Amafi
Association française des marchés financiers

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Welcome to the ICE Age: a vista of opportunities to be seized

Editorial

The 2014 Finance Bill to be debated by parliament contains two flagship measures aimed at ploughing savings into economic activity. The first is the PEA PME, an equity savings scheme in small and midsized enterprises, which has certain drawbacks (see page 6); the second is an amendment to the taxation of capital gains on the disposal of securities. The latter measure consists in introducing a rebate that increases with the length of the holding period, thus realigning the French tax scale with the European norm.

Are these measures sufficient? Certainly not, since our savings tax system continues to favour products that are liquid and risk-free. Yet, urgent action is needed since the first signs of a supposed return to growth are emerging and our ecosystem no longer has the resources to finance the recovery.

But even if tax incentives did exist, it would take time for people to reengage with the stock market and regain their appetite for financing economic activity. This is a good reason for not wasting time but also for finding other ways of harnessing the necessary funds without delay. Accordingly, the plan to set up a fund to finance the French economy, supported by AMAFI and based on the same model as the Pension Reserve Fund (FRR), is of vital importance. Moreover, it borders on the issue of funding our pension system.

AMAFI will continue to engage with matters of business financing and savings allocation, as it has done for many months, by making proposals and fostering discussion

Pierre de Lauzun
Chief Executive, AMAFI

Feature

The forthcoming merger with IntercontinentalExchange is an exciting prospect for NYSE Euronext. It also gives the Paris financial centre a unique opportunity to stem an inevitable decline and establish a market ecosystem that meets the needs of issuers and investors alike. For France, the tie-up is more than just a financial transaction. It's a matter of sovereignty.

The times they are a'changing

Gone are the days when every country had its own airline, currency and stock exchange. Globalisation and competition have prompted a string of mergers and alliances between some of the world's largest bourses, which were once mutualised or government owned.

Paris was a pioneer in this movement. In 2000 it joined forces with the Amsterdam and Brussels exchanges to form Euronext, which later acquired the London International Financial Futures and Options Exchange (LIFFE) and the Lisbon Stock Exchange. And in 2007 Euronext merged with the New York Stock Exchange to form NYSE Euronext, which billed itself as a marketplace with a truly global span.

Fast-forward a few years, however, and the environment has changed radically. Big-league exchanges are no longer the force they once were. They have been losing ground to electronic communication networks, specialised platforms and discount brokerages. These low-cost entrants have altered the business model by boiling it down to the basics, a trend paralleled in the airline industry. This period of consolidation saw a wave of mergers – not just NYSE and Euronext but also the London Stock Exchange and TMX (itself the result of an earlier merger between Toronto and Montreal), the Tokyo and Osaka exchanges and, more recently, BATS and Direct Edge.

Even after the merger with Euronext, NYSE continued to face stiff competition not only from rival exchanges such as Nasdaq OMX but also from so-called dark pool networks, which provide liquidity that is invisible to the public. In 2011 NYSE Euronext entered into talks to merge with Germany's Deutsche Börse to create what would have been the largest exchange in the world. The negotiations made progress, but ultimately the $9 billion deal was vetoed by European Union regulators.

Then, out of the blue, IntercontinentalExchange (ICE), a 12-year-old marketplace specialising in energy and commodity futures, announced it had agreed to acquire NYSE Euronext in an $8.2 billion cash and stock bid. The deal was pitched as creating a true multiproduct exchange offering both commodity and interest rate futures trading, while continuing to generate significant income from derivatives, securities transactions, market data and technology services. ICE's substantial clearing business is also included. Under the plan, ICE will sell some of Euronext's cash market activities, probably in mid-2014, but will hold onto LIFFE, the second-largest derivatives market in Europe.

One year on, the deal is moving into the final phase. The shareholders of both groups voted in favour of the merger. In June this year, the European Commission gave its unconditional approval on the grounds that the deal would not raise competition concerns since the two exchanges were not direct competitors in the markets concerned and would still face competition. And in August, the US Securities and Exchange Commission gave the go-ahead and approved a rule change to complete the transaction. All that remains now is to secure approval from national regulators.

The merger certainly epitomises the tectonic shift in the global securities industry over the past two decades. But it will also provide an opportunity for France to re-establish the importance of its entire market ecosystem at a time when staying local is vitally important.

The view from Paris

When NYSE Euronext came into being back in 2006, it took a number of initiatives to tackle the competition it was facing as a result of the paradigm shift in the industry. Logically, it focused much time and attention on major business issues, and the results were beneficial mainly to market participants. It boosted volumes by catering to firms' needs in terms of pricing and trading tools. Those efforts also paid off for large issuers, which were able to raise their international visibility still further. On the downside, though, less attention was paid to the market ecosystem, in which NYSE Euronext, key market players and major investors – all with distinctive cultural backgrounds – were operating under different legal constraints.

Under these circumstances, an alliance with another exchange or market operator may seem a step too far. But ICE's bid for NYSE Euronext is not simply another stage in an inevitable M&A process. It should be set against the importance for France of a market ecosystem that addresses the needs of issuers, investors and savers over the long term.

The facts are plain to see. As a financial centre the French capital has been losing headway: it currently ranks seventh in the Xinhua-Dow Jones International Financial Centres Development Index. The decline has been going on for at least five years as a result of several factors. First, the importance of a strong stock market ecosystem has been downplayed, despite new prudential regulations that have radically altered the country's financing model. Second, the French tax system does little or nothing to channel savings and investment into long-term business funding. Last, France places too much importance on its regulatory system while largely overlooking not only the fierce winds of international competition but also the migration of an increasing chunk of regulation to the European level. The upshot is that, in many areas, French-based market participants are subject to stricter constraints than their competitors and also to a harmful degree of instability.

The importance of staying local

Research has shown that small and medium sized businesses depend heavily on a locally based ecosystem because they struggle to raise funds in the international market. And even though large companies do not have the same problems of access, they too need a local system because economic shocks such as the eurozone crisis send foreign investors fleeing, thus undermining corporate growth strategies. This situation also raises the crucial question of sovereignty inasmuch as these same international investors hold over 46 per cent of the CAC 40 benchmark index.

Feature

More generally, these problems can certainly have an impact in terms of value added and employment. Past experience in the Nordic countries has shown that issuers seeking efficient services tend to gravitate to where their main suppliers are based, particularly if international investors are also operating in the same place. This in turn prompts other high value added players, such as lawyers, consultants and financial advisors, to up sticks.

The ICE-NYSE Euronext alliance is certainly a good opportunity to reverse the downtrend. But it must not be seen in isolation. To that end, the finance minister tasked Thierry Francq, former head of the securities regulator and currently advisor to the Director General of the Treasury, to carry out a study on the future of the Paris stock market (see Q&A).

The broader view

Society at large needs to acknowledge the industry's usefulness so that collective energies can be channelled into providing essential services to issuers and investors well into the future. Despite this, the prevailing tendency seems to be to deny the benefits provided by our country's financial industry and to totally overlook the wealth and jobs it creates. It is as if the industry's disappearance or relocation would not, after all, be too dramatic. For example, the disastrous consequences of the draft European directive implementing enhanced cooperation for a financial transaction tax are being totally ignored.
Yet the importance of rebuilding an efficient and competitive marketplace should not be underestimated, either economically or politically. From this vantage point, three key issues have to be addressed. First, clear decision-making in terms of regulation and tax treatment is needed so that savings and investment will be used to provide long-term financing for business. Second, a determined effort must be made by investing in the equity of critical market infrastructures to ensure they remain in France.
Last, appropriate regulations should be adopted to allow issuers and investors to take advantage of any shortcomings in offshore financial centres.

Unless appropriate steps are taken in time, the importance of Paris will continue to dwindle as the key functions that underpin its ecosystem move elsewhere. Seen from this perspective, the ICE/NYSE Euronext tie-up – the takeover of a major exchange by a young start-up is – is an excellent opportunity for the French finance industry to regain control of a vital infrastructure. And to maintain its sovereignty.

Anthony Bulger

Q&A with…

Thierry Francq, adviser to the Director General of the French Treasury

In what ways will the ICE/NYSE Euronext merger be beneficial?

In itself, the merger may have a strong impact in the US, but it will change little in the European landscape. Much more important is ICE's intention to split Euronext into two pieces, and to sell the continental part. This will reshuffle the cards in the organisation of markets in Europe, notably eurozone stock markets. Indeed, with regulatory integration in Europe and monetary integration in the eurozone, it obviously makes sense to think about the organisation of market infrastructure at European level. That is why, in the first half of the last decade, we witnessed a natural move towards the merger of historical national stock markets in Europe, alongside the creation of alternative pan-European trading platforms. This movement has unfortunately ground to a halt. The fact that the most advanced model of multinational federal management of regulated stock markets will have to freely invent its future, alongside the new European regulation governing post-trade activities, is a great opportunity for Europe in general, and the eurozone in particular, to build a rational system of market infrastructures. This will be a key component of eurozone competitiveness going forward.

More generally, will it have a positive impact on the Paris financial centre?

The merger does indeed offer an opportunity for Paris. First, as one of the most important financial centres in the eurozone, Paris could benefit from a new step forward in stock market integration within the zone. Second, the management of Euronext will be free to re-focus on developing services to the market ecosystem in Paris (as well as in Amsterdam, Brussels and Portugal) at a juncture where there is a need – and a political push through new regulations such as EMIR – for more centralised organisation of markets in bonds, derivatives and other financial instruments. But this potential will be realised only if two conditions are met. First, all the key players must show a collective ambition so that the financial centre can feed Euronext's strategy through a renewed capital structure and governance. Second, the government needs a carefully crafted posture and policy, at both national and European levels, that distinguishes between unnecessary and dangerous market activities, which are to be discouraged, and useful ones, to be supported. The recent law on the separation of banking activities shows this to be possible.

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International

IOSCO Annual Conference, Luxembourg, 15-19 September 2013

The International Organization of Securities Commissions (IOSCO), which brings together the world's securities regulators, held its 38th Annual Conference in Luxembourg from 15 to 19 September.

AMAFI, represented by Chief Executive Pierre de Lauzun and European and International Affairs Director Véronique Donnadieu, attended the organisation's public conference. They also took part in meetings organised by the International Council of Securities Associations between industry representatives and the chairs of the IOSCO committees in charge of technical work.

Véronique Donnadieu

ICSA Annual General Meeting, Paris, 13-15 April 2014

The International Council of Securities Associations (ICSA), an international body composed of organisations representing financial market professionals, organises its annual general meeting in the home country of one of its member organisations.

In 2014 AMAFI – one of ICSA's founder members – will be in charge of organising the event, to be held in Paris from 13 to 15 April 2014.

As usual, the AGM will consist of a private session for ICSA members only and an open session attended by politicians, regulators, companies and other stakeholders in the world of finance.

Véronique Donnadieu, Philippe Bouyoux

News

Europe

Review of the European system of financial supervision

The European Parliament and the Commission launched a series of consultations this spring on ways of amending the European system of financial supervision.

Responding, AMAFI pointed to a number of concerns *(AMAFI / 13-30* and *13-36)*. These included issues of consistency with the framework resulting from current and pending legislation. AMAFI also considers that the complexity of both the decision making process and the regulatory architecture hinders the introduction of rules that are clear, enforceable and applied uniformly throughout Europe. Moreover the problem is likely to persist for some time to come. The leeway inevitably left to national authorities for interpreting and implementing these rules is bound to be influenced by their legal system and culture. These aspects are particularly important to the way that AMAFI assesses the functioning and work of the European Securities and Markets Authority, which plays a central role in developing a consistent and harmonised operating environment

Véronique Donnadieu

Remuneration

Ahead of the entry into force of the fourth Capital Requirements Directive (CRD4), the European Banking Authority (EBA) has put out for consultation draft technical standards for identifying risk takers with respect to the planned provisions on remuneration (EBA/CP/2013/11).

In response, AMAFI stressed that the quantitative criteria proposed by the EBA, especially with regard to total remuneration exceeding €500,000, ought to be examined in light of the risks actually taken by the professionals concerned *(AMAFI / 13-39)*. It also pointed out that some of the activities carried out by AMAFI members could indeed give rise to potentially substantial remuneration but without exposing them to risks that would jeopardise their firms.

The EBA standards are not due to be finalised until March 2014. Accordingly, during discussions with the French authorities on CRD4 transposition, AMAFI emphasised that because of this late publication date, firms would be unable to make the necessary adjustments to their risk taker population for remuneration paid in 2014 in respect of 2013.

On another note, following the passage of French legislation regulating and ring-fencing banking activities, the government is preparing an order on variable remuneration caps for risk takers. The measure is expected to implement provisions equivalent to the CRD4, which impose a fixed-to-variable remuneration ratio of 1:1, which can be raised to 2:1 with shareholder approval.

Stéphanie Hubert

France

News

The AMF does its strategic planning

When it published its 2012 Annual Report, the AMF, France's securities regulator, also organised a public consultation on its outline strategy for the 2013-2016 period. The strategic plan has three main thrusts, each with different goals: foster safe and transparent markets in Europe, restore investor confidence, and promote financing for the economy. While AMAFI supports all the plan's proposals, it stresses the need to prioritise. In its consultation feedback *(AMAFI / 13-40)*, it argued for the need to promote business financing, encourage public debate on important issues connected with having a financial centre, and respond to the effects of European integration, which has allowed foreign firms to supply financial products and services under the European passport without applying the specific rules set by France.
On the topic of industry collaboration and the AMF's stated desire to radically reform its ties to the market, AMAFI underlined the pivotal role played by industry associations and the importance of consulting with them on issues of interest.

Bertrand de Saint Mars

Private bond placements (Euro PP market)

AMAFI continued discussions begun last winter about ways to promote the growth of private debt placements with institutional investors, chiefly by mid-tier firms. Legislation passed on 2 August 2013 made the regulatory framework for the new "Euro PP" private placement market much more flexible by extending the list of assets allowed to cover regulated liabilities in the insurance sector. Meanwhile, responding to the need to create a specific execution framework for this market, AMAFI set up a dedicated working group.

The group has been working hard to produce documents designed to build understanding and so promote growth in this area, always with the aim of providing input for broader debate. The opportunity to make a contribution has now come as AMAFI is pursuing its efforts within the market-wide group set up under the Banque de France with stakeholders, including institutional investors and issuers. The goal is to establish market tools and standards that will help establish the Euro PP as a standard-setting market in France and internationally.

Sylvie Dariosecq, Julien Perrier

Crowdfunding

AMAFI has recently been taking part in meetings organised by the Treasury and regulators to prepare a new legal framework for crowdfunding, an approach that some smaller firms are using to raise financing. The framework should establish a new professional category – crowdfunding investment adviser – as well as various measures that tweak the arrangements governing the scope of public securities offerings.
AMAFI takes a natural interest in these initiatives, which could address some specific needs at a time when France's funding model is evolving quickly. However, since the people approached in crowdfunding proposals are not necessarily being asked to support a charity, and since they may not have family or neighbourhood ties to the fund-raiser, the exemptions currently proposed for crowdfunding can only work if the funding amounts are tiny. Otherwise, the whole question would need to be reset within the broader context of the restrictions applicable to banks, investment firms and other more conventional participants, potentially with a view to revisiting the priorities that caused these restrictions – particularly investor protection requirements – to be put in place in the first place and stepped up over time.
With draft legislation expected to be put out to market consultation in the autumn, AMAFI will be devoting much of its attention to these issues.

Sylvie Dariosecq

SME equity savings schemes to make their debut

As announced by the finance minister at the end of August, the 2014 Budget Act is introducing a new kind of equity savings scheme for investments in small and mid-sized firms. Given the ramifications in terms of financing this category of business, AMAFI has been lobbying for months for the measure, which becomes effective 1 January 2014.
As AMAFI pointed out to public policymakers, the new type of scheme is set up differently from conventional equity savings schemes and also allows for bond investments, which are crucial to the financing needs of SMEs and mid-tier firms.
However, AMAFI does feel that the new framework falls short in a few areas. Bonds can be acquired through collective investment schemes only. The definition provided for eligible listed firms is not based on the EnterNext population of firms. Moreover, there are no up-front tax breaks, and since households tend to be highly risk averse, this means only those that have reached the investment limit for standard equity savings plans will opt for the new schemes.
AMAFI will keep a close eye on parliament's work on these points.

Emmanuel de Fournoux

News

Taxation

European financial transaction tax

The legal service of the European Council published an opinion on 6 September stating that the plan to introduce a European financial transaction tax (FTT) overreaches national jurisdiction and infringes EU treaties. From the latter angle, the key issue is the principle of residence: a financial institution, regardless of where it is located, is considered a resident of a state participating in enhanced cooperation if it carries out a financial transaction with or on behalf of a party located in such a state. The experts' opinion joins a growing chorus of criticism of the economic and financial dangers and legal uncertainty involved in the FTT project.

Although the idea of a European FTT is unlikely to be dropped, the measure will probably be refocused on the issuance principle, a move AMAFI deems necessary. That principle exists in different forms not only in France but also in Italy and the UK. The position that Germany will adopt in the wake of its recent general election will be key in shaping the future of the tax.

Eric Vacher

Preventing tax fraud and evasion

In 2009, amid a global economic and financial crisis, France drew up a blacklist of non-cooperative states and territories (NCSTs). Transactions carried out in an NCST or on behalf of someone based or tax-domiciled in one are subject to "deterrent tax treatment". The list was updated this summer with the addition of Jersey, the British Virgin Islands and Bermuda – the first time that territories with a financial centre have been included. The move will entail consequences for financial firms having equity interests or doing business in these territories *(AMAFI / 13-41).*

At present the NCST list is confined to ten states, but it could be expanded significantly in January 2016. Under draft legislation on the prevention of tax fraud and evasion and serious financial and economic crime, the criterion for distinguishing NCSTs from cooperative states will be automatic exchange of information. Likewise, at the Saint Petersburg summit in September 2013, the G20 members committed to making global automatic information exchange the new international standard. As from 2015 all G20 member states will automatically exchange tax information and apply this principle worldwide. Meanwhile, the European Commission is working on a plan, based on the US Foreign Account Tax Compliance Act, for multilateral automatic data exchange.

Eric Vacher

Amafi Highlights

New Members

Equitim, an investment firm whose main business is advisory and brokerage for structured products. Its senior managers are Damien Leclair (founder and statutory manager) and Jean-Christophe Charlin (joint statutory manager).

FundQuest Advisor, an investment firm whose main businesses are investment advice and any other form of general recommendation (manager selection, selection of funds or similar products, production of portfolio models, and risk due diligence) for professional investors and institutional clients in France and abroad. Its senior managers are Charlotte Dennery (Chairman) and Stéphane Pouchoulin (Chief Executive Officer).

UniCredit Bank AG Paris, a credit institution whose main business is the sale of financial products (bonds, interest rate products, derivatives) for institutional and corporate clients. Its senior managers are Jean-Christophe Galtier (Branch Manager) and Ottorino Menghini (Deputy Branch Manager).

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www.amafi.fr
Most of them, notably AMAFI's responses to public consultations, are freely available, but some are restricted to members only.

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