

AMF position - recommendation Initial Public Offerings – DOC-2015-02

Reference texts: articles 212-12, 223-10-1 and 315-35 of the AMF General Regulation

This position-recommendation replaces and supplements AMF position DOC-2009-12 of 30 June 2009 on relaxing the procedures for launching an IPO in a highly volatile market.

1 The tranche intended for retail investors

Issuers are obliged, when conducting an IPO, to set aside a portion of the securities for retail investors. This obligation is a best endeavours obligation, and not a performance guarantee, as provided for in article 315-35 of the AMF General Regulation.

Furthermore, the AMF notes that, when conducting an IPO, numerous issuers offer employees the option to subscribe to shares in their company based on the provisions of the French labour code relating to increases in capital for members of savings plans. It highlights these initiatives at the discretion of companies aiming to promote share ownership among retail investor-employees in parallel with the IPO process.

2 Flexible pricing rules

In order to offer issuers greater flexibility in terms of how they set the price when conducting an IPO, while remaining efficient from the investors' point of view, the issuer may, when conducting an IPO, only mention the maximum price in the prospectus approved by the AMF. In this case, no later than 3 business days before the offer closing date, notification must be given by press release of a price range varying by a maximum of 15% either side of a pivot price.

Position

The prospectus approved by the AMF when IPOs are conducted must at least indicate the maximum price of the offered securities. No later than 3 business days before the offer closing date, notification of a price range varying by a maximum of 15% either side of a pivot price must be communicated to the market.

In the event that this price range increases the pre-announced maximum price, an additional note must be prepared and submitted for approval by the AMF.

When only a maximum price is communicated at the launch of an IPO, this must be relevant and consistent both in terms of other information given in the prospectus as well as market practices. Indeed, this being an IPO, the maximum price thereby constitutes the only pricing frame of reference.

Moreover, if an IPO is accompanied by a fundraising operation (the issue of new securities) and the prospectus only gives a maximum price at the launch of the IPO, the amount of funds finally raised must not lead to changes in the characteristics of the transaction as announced, in particular the reasons for the offer and the use of the product. Failing that, in the event of a significant change in the characteristics of the IPO initially announced, a period lasting a minimum of two trading days is opened, during which orders may be revoked¹.

In any event, the final price may be subject to a press release without further approval, provided that it is not likely to lead to changes in other transaction characteristics, in particular the reasons for the offer and the use of the product.

¹ Pursuant to article 212-17 of the AMF General Regulation, publication of the final number of securities concerned may be subject to a press release without further approval and retraction of orders, provided that it is not likely to lead to changes in other transaction characteristics, in particular the reasons for the offer and the use of the product.

3 Criteria for setting the price range

Concerning the conditions for determining the price in accordance with articles 8.1 of the Prospectus Directive 2003/71/EC and 5.3.1. of European regulation No. 809/2004 of 29 April 2004, and following the practice observed by the European Securities and Markets Authority (ESMA) in the October 2013 update of its questions-answers document on prospectuses, the AMF grants issuers the option of creating an order book as a means of determining the final price, provided that the maximum price or price range is indicated upstream of the IPO launch, this being in the prospectus approved by the AMF.

Issuers may, however, voluntarily continue to present factors used to determine the price or price range in their prospectus, in particular by using approaches based on criteria such as peer group comparison, discounted cash flow, sum-of-the-parts analysis, or multiples associated with transactions carried out by comparable companies.

4 The revocability of orders in the open-price offer intended for retail investors

The irrevocability of orders transmitted in connection with an open-price offer is the result of operational and legal restraints entailed in the transmission of orders (orders received across counters against orders received over the internet), and not from the regulatory framework laid down by the AMF.

The AMF has observed that two thirds to 90% of orders made by retail investors are now transmitted via the internet²

In order to deal with retail investors and professionals fairly, banking networks must therefore now provide for the possibility that retail investor orders via the internet may be revoked at any time until the offer closing date.

After reviewing the practical constraints, some banking networks have examined the option of providing for the possibility that retail investor orders, whatever their means of transmission, may be revoked at any time until the closing of the offer. As a result of these reviews, major banking networks have agreed to offer, in the short term, the possibility of revoking retail investor orders made via the internet. However, it appears that providing for the revocability of orders made by telephone or directly in branch poses even greater challenges for banking networks and could possibly be a source of disputes.

Recommendation

The AMF recommends to the market operators concerned that all orders from private investors during IPOs should be revocable throughout the duration of the retail-investor offer. Concerning orders made on the internet, in view of the technical constraints, this revocability should be possible by 31 March 2015 at the latest. Moreover, banking networks should use their best efforts to extend this irrevocability to other distribution channels within a reasonable period of time if they have not been able to implement it by 31 March 2015.

Position

The prospectus includes a description of the practical arrangements for subscribing to IPOs and includes the necessary details with regards to the revocability offered according to the order transmission channel.

² Compared to paper orders and those made across counters in bank branches.

5 Underwriting syndicate analysts' access to information ahead of the publication of AMF-approved documentation

Underwriting syndicate analysts participating in an IPO need upstream access to information on the company being listed. Consequently, the AMF currently makes it possible for these analysts to be informed ahead of the IPO, provided that confidentiality is assured in accordance with the provisions of article 315-15 of its General Regulation, with the aim of reducing the IPO schedule and, therefore, execution risks.

Pursuant to amended article 223-10-1 of the AMF General Regulation, the system would be extended to companies whose debt securities have already been admitted to trading on a regulated market or on a multilateral trading facility.

Within the framework of their IPO, both these companies as well as subsidiaries of groups already listed or being listed by way of a demerger, for example, must be vigilant with regards to the rules governing insider information.

Position

When analysts in the syndicate have access to the information in advance, the operating procedure used must be transparent and follow the steps below:

- An initial meeting restricted to the underwriting syndicate analysts must be held ahead of the IPO announcement and, therefore, the registration of the base document, subject to a commitment to confidentiality in accordance with the "Walls of China" procedures (article 315-15 of the AMF General Regulation) implemented to allow these analysts, whose research reports need to be published for the investors' "education period", to start their work in advance, and to finalise their reports quickly after the base document has been registered³.
The AMF draws the attention of issuers to the fact that the documentation (the draft prospectus in particular) must be available with enough notice to facilitate this meeting between underwriting syndicate analysts during the prospectus or base-document review period by the AMF (particularly considering all the information required to assess the proposal and, notably, the strategy, accounts, presentation of results and sections on "trends" and "forecasts"). In any case, if significant modifications occur between the initial presentation to analysts and the information finally presented in the base document, it is the responsibility of the underwriting syndicate members and issuers to ensure that this modified information has been brought to the attention of this meeting's participants.
- A second publication of information subsequent to registration of the base document, intended for all potentially interested analysts, which enables them to benefit from in-depth discussions with the directors, the presentation of which may in no way contain less information than the first. These discussions may take the form of a physical meeting or a conference call, depending on the number of analysts involved.
- This option must have no effect on the presentation meeting open to the financial community, organised under the auspices of, in particular, the French Society of Financial Analysts (SFAF), and held in conjunction with the IPO launch.

³ Or, alternatively, after the prospectus approved by the AMF has been published, in the case of IPO documentation relying on a single prospectus.

6 The language of the Prospectus

In the interests of the competitiveness of the Paris market, and in line with its European counterparts, stock market regulations, pursuant to amended article 212-12 of the AMF General Regulation, now give companies the option to create a prospectus written in a language commonly used by the financial community other than French, including in the case of IPOs in France, on the condition that the prospectus summary is also translated into French.

Recommendation

The AMF recommends that the choice of language be consistent over time and in terms of the shareholding strategy implemented by the company.

The AMF recommends that companies seeking to attract a wide-ranging public of French retail investors should give preference to a prospectus drafted entirely in French. Financial information intended for the general public, especially marketing materials, should be drafted accordingly.

The use of English in an IPO prospectus should take account of the IPO characteristics and those of the company, with particular reference to the following:

- whether the shares are offered internationally (private international investment, double listing, etc.);
- the profile of the company operating in an international financial ecosystem (foreign company, international group, international management, international customers or contracts, etc.).

A company under French law should also decide whether to draft an IPO prospectus in English in the light of its obligations to produce annual financial statements and a management report in French pursuant to the French Commercial Code.