

AMF Recommendation 2009-11

Preparing documentation for corporate finance transactions subject to the approval of the AMF

Background regulations: Articles 212-6 and 212-7 of the AMF General Regulation

In the current volatile market conditions, the Autorité des Marchés Financiers has been regularly called on to approve corporate finance transactions, and in particular capital increases, within very tight deadlines.

Ever since the Prospectus directive came into force, the period for reviewing a corporate finance transaction has been reduced. This period may be reduced to five business days if the issuer has a registration document and three working days if the issuer qualifies for the simple-track procedure.

In practice, some issuers file a prospectus with the AMF to put down a marker in the examination period while the prospectus provides only a general outline and standard clauses, with many details being provided very late as compared to the desired approval date.

While the price, and hence the number of financial instruments, can be set on the day of approval, which is one day before the launch of the transaction, other information, and in particular details about the issuer, must be made available much earlier. Such information, which may prove highly sensitive, must be provided at the very beginning of the examination, including at the draft stage. The following information should notably be provided:

- The working capital statement,
- The purpose of the issue,
- the intentions of shareholders holding more than 5% of the issuer's capital and/or represented on the board of directors (except in specific cases duly justified in advance when such information is not available or is available on the day of approval only),
- the bank guarantee or the absence of bank guarantee for the transaction and/or the potential purchase commitments;
- the characteristics of the financial instruments to be issued;
- the risk factors specific to the issuer and to the transaction;
- forward-looking information disseminated to the market or to the investors underwriting the transaction;
- the draft transaction summary ;
- a precise and indicative timetable (for instance, time limits expressed in trading days) ;
- the draft news release for the launch of the transaction.

In certain cases, the absence of all or part of these elements does not allow assessing the consistency of the project, hence its examination by the AMF.

Recommendation:

The AMF recommends that the documentation for corporate finance transactions be prepared at the earliest and in a proactive way in order to for issuers and counsels to secure approval and avoid malfunctions such as:

- **inconsistency between the amount of the issue and the approval of the capital increase by the general meeting,**
- **a late change in the characteristics of a complex product that results in its nature being modified.**

Moreover, it bears recalling that it is necessary to document in advance the difficulties and/or peculiarities of the issuer and of the transaction in order for these issues to be comprehensively addressed by the AMF staff.

Recommendation:

The AMF recommends also that the overall circumstances and characteristics of the proposed transaction be effectively anticipated as well as the potential associated specific risks.

The AMF is willing to make its best efforts to approve transactions within short deadlines previously agreed upon with issuers pursuant to the applicable regulation. However, late receipt of material information increases the risk that the transaction be not approved.