



JONES DAY
COMMENTARY

FRANCE REVISES ITS RULES FOR REPORTING LARGE SHAREHOLDINGS IN LISTED COMPANIES

On January 30, 2009, the French government published decree No. 2009-105 (the “Ordonnance”), which included, among other things, a new basis for calculating shareholdings for purposes of declaring holdings in listed companies and other additional required disclosure. The Ordonnance also added two new thresholds that trigger a requirement to report the investor’s intentions with respect to its holdings and the issuer. The French government stopped short of imposing additional thresholds for mandatory bids and did not decrease the initial disclosure threshold to 3 percent as originally proposed.

The main goal of the Ordonnance is to improve the transparency of the French capital markets, among other things. Its issuance followed the publication on October 23, 2008, by the Autorité des marchés financiers (the “AMF”) of its proposals for various amendments to existing disclosure requirements, as directed by the French law for Economic Modernization (*loi de modernisation de l’économie*,

promulgated on August 4, 2008). (See related *Jones Day Commentary* entitled “[UK and French Proposals on Reporting of Large Shareholdings in Listed Companies](#),” October 2008.)

GENERAL FRAMEWORK

An investor is required to file a report with the AMF (with a copy to the issuer) when its holdings in the share capital of a French listed company go above or below certain enumerated thresholds (5 percent, 10 percent, 15 percent, 20 percent, 25 percent, one third, 50 percent, two thirds, 90 percent, and 95 percent). The report must be filed within five trading days of the transaction that resulted in the threshold being crossed. The investor must include in the calculation of its holdings any shares held by any party with which it is acting in concert. In addition, upon crossing the 10 percent and 20 percent thresholds, the investor must disclose its intentions vis-à-vis the

listed company, as described below. The investor is required to launch a tender offer for all the outstanding equity and equity-linked securities when its holdings exceed one third of the share capital or voting rights of the issuer.

The existing rules have been modified by the Ordonnance, as described below. The new requirements become applicable in two phases, also as described below.

DISCLOSURE OF DERIVATIVES

Previously, when an investor calculated its holdings for purposes of determining whether it had an obligation to file the report, it was required to include in the numerator only shares and instruments convertible into shares (and, in each case, the related voting rights) actually owned by the investor and parties with which it acts in concert, if any. Under the new rules, which will take effect on July 30, 2009, an investor must now also include in the numerator any shares that are issued and outstanding, and/or the related voting rights, that the investor has the right to acquire pursuant to the terms of a contract that provides either for physical settlement only, or grants the investor the option to choose physical or cash settlement in its sole discretion. Such contracts would include cash- and share-settled swaps or other similar derivatives.

Derivative instruments that provide for cash settlement only must now be disclosed in a separate section of the report filed with the AMF and sent to the issuer. This new section must also include the number of shares that may be acquired pursuant to securities that give the right to acquire newly issued shares, such as options, and the number of shares that can be acquired pursuant to a contract that does not give sole discretion to the investor to settle in cash or shares, in each case including the number of related voting rights. These new disclosure requirements, which will take effect on October 30, 2009, are designed to increase the information available with respect to the investor's economic exposure to an issuer's capital.

An exemption is available, which will be clarified through AMF rulemaking, for derivative instruments that meet the requirements described above but are held only for trading by an investment services provider.

As a reminder, thresholds apply only to shares of companies that are listed on a regulated market in France, and other rules apply to shares listed on other markets (such as Alternext).

THE INVESTOR'S INTENTIONS—NEW THRESHOLDS AND SHORTER FILING PERIODS

An investor is required to disclose its intentions with respect to the issuer as soon as it holds more than 10 percent and 20 percent of the issuer's share capital or voting rights. The investor must indicate whether it intends further to increase its stake, acquire control of the issuer, or request the appointment of representatives on the issuer's board. The Ordonnance has added two new thresholds—15 percent and 25 percent—that trigger this disclosure requirement. However, the statements made with respect to the investor's intentions are now required to cover only the six months following the filing of the report, instead of the 12 months previously required. Filing has been accelerated and must now be made within five trading days of crossing the relevant threshold. These new thresholds and requirements will take effect on July 30, 2009.

Under the former regime, the investor could amend the disclosure relating to its intentions only if there had been a significant change in circumstances, environment, or shareholding of the issuer since the filing of the report. As part of the reform, this requirement has been eliminated, and an investor may amend its disclosure, if necessary, during the six-month period. If he chooses to do so, he will be required to declare its revised intention for a new six-month period.

ENHANCED DISCLOSURE

As part of the reform, the French government has also provided for other enhanced disclosure when a threshold is crossed, more similar to the Schedule 13D requirements in the United States. For example, the disclosure relating to the investor's intentions must now include information relating to the investor's strategy, any transactions, or undertakings required to achieve that strategy and to any agreements relating to the temporary purchase or sale of the issuer's

securities, such as stock lending or other temporary share transfers. These new requirements will take effect on July 30, 2009, and additional requirements will be adopted by the AMF pursuant to its regulatory authority in due course.

SANCTIONS

Pursuant to Article L.247-2 of the French Commercial Code, failure to comply with the reporting obligations described above may result in a fine of up to €18,000. If not properly reported, shares in excess of the threshold that should have been reported may be deprived of voting rights in certain circumstances for a period of up to two years after the date of compliance by the investor with its reporting obligations.

LAWYER CONTACTS

For further information, please contact your principal Firm representative or one of the lawyers listed below. General email messages may be sent using our “Contact Us” form, which can be found at www.jonesday.com.

Linda Hesse

+ 33 1 5659 3872

lhesse@jonesday.com

Claire Malrieu

+ 33 1 5659 3929

cmalrieu@jonesday.com

Robert Mayo

+33 1 5659 4692

rmayo@jonesday.com

Stefanie A. Magner

+ 33 1 5659 3907

smagner@jonesday.com

Jones Day publications should not be construed as legal advice on any specific facts or circumstances. The contents are intended for general information purposes only and may not be quoted or referred to in any other publication or proceeding without the prior written consent of the Firm, to be given or withheld at our discretion. To request reprint permission for any of our publications, please use our "Contact Us" form, which can be found on our web site at www.jonesday.com. The mailing of this publication is not intended to create, and receipt of it does not constitute, an attorney-client relationship. The views set forth herein are the personal views of the authors and do not necessarily reflect those of the Firm.