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The French Financial Markets Authority Takes a Stand on Climate Resolutions through Shareholder Dialogue

On 8 March 2023, the French Financial Markets Authority (*Autorité des Marchés Financiers* – AMF) issued a statement on the management of environmental and climate-related concerns within the framework of shareholder dialogue. It also published the recommendations of its Climate and Sustainable Finance Commission (CSFC) on climate resolutions, amplifying the debate.

The AMF is an independent public authority responsible for ensuring that savings invested in French financial products are protected and that investors are provided with adequate information. It also supervises the orderly operations of the markets.

On the eve of the 2023 Shareholders' Meeting season, the AMF has reminded companies of their obligation to release an annual non-financial performance statement (NFPS) in their management report. NFPS must notably include the environmental and climate change risks presented by the company's activities, the internal policies implemented to address them, and the associated indicators. The French independent authority adds that this information shall be presented in such a way that it is "*complete, consistent and comprehensible*".

The AMF went on to reiterate the provisions of the Corporate Sustainability Reporting Directive (CSRD), whose first application will occur in 2025. The text, adopted by the European co-legislators last December, specifies and considerably extends the scope of the reporting obligation contained within the Directive on the disclosure of non-financial information, dated 2014. Under the CSRD, companies whose shares are listed on a regulated market must communicate their plans (including financial and investment plans) to ensure that their business model and strategy are compatible with the transition to a sustainable economy, limiting global warming to 1.5 °C, with the objective of achieving climate neutrality by 2050 and, where relevant, the exposure of the company to



coal-, oil- and gas-related activities. The entry into force of the CSRD is accompanied by renewed reporting standards, as well as new executive regulations – which are all being currently drafted.

In addition to these legal obligations, the practice of Say on Climate (SoC) has developed, which refers to the adoption of a resolution on the company's climate strategy at the Shareholders' Meeting. It can be submitted by the company itself or initiated by the shareholders. Although still a minority practice among all listed companies, it is nonetheless generating a great deal of interest from certain committed investors. A "climate resolution" can relate to the SoC, insofar as the shareholders will require a vote on the validation of the company's climate strategy. A "climate resolution" can also serve other purposes: requesting information and/or transparency on specific issues, such as the reduction of GHG emissions or the rationale for certain projects.

In this evolving context, the AMF calls on listed companies to consider "*as of now*" the future requirements when developing their NFPS and their climate strategy. Concretely, listed companies are invited to strengthen the shareholder dialogue by presenting their climate strategy "*during each general meeting by including the items on the agenda with a debate*". The AMF is not in favor of a formal shareholder approval but considers this development advisable in the long run. Besides, the AMF points out that French Commercial Courts (CC) have the sole competence to assess the admissibility of draft climate resolutions whose inclusion in the agenda of a Shareholders' Meeting is requested by shareholders, as well as to assess the merits of a refusal by the Administrative Body.

On these aspects, the CSFC stands apart with a critical analysis, noting that shareholders are frustrated by the difficulty of filing climate resolutions in France and that the procedure of referring to a CC is deemed ineffective, as it leads to the *de facto* blocking of the presentation of these resolutions at the Shareholders' Meeting. Consequently, the CCFD recommends:

- Regarding climate resolutions initiated by shareholders: inclusion, as a principle, in the agenda of the Shareholders' Meeting; in case of refusal, mandatory referral to the AMF by the Administrative Body – implying a revision of the texts governing the role of the AMF; pending this modification, referral to the CC, not by the dissatisfied shareholders, but by the Administrative Body – which amounts to reversing the burden of the dispute.
- Regarding climate resolutions submitted by the Company: provide a framework and standardize the practice of SoC at European level (its mandatory nature, content, frequency, resources, and consequences of the vote).

The AMF has made it clear that the opinions expressed by the CSFC, whose mission is to help it carry out its regulatory and supervisory missions on issues related to sustainable finance (rating agencies, carbon neutrality, etc.), are not binding on the French Authority.

King & Spalding can assist companies on all these issues, in particular to inform them on the implementation of existing and future non-financial reporting obligations, as well as to assess the risks of civil and commercial litigation arising from such obligations.



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