

AMF Recommendation 2012-05 General meetings of shareholders of listed companies

Background regulations: articles L.225-37-4, L.225-38, L.225-39, L.225-40, L.225-40-1, L.225-88-1, L.225-96, L.225-98, L.225-100, L.225-105, L.225-106-2, L.225-107, L.225-108, L.225-114, L.225-116, L.225-117, L.225-120, L.225-129-5, L.228-1, L.233-5-1, L.233-7, L.233-14 and L.242-10 of the Commercial Code; articles R.225-31, R.225-58, R.225-66, R.225-69, R.225-71, R.225-73, R.225-73-1, R.225-83, R.225-85, R.225-90, R.225-92, R.225-95, R.225-98, R.225-100, R.225-101, R.225-106, R.225-106-1, R.225-107, R.225-116 and R.225-117 of the Commercial Code; articles L.211-17-1 and R.211-2 and ongoing of the Monetary and Financial Code; articles 322-49-1 and 570-2 of the AMF General Regulation

In view of its remit to ensure investor protection, the AMF pays special attention to ensuring that shareholders are able to exercise their voting rights at general meetings.

In light of this, the AMF Board decided in May 2011 to commission a working group made up of different market participants to formulate proposals on the following issues: the dialogue between shareholders and issuers at general meetings, the functioning of general meetings (shareholder voting, in particular non-resident shareholder voting and duties and powers of the committee) and voting on regulated agreements. The report of the working group ("the Report") presented the results of the work undertaken by the group and issued 33 proposals. In July 2012, the AMF Board committed to following up the proposals addressed to public authorities and professional associations and organisations. It recommended the adoption of all the remaining proposals, which were essentially addressed to listed companies.

The AMF conducted a review of the implementation of these proposals and published a report in February 2015. Proposals were then reiterated, with some being modified and others deleted or added. In February 2015, the AMF's Recommendation no. 2012-05 issued 33 proposals.

On 17 November 2016, the AMF published its annual report on corporate governance and executive remuneration. Paragraph 5.3, "Regulated agreements and the management of conflicts of interest" of this report contained a reminder and specifications added to former proposal 22 in Recommendation no. 2012-05. These specifications are now found in the proposal renumbered 26.

In July 2017, the AMF Board decided to endorse, subject to minor adjustments, 9 of the 31 proposals from the report "For a transparent and effective vote at general meetings in the digital era", dated 13 January 2017, by the AMF's consultative commission for Retail Investors¹. These 9 proposals were integrated into the present AMF Recommendation, which now contains 31 proposals.

- Some proposals are aimed directly at the market participants concerned, notably listed companies. **The AMF recommends that all these proposals be adopted**, except where legislative or regulatory amendments arising from some of these proposals are necessary to their application;
- The other proposals are addressed either to public authorities when they require legislative or regulatory amendments or to certain professional associations or organisations. **The AMF will follow up the implementation of these proposals, with the understanding that a certain number of the proposals put forward in 2012 have already been adopted in whole or in part by the legislator or by professional organisations.**

Recommendation:

L'AMF recommends the application of:

- **the propositions 1 to 10 (ongoing dialogue between shareholders and issuers);**
- **the propositions 12, 13, 14, 16 and 19 (voting at general meeting);**

¹ Comprised of representatives from retail investor and savers associations and individual shareholders, of representatives from consumer associations as well as experts (lawyers, academics, journalists, etc.), this consultative commission's function is to inform the Board's decisions, which could have an impact on the protection of retail investors' interests, by expressing specific retail investors' views.



- **the propositions 21 and 22A (general meeting committee);**
- **the propositions 25, 26, 27, 28, 30, 31, 32, 34, 35, 36, 37, 38 (voting on regulated agreements).**

The propositions 1, 3, 4B, 4C, 7A, 8, 12, 13, 21 and 25 are a priori not intended to apply to small- and mid-caps. These companies may however decide to refer to them on a voluntary basis or to draw inspiration from them in practice.

Moreover, the AMF will follow up the implementation of the proposals addressed to itself, to public authorities and to certain professional associations or organisations (propositions 3A, 4, 11, 15, 17, 20, 22B, 23, 24, 29, 33). In addition, the AMF will prepare an annual report on the implementation of proposition 3A in the annual report on corporate governance and executive remuneration.

Finally, in propositions 10 and 18, the AMF reminds the general meeting of certain rights and obligations.

PROPOSITIONS

I. Ongoing dialogue between issuers and shareholders

Proposition 1

- A. Maintain an ongoing dialogue between issuers and investors as well as those who advise them, before draft resolutions are published and after the general meeting as well, to help resolve possible disagreements on points of voting policy for different categories of shareholders. To this end, the AMF reiterates its March 2011 recommendation on proxy voting advisory firms.
- B. Develop new ways of dialoguing after the notice of meeting has been published, and allow time for discussion.
- C. After the general meeting, to the extent possible, meet personally with shareholders who wish to discuss any disagreements on important points brought up at the meeting, with a view to drawing lessons for the next general meeting.

Proposition 2

Encourage all directors, and in particular those having specific functions, such as the consultative committee chairs and the lead director, to attend the general meetings of shareholders

Proposition 3

- A. Announce the date of the following year's general meeting (or even the dates of the next two AGMs) at the end of the current year's meeting and publish the date(s) on the issuer's website, both in the section dedicated to its calendar for future financial reports, and in the section dedicated to the agenda of its general meeting..
- B. Ensure that the issuer's updated articles of association are posted on its website so that each shareholder has access to full information from the company.

Proposition 4

- A. Amend the legal and regulatory provisions of the Commercial Code in order to:
 - a. allow companies to include in their articles of association lower thresholds than those currently provided in the Commercial Code for shareholders submitting draft resolutions and/or agenda items. Large cap companies will be encouraged to amend their articles of association in application of these new regulatory provisions;
 - b. update the shareholding thresholds required in order to submit items and draft resolutions at a general meeting, dividing it by two;
 - c. align the shareholding threshold required from shareholder associations wishing to table draft resolutions to those applicable to individual shareholders, which are lower.
- B. Adopt a broad concept of agenda items that extends beyond what lies strictly within the decision-making powers of the general meeting. To this end, agenda items may relate to the purpose of the company or to the content of the literature provided for the general meeting.
- C. Organise the general meeting so that agenda items and proposed resolutions relating to the same subject are debated together, not separately.

Proposition 5

- A. Continue efforts to improve the readability and accessibility of draft resolutions, their titles and their statement of reasons by presenting the resolutions in an informative manner that clarifies what is to be voted on and what is at stake in the decision. Accordingly, the statement of reasons ought not to consist merely in recasting the legal terms of the draft resolution in plainer language, but should

present – in an accurate, instructive manner and in simple, clear and understandable terms – the purpose, explanation, key issues and reach of the draft resolution in question in order to inform the shareholder vote.

- B. Post the statements of reasons included in the board's report on the proposed resolutions on the issuer's website at the same time that the "meeting notice" is published in the legal gazette (BALO), not later than 35 days before the meeting. Include a link to the issuer's website in the AGM notice published in the BALO.
- C. At the general meeting, present and explain the proposed resolutions before they are voted on.
- D. Present separate draft resolutions to the shareholders if a draft resolution deals with several significant and distinct issues that may give rise to distinct votes.

Proposition 6

- A. Justify new requests for authority to issue securities within the framework of the company's business strategy, with due regard for the confidentiality of financial offerings.
- B. As soon as the meeting notice is published, post on the issuer's website, along with the board's statement of reasons for the proposed resolutions, the summary table on how previous financing authorisations have been used, if need be with explanations to aid understanding.

Proposition 7

- A. Facilitate the exercise of a shareholder's right to put items or proposed resolutions on the agenda of the general meeting.
- B. Recommend that shareholders submitting draft resolutions to the agenda of a general meeting systematically prepare a statement of reasons.
- C. Post the statement of reasons for the draft resolution on the issuer's website and on the same page as the statement of reasons for draft resolutions proposed by the board of directors (or, where applicable, the executive board).
- D. Allow any shareholder who has tabled a draft resolution for the agenda to exercise the right to speak at the general meeting in order to briefly present his or her proposal in advance of the vote.

Proposition 8

- A. Post a summary report on the general meeting on the company's website within two months of that meeting.
- B. Draw up the minutes as soon as possible after release of the summary report on the meeting, and no later than four months after the meeting.
- C. At information meetings that take place after the AGM, devote an agenda item to summarise the discussions that took place at the meeting.

Proposition 9

- A. Post a standard form on the website, to the attention of shareholders, to request documents relating to the general meeting (notice to attend, reports, draft resolutions, etc.) in French and, where necessary, in an English translation.
- B. Recommend that issuers and custody account-keeping institutions make their best efforts to inform shareholders, in particular non-residents, by e-mail of the availability of documentation relating to the general meeting and the corresponding voting forms, when they have shareholders' e-mail addresses.

Proposition 10

- A. Under articles R.225-90 and R.225-92 of the Commercial Code, any shareholder has the right to "take copies" of the list of shareholders and the attendance sheet for general meetings. Issuers may not limit the full exercise of this right.
- B. Shareholders taking copies of the list of shareholders or the attendance sheet are subject to an obligation of confidentiality, as releasing these lists to the public may constitute a breach of this right.

II. Voting at general meetings

Proposition 11

- A. Institute a true vote of abstention in French law through new legislation.
- B. Redesign the mail-in voting form to clarify the intent of each vote, in particular to distinguish it from powers granted without specifying the name of the proxy.

Proposition 12

- A. Take measures to ensure that these voting rights are duly exercised, in particular for non-resident shareholders.
- B. When communicating with investors, issuers should pay particular attention to non-resident shareholders (if any), notably by providing English translations of the main general meeting documents (agenda, draft resolutions, statements of reasons, management report);
- C. Large issuers with an international shareholder base should systematically put a suitable person in charge of relations with non-resident investors in order to answer questions relating to the general meeting. The name and contact details of this (these) person(s) should be provided in the issuer's financial disclosures.

Proposition 13

Ensure that non-resident shareholders are better informed about the key stages of the voting procedure by providing them with clear, comprehensive documentation put together by issuers and other participants in the French securities holding system.

Proposition 14

Without prejudice to other countries' laws, align the information on non-resident investors with that required for resident shareholders. To this end, ensure that the global mail-in voting forms sent via registered intermediaries include a file giving details of the identity and votes cast of the shareholders concerned.

Proposition 15

- A. Pursue the development of one or more electronic voting platforms that can provide prompt, reliable handling of data flows between issuers and all their shareholders. Encourage non-resident shareholders to benefit from this system by encouraging all participants in the voting chain to take the steps needed to connect to these platforms as quickly as possible in order to improve the use of this system by non-resident shareholders.
- B. Encourage resident and non-resident shareholders and their providers to vote electronically.

Proposition 16

Provide any shareholder, upon prior request of the party concerned, with a document confirming that his or her vote has been properly accounted for, a minima when this vote is submitted electronically.

Proposition 17

Study the feasibility of a system that would enable resident and non-resident shareholders to be informed that their voting rights have been duly exercised even where the voting is not done electronically.

Proposition 18

- A. Respond to all oral questions asked by shareholders at the general meeting, except in the case of repeat questions or blatant abuse of the right to speak.
- B. Choose, while ensuring respect for the rule of impartiality, among the shareholders requesting to ask a question at general meetings.

Proposition 19

- A. Provide free access to all information relating to past general meetings, for at least the three previous years, in a dedicated section on the websites of issuers whose shares are admitted to trading on a regulated market.

- B. In addition to posting information relating to general meetings on the websites of issuers whose shares are admitted to trading on a regulated market pursuant to article R.225-73-1 of the Commercial Code, ensure that the following information is also made available on this same website, for at least the three previous years.
- a. the results of the vote for each of the proposed resolutions;
 - b. the translations into other languages of all documents pertaining to the general meeting (if the issuer has proceeded with such translations);
 - c. the audio or video recordings of all or part of the general meeting (if the issuer has produced such recordings), with the understanding that in the case of partial recordings, the issuer must indicate that sections have been omitted.

III. General meeting committee

Proposition 20

- A. Insert the principle, in either the legislative or regulatory part of the Commercial Code, that a general meeting committee must be formed and in place at the general meeting.
- B. In the regulatory part of the Commercial Code, specify that this committee is chaired by the same person who presides as chair of the general meeting, unless impeded as provided in Proposition 22 below, and that the committee's decisions are taken by a majority of its members.

Proposition 21

- A. Establish a general meeting committee composed of a chairperson and two scrutineers, unless circumstances duly explained in the meeting minutes make this impossible.
- B. To the extent possible, identify in advance the persons likely to be named as scrutineers, so that they can familiarise themselves with the role they will play and the difficulties the committee may encounter during the general meeting.

Proposition 22

- A. Prohibit a member of the general meeting committee from taking part in any decision within the committee's powers that would affect that member, such as a decision on suspending voting rights, amending a resolution or proposing a new resolution. Designate an alternate who would take the place of the committee member prevented from participating in such circumstances.
- B. Write this prohibition and this provision for designating alternates into the legislative or regulatory part of the Commercial Code.

Proposition 23

- A. Remind the general meeting of the role of the "centraliser". On the attendance sheet, mention that the scrutineers have signed this document on the basis of information provided by the centraliser under the terms of its contract with the issuer.
- B. Ask the professional associations concerned, issuers and shareholders to draft a code of conduct for the meeting centraliser that identifies best practices, particularly on managing potential conflicts of interest.

Proposition 24

Enshrine the policing power of the general meeting committee in the regulatory section of the Commercial Code. Specify that this committee:

- a. ensures orderly debate. Accordingly, it may have to ensure orderly management of answers to shareholders' questions (in particular by distributing floor time).
- b. if necessary, decides whether to suspend the session, that is, to halt deliberations of the general meeting momentarily.
- c. enforces the applicable rules on denial of voting rights based on evidence presented to it, but without making a precise legal characterisation.

IV. Voting on regulated agreements

Proposition 25

- A. Have companies establish an internal charter to define an agreement and submit it to the regulated agreement procedure. The charter would set forth the criteria adopted by the company, which would adapt the CNCC guide to its own situation, in agreement with its statutory auditors.
- B. Submit this charter to the company's board of directors for approval and make it public on its website.

Proposition 26

In applying the notion of an "indirectly involved person" retain the following definition: "*A person not party to an agreement is considered to be indirectly involved in that agreement if, by virtue of his or her links to the parties and of his or her powers to influence their conduct, he or she derives a benefit from it*".² Thus, a shareholding company controlled by the shareholder who is the ultimate beneficiary of the agreement should not have an effect on the vote on the said agreement, nor should the shareholder controlling the company beneficiary of the agreement. Finally, shareholders acting in concert, especially when this action includes a policy of voting together, should not have an effect on the vote on an agreement contracted with one of the cooperating shareholders.

Proposition 27

Ensure that any director in a conflict of interest situation, even a potential one, with regard to an item on the agenda, takes part neither in the debate, nor in the vote. This is particularly applicable in the event of a vote on a regulated agreement of interest to a shareholder with whom the director maintains a relationship that places him or her in a conflict of interest situation, even a potential one, for example when he or she was appointed based on the proposition of this shareholder.

Proposition 28

Present agreements concluded by a subsidiary in accordance with article L.225-37-4 of the Commercial Code in the registration document.

Proposition 29

Ask the statutory auditors to make comments in their special report in the event that the merits of the agreement is not, or not sufficiently, explained, on the understanding that the auditors assess neither the advisability nor the usefulness of entering into the agreement.

Proposition 30

- A. Encourage the board of directors to appoint an independent appraiser whenever entering into a regulated agreement may have a very significant impact on the balance sheet or results of the company and/or the group.
- B. Refer to the board of directors' request for an independent appraisal in the special report and make it public, with the exception of any factors that might compromise business secrecy.

Proposition 31

In exceptional cases in which prior authorisation from the board of directors has not been obtained, have the board ratify any agreements not previously authorised before they are submitted to the general meeting for approval, barring specific circumstances in which all the directors have a conflict of interest.

Proposition 32

With regard to the board of directors' annual review of regulated agreements having a long-lasting effect on the company³, provide a summary of this review and its conclusions in the annual report or the registration document, including:

² Based on a definition similar to the proposition initially formulated by the Paris Chamber of Commerce in its contribution to the industry initiative on, "Enhancing the effectiveness of the regulated agreement procedure", September 2011, p. 18.

³ Excluding agreements that have been subject to amendment during the period, authorised according to the procedure for new regulated agreements.

- a. for each of the agreements authorised in a prior period and which continued to be carried out in the most recent period, or is likely to be carried out or concluded in future periods, the rules it plans to apply to the calculation and adjustment of financial conditions;
- b. specific information for each of these agreements that has undergone a substantial change in amount or financial conditions, for example due to indexing;
- c. the agreements that the board has decided no longer meet the qualification of a regulated agreement due to a change in circumstances.

Proposition 33

- A. Amend the sixth paragraph of article R.225-31 and the fifth paragraph of articles R.225-58 of the Commercial Code such that they expressly require that shareholders invited to vote on agreements that might demand the company's commitment over several periods be fully informed with regard to the methods used to calculate financial conditions and their condition(s) of adjustment over time.
- B. Include a reminder in the auditors' special report on the regulated agreements of the rules for the calculation of financial condition and their adjustment over time for each of the previously authorised agreements which continued to be carried out in the most recent period or is likely to be carried out or concluded in future periods.

Proposition 34

- A. Enhance the content of the information provided in the statutory auditors' special report so that shareholders can better appreciate the issues involved in agreements that have been concluded. In particular, any information that might enable shareholders to assess the merits of entering into agreements and commitments should be provided, especially in the case of service agreements with directors. Achieving this objective will be facilitated if the board of directors transmits a clear, precise document explaining why the agreement is in the company's interest (see Proposal 30).
- B. Specify the persons concerned by the agreements and state their function, including for ongoing agreements.
- C. Clarify the presentation of the terms and conditions of regulated agreements in the report in order to identify more easily the issues involved for the issuer and the senior executives concerned. In this respect, the report on regulated agreements should be organised into three sections:
 - a. agreements with shareholders;
 - b. agreements with companies that share senior managers, specifying the equity links between those companies (i.e. ownership percentages);
 - c. other agreements with senior managers.
- D. Present the financial details of these agreements, making a distinction between income, expenses and commitments and specifying the amounts involved.

Proposition 35

Subject any significant regulated agreement, authorised and concluded after the financial year-end, to the approval of the next meeting, on condition that the statutory auditors have been able to analyse the agreement in time for the publication of its report.

Proposition 36

Establish a link, if any, between the consolidated financial statement note concerning related parties with the information presented on regulated agreements.

Proposition 37

Where the company prepares a registration document, the special report should be included so that shareholders can promptly access relevant information.

Proposition 38

Encourage submission of a separate resolution to shareholder vote whenever the agreement is of a significant nature for one of its parties and that directly or indirectly involves a senior manager or shareholder, as required by law for deferred commitments for the benefit of senior management.