

The development of *Euro Private Placements* (Euro PP) in France

London, 10 September 2014

Euro Private Placement?

A **medium or long-term financing transaction** between a listed or unlisted company and a **limited number of institutional investors**, based on **deal-specific documentation** negotiated between the borrower and the investors, generally with the participation of an arranger

Terminology

– **Legal terminology:** « Private placement » / « Offer to the public »

- Offer to the public defined by the French Monetary and Financial Code, Article L.411-1

« An offer of securities to the public takes one of the following forms:

1. Communication to persons in any form and by any means, presenting sufficient information on the terms of the offer and the securities to be offered, so as to enable an investor to decide to purchase or subscribe to these securities.

2. The placing of securities through financial intermediaries.»

- Exemptions

- ✓ Total consideration below €5,000,000
- ✓ Denomination being at least equal to €100,000
- ✓ Qualified investors
- ✓ Limited circle of investors etc.

– **Market terminology:** « Private placement » / « Public market »

Meeting mid-sized companies' needs

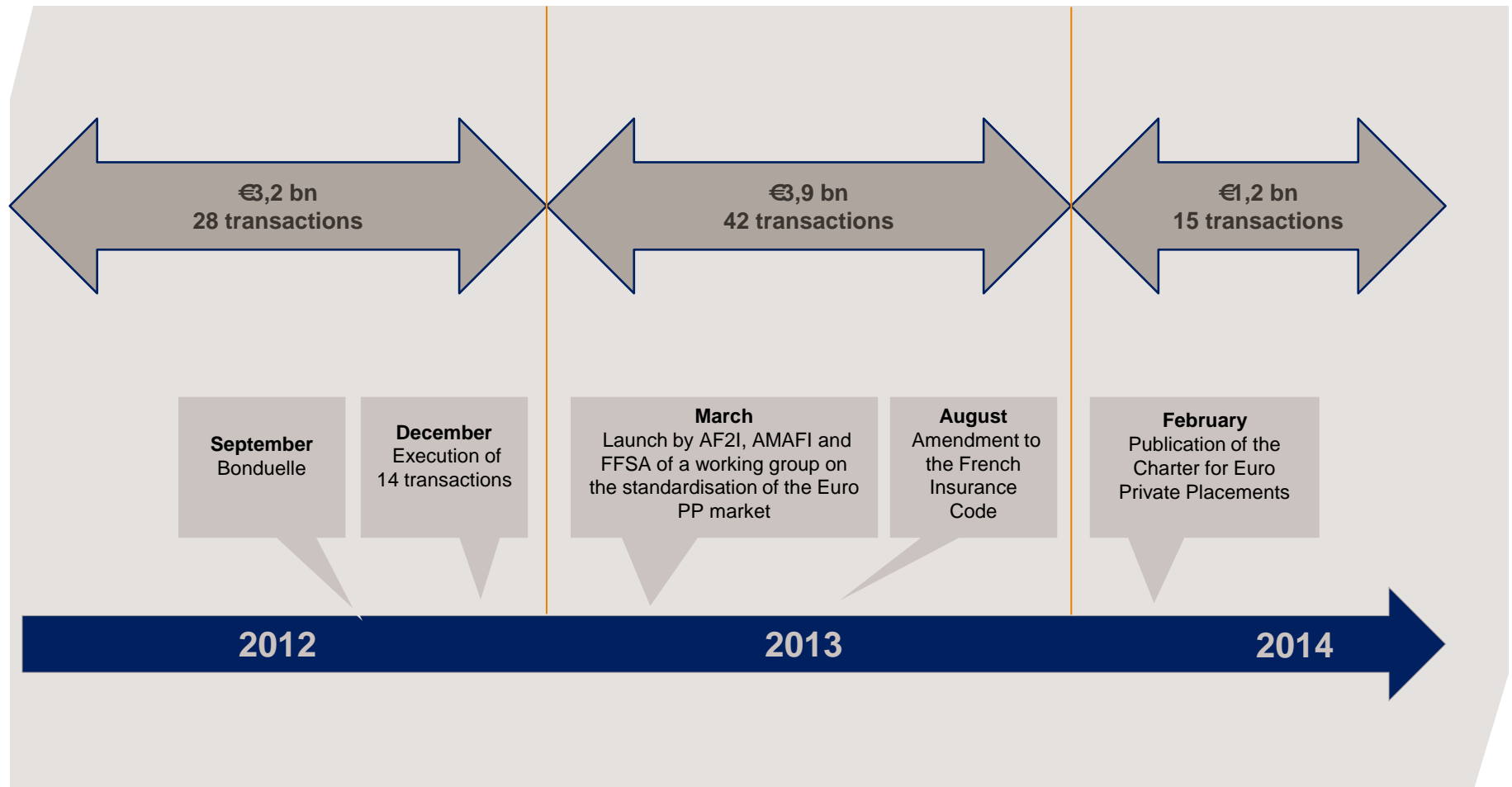
In the context of the financial crisis, with less financings from banks, more mid-sized companies seek to **diversify their funding sources**

- Prior to 2012, the **public bond market** was opened only to large rated companies issuing significant amounts
- Since 2012, **Euro Private Placements** provided an access to the bond market to unrated mid-cap issuers with limited financing needs

Inspirations

| | US Private Placement (USPP) | Schuldschein |
|---------------|---|--|
| | Mature markets | |
| Investors | U.S. “ <i>buy & hold</i> ” institutional investors | Mainly german institutional investors |
| Listing | No listing / No Prospectus | |
| Documentation | Standardized documentation: <ul style="list-style-type: none"> • <i>Note Purchase Agreement (standard form from the American College of Investment Counsel)</i> • <i>Information Memorandum</i> | Light documentation: <ul style="list-style-type: none"> • <i>Schuldschein Loan Agreement</i> • <i>Paying Agency Agreement</i> • <i>Schuldschein</i> |
| Governing Law | New York law | German law |

Euro Private Placements in France





Different formats

- **Bonds listed on a RM**
 - Application of the Prospectus, Transparency and Market Abuse Directives
 - Approval of the Prospectus by the regulator
- **Bonds listed on a MTF**
 - Prospectus/offering circular
 - Application of rules on market abuse
- **Unlisted bonds**
 - Confidentiality
- **Loans**
 - Confidentiality
 - Often with a minority co-investment by the arranger

Meeting investors' needs

Lack of liquidity

➤ « **Buy-and-hold** » investors

– More detailed **credit analysis**

– **Additional protections**

- Inspired by USPP and Schuldschein markets
- Investors seek to be « pari passu » with the banks of the issuer and benefit from the same protections

Prospectus?

| Markets | Applicable regulation | Public documentation | Approval |
|---------------------------|--|--|---------------------------|
| Euronext | Prospectus directive + Regulation 809/2004 | Prospectus | AMF |
| Luxembourg Stock Exchange | Prospectus directive + Regulation 809/2004 | Prospectus | CSSF |
| Alternext | Alternext market rules | Information document | NYSE Euronext |
| Euro MTF | Luxembourg Stock Exchange rules | LuxSE rules <u>or</u> Prospectus Directive (issuer's choice) | Luxembourg Stock Exchange |
| No listing | No public documentation (purely contractual) | | |

Listed Euro Private Placements: periodic information

| Markets | | Debt securities ≤ 100.000 € | | Debt securities ≥ 100.000 € | |
|--|---------------------------|-----------------------------|----------------------|-----------------------------|----------------------|
| | | Annual accounts | Semi annual accounts | Annual accounts | Semi annual accounts |
| Regulated Market <i>(Transparency Directive)</i> | Euronext | ✓ | ✓ | ✗ | ✗ |
| | Luxembourg Stock Exchange | ✓ | ✓ | ✗ | ✗ |
| Unregulated Market <i>(Market rules)</i> | Alternext | ✓ | ✓ | ✓ | ✓ |
| | Euro MTF | ✓ | ✗ | ✗ | ✗ |

Subject to more stringent contractual covenants likely to be required by investors

Listed Euro Private Placements: ongoing information

The Issuer shall communicate to the public any information relating to events affecting the listed bonds that might have an impact on their price

Unlisted Euro Private Placements

– Financial information?

- At the time of initial placement
- Periodic and ongoing information
 - Confidentiality Letter?
- Unlisted Euro Private Placement by a listed issuer

– *Due diligence?*

- *Due diligence* by the arranger?
- *Due diligence* by the investors?

Terms and conditions

1. Terms customary on the public bond market
2. Protections sought by investors
3. Protections sought by issuers

1. Terms customary on the public bond market

- Rank
- Change of control
- Events of default
- Tax gross up

2. Protections sought by investors

2.1. *Extended negative pledge*

– **Public bond markets:**

- *Negative pledge* limited to bond indebtedness

– **Euro Private Placement:**

- « *Extended* » *negative pledge* covering:
 - ✓ All indebtedness (bond and bank loans), with customary exceptions
 - ✓ Issuer / issuer and its principal subsidiaries / issuer and its subsidiaries

In the case of real estate companies, the negative pledge can be replaced and/or completed by a limitation on secured borrowings

Ex: Altaréa, Cofitem Cofimur, Eurosic, Foncière de Paris SIIC, Frey

2. Protections sought by investors

2.2. Financial covenants

– Gearing ratio

- Net debt / equity
- Measures the risk of the financial structure of the issuer

Ex: Agrial, Akka Technologies, Albioma, Altrad, Lactalis, Nexity, NGE, Orpéa, Soufflet, Touax, Ubisoft

– Leverage ratio

- Net debt / EBITDA
- Measures the ability of the company to repay its debt

Ex: Agrial, , Akka Technologies, Altran Technologies, Fromageries Bell, Korian, Lactalis, Nexity, Newrest, NGE, Orpéa, Sodiaal, Soufflet, Steria, Touax, Ubisoft.

– Interest Cover ratio

- EBITDA / Interest expense
- Measures the weight of the indebtedness of the issuer

Ex: Altaréa, Foncière Inéa, Frey, Eurosic, Lactalis, Nexity, Steria

2. Protections sought by investors

2.2. *Financial covenants*

– **Periodicity?**

- Annual / Semi-annual?
- Same as in bank loan documentation?

– **Information provided to bondholders?**

- Delivery of a compliance certificate by the Issuer
- Signed by the auditors?
- Role of the fiscal agent: control of the certificate or notification to bondholders without control?

2. Protections sought by investors

2.3. *Other covenants*

– **Provisions relating to the issuer's financial condition**

- Incurrence of new debt subject to compliance with certain ratios
- Distribution of dividends subject to compliance with certain ratios
- No restrictions on payment of dividends by subsidiaries
- Transactions with affiliates at market value

– **Provisions relating to the issuer's assets**

- No sale of significant assets (real estate, patents, subsidiaries, etc.)
- No new activities

– **Provisions relating to the issuer's legal situation**

- Form
- Merger, demerger, etc

2. Protections sought by investors

2.4. *Interest step-up*

- The rate of interest may increase in some circumstances
 - Assignment of a non-investment grade rating
Ex: Soufflet
 - Non-compliance with financial covenants
Ex: Akka Technologies, Id Valeurs, Laurent Perrier, Tessi, Vranken Pommery

3. Protections sought by issuers

3.1. *Fall-away*

Suspension of some of the protections provided to investors under certain circumstances (primarily when the issuer's credit quality improves)

- Issuer's undertakings that may be suspended
 - Extended negative pledge and/or
 - Financial covenants
- Circumstances triggering the fall-away clause
 - Assignment of an investment grade rating
 - Issue of a benchmark bond without the protections

Ex: Agrial, Akka Technologies, Orpéa, Altran Technologies, Fromageries Bel, Lactalis, Neopost, Soufflet, Ubisoft.

3. Protections sought by issuers

3.3. Call

Make-whole call

- Exercisable at any time
- At a make-whole amount

Make-whole amount: present value of the remaining scheduled payments of principal and interest until the initial maturity date, discounted on the basis of a benchmark yield, usually the French OAT or the German Bund, plus a spread

Ex: Adéo, Agrial, Akka Technologies, Bonduelle, Frey, Fromageries Bel, Korian, Lactalis, Neopost, Nexity, Newrest, NGE, Orpéa, Plastic Omnium, Steria.

Residual maturity call

- Call at par
- Exercisable X months (e.g. 3 months) prior to the initial maturity date

The French Charter for Euro Private Placements

Why?

- To enhance the standardisation of the three main steps of a private placement (preparation, execution and management until maturity)
- to facilitate the access of mid-sized companies to the Euro PP market and strengthen investors' confidence

How?

- Cross-market work carried out by a group of representatives of issuers, intermediaries, investors and law firms
- Commissioned by the Banque de France and the Paris IDF Chamber of Commerce and Industry
- Endorsed by the French Ministry of Economy

Who?

Supported by nine French professional organisations:

- *Association Française des Investisseurs Institutionnels (Af2i)*
- *Association Française des Marchés Financiers (AMAFI)*
- *Association Française des Trésoriers d'Entreprises (AFTE)*
- *Fédération Bancaire Française (FBF)*
- *Mouvement des entreprises de France (MEDEF)*
- *Association Française de la Gestion financière (AFG)*
- *Fédération Française des Sociétés d'Assurances (FFSA)*
- *Groupement des entreprises mutuelles d'assurance (GEMA)*
- Paris Europlace

Content of the Charter

A non-binding framework of best practices and recommendations, including on:

- the role of the different actors (issuers, investors and intermediaries)
- the key processes
- the determination of the terms of a transaction

Templates included in the Charter

Non-binding templates

- **Information Memorandum** Template
- Form of **Non-Disclosure Agreement**
- **Terms and Conditions** Template

Intended to constitute the starting point of the negotiations between the issuer and the investors, by defining the main clauses of the Euro PP and by identifying "key points" to consider for each clause

- **Arranger's Due Diligence Questionnaire** Template

Charter's publication and next steps

- Publication of the Charter in February 2014 (available in English and in French)
- *Autorité des marchés financiers* (AMF)'s position on the exclusion of Euro Private Placements from the scope of the rules on market soundings
- The Charter is intended to evolve to take into account the expectations of stakeholders and market developments
- At the European level: LMA and ICMA initiatives for a pan-European Charter/Guide
- Standard forms: loan and bond formats



Marc-Etienne Sébire

Partner

Head of Capital Markets

Avocat / Solicitor, England & Wales

T +33 1 47 38 40 36

Mob: +33 6 42 18 79 57

E marc-etienne.sebire@cms-bfl.com