or any recent transaction, they should only be submitted again if they have undergone changes. The issuer shall list the documents that are unchanged when filing the application.

II. - Where the application is filed by an intermediary, it shall name the issuer's contact person whom the AMF staff may talk to directly.

III. - If the planned transaction has specific characteristics which require special adaptation, the issuer shall contact the AMF before filing the application (even if the final terms of the transaction have not been agreed upon).

## **Article 2 - Declaration by the persons responsible for the prospectus**

The declaration by the person or persons responsible for the prospectus stipulated in Article 212-14 of the AMF General Regulation shall be worded as follows:

"I [We] declare, after taking all reasonable measures for this purpose and to the best of my [our] knowledge, that the information contained in this [registration document / base document / prospectus / erratum / supplement / securities note] is in accordance with the facts and that it makes no omission likely to affect its import."

I [we] have obtained a completion letter from the statutory auditors in which they state that they have audited the information relating to the financial position and the financial statements presented in this [registration document / base document / prospectus / erratum / supplement / securities note] and read the [registration document / base document / prospectus / erratum / supplement / securities note] in its entirety."

*[If the completion letter contains any qualified opinion, the qualified opinion shall be reiterated in the declaration using the following wording]*

This letter contains the following qualified opinion: ....

*[Should the statutory auditors' reports contain a qualified opinion and/or emphases of matter paragraphs, this declaration should be completed as follows]*

The financial information [historical / pro forma / forecast] presented in [the issuer shall specify the document or documents concerned: prospectus, addendum to the prospectus, registration document, base document, supplement, securities note, etc.] has given rise to the statutory auditors' reports to be found on page [x] of the said document, and which contains [a qualified opinion / emphasis of matter paragraphs]. [As appropriate, one may mention the significant emphasis of matter paragraphs and the qualified opinion about issues such as continuity of operations or disputes].

The signed declaration shall be filed with the AMF prior to approval. It must be dated no more than 2 trading days before the date on which approval is granted for the final version of the prospectus. As appropriate, a special time period may be set for issuers whose financial instruments are admitted to trading on a market in a State that is not party to the European Economic Area Agreement and whose legislation is recognised as equivalent within the meaning of Article 212-36 of the AMF General Regulation.

### **Article 3 - Documents to be filed for a first public offering or for the admission of financial instruments to trading on a regulated market**

In the case of a first public offering or in the event of the admission of financial instruments to trading on a regulated market, the application filed with the draft prospectus or base document shall contain three copies of each of the following documents relating to the issuer, in addition to the documents stipulated in Article 1:

#### **1° Legal documents including:**

- a) The minutes of the general meetings and meetings of the board of directors or any equivalent administrative body under foreign law for the three last financial years, if the issuer has completed at least three financial years;
- b) The draft resolutions for the next extraordinary general meeting or any equivalent body under foreign law (or the meeting that authorised the issue and the draft minutes of the board of directors or executive board meeting, as appropriate)
- c) As appropriate, the draft articles of association or articles of incorporation updated after the extraordinary general meeting;
- d) Shareholder agreements and other agreements;
- e) The *curriculum vitae* and a copy of the judicial records of the senior managers;
- f) A summary note presenting the main features of insurance policies;
- g) A statement of the ongoing disputes;
- h) A statement of encumbrances (liens, mortgages, security pledges);
- i) A statement of patent and trademark protections and quality certifications;
- j) Specific documents for each application (material contracts, commercial agreements, etc...).

#### **2° Accounting documents, including:**

- a) The financial statements and full annexes for the time period covered by the relevant schedule of Regulation (EC) 809/2004 dated 29 April 2004;
- b) The statutory auditors' general and special reports on the historical parent company and consolidated financial statements, along with any special statutory auditors' reports, as appropriate;
- c) In the cases stipulated by the European Regulation, interim financial statements made available to the public and, as appropriate, the statutory auditors' reports;
- d) As appropriate, profit forecasts and estimates and/or pro-forma financial information compiled pursuant to the provisions of Regulation (EC) 809/2004 dated 29 April 2004 supplemented with the statutory auditors' statements and any other financial information compiled for the purposes of the transaction.

#### **3° General documents, including:**

- a) The planned timetable for the transaction;
- b) Any document presenting the issuer's business and/or plans drawn up for the purposes of the transaction;
- c) Any documents relating to partial mergers, mergers or conversions during the period prior to the initial public offering for which the historical financial data are being presented, along with the auditors' reports on the merger or partial merger and any special reports that the statutory auditors have drawn up for the purposes of the transaction concerned;
- d) All due diligence reports compiled for the initial public offering;
- e) A press review on the issuer;

- f) A full copy of the application filed with the market operator;
- g) Tables describing all the company's share transactions or transactions providing access to its capital in the year prior to the initial public offering.

#### **Article 4 – Issuers with their registered office in a state that is not party to the European Economic Area (EEA) Agreement**

Pursuant to Regulation (EC) 809/2004 of 29 April 2004, issuers with their registered office in a State that is not party to the European Economic Area Agreement shall use the international accounting standards adopted pursuant to the procedure set out in Article 3 of Regulation (EC) 1606/2002 or to a third country's national accounting standards equivalent to these standards.

The application filed with the prospectus shall include the items required in Article 3, written in French or in another language customary in the sphere of international finance. If the documents are translated, the accuracy of the translation must be certified.

The issuer shall give the AMF the name and contact details of the statutory auditor that it plans to appoint pursuant to Article 212-37 of the AMF General Regulation. The AMF shall determine whether the statutory auditor named has the appropriate resources and expertise.

Pursuant to Article 212-37 of the AMF General Regulation, the translation of the financial statements and notes shall be verified by a statutory auditor appointed with the AMF's consent. If the AMF deems it necessary for investors' understanding, it may require additions and adjustments and verification of the translation and relevance of such additions and adjustments. The statutory auditor shall also verify the translation of the statutory auditors' reports.

The prospectus shall document the name, function and declaration of responsibility of the paying agent managing the initial public offering with its registered office in France or in a State party to the EEA Agreement (provided, in the latter case, that it is represented by a branch in France).

#### **Article 5 - Issuers filing or registering a registration document**

I. – In the case of a public offering or admission of financial instruments to trading on a regulated market, the issuer who has drawn up a registration document and registered it pursuant to Article 212-13 of the AMF General Regulation shall file a securities note and a summary at least five trading days before the proposed date of approval of the transaction.

II. - 1° Without prejudice to the provisions of 4°, issuers filing for a public offering or for admission of financial instruments to trading on a regulated market may qualify for a simple-track procedure for approval requests. The associated securities note and summary must comply with the standard format for securities notes (including summaries) prepared by the French financial markets association AMAFI and approved by the AMF and meet the following requirements:

- a) it must not be subject to the provisions set out in Book VI of the Commercial Code or any equivalent provisions under foreign law;
- b) it must have filed its registration document in accordance with Article 212-13 of the AMF General Regulation;

2° The issuer's request shall contain:

- a) Indicative information on the size of the issue and, if possible, on the other financial parameters and timetable;
- b) A statement by the issuer that:
  - All regulatory information, within the meaning of Article 221-1 of the AMF General Regulation, has

been filed with the AMF and has been fully and effectively disseminated in accordance with the General Regulation;

- All sections of Annex I of Regulation (EC) 809/2004 of 29 April 2004 have been completed;
- Where appropriate, it has acted on any comments made by the AMF following a review of its registration document or, failing that, given detailed reasons why these comments were not acted on;

c) A statement by the investment services provider (ISP) indicating that the content of the securities note and the summary comply with the standard format for securities notes (including summaries) prepared by the AMAFI and approved by the AMF, with the exception of any specifically identified clauses, where appropriate;

d) The e-mail address of the person in charge of the file at the issuer and at the ISP;

3° The documents referred to in 2° must be submitted before 6:00 pm to the following address:

<p>AUTORITÉ DES MARCHÉS FINANCIERS Direction des Émetteurs 17 place de la bourse 75082 Paris Cedex 02</p>
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On the same day, the issuer or the ISP should make telephone or e-mail contact with the person at the Corporate Finance Division who usually manages its affairs, or if that person is absent, with his or her superior.

The AMF will send the issuer and the ISP an e-mail acknowledging receipt of the file and the request on the same day.

4° The AMF will inform the issuer and ISP whether it is accepting or rejecting the issuer's request for a simplified review procedure within two business days of the acknowledgement of receipt mentioned in the final paragraph of 3°. The AMF shall be deemed to have accepted the issuer's request if it does not contact the issuer during this period. If the request is rejected, the review period of ten trading days referred to in Article 212-21 of the AMF General Regulation shall include the two-business-day period;

5° The time taken to review the securities note and summary has been shortened to three business days, as of acceptance of the issuer's request;

6° The statement mentioned in Article 212-16 of the AMF General Regulation and submitted by the ISP prior to issuance of approval, shall corroborate the statement referred to in point 2°- C.

III. - Should the issuer fail to meet the implementation requirements of the simple-track procedure or refuse to be covered by the procedure, the review period may be shortened, provided that the issuer supplies a reasoned request and informs the AMF in advance of its intention to make a public offering or seek admission to trading on a regulated market.

IV. - In all cases, the documents referred to in Article I must always be provided when the securities note and summary are filed, unless these documents have already been provided to the AMF.

## **Section 2 – Registration document and base document**

### **Article 6 – Filing the registration document**

I. - If the issuer compiles a registration document, 5 copies of the registration document or draft registration document shall be filed, along with the documents referred to in points 1°, 2°, 6° and 14° of Article 1.

If the registration document does not present the information in the order stipulated in the relevant annex to Regulation (EC) 809/2004 of 29 April 2004, the registration document shall include the cross-reference list stipulated in Article 25.4 of the said Regulation. The cross-reference list shall state the exact order of all of the items in the said annex.

As appropriate, the following items shall be enclosed:

1° Certified copies of the minutes of the general meetings that decided or ratified capital increases in cash in the previous financial year, and of the minutes of the board of directors or executive board meetings, along with a copy of the related legal notices published;

2° Certified copies of the minutes of the general meetings that decided and ratified changes in the par value of shares, allocation of free shares and capital reductions in the previous financial year, and of the minutes general meetings that amended the articles of association, along with a copy of the related legal notices published.

If these documents were filed with the AMF during the initial public offering transaction or admission to trading on a regulated market or a recent transaction, they should only be submitted again if they have undergone changes. The issuer shall list the documents that are unchanged when filing the application.

II. - Issuers that have already filed three consecutive registration documents with the AMF shall file the following documents, in addition to the documents stipulated in point I above:

1° A written response to the remarks made by the AMF following its examination of the previous registration document;

2° A signed version of the declaration by the persons responsible stipulated in Article 2, which shall be dated no more than 2 trading days before the filing date;

3° A copy of the statutory auditors' completion letter drawn up pursuant to Article 212-15 of the AMF General Regulation.

III. – Issuers who file a registration document with the AMF in a language customary in the sphere of international finance shall provide the AMF with an accurate, certified translation of this document compared to the French version.

#### **Article 7 – Filing the base document**

When an issuer compiles a base document for the initial admission of financial instruments to trading on a regulated market or on a multilateral trading facility, 5 copies of the draft base document shall be filed, along with the documents stipulated in Articles 1 and 3.

#### **Article 8 – Registering the registration document or base document**

I. - If the issuer has not yet filed three consecutive registration documents with the AMF or if the issuer is filing for the initial admission of financial instruments for trading, the draft registration document or base document shall be filed with the AMF, which shall register it according to the provisions of Article 212-13 of the AMF General Regulation.

The AMF may require changes or further investigations, under the same conditions as those stipulated in the prospectus review (visa) procedure.

Prior to the registration of the registration document or the base document, the issuer shall provide the following to the AMF:

1° A signed version of the declaration by the responsible persons for the documents, which shall be dated no more than 2 trading days before the registration date for the final version of the document. This

declaration shall be drawn up in accordance with Article 2 of this instruction or, where the registration document incorporates by reference an annual or half-yearly financial report, using one of the following specimens:

**a) Certification of a registration document incorporating by reference an annual financial report**

I hereby certify, after having taken all reasonable measures to this effect, that the information contained in this registration document is, to the best of my knowledge, in accordance with the facts and makes no omission likely to affect its import

I certify, to the best of my knowledge, that the financial statements have been prepared in accordance with applicable accounting standards and give a fair view of the assets, liabilities and financial position and profit or loss of the company and all the undertakings included in the consolidation, and that the management report [herewith / on page ...] presents a fair review of the development and performance of the business and financial position of the company and all the undertakings included in the consolidation as well as a description of the main risks and uncertainties to which they are exposed.

I have received a completion letter from the statutory auditors stating that they have audited the information contained in this registration document about the financial position and statements and that they have read this document in its entirety.

*[If the statutory auditors' completion letter contains a qualified opinion, this shall be reproduced in the statement, as follows:]*

This letter contains the following qualified opinion or emphasis of matter paragraphs: ....

*[If the statutory auditors' reports contain a qualified opinion and/or emphases of matter paragraphs, the statement should be completed as follows]*

The statutory auditors have reviewed the [historical / pro forma / forward-looking] financial information in this document and have issued reports, included on page [X], that contain [a qualified opinion / emphases of matter paragraphs].

**b) Certification of a registration document (or update thereto) incorporating by reference a half-yearly financial report**

I hereby certify, after having taken all reasonable measures to this effect, that the information contained in this [registration document / updated registration document] is, to the best of my knowledge, in accordance with the facts and makes no omission likely to affect its import.

I certify, to the best of my knowledge, that the [condensed / full] financial statements for the past half-year have been prepared in accordance with applicable accounting standards and give a fair view of the assets, liabilities and financial position and profit or loss of the company and all the undertakings included in the consolidation, and that the interim management report [herewith / on page ...] presents a fair review of the important events that have occurred during the first six months of the financial year, their impact on the financial statements, major related-party transactions, and a description of the principal risks and uncertainties for the remaining six months of the financial year.

I have received a completion letter from the auditors stating that they have audited the information contained in this [registration document / updated registration document] about the financial position and accounts and that they have read this [document / update] in its entirety.

*[If the auditors' completion letter contains a qualified opinion, this shall be reproduced in the statement, as follows:]*



*This letter contains the following observations: ...*

*[If the auditor's reports contain observations and /or reservations, the statement should be completed as follows]*

The statutory auditors have reviewed the [historical / pro forma / forward-looking] financial information in this [document / update] and have issued reports, included on page [X], that contain [observations / reservations].

2° A copy of the statutory auditors' completion letter drawn up in accordance with the terms of Article 212-15 of the AMF General Regulation.

III. – The AMF visa is presented on the front cover of the registration document or base document according to the insert templates provided for in Annex V.

### **Article 9 – Contents of the registration document or base document**

The registration document may take the form of:

1° a special document, or

2° the annual report to shareholders, provided that it contains all of the information required and that the promotional presentation of the issuer does not compromise the requisite objectivity of the information supervised by the AMF.

The registration document or the base document shall contain at the least, all of the information stipulated in the appropriate schedules in Annexes I, IV, VII, IX or XI of Regulation (EC) 809/2004 of 29 April 2004.

The registration document shall contain the reports and information stipulated in Article 222-9 of the AMF General Regulation.

If the final version of the financial statements approved by the general meeting is different from the audited financial statements presented in the registration document, the issuer shall file an update of the registration document with the final financial statements as soon as possible.

## **Section 3 - Notification of approval and due diligence requirements for issuers**

### **Article 10 – Visa issuance**

Following its examination of the application, the AMF shall decide to grant or refuse approval. It shall notify the issuer or the issuer's representative in France of its decision by ordinary letter. If it refuses to grant approval, it shall give the reasons for doing so.

The AMF visa is presented on the front cover of the prospectus according to one of the insert templates provided for in Annex V.

Before the issue of its financial instruments or their admission to trading on a regulated market, the issuer shall provide the AMF with 5 paper copies of the final version of the prospectus and an online version with a view to posting on the AMF website.

## **Section 4 - Specific provisions for the compartment referred to in article 516-18 of the AMF general regulation**

### **Article 10-1 – Filing the draft prospectus**

I. – The provisions of articles 1 and 3 of this instruction do not apply to admission to trading on the compartment referred to in Article 516-18 of the AMF General Regulation when one of the following conditions is met:

1° The certification referred to in Article 212-16 of the AMF General Regulation is submitted on a voluntary

basis to the AMF before the visa is issued;

2° An application for admission of financial instruments to trading has been filed or the financial instruments have already been admitted to trading on a market located in a state that is not party to the European Economic Area Agreement and of which the legislation is recognised as equivalent within the meaning of Article 212-36 of the AMF General Regulation.

3° The application for admission concerns debt securities.

In the cases provided for in Points 1 to 3, the provisions of II of this article shall apply.

In all cases, notwithstanding Articles 1 and 3 of this instruction, the documents filed with the AMF may be in a language other than French that is customary in the sphere of finance and may be filed in triplicate only. Where these documents have not been drafted in a language other than French that is customary in the sphere of finance, they must be translated into such a language and the translation must be certified by a recognised expert.

II. – The persons or entities referred to in Article 211-1 of the AMF General Regulation who file for their financial instruments to be admitted to trading on the compartment referred to in Article 516-18 of the AMF General Regulation and who meet one of the conditions set forth in 1° to 3° of I of this article, must file three copies of a draft prospectus compliant with Regulation (EC) (CE) 809/2004 of 29 April 2004 along with the following items:

1° As appropriate, the application for the issuance of an approval certificate by the AMF pursuant to article 212-39 of the AMF General Regulation. In this case, the filing is accompanied by the list of annexes to Regulation (EC) 809/2004 of 29 April 2004 used to articulate the draft prospectus and, where appropriate, the list of the headings that have not be filled in;

2° For issuers with their registered office in a state that is not party to the European Economic Area Agreement, the name of the national regulator, the identity and contact details of the issuer's correspondent at the regulator when the financial instruments have already been admitted to trading on a market.

3° An electronic version of the draft prospectus;

4° In the cases provided for in Point 1 of II, the cross-reference list referred to in Article 25(4) of Regulation (EC) 809/2004 dated 24 April 2004 if the items in the prospectus are not presented in the same order as those provided for in the annexes of the aforementioned Regulation;

5° For an initial public offering, any document drawn up for that offering which presents the issuer's business or plan.

If the application is filed by an intermediary, it shall name the issuer's contact person whom the AMF staff may talk to directly.

#### **Article 10-2 - Declaration by the persons responsible for the prospectus**

The provisions of Article 2 of this instruction do not apply to admission on the compartment referred to in Article 516-18 of the AMF General Regulation. In this case, the declaration by the person or persons responsible for the prospectus stipulated in Article 212-14 of the AMF General Regulation shall be worded as follows:

"I [we] declare, after tacking all reasonable measures for this purpose, that the information contained in this prospectus is, to the best of my [our] knowledge, consistent with the facts and that it makes no omission likely to affect its import."

The signed declaration shall be filed with the AMF before the approval is granted. It must be dated no more than 2 trading days before the date on which approval is granted for the final version of the prospectus. As appropriate, a special time period may be set if the issuer's financial instruments are admitted to trading on a regulated market in a State that is not party to the European Economic Area Agreement and whose legislation is recognised as equivalent within the meaning of Article 212-36 of the AMF General Regulation.

### **Article 10-3 – Issuers with their registered office in a state non party to the European Economic Area Agreement**

The provisions of Article 4 of this instruction do not apply to admission to trading on the compartment referred to Article 516-18 of the AMF General Regulation.

### **Article 10-4 – Granting of approval**

When the issuer does not fall under the scope of Book VI of the Commercial Code or any equivalent provisions under foreign law, and when he fulfils one of the conditions set forth in I of Article 10-1, the period for reviewing the draft prospectus is shortened to 5 business days as of the date of filing.

The AMF may demand any additional information it needs to examine the application and, as appropriate, may indicate the particulars to be amended or the information to be added to the draft prospectus so as to ensure that the document is complete with regard to the AMF General Regulation. In this case, the time period in the above paragraph shall not come into effect until the AMF has received the additional information.

Notwithstanding the time period referred to in the first paragraph, the issuer shall still be entitled to contact the AMF before filing a draft prospectus.

The AMF visa is presented on the front cover of the prospectus according to one of the insert templates provided for in Annex V.

## **Chapter II - Exemptions**

### **Article 11 – Public offering and admission of financial instruments to trading as part of a public exchange offer**

Issuers seeking an exemption under the provisions of point 2° of Article 212-4 and point 3° of Article 212-5 of the AMF General Regulation shall compile and disseminate a prospectus scrutinised by the AMF, together with the information stipulated in Article 231-28, in accordance with the provisions of Title III of Book II of the AMF General Regulation and containing the information stipulated in Annex I hereto.

### **Article 12 - Public offering and admission of financial instruments to trading as part of a merger, demerger or partial merger**

If the financial instruments issued or transferred as part of a merger or a partial represent no more than 10% of the financial instruments in the same class that have already been admitted for trading on a regulated market, the issuer shall compile and disseminate a news release documenting the number and type of financial instruments and on the purpose of the transaction and the arrangements for the transaction. This news release shall be disseminated beforehand to the shareholders' general meeting called to authorise the transaction or, at the latest, on the day of the board meeting that decides to issue the financial instruments concerned. The news release shall be filed with the AMF before being disseminated in accordance with Article 221-5 and shall be published in accordance with Article 221-3 of the AMF General Regulation.

If the financial instruments issued or transferred as part of a merger or a partialmerger represent more than 10% of the financial instruments in the same class that have already been admitted to trading on a regulated market, the issuer shall compile and disseminate a document containing the information specified in Annex II hereto.

The application submitted with the draft document filed with the AMF shall contain the documents stipulated in points 1°, 2°, 5°, 6°, 7°, 8° and 13° of Article 1. It shall also contain the partial merger agreement, the merger agreement, the draft resolutions submitted to the general meetings called to ratify the partial merger or to approve the merger, the decision of the board of directors or the executive board, and, where appropriate, the statutory auditors' reports on the partial merger or merger, along with a copy of any related legal notices published as the case may be.

### **Article 13 - Bonus shares allotted or to be allotted to shareholders and scrip dividends**

Issuers seeking an exemption under the provisions of point 4° of Article 212-4 and point 5° of Article 212-5 of the AMF General Regulation shall provide a document containing the information stipulated in Annex III hereto and make it available to shareholders at their registered office and on their website.

If the issuer is filing for the admission of its shares to trading on a French regulated market, the document mentioned in the first paragraph shall be published in the form of a news release and disseminated in accordance with Article 221-3 of the AMF General Regulation. The news release shall be disseminated on the very day on which that the executive body, or the entity to which management is delegated, takes note of the capital increase.

### **Article 14 - Financial instruments offered or allotted to directors or employees**

Issuers seeking an exemption under the provisions of point 5° of Article 212-4 and point 6° of Article 212-5 of the AMF General Regulation shall send a letter to the interested parties or, failing that, make a document containing the information stipulated in Annex IV hereto available at their registered office. In all cases, the document shall be posted on the issuer's intranet website, if the issuer has one.

If the issuer is seeking admission of these financial instruments to trading on a French regulated market, the document mentioned in the first paragraph shall be published in the form of a news release and disseminated in accordance with Article 221-3 of the AMF General Regulation. The news release shall be disseminated between the date on which the board approves the allotment of the instruments concerned or the capital increase reserved for employees and the start of the subscription period reserved for employees or, if there is no such period, the date of the board's decision on the transaction.

## **Chapter III – Summary note**

### **Article 15 - Warning**

The warning mentioned in point III of Article 212-8 of the AMF General Regulation shall be worded as follows:

*"This summary note should be read as an introduction to the prospectus. Any decision to invest in the financial instruments offered to the public or for which admission to trading on a regulated market is sought should be based on a comprehensive review of the full prospectus. Where a claim relating to the information contained in a prospectus is brought before a court, the plaintiff investor might, under the national legislation of the Member States of the European Community or States party to the European Economic Area Agreement, have to bear the costs of translating the prospectus before the legal proceedings are initiated. Civil liability attaches to the persons who presented the summary note, and any translation thereof, and who requested notification within the meaning of Article 212-41 of the AMF General Regulation only if the content of the summary note is misleading, inaccurate or inconsistent compared with other parts of the prospectus."*

## **Annex I – Public offering and admission of financial instruments to trading as part of public exchange offer**

The document referred to in 2° of Article 212-4 and in 3° of Article 212-5 of the AMF General Regulation shall contain the following information to present the offeror:

### **1° To present the offeror in a public exchange offer:**

As appropriate, the information required by one of the following annexes to Regulation (EC) 809/2004 of 29 April 2004:

- Annex I on shares, or
- Annex IV on debt securities with a par value of less than EUR 50,000, or
- Annex XI on debt securities with a par value of EUR 50,000 or more
- As appropriate, the information required under Annex II of the said Regulation (pro forma financial information) : when the impact of the transaction envisaged or the impact of a change in the consolidation scope since the closing of the last fiscal year results in the size indicators of the bidding company varying by more than 25%, the latter shall provide pro forma financial information on its situation after the transaction or after the change in its consolidation scope, in accordance to the schedule of Annex II of Regulation (EC) 809/2004 dated 29 April 2004, on the basis of financial statements drawn up as close as possible to the transaction date. This pro forma financial information shall be presented on a consolidated basis. The issuer shall refer to the ESMA Guidelines to determine the appropriate size indicators aimed at assessing the impact of the transaction or the change in the consolidation scope since the closing of the last reporting period.

This information may be included in a registration document or update.

### **2° If the transaction involves shares:**

The following points from Annex III to Regulation (EC) 809/2004 of 29 April 2004:

- Risk factors (associated with the transaction);
- Net working capital statement (including a description of the impact of the public exchange offer on this item);
- Private equity and indebtedness (including a description of the impact of the public exchange offer on the item);
- Interest of the natural and legal persons involved in the share issue;
- Expense of the share issue;
- Dilution;
- Additional information (on advisers, experts' reports).

If the transaction involves securities that give access to the capital (share warrants for instance), under the supervision of the AMF, the bidding company shall present this information also.

When the financial instruments offered as part of the public exchange offer represent less than 10% of the financial instruments of the same class already admitted to trading on a regulated market, the bidding company cannot present the statement of changes in equity and statement of indebtedness. The bidding company shall then certify in the document referred to in 2° of Article 212-4 and in 3° of Article 212-5 of the AMF General Regulation (i) that, to the best of its knowledge, there has not been any change since the closing of the last financial year that might affect the content of this information as regards the level of equity and indebtedness and (ii) that the impact of the public exchange offer is not likely to significantly modify them.

### **3° If the transaction involves debt securities with a par value of less than EUR 50,000:**

The following points from Annex V to Regulation (EC) 809/2004 of 29 April 2004:

- Risk factors;

- Interest of the natural and legal persons involved in the issue;
- Information on the financial instruments to be offered/admitted to trading;
- An indication as to whether the financial instruments are or will be the object of an application for admission to trading. If known, the earliest dates on which the securities will be admitted to trading shall be given;
- The names of all the regulated markets or equivalent markets on which securities of the same class are already admitted to trading;
- Additional information.

4° If the transaction involves debt securities with a par value of EUR 50.000 or more:

The following points from Annex XIII to Regulation (EC) 809/2004 of 29 April 2004:

- Risk factors;
- Interest of the natural and legal persons involved in the share issue;
- Information on the financial instruments to be admitted to trading;
- Additional information.

## **Annex II - Issue and admission of financial instruments as part of a merger, demerger or partial merger**



Pursuant to Article 212-34 of its General Regulation, the AMF has affixed the registration number E.aa-xxxx dated ddmmyyyy to this document. This document was articulated by the issuer and is the responsibility of its signatories.

Pursuant to Article L.621-8-1-I of the Monetary and Financial Code, the registration number was attributed after the AMF checked that the document is complete and comprehensible and that the information it contains is coherent. It implies neither approval of the opportunity of the transaction, nor endorsement of the financial and accounting elements presented.

It means that the information contained in this document fulfils regulatory requirements and, in consequence, that the shares issued as consideration for the merger can, subject to the agreement of the shareholder general meeting, subsequently be admitted to listing on Euronext Paris.

The document stipulated in point 4° of Article 212-5 of the AMF General Regulation shall contain the following information:

### **PERSONS RESPONSIBLE FOR THE DOCUMENT**

The document shall contain a joint declaration or individual declarations by the persons responsible for the information about the transaction and its consequences, the presentation of the target company or the offer or / and the presentation of the target company or the assets transferred. The declarations shall be worded according to the template provided in Article 2 of this instruction.

## **Chapter I - Information about the transaction and its consequences**

### **1.1. Business aspects of the merger (demerger or partial merger)**

#### **1.1.1. Pre-existing links between the companies involved**

1.1.1.1. Shareholdings: (document the shareholdings in an organisational chart including voting rights)

1.1.1.2. Indicate, as appropriate:

- The guarantees;
- Directors who sit on both companies' boards;
- Jointly-held subsidiaries and belonging to the same group (this information shall be included in the organisational chart);
- Technical and commercial agreements (regulated agreements within the meaning of Article L. 225-38 of the Commercial Code).

#### **1.1.2. Purpose and objectives of the transaction**

1.1.2.1. Merit of the transaction for the offeror and its shareholders

1.1.2.2. Merit of the transaction for the target company and, if it is listed on a market, for its shareholders.

### **1.2. Legal aspects of the transaction**

#### **1.2.1. The transaction per se**

*1.2.1.1. Date of the planned merger, demerger or partial merger.*

*1.2.1.2. Date of the financial statements used to determine the values of the transferred assets.*

*1.2.1.3. Retroactive date of the transaction.*

*1.2.1.4. Date of the board meetings that approved the transaction.*

*1.2.1.5. Date for filing the partial merger or merger plan with the commercial court.*

*1.2.1.6. Tax treatment of the transaction.*

#### 1.2.2. Supervision of the transaction

1.2.2.1. Dates of the general meetings called to approve the transaction.

1.2.2.2. Auditors for partial mergers:

- Names and addresses ;
- Date of appointment ;
- Date of the asset transfer.

1.2.2.3. Auditors for mergers or demergers:

- Names and addresses;
- Date of appointment;
- Date of the asset transfer.

1.2.2.4. Experts appointed by the commercial court, as appropriate:

- Names and addresses;
- Date of appointment;
- Date of the asset transfer.

1.2.2.5. Special tasks assigned to the statutory auditors by the AMF:

- Names and addresses;
- Date of appointment;
- Date of the asset transfer.

#### 1.2.3. Remuneration of transferred assets

1.2.3.1. Capital increase

- Par value of shares.
- Net number of shares created (after cancellation by merger of the shares owed to the offeror by virtue of its shareholding in the target company, as appropriate).
- Vesting date.
- First trading date.
- Listing date.

1.2.3.2. Capital reduction

As appropriate, an indication of the capital reduction resulting from the fact that the target company had a shareholding in the offeror.



### 1.3. Recognition of transferred assets

1.3.1. Designation and value of the transferred assets and liabilities. Indication of the net value of the transferred assets.

1.3.2. If the value of the transferred assets is different from the carrying amount, a transition table shall be presented, showing the revaluations and adjustments made. In addition, the restatement methods shall be indicated, along with any relevant tax expenses.

1.3.3. If the valuation of the transferred assets gave rise to an expert's report, the expert's name and the date of the report shall be indicated.

1.3.4. Details about how the partial merger premium or merger premium was calculated, as well as any merger gain or loss.

This information shall be provided for each target company and the planned accounting treatment must be explained and justified.

### 1.4. Remuneration of transferred assets

1.4.1. In the event of a merger or any equivalent transaction

1.4.1.1. Description of the criteria used to compare the companies involved in the transaction and an explanation of why they were chosen<sup>1</sup>. This shall include a presentation of the main criteria customarily used, where they are material:

- Restated net assets (with an indication of the items and amounts concerned, as well as the methods used).
- Net profit (comparison with the PER of companies in the same sector).
- Dividend.
- Share prices (averages for 3 and 6 months before the transaction announcement).
- Cash flow.

Should a criterion be not applied uniformly or should the criteria used for each company be not uniform, the differences shall be explained

More specifically, reference shall be made to the criteria customarily used by companies with the same type of activities.

1.4.1.2. Where relevant, an explanation of the elimination of other criteria customarily used and an indication as far as possible of the parities that they would have produced.

1.4.1.3. If experts have valued the companies concerned or certain of their assets, the experts' names and their report dates shall be indicated.

1.4.1.4. A table presenting the application of the criteria overall or per share, along with the exchange parities derived from these criteria, shall be drawn up (where relevant, the table shall show a separate accounting of the results obtained when considering the financial instruments that eventually provide access to the company's capital).

The final parity applied shall be indicated, along with the reasons for the choice made.

1.4.1.5. A review of the valuations used for each of the companies concerned during recent transactions (public offers, acquisitions of controlling stakes, mergers, partial mergers, etc...).

1.4.2. In the event of a partial merger

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<sup>1</sup> Each criterion shall be examined at the consolidated level, as appropriate, and the calculation method used shall be explained.

The board of directors' report or the notes thereto shall indicate the criteria that senior management used to estimate the value of the transferred assets and the value of the shares in the offeror.

The report shall explain why the criteria were chosen and how the remuneration for the transferred assets was calculated.

This presentation shall be made using the model required for merger transactions.

## 1.5. Consequences

### 1.5.1. Consequences for the offeror and its shareholders

1.5.1.1. Table showing the effect of the transaction on the offeror's net equity (see table below).

1.5.1.2. Organisation chart after the transaction, showing the percentages of shares and voting rights.

1.5.1.3. Planned changes to the board and senior management.

1.5.1.4. Change in the market capitalisation:

- Situation before the transaction announcement for each of the companies concerned.
- Situation after the transaction announcement for each of the companies concerned.

1.5.1.5. Indication of the impact on the net profit per share calculation based on the most recent full financial year, for each of the companies concerned by the transaction and for the merged entity.

1.5.1.6. New business objectives

1.5.1.7. Short and medium term outlook for business, restructuring, earnings and dividend distribution policy.

### 1.5.2. Consequences for the target company and its shareholders

In the event of a merger, no information is generally required insofar as the target company ceases to exist.

However, if some shareholders in the target company end up with 10% or more of the shares in the offeror after the merger, and if they have taken steps to dispose of some or all of their shares, they shall be required to state their intentions.

**Table showing the changes in the offeror's net equity**

	Number of shares	Share capital	Merger premium
Initial situation			
Impact in terms of the total number of shares created			
Impact in terms of shares cancelled by merger			
Situation after the transaction			

## **Chapter II - Presentation of the offeror**

Schedule of the share Registration document presented in Annex I to Regulation (EC) 809/2004 of 29 April 2004, supplemented with the following items:

- As appropriate, the financial statements stipulated by Article R. 236-3 of the Commercial Code;
- The following items from Annex III to the aforementioned Regulation:
  - Risk factors (associated with the transaction);
  - Net working capital statement;
  - Capitalisation and indebtedness;
  - Interest of the natural and legal persons involved in the share issue;
  - Expenses associated with the share issue ;
  - Dilution ;
  - Additional information (on advisers, auditors' and experts' reports).

## **Chapter III - Pro forma financial information**

Should the planned transaction cause the size indicators of the acquiring company or offeror to change by more than 25%, the offeror shall present pro forma financial information about its financial position after the transaction in accordance with the schedule set out in Annex II to Regulation (EC) 809/2004 of 29 April 2004, on the basis of financial statements drawn up at a date as close as possible to the transaction date. Pro forma financial information shall be presented on a consolidated basis.

The issuer will refer to the CESR recommendations in order to determine the appropriate size indicators for assessing the effect of the transaction.

## **Chapter IV - Presentation of the target company or transferred assets**

In the case of a partial merger, the schedule presented hereinafter will have to be adapted.

### **3.1. General information**

- 3.1.1. Name, registered office and principal administrative establishment, if different from the registered office.
- 3.1.2. Date of incorporation and term of the Company.
- 3.1.3. Legislation applying to the target company and legal form.
- 3.1.4. Corporate purpose.
- 3.1.5. Company register number – APE code.
- 3.1.6. Senior management:
  - Last names and first names of the senior managers and their functions within the company
  - Compensation and benefits in kind paid to the members of the issuer's board of directors, executive board or supervisory board by all of the companies in the group during the last full financial year.
- 3.1.7. Statutory auditors:

Names, addresses and the date they took up their functions and the date on which their assignment was last renewed. If the auditor is a company, give the identity of the partner responsible for the audit.
- 3.1.8. Special agreements:

Indications on the content, scope and terms of the current agreements covered by Articles L. 225-38, L. 225-40, L. 225-41 and L. 225-42 (or L. 225-86 up to L. 225-90) of the Commercial Code.

Also provide details on such agreements entered into in previous years if they continue to produce their effects.

3.1.9. Address where the documents and information relating to the company are available for consultation.

### **3.2. General information about share capital**

3.2.1. The amount of subscribed capital, number and classes of financial instruments making up the share capital, along with the main characteristics of these instruments.

- Where appropriate, the number of double voting rights and voting treasury shares
- Information about the portion of capital issued but not fully paid
- A table showing changes in the share capital over the past five years

3.2.2. Characteristics of financial instruments providing access to capital.

3.2.3. Allocation of shares and voting rights.

### **3.3. Information on the issuer's business**

3.3.1. Description of the target company's and its group's main activities, stating the main categories of products sold and/or services provided.

3.3.2. Net turnover in the last three financial years for each branch of activity and geographical markets (consolidated data, where appropriate).

3.3.3. Changes in the target company's workforce and that of its group over the past three financial years.

3.3.4. Key data on the activity of subsidiaries or sub-subsidiaries that are material to the assets or income of the target company or its group.

A subsidiary or sub-subsidiary shall be deemed of material importance when its carrying value represents 10% of the target company's net equity or when it accounts for at least 10% of the net income or the target company or its group.

3.3.5. Indication of any disputes or non-recurring events that are likely to have, or have recently had, a material impact on the financial position of the target company or its group.

### **3.4. Financial review**

3.4.1. Summary consolidated financial statements of the issuer for the past three years (or summary annual financial statements if the issuer does not draw up consolidated financial statements) and the statutory auditor's general and special reports.

3.4.2. Material elements from the notes necessary for properly assessing the data contained in the income statement and balance sheet.

3.4.3. Table of subsidiaries and investments.

3.4.4. Interim financial statements for the first half if the application is filed more than three months after the end of the first half-year.

### **3.5. Recent trend information**

### **Annex III – Offered shares or bonus shares awarded to shareholders and scrip dividends**

The document referred to in 4° or Article 212-4 and in 5° of Article 212-5 of the AMF General Regulation shall contain at least the following information:

1. Number of shares issued and the ratio used for the allocation of bonus shares;
2. Percentage of the capital represented by the number of bonus shares issued;
3. Purpose of the transaction;
4. Indication of whether an application will be made for the admission of the shares to trading on a regulated market or on a multilateral trading facility;
5. Allocation date or payment date and, where appropriate, the requirements for the allocation;
6. A description of the nature and class of shares offered and/or admitted for trading;
7. A description of the rights attaching to the financial instruments, including any restrictions applying to them, and the procedures for exercising the rights.

#### **Annex IV - Financial instruments offered or allocated to directors or employees**

The document referred to in point 5° of Article 212-4 and in point 6° of Article 212-5 of the AMF General Regulation shall contain at the least the following information:

1. Maximum number of financial instruments to be issued;
2. Purpose of the offer;
3. Indication of whether an application will be made for the admission of the shares to trading on a regulated market or on a multilateral trading facility;
4. A description of the nature and class of the financial instruments offered and/or admitted for trading;
5. A description of the rights attaching to the financial instruments, including any restrictions applying to them, and the procedures for exercising the rights;
6. Price or procedures for fixing the subscription price;
7. Total amount of the offer;
8. Subscription period.

## Annex V – AMF insert templates

### 1 – Registration document filed with the AMF



This registration document was filed with the Autorité des Marchés Financiers (AMF) on mm/dd/yyyy, pursuant to Article 212-13 of the AMF General Regulation. It may be used to support a financial transaction if completed by a transaction note approved by the AMF. This document was prepared by the issuer and is the responsibility of its signatories.

### 2 - Registration document filed with the AMF



Pursuant to its General Regulation, and more particularly to Article 212-13, the Autorité des Marchés Financiers has registered this registration document on mm/dd/yyyy under number R.aa-xxxx. This document may be used to support a financial transaction only if completed by a transaction note approved by the AMF. It was prepared by the issuer and is the responsibility of its signatories.

Pursuant to Article L. 621-8-1-I of the Monetary and Financial Code, registration was made after the AMF verified that the document is exhaustive and comprehensible and that the information contained in it is consistent. It does not imply that the Autorité des Marchés Financiers has verified the accounting and financial information presented herein.

### 3 - Base document



Pursuant to its General Regulation, and more particularly to Article 212-23, The Autorité des marchés has registered this base document on mm/dd/yyyy under number I.aa-xxxx. This document may be used to support a financial transaction only if completed by a transaction note approved by the AMF. It was prepared by the issuer and is the responsibility of its signatories.

Pursuant to Article L. 621-8-1-I of the Monetary and Financial Code, registration was made after the AMF verified that the document is exhaustive and comprehensible and that the information contained in it is consistent. It does not imply that the Autorité des Marchés Financiers has authenticated the accounting and financial information presented herein.

#### 4 - Prospectus and transaction note



Pursuant to Articles L. 412-1 et L. 621-8 of the Monetary and Financial Code and to its General Regulation, in particular Articles 211-1 to 216-1, the Autorité des Marchés Financiers affixed the visa No aa-xxxx on JJ/MM/AA on this prospectus. This prospectus was prepared by the issuer and is the responsibility of its signatories.

Pursuant to Article L. 621-8-1-I of the Monetary and Financial Code, this visa was granted after the AMF verified that the document is exhaustive and comprehensible and that the information contained in it is consistent. It does not imply that the AMF has approved the appropriateness of the transaction or authenticated the accounting and financial information presented herein.

#### 5 – Base prospectus



Pursuant to L. 412-1 and L. 621-8 of the Monetary and Financial and of its General Regulation, in particular Articles 212-31 to 212-33, the Autorité des Marchés Financiers has affixed the visa No aa-xxxx on JJ/MM/AA on this base document. This prospectus was prepared by the issuer and is the responsibility of its signatories.

Pursuant to Article L. 621-8-1-I of the Monetary and Financial Code, this visa was granted after the AMF has verified that the document is exhaustive and comprehensible and that the information contained in it is consistent. It does not imply that the AMF has approved the appropriateness of the transaction or authenticated the accounting and financial information presented herein.

Pursuant to Article 212-32 of the AMF General Regulation, any issuance or admission of financial instruments to trading completed in respect of this base document will result in establishing final terms and conditions.