

[Latham & Watkins Capital Markets Practice](#)

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Impact of COVID-19 on French Listed Companies and High Yield Issuers

Q&A for listed companies and high yield issuers navigating capital markets implications, with reference to the AMF's recommendations and best practices.

Listed Companies' General Meetings During Confinement

Q: How should shareholders attend listed companies' general meetings?

- The French securities and market regulator (the *Autorité des Marchés Financiers* or AMF) has issued guidance reminding shareholders of listed companies that they do not need to be physically present to vote at general meetings. Any shareholder may also submit written questions on subjects that fall within the scope of the general meeting in accordance with Article L. 225-108 of the French Commercial Code.
- The AMF recommends that listed issuers broadcast their general meetings on their websites and use all channels to inform shareholders.

Q: How will shareholders provide their vote if they cannot be physically present?

- Shareholders may vote remotely through several means:
 - Vote by correspondence using a voting form. This vote may be on paper or electronic (if the company's bylaws allow the latter). Issuers must take remote voting forms into account if they receive them at least three days before the date of the general meeting, except if the bylaws provide for a shorter period. Electronic voting forms may be sent to the issuer up to the day before the general meeting, and must be received at latest by 3 p.m. on the general meeting date.
 - Vote via proxy. Shareholders may provide a proxy to a person of their choice or to the issuer without indicating a proxyholder (blank proxy). For companies with shares admitted to trading on a regulated market, postal voting and proxy voting forms may be downloaded from the

company's website on the 21st day prior to the general meeting at the latest, except when the issuer sends these forms to all its shareholders.

- Vote online via a secure voting platform. Online vote may proceed if the issuer's bylaws allow this and if the issuer establishes an online voting procedure. Shareholders of companies with shares that are not admitted to trading on a regulated market may be required to attend the general meeting in this way, if the issuer's bylaws allow this.

Disclosure Requirements on COVID-19 Impact for Market Participants

Q: How should companies disclose the impact of the current COVID-19 outbreak on their business?

- The Market Abuse Regulation (MAR), which applies to all issuers with financial instruments (debt and equity) admitted to trading on a regulated or multilateral trading facility in the European Economic Area (such as the Luxembourg Stock Exchange or Euronext Dublin), requires that issuers disclose, as soon as possible, all "inside information" that concerns the issuer or the relevant listed financial instruments, directly or indirectly. Inside information is further defined as precise, non-public information that is likely to have a significant influence on the price of such financial instrument. Any knowledge of the COVID-19 pandemic's impact on the activity, performance, or outlook of the issuer or the issuer's ability to comply with the covenants of the debt instrument must be disclosed as soon as possible insofar as it meets the aforementioned definition of inside information under MAR.
- For issuers with financial instruments admitted to trading in France (e.g., Euronext Paris and Euronext Access), the AMF is the competent authority for MAR. The AMF has communicated to the market that listed companies should consider the impact of the COVID-19 outbreak on their ongoing and periodic disclosure, including risk factors, guidance, and liquidity.

Q: Should this disclosure be made on an ongoing basis until the end of the COVID-19 outbreak?

- Given the uncertainty surrounding the future development of this outbreak, issuers should periodically re-assess the estimated and anticipated impact on their company's activity and outlook with respect to materiality of such impact, in order to determine if additional detail regarding the impact constitutes inside information under MAR that should be disclosed.

Q: What form should this disclosure take?

- To ensure equal access to information for all investors, the mode of communication of inside information is the publication of a press release, which should be posted on the issuer's website (and be maintained for at least five years), filed with the AMF, posted with the French national storage mechanism, and communicated to media that are reasonably relied upon by the public to ensure effective dissemination, with an indication of the date and time of communication. The AMF has indicated that issuers are presumed to have fulfilled their obligations when they use a regulated information service that is listed on the registry maintained by the AMF.

Q: Should financial statements for the year ended December 31, 2019 include any disclosure regarding the impact of the COVID-19 outbreak?

- The impact of the COVID-19 outbreak should be considered, if necessary, as a post-closing event requiring disclosure in the financial statements of December 31, 2019 (or other applicable year-end date), in accordance with IFRS. If applicable, issuers will have to consider, with their statutory

auditors, the possible effects of the COVID-19 outbreak on their future financial statements, for example with regard to the valuation of their inventories.

- Listed companies that closed their accounts on December 31, 2019 must submit their annual financial report including their management report, which must include a description of the main risks and uncertainties faced by the company prior to and including April 30, 2020. In this respect, issuers should consider the COVID-19 outbreak in light of the foregoing obligation.

Q: Should companies publishing their universal registration document provide any disclosure on the COVID-19 outbreak?

- For issuers publishing a universal registration document, the “Risk Factors” section should, where necessary, deal specifically with the exposure of the issuer to the COVID-19 outbreak, as well as any measures that may have been taken with this regard.

Issuers Facing Liquidity Issues Due to COVID-19

Q: How can a company raise emergency funds due to lost revenue resulting from the COVID-19 outbreak?

- As part of the emergency support recovery plan for businesses, Bpifrance is launching cash support loans. Unsecured and unguaranteed loans are available to VSEs, SMEs, and mid-sized companies experiencing financial difficulties linked to the COVID-19 outbreak. Bpifrance is offering two types of loans:
 - The *Rebond* loan (€10,000 to €300,000), subsidized over a period of seven years with up to two years of deferral
 - The *Atout* loan (up to €5 million for SMEs and up to €30 million for mid-sized companies), granted over a period of three to five years with deferred amortization
- The structures that European high yield issuers have already used or are considering are: (1) drawing under existing super senior revolving credit facilities, (2) new super senior liquidity lines underwritten by direct lending funds, (3) credit lines secured by assets not subject to security by other creditors, and (4) subordinated shareholder instruments. Bpifrance has announced it will provide guarantees for loans granted to French non-financial institution companies by French credit institutions and financing companies, up to the equivalent of 90% of the amount borrowed, so long as the borrower is not subject to insolvency proceedings (*sauvegarde*, *redressement judiciaire* or *liquidation judiciaire*) at the time of the borrowing. The guarantees are intended to stimulate loans by French credit institutions and financing companies and will have maturity of between three to seven years. The exact terms and conditions of the guarantees have been set by Ministerial Order on March 23, 2020.
- Companies with existing high yield bonds should contact Latham & Watkins for assistance in analyzing their incremental debt and lien capacity under their indenture, in order to make informed decisions regarding different financing sources and determine the most appropriate structure considering the issuer’s constraints and borrowing capacity.
- Listed French issuers may consider rights issues, either with preferential subscription rights for existing shareholders (*droit préférentiel de souscription*) permitting them to avoid any dilution or

reserved to certain investors subject to shareholder approval at an extraordinary general meeting or a pre-existing delegation of authority granted by the shareholders for up to 10% of the issuer's share capital per year. French issuers benefit from accelerated time to market as a rights issue prospectus may be approved via a securities note and incorporation by reference of the issuer's latest universal registration document.

Q: How can a company make adjustments to EBITDA based on the impact of COVID-19?

- IFRS offers some guidelines related to certain non-recurring and exceptional items which could be excluded from recurring income, hence impact non-IFRS measures published by issuers, such as EBITDA. In addition, certain applicable financing documentations, such as credit facility agreement and high yield indentures, allow certain additional adjustments.
- Issuers/borrowers are considering how to make adjustments to EBITDA (insofar as possible under their documentation), either because they are subject to maintenance covenants (e.g., have fully drawn their revolving credit facilities with a springing covenant) or in order to incur debt for emergency funding.
- It is typical and customary for non-recurring charges and expenses to form the basis of adjustments to consolidated net income (itself a component of consolidated EBITDA), including costs and expenses incurred related to restructuring, redundancy, or severance. This could be relied on, for example, when businesses are forced to make furloughs, layoffs, or idle workers and manufacturing sites due to the impact of COVID-19. Additionally, high yield documentation typically provides for adjustments related to non-cash charges to the income statement, for example, related to impairment of inventory, receivables, or goodwill, as well as unrealized foreign exchange transactions in respect of indebtedness or other obligations. The foregoing could be relied on for all manner of dislocations related to supply chain, unsaleable, or unusable inventory or semi-finished goods, as well as the movement between the euro and the dollar for issuers with debt in multiple currencies. High yield documentation also provides for the ability to adjust for amounts received or reasonably likely to be received from business interruption insurance plans. Issuers that have contemplated various cost savings initiatives may also be able to adjust consolidated EBITDA, and potentially include revenue synergies.
- The ability to adjust for lost revenue requires a case-by-case consideration of the relevant documentation. For new transactions that are still being negotiated, there may be room to tailor an adjustment for a specific business with a determinable impact over a particular period, depending on the circumstances.

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