



18.10.2011  
Rév.19.10.2011

**Issuers & Shareholders  
Toronto Summit, 25 October, 2011**

**Main Wishes of the Issuers**

**IDENTIFYING THE SHAREHOLDERS**

***Why?***

In France, Securities are de-materialized (see note “Main dates” dated 18 Oct., 2011). As a result, most shareholders are known only to the financial institutions with which they have opened Securities Accounts, and not to the company whose shares they hold. Identification of the shareholders is important for several reasons:

- the credibility of votes at the meeting of shareholders hinges on a process to ascertain accurately that only shareholders take part in the ballot, and that they each exercise the number of votes that they actually hold;
- certain statutory rights are reserved for shareholders, who need to prove their positions as such in order to exercise them;
- the company may wish to identify its shareholders in order to communicate with them, e.g., by sending them a periodic newsletter, a practice increasingly common among large companies at least;
- last, the shareholders themselves may wish to identify the other shareholders or at least the major shareholders who may influence the decisions of meetings of shareholders.

***Identification depends on the form of holding - director indirect- of the shares***

In France, prior to de-materialization, "securities were held, traded and settled in a system of direct holding"<sup>1</sup>. The shareholder was registered in the issuing company's books (Registered) or held a certificate evidencing the securities (Bearer).

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<sup>1</sup> Ch. Bernasconi, Report on the law applicable to dispositions of securities held through indirect holding systems, Preliminary Document 1 to the Hague Conference on Private International Law, nov. 2001.

De-materialization<sup>2</sup> replaced the earlier system of registers or Bearer Securities, without modifying the legal principle of direct holding: for tax reasons, the law requires book entry in the name of the Securities' owner.

In many other countries, de-materialization did not result in such a radical change: physical evidence of the shares remains in theory, insofar as the central depository is entered in the company's records or holds the Securities in paper form, thereby appearing as a shareholder. It then opens accounts for financial intermediaries, which are themselves Account Keepers for other intermediaries or investors.

And even though the operation in practice of those two forms of holding and transaction in current accounts is similar, the legal analysis underlying a direct holding system and an indirect holding system differ substantially.

In a system of indirect holding, the number of intermediaries between the Beneficial Owner, the real Holder of Rights Attaching to the Share, and the issuing company may be very large, making it difficult to determine the identity of the Holder of Rights Attaching to the Share.

### ***Registered Securities versus Bearer Securities***

Few listed companies require their shareholders to hold their shares in Registered form, i.e., by entry in the company's records<sup>3</sup>. When the Registered form is not required by the by-laws of the company, every shareholder has an option to hold shares either as Bearer shares or in Registered form, in particular so as to have a means of direct communication with the company or to obtain the benefits connected with Registered holding, if any. Certain companies grant benefits to shares held in Registered form uninterruptedly for two years at least (the by-laws may require a longer period). The benefits, which must be specified in the by-laws, may consist of an extra dividend<sup>4</sup> (not to exceed 10% of the ordinary dividend), or the grant of double votes.

Apart from these benefits, Registered shareholders gain by the fact that they are known to the company, which may therefore communicate with them directly, whereas Bearer shareholders need to ask intermediaries or the financial institutions acting as their Account Keeper to draw up Book-Entry Attestations to exercise their rights. Holders of Registered shares are called to the meeting by mail individually. In addition, "Pure" Registered shareholders, i.e., those registered solely in the accounts of the issuing company, save the custody fees usually charged by financial institutions.

Most Non-Resident investors, however, have seen an advantage in overall cost and convenience in holding their shares in *nominee* names through custodians using Bearer shares.

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<sup>2</sup> Article L.211-4 of the Monetary and Financial Code: "securities issued on French territory and subject to French legislation, regardless of their form, must be entered in accounts kept by the issuer or an authorized intermediary".

<sup>3</sup> On the other hand, all shares in unlisted companies are in Registered form.

<sup>4</sup> And extra shares, in the event of an allotment of bonus shares or stock dividend (attribution gratuite d'actions).

## **PROXY Transparency**

### ***Proxies : more transparency***

Complying with European Directive of July 11, 2007, the French Act of December 9, 2010 provides measures to ensure an adequate degree of transparency of proxy voting.

In principle, the proxy holder is bound to observe the instructions he may receive from the shareholder (Directive, consideration nr 10) ; following to the French Act, he is obliged to publish his proxy voting policy.

Moreover, ANSA considers that the proxy holder who actively engages in the collection of proxies, especially towards individual shareholders, should also be bound to publish in advance each of the votes he intends to cast on each resolution : unfortunately, this measure has not been enforced.

### ***Proxy advisors : an efficient dialogue***

In March 2011, the French Financial Market Authority (Autorité des marchés financiers, AMF) published a recommendation nr 2011-06, in order to regulate the activities of proxy advisory firms. A Proxy advisory firm :

- must disclose its voting policy and explain the reasons why the firm delivers such and such recommendation on a draft resolution tabled at the General Meeting ;
- is supposed to guarantee means adapted to its activity and to define internal rules and methods ;
- is bound to communicate to the issuers, sufficiently in advance, its analysis and recommendations before they are disclosed ; ANSA is very sensitive to such a early dialogue between the proxy advisory firms and the issuers ;
- must disclose information about its business practices and potential conflicts of interest to clients.

## **Internet voting**

Internet voting is now legally permissible since 2001 and 2002, which will soon be implemented by a new Decree to make easier the electronic identification of any shareholder who intends to vote on the Net. Companies will be able to amend their bylaws – and often have already done so - to allow it, and experts are in the process of engineering appropriate technical systems to enable e-voting to operate smoothly, accurately and securely. Some of the national largest companies may be expected to wish to launch it quickly, thanks to Votaccess, the French electronic voting system created by the French bankers, already workable and which will be operational in November, 2011 (see appendices)

## ***Other subjects***

### ***- European consultation on CSDs (2011)***

ANSA welcomes the acknowledgement for the first time by the European Commission of the *notary function* performed by CSDs, which is central to issuers concern and which consists of ensuring that the number of securities issued balances out the number of securities in circulation: this is to avoid any overvoting in the General Meetings.

Hence, the distinction between core services and ancillary services is perfectly valid, as it draws a line between the CSD utility, stock-taking function that does not bear any financial risk on the one hand and the banking activities of intermediaries including custodians, that assume most of the risk and for which the sharing of financial risk across the range of competing players must be encouraged. Separation of activities should, in ANSA's view, be complemented by a separation of legal entities performing these respective tasks.

### ***- European Securities Law draft directive***

The French financial sector and the Issuers believe that the future SLD must encompass at least five main principles. These principles are widely applied throughout the European Union and they tie in with the European Union's political commitment to reinforcing market transparency and protection for end investors.

These five principles are:

1. The existence of real and direct rights for the final investor, who alone holds rights over the securities, regardless of the form: ownership, co-ownership, beneficial ownership, etc. For example, only a final investor acting directly or via a representative can sell the securities.
2. Respect for the '*acquis communautaire*' in terms of conflict of law rules. Three European directives (the Credit Institutions Winding-up Directive, the Settlement Finality Directive and the Financial Collateral Directive) stipulate that the law applicable to the security is the law of *the country where the account is maintained*, which is the principle recognised by the text of this consultation.
3. Refusal of the notions of "book-entry securities" or "account-held securities", which can give rise to the creation of a distinct asset at each level in the intermediation chain. Protecting the end investor requires that the asset credited to an account are securities<sup>6</sup> and not a "book-entry securities", to avoid any inflation of securities and over-voting in shareholders' meetings.

The future rule governing the effects of recording a security in an account must protect: the final investor, who alone can exercise the rights flowing from the

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Understood as financial instruments as listed in Annex I section C of directive 2004/39/CE, which are capable of being credited to a securities account.

securities, the custodian, which only has an obligation towards the investor and cannot be considered as a shareholder as it has no rights to the securities, and the issuer, which can easily identify its shareholders.

4. The "no debit without credit" principle, which is a *fundamental principle* of securities law in all European countries and which protects the integrity of the issue and avoids any inflation of securities. This rule is forbidden by the UNIDROIT Convention, and even in unofficial drafts of the directive that are currently being circulated.
5. The need for issuers to be able to identify their final investors throughout the investment chain, should they so wish. The future SLD should at least include the shareholder identification principle and a disclosure obligation on intermediaries in this respect, in accordance with domestic rules applicable under corporate law, regardless of whether the shares are held directly or indirectly.

#### **- Fiscal Stability**

During the ten past years, the French Shareholders, especially the long term investors, have not been treated as favourably as other tax payers. Moreover, fiscal rules change too often in France, which is not an attractive factor for the non-resident investors.

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