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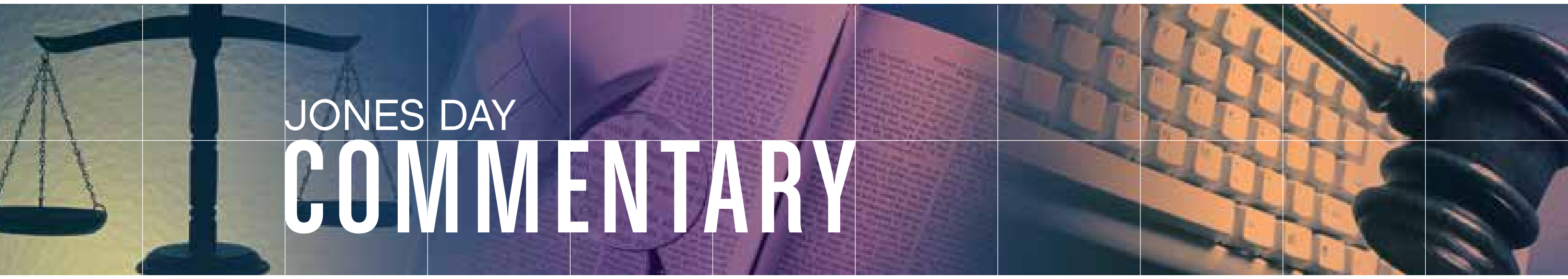

AFEP AND MEDEF REVISE CORPORATE GOVERNANCE CODE FOR LISTED COMPANIES: "SAY ON PAY" COMES TO FRANCE

On June 16, the two main French business groups, *Association Française des Entreprises Privées* ("AFEP") and *Mouvement des Entreprises de France* ("MEDEF"), published a revised version of their joint corporate governance code for listed companies in France (the "AFEP-MEDEF Code"). The AFEP-MEDEF Code was first published in 1995 and last updated in 2010 to make recommendations regarding the representation of women on boards of directors.

Listed companies in France must comply with the corporate governance provisions of general corporate law and may also refer to the recommendations of a "reference governance code." Companies referring to a reference governance code must disclose which code they choose to follow and whether their governance practices deviate from the recommendations set out in such code. The AFEP-MEDEF Code is the code of choice for large cap companies,[1] including all of the companies making up the French CAC 40 Index, and one of the most complete and stringent codes of the OECD member countries according to the AFEP and MEDEF.

The executive officer compensation recommendations of the AFEP-MEDEF Code apply to the chairman, chief executive officer, and deputy chief executive officers of French companies with a board of directors, to the chairman and members of the management board of companies with a two-tier board, and to the manager of a partnership (*société en commandite par actions*) (referred to below as "executive officers").

The revised AFEP-MEDEF Code provides for the following changes in corporate governance for French listed companies adhering to its recommendations ("listed companies"):

1 The MiddleNext Corporate Governance Code is specially adapted to small and mid-cap companies.

NONBINDING SHAREHOLDER VOTE ON EXECUTIVE OFFICER COMPENSATION ("SAY ON PAY")

Starting as early as the 2014 annual shareholders' meeting, shareholders must vote on the individual compensation of the company's executive officer(s).

Shareholders will be consulted on the fixed portion of the compensation, the variable annual and multiyear portion of the compensation, exceptional compensation (if any), stock options and performance shares, additional retirement benefits (if any), as well as signing bonuses or golden parachutes.

The shareholders' vote will not be binding on the board of directors. However, in the event of a vote against the proposed compensation, the board should first consult the compensation committee and then debate the matter during the next board meeting to decide on any actions to be taken in response to the shareholders' vote. The board should immediately thereafter issue a press release and post it to the company's web site regarding its intended response to the shareholders' vote.

CREATION OF A HIGH COMMITTEE OF CORPORATE GOVERNANCE (THE "COMMITTEE")

The Committee's mission will be to oversee the implementation of the governance provisions contained in the AFEP-MEDEF Code.

The boards of listed companies may submit questions to the Committee relating to the interpretation of any provision of the AFEP-MEDEF Code or other governance matter. The Committee may also request companies to explain with greater detail any noncompliance with the AFEP-MEDEF Code's recommendations. If a company does not comply with the Committee's recommendations, it must explain the reasons for such noncompliance in its annual report.

The Committee will be composed of seven members:

- Four individuals holding or having held an executive position in an international group; the Chairman of the Committee will be appointed from among these four members; and
- Three experts representing investors and/or chosen for their knowledge of the law or ethics.

The Committee may also propose amendments to the AFEP-MEDEF Code, in light of developing practices in France and abroad, recommendations of the French securities regulator, the *Autorité des marchés financiers* ("AMF"), or at the request of investors.

"COMPLY OR EXPLAIN" ENHANCEMENTS

The revised Code enhances the preexisting "comply or explain" principle. If a listed company chooses not to apply a particular recommendation of the AFEP-MEDEF Code, it should explain in detail any noncompliance, in relation to the company's specific circumstances, and any alternative measures taken to stay within the intended objectives of the particular recommendation. Any recommendations that are not applied should be mentioned in the company's annual report, along with the relevant explanations for noncompliance.

EMPLOYEE REPRESENTATION ON COMPANY BOARDS ENCOURAGED

Employee representatives are encouraged to participate in board committees and are entitled to receive specific training relating to their duties on the board. The revised AFEP-MEDEF Code also recommends that an employee member of the board should have a seat on the compensation committee.

MORE DEMANDING CONDITIONS PLACED ON EXECUTIVE OFFICER COMPENSATION

Multiyear and annual variable compensation should be made public and subject to performance criteria, and should be limited to a certain percentage of fixed compensation as determined by the board.

Signing bonuses should be made public and should be granted only to executive officers who are new to the group.

Golden parachutes should be conditioned only on the executive officer's forced departure from the group (e.g., in case of a change of control or disagreement on strategy), should not exceed two years of the sum of fixed and variable compensation, and should be subject to performance criteria evaluated over two fiscal years. Executive officers nearing retirement age should not be eligible for a golden parachute.

Noncompete indemnities should be approved by the board, after extensive review by the compensation committee. Such indemnities should be made public and should not exceed two years of the sum of fixed and variable compensation. Where an executive officer is eligible for a noncompete indemnity and a golden parachute, the two indemnities combined should not exceed such cap. The board should decide whether to grant such indemnity at the time of the beneficiary's departure and should be able to waive the indemnity at any time.

Additional retirement benefits should not exceed 45 percent of base compensation. Annual increases should be limited to 5 percent of the beneficiary's compensation. The pool of beneficiaries should not be limited to executive officers, and beneficiaries must have been with the company at least two years before being eligible for additional retirement benefits.

The grant of stock options and performance shares should be subject to both internal and external performance criteria, and beneficiaries should be required to hold a substantial amount of stock options and performance shares until the end of their terms of office.

LIMITATION ON NUMBER OF DIRECTORSHIPS

Executive officer board members should not hold more than two other directorships in listed companies outside the group, including foreign companies. All other board members should be limited to holding four directorships in other companies outside the group, including foreign companies.

FORMAL COMMITMENT NOT TO USE ANY HEDGING INSTRUMENT

Since 2009, the AMF has suggested that executive officers formally commit not to use option hedging instruments and that the issuer disclose such commitment in its annual report. While the 2010 update to the AFEP-MEDEF Code already contained a recommendation that executive officers not use hedging instruments to cover their risk on options or performance shares, the revised Code went a step further, adopting the AMF's suggested language and recommending that executive officers formally undertake not to hedge options, shares issued from the exercise of options, or performance shares until the end of the holding period for such securities.

CALCULATION OF NUMBER OF INDEPENDENT DIRECTORS MODIFIED

The AFEP-MEDEF Code modifies how companies should calculate the ratio of independent to non-independent directors. Under the new method, directors representing employee shareholders or employees should be excluded for purposes of determining the percentage of independent directors.

The revised AFEP-MEDEF Code provides broad principles-based recommendations to French listed companies. Companies should begin considering the impact of these recommendations, specifically with respect to executive officer compensation, sufficiently in advance of their 2014 annual shareholders' meeting. Special attention should be paid to disclosures on compensation as a means of developing sufficient shareholder support in advance of the annual shareholders' meeting, in particular if there are any red flag issues that could result in negative votes. Experienced legal counsel can assist in evaluating whether executive officer compensation packages comply with the revised Code, drafting "say on pay" disclosures and resolutions, and managing the company's dialogue with shareholders and proxy voting advisory groups.

LAWYER CONTACTS

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