Legal high Committee for
Financial markets of Paris

REPORT ON FINANCIAL PRODUCTS SOLD AS FRACTIONAL SHARES

of the Legal High Committee for Financial Markets of Paris

15 May 2025

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1. The AMF (French Financial Market Authority) has observed that financial intermediaries, often foreign and with varying legal status, are offering French investors financial products in various forms under the name of "*fractional shares*"[1] .

They offer younger retail investors, in particular, fractions of shares, which may, if applicable, be in French companies.

In so doing, they claim to be "*democratising*" equity investment, by allowing individual investors to invest in fractional shares in proportion to their resources.

2. Issuers have also shown an interest in these financial products, particularly as part of scheduled investment plans, as they enable younger retail investors to learn about equity investing and, ultimately, to acquire whole shares.

3. Based on this observation, the AMF asked the HCJP to set up a working group on fractional shares to clarify the nature and legal status of these financial products and potentially to issue recommendations on them.

4. This group was set up in December 2023.[2]

[1] Appendix 2 : AMF framework note.
[2] Appendix 1: Composition of the working group.

5. Article 13 of Law no. 2024-537 of 13 June 2024 "*aimed at increasing the financing of businesses and the attractiveness of France*" then authorised the Government to publish an ordinance, in the following terms:

"Under the conditions laid down in Article 38 of the Constitution, the Government is empowered to adopt by ordinance, within one year of the promulgation of this Act, any measure falling within the scope of the law enabling the creation of a regime for the splitting of financial instruments, in particular by:

1° Defining the terms and conditions for splitting a financial instrument;

2° Defining a system of ownership for the acquisition and holding of fractional financial instruments;

3° Extending the rights associated with different categories of financial instruments in the event of splitting;

4° Adapting the rules on the marketing and trading of financial instruments in order to clarify their application in the event of the splitting of a financial instrument;

5° Adapting the investor protection regime to take into account the splitting of financial instruments."

5. This report sets out the current state of the issue (I), then explores possible ways of share fractioning under French law (II). Finally, it makes recommendations (III).

1. THE CURRENT SITUATION

1.1. DEFINING THE SUBJECT[3]

6. Article L. 228-5 of the French Commercial Code (FCC) establishes the principle of indivisibility of shares, in these terms:

"With regard to the company, the shares are indivisible, subject to the application of Articles L. 225-110 and L. 225-118."

This principle has the following limitations:

- the share may be split between a bare owner and an usufructuary (art. L. 225-110 FCC);

- it may be undivided between several co-owners (art. L. 225-118 FCC).

7. This note does not consider these temperaments, nor the following other situations:

- The dismemberment of the share into an investment certificate and a voting right certificate (a possibility introduced by Law 83-1 of 3 January 1983 on the development of investments and the protection of savings, then abolished for the future by Ordinance 2004-604 of 24 June 2004);

- the division of the share into share fractions (art. L. 228-8 FCC);

- splitting the share into new shares by reducing its nominal value ("*split*") (art. L. 228-8 FCC);

- the "*split*" *of* the share on the occasion of a transaction affecting the company's capital (art. L. 228-29-1 FCC in particular);

[3] Appendix 3: Scoping note drawn up by Antoine Gaudemet, 27 February 2024.

- decimals of units or shares in undertakings for collective investment in transferable securities, including *Exchange Traded Funds* (ETFs).

8. In reality, the principle of indivisibility of shares is not at issue in the financial products that financial intermediaries offer to investors under the name of "*fractional shares*".

Despite its name, a fractional share is not a share split.

1.2. EXISTING "STOCK SPLIT" PROCESSES

9. In a fractional share, *the* "*buyer*" pays the "*seller*" financial intermediary a sum of money equal to a fraction of the value of a share.

In return, the selling financial intermediary grants the buyer at least two rights:

- the right to receive a sum of money equal to the same fraction of the dividend detached from the share (deposit and balance, if applicable);

- in the event of a "*sale*", the right to receive a sum of money equal to the same fraction of the value of the share.

10. For example, the buyer pays the selling financial intermediary the sum of 100 euros to acquire a fraction of a share in a company with a value of 1,000 euros.

In return, the financial intermediary grants the buyer at least two rights:

- the right to receive a sum of money equal to 10% of the dividend detached from the share (deposit and balance, if applicable);

- in the event of sale, the right to receive a sum of money equal to 10% of the value of the share.

For example, if the value of the share is 1,200 euros on the day the fractional share is sold, the buyer is entitled to receive the sum of 120 euros.

11. These rights are always present in a fractional share.

However, other rights are variable, in particular:

- the buyer's right to be entitled to the ownership of the entire underlying share, if he or she comes to hold a number of fractions of a share reconstituting the entire share;

- the buyer's right to receive a sum of money equal to a fraction of the liquidation surplus.

12. Whatever these rights may be, they arise from a contract between the selling financial intermediary and the buyer.

13. Based on the practice observed by the working group, this contract can be given several alternative legal classifications .[4]

14. 1°) It may be classified as a "*financial contract*" or, synonymously, as a "*financial futures instrument*" within the meaning of Article L. 211-1, III of the Monetary and Financial Code.

In particular, it is covered by the broad terms of 1° of I of Article D. 211-1 A of the Monetary and Financial Code, which stipulates :

"Options, futures, swaps, forward rate agreements and all other forward contracts relating to financial instruments [...], financial indices or financial measures that can be settled by physical delivery or in cash".

15. 2°) The rights to which this contract gives rise may, in addition, be recorded in an entry credited to an account opened in the name of the buyer in the books of the selling financial intermediary.

[4] Appendix 4: ESMA, Public Statement On derivatives on fractions of shares.

In this case, the alternative qualification of debt security may be considered.

Under article L. 213-0-1 of the French Monetary and Financial Code:

"Debt securities each represent a claim on the legal entity [...] that issues them".

This qualification is, moreover, the one adopted by the majority of legal writers with regard to *depositary receipts*, which are similar to fractional shares.

Mr Malassigné, for example, writes:

"Depositary receipts are, by default, debt securities under French law. This classification appears to be entirely appropriate, since holders of depositary receipts have a set of rights with regard to the so-called "depositary" bank. In particular, they may require the bank to pay them the dividends distributed by the issuer of the shares represented, to translate for them the information issued by the issuer and, where applicable, to do its utmost to exercise the voting rights attached to the said shares in the manner they have requested" (*V. Malassigné, Bull Joly Bourse, Jan-Feb 2017, No. 31*).

16. However, in order to apply the same qualification to fractional shares, we have to accept that they can be :

- issued individually in the relationship between the selling financial intermediary and the buyer, as are negotiable debt securities (art. L. 213-1 of the Monetary and Financial Code) and not collectively, as are transferable securities (art. L. 228-1 FCC) ; and

- negotiable only by transfer from an account in the books of the selling financial intermediary to another account in the same books or in the books of another financial intermediary affiliated to the selling financial intermediary.

17. In France, a financial intermediary, Shares Financial Assets, has been authorised by the ACPR (French Prudential Supervision and Resolution Authority) as an investment firm, to carry out the activity of receiving and transmitting buy and sell orders for fractional shares

admitted to trading on the US NYSE and NASDAQ markets in the, which are classified, in that context, as debt securities.

This financial intermediary was heard by the working group.[5]

18. 3°) Under certain foreign laws, the contract concluded between the selling financial intermediary and the buyer organises a joint ownership (*indivision)*[6] of the share in accordance with local law.

The selling financial intermediary acquires a share and then grants the buyer a share of undivided rights in that share.

The buyer has a real right to the undivided share.

This situation is characteristic of German and Dutch law in particular.

The working group thus heard from the following financial intermediaries:

- Upvest[7] , Scalable Capital and Trade Republic, regarding German law;

- Bux[8] , regarding Dutch law.

19. 4°) Alternatively, the contract concluded between the selling financial intermediary and the purchaser may set up a *trust* or a management trust, depending on local law.

The selling financial intermediary, *trustee* or fiduciary, holds a share in ownership on behalf of several purchasers, beneficiaries.

Purchasers would have a personal right of restitution against the selling financial intermediary.

[5] Appendix 5: Presentation by Shares Company.
[6] Joint ownership or co-ownership. As co-ownership is considered to be a form of joint ownership, only the term "joint ownership" will be used in this report.
[7] Appendix 6: Presentation by Upvest.
[8] Appendix 7: Presentation by BUX.

A recent circular from the Cypriot market authority (CYSEC) documents this new form of stock split.[9]

However, the working group was unable to identify any financial intermediaries using this method.

20. 5°) Lastly, the AMF reports that tokens representing fractions of a share are being marketed, on institutional crypto-asset trading platforms, under the name "*stock tokens*".[10]

These tokens have the characteristics of financial instruments.

They would therefore not be crypto-assets subject to Regulation 2023/1114 of the European Parliament and of the Council of 31 May 2023 on markets in crypto-assets pursuant to Article 2(4)(a) of the same Regulation.

Moreover, the fact that they are represented by an entry in a distributed register, within the meaning of Article L. 226-1 d) of the French Monetary and Financial Code, does not alter their classification as financial instruments, by virtue of the "*neutrality principle*" applied by the same regulation.

[9] Appendix 8: CySEC, Circular on Fractionalisation of Shares, 26 September 2024.
[10] Appendix 2, AMF framework note.

1.3. RISKS ASSOCIATED WITH "STOCK SPLIT" PROCESSES

21. Whatever legal form they take, fractional shares are a source of several risks for the parties involved.

22. 1°) The buyer of a fractional share bears three risks:

- a market risk: the value of the underlying share and, with it, of the fraction of the share acquired may fall;

- counterparty risk: the selling financial intermediary may default on payment of the sums of money promised to the buyer;

- a risk resulting from reduced liquidity: a fraction of a share cannot in principle be traded, other than on a platform managed for this purpose by the selling financial intermediary, but can be liquidated; in the latter case, the selling financial intermediary must pay the buyer a sum of money equal to the value of the share in relation to the fraction of the share liquidated; it is still possible that the selling financial intermediary defaults on payment of this sum of money.

23. However, these risks can be mitigated by a number of techniques, which must be taken into account in the analysis:

- the selling financial intermediary may be obliged to acquire the entire underlying share and retain ownership thereof;

- it may be obliged to allocate ownership of the entire underlying share to the buyer, if the latter comes to hold a number of fractions of a share reconstituting the entire share;

- it may be obliged to join a securities guarantee scheme in respect of the fractional shares it sells, such as the *Securities Investor Protection Corporation* in the United States.

24. Above all, the buyer of a fractional share runs the risk of being misinformed:

- About the characteristics of the financial product purchased: as we have seen, a fractional share is not a division of a share; in particular, it does not usually confer on its purchaser the right to vote at general shareholders meetings of the company issuing the underlying share; in this respect, the name "*fractional share*" is misleading;

- About the costs associated with the acquisition of the financial product purchased: it has been observed that these costs can sometimes be unclear or even abnormally high.

25. 2°) The financial intermediary selling a fraction of a share also bears a market risk: the value of the underlying share and, with it, of the fraction of the share sold may rise.

This risk means that it may have to tie up equity.

To mitigate this, the selling financial intermediary may acquire the entire underlying share or conclude financial contracts or financial futures on it.

If the underlying share is admitted to trading on a regulated market, the shareholder is required, in this context, to declare the crossing of a threshold and the intention to do so, in accordance with Articles L. 233-7 et seq. of the French Commercial Code.

26. In addition, the question was raised within the working group as to whether the selling financial intermediary should be required to publish a voting policy describing the conditions under which it intends to exercise the voting right, or even the other rights, attached to this share.

The view was also expressed that, in the event that the selling financial intermediary did not publish a voting policy, it should abstain from exercising the voting right, or the other rights, attached to the underlying share.

27. 3°) Finally, the issuer of the underlying share of a fractional share runs two risks:

- it may be unaware that financial intermediaries are selling fractions of shares whose underlying share is the share it has issued;

- and even if it is aware, it may not approve the situation.

28. Issuers, however, have indicated to the working group that they are in favour of financial intermediaries selling fractions of shares whose underlying share is the share they have issued, in particular in the form of a share of undivided rights.

This would enable financial intermediaries that offer programmed investment plans in ETFs, which are popular with younger retail investors, to also offer programmed investment plans in shares.

Retail investors would thus have the opportunity to invest directly in the real economy over time and become shareholders in the company issuing the underlying share, when they came to hold a number of fractions of a share reconstituting the whole share.

29. In this case, however, the same issuers also indicated that they were not always sure of being able to identify the purchasers of these fractional shares.

Two issues in particular were raised:

- Is the purchaser of a fractional share required to declare the crossing of a threshold and the intention to do so under Articles L. 233-7 et seq. of the French Commercial Code?

- can it be identified by the issuer, as part of the procedure for identifying holders of bearer shares set out in Article L. 228-2 of the same Code, as some issuers would like to do, to start creating a link with the future shareholder, and even said that they have experimented it?

30. The general answer to these questions was that :

- the purchaser of a fraction of a share could be required to declare the crossing of a threshold and declare his intention, in the assimilation cases provided for in Article L. 233-9, 4° or 4° bis, of the French Commercial Code, in the exceptional situation where he would cross a declaratory threshold.

- the purchaser of a fractional share cannot in principle be identified by the issuer as part of the procedure for identifying holders of bearer shares, for several reasons :

    - as it currently stands, the procedure for identifying holders of bearer shares set out in Article L. 228-2 of the French Commercial Code can only be used to identify holders of a whole number of shares;

    - moreover, the financial intermediary selling the fractional share is not necessarily one of the "*intermediaries*" listed exhaustively in Article L. 228-2 of the French Commercial Code;

    - he may not disclose to the issuer the identity of the purchaser of a fractional share without a legal basis authorising him to waive professional confidentiality.

31. In addition to these specific observations, the working group noted more generally that fractional shares raise a risk to market transparency, particularly because their name is misleading (they are not divisions of the share) and they may be offered without the issuer's knowledge of the underlying share, or even against the issuer's wishes.

1.4. ISSUES ASSOCIATED WITH "STOCK SPLIT" PROCESSES

32. What are the issues involved in developing fractional shares?

33. 1°) First and foremost, the competitiveness of the Financial Markets of Paris is at stake.

At present, most of the financial intermediaries offering fractional shares to French investors are foreign, particularly German and Dutch.

They offer French investors fractional shares, which may, where applicable, be in French companies.

34. The framework allowing French financial intermediaries to offer fractional shares should therefore be clarified so as not to harm their competitiveness.

The explanatory statement of the Government's amendment leading to Article 13 of Law 2024-537 of 13 June 2024 "*aimed at increasing the financing of businesses and the attractiveness of France*" expresses this in the following terms:

"The development of a French regime for splitting financial instruments is also a competitive issue for the financial sector: this option already exists in some European countries (especially Germany and the Netherlands), which allows non-French players to offer fractional shares under the freedom to provide services regime, while the players themselves are deprived of this right. The purpose of creating a splitting regime is therefore to enable the development of a range of French products, under the supervision of the Autorité des marchés financiers".

In doing so :

- French retail investors, particularly younger investors, would be encouraged to invest in equities;

- the equity needs of French companies would be better met, whenever the fractional shares offered imply the purchase by the selling financial intermediary of the underlying share.

35. 2°) There are also issues related to negotiability and the "*post-market*".[11]

36. On the one hand, as we have already seen, a fraction of a share can only be traded on a platform that may be managed for this purpose by the selling financial intermediary.

Otherwise, it must be liquidated between the buyer and the selling financial intermediary.

When a fraction of a share can actually be traded, it is therefore on a platform set up for this purpose by the selling financial intermediary.

This platform is separate from the underlying share market.

The buy and sell orders executed on this market do not contribute to the formation of the order book of this market.

37. On the other hand, the financial intermediary selling a fraction of a share, who acquires or sells the underlying share, often does so internally, outside a regulated market or a multilateral trading facility for financial instruments.

This is particularly true of American financial intermediaries, although less so of European financial intermediaries at present.

38. As a result, fractional shares contribute little to the formation of the central order book for the underlying share, and therefore to the correct formation of the share price.

One of the development challenges, identified by Euronext, is the participation of financial intermediaries offering fractional shares in the central order book for the underlying shares, in the interest of the market.

[11] Appendix 9: Note drawn up by France Post Marché, " Financial instruments split regime", 11 October 2024.

39. 3°) Lastly, the French Treasury raised an additional issue relating to the tax treatment of fractional shares during the working group's work.

In particular, it will be necessary to determine whether, and to what extent, financial products sold under the name of "*fractions of shares*", whose underlying shares are eligible for the Equity Savings Plan (*Plan d'Épargne en Actions)*[12], in particular the Young Adults Equity Savings Plan (*Plan d'Épargne en Actions Jeune)*, could also be eligible for this plan.

This eligibility would clearly support the development of the offering of fractional share by French intermediaries.

40. In this regard, the working group noted that:

- Article 4 of Act no. 2024-537 of 13 June 2024 "*aimed at increasing the financing of businesses and the attractiveness of France*" made "*subscription rights or warrants attached*" to shares eligible for the Stock Savings Plan by amending article L. 221-31 of the Monetary and Financial Code;

- Article 92, II of the Finance Act 2025-127 of 14 February 2025 then limited eligibility to "the *preferential rights referred to in Article L. 225-132 of the French Commercial Code, where they meet the following conditions: - these securities are admitted to trading on a regulated market within the meaning of Articles L. 421-1 or L. 422-1 of this Code or on a multilateral trading facility within the meaning of Articles L. 424-1 or L. 424-9*", again by amending Article L. 221-31 of the Monetary and Financial Code;

- in the United Kingdom, *Regulations* of 14 October 2024 made certain forms of fractional share eligible for the *Individual Savings Account*, the UK equivalent of the Stock Savings Plan.

[12] Stock Savings Plan (Plan d'Epargne en actions), for purposes of this report, is a specific type of stock savings plan with a favorable tax treatment attached to the securities in the plan.

2. POSSIBLE METHODS FOR SHARE FRACTIONING

2.1. GUARANTEES TO BE PROVIDED IN ANY EVENT

41. At the end of its deliberations, the working group considered that financial products sold under the name of "*fractional shares*", whatever their legal form, should satisfy several conditions which together form a sort of primary regime for fractional shares.

42. 1°) Firstly, the purchaser of a financial product sold as a "*fractional share*" should first receive accurate, clear and non-misleading information on :

- the legal status and characteristics of the product purchased: this information should mention that a "*fractional share*" is not a share split, so that the purchaser does not acquire the status of a shareholder of the company issuing the underlying share by virtue of his or her purchase ; in particular, he or she does not acquire the right to vote at shareholders meetings, nor the other rights attached to this share (right to dividends, preferential subscription right to capital increases, etc.). However, the working group did not consider it appropriate to prohibit the use of the term "*fractional share*", which has become accepted in practice;

- the costs associated with the product purchased ;

- the legal status of the selling financial intermediary ;

- risks to the buyer :

    - market risk: the value of the underlying share and, with it, that of the fraction of the share purchased may fall;

    - counterparty risk: the selling financial intermediary may default on payment of the sums of money promised to the buyer;

    - the risk resulting from reduced liquidity: the fraction of the share purchased cannot in principle be traded, other than on a platform that may be managed

for this purpose by the selling financial intermediary, but must be liquidated; in the latter case, the selling financial intermediary must pay the purchaser a sum of money equal to the value of the share in relation to the fraction of the share liquidated; it may also default on payment of this sum of money.

- the obligation on the selling financial intermediary to acquire and retain ownership of the entire underlying share;

- the conditions under which the selling financial intermediary intends to exercise the rights attached to the underlying share;

- the obligation on the selling financial intermediary to allocate ownership of the entire underlying share to the buyer, when the latter comes to hold a number of fractions of a share reconstituting the whole share;

- whether or not the product purchased is eligible for the Stock Savings Plan.

- whether or not the product purchased is eligible for the securities guarantee mechanism provided for in articles L. 322-1 et seq. of the Monetary and Financial Code.

43. This information should be provided by the selling financial intermediary or distributor to the purchaser in the form of general terms and conditions prior to the first purchase of a financial product sold as a fractional share.

It would benefit from being presented in such a way as to ensure that it is properly understandable and comparable between the different forms of fractional share, on the one hand, and between the different offers of the selling financial intermediaries, on the other.

44. 2°) Secondly, the financial intermediary selling a financial product denominated as a fractional share should be required to acquire and retain ownership of the entire underlying share.

The selling financial intermediary may hold the underlying share by itself, possibly credited to a special purpose account provided for by law, or through a third party, in the event that it is not authorised to provide the proprietary trading investment service.

The working group felt indeed that this name was only legitimate if the selling financial intermediary acquires the underlying share and is obliged to transfer ownership of it to the buyer, when the latter comes to hold a number of fractions of a share reconstituting the whole share.

45. The obligation thus imposed on the selling financial intermediary would moreover be likely to support the satisfaction of the capital funding needs of French companies and even to participate in the central order book for the underlying share, in the interest of the market.

46. However, it was noted that :

- the financial intermediary selling a fraction of a share, because it is exposed to the risk of an increase in the value of the underlying share, is encouraged, in practice, to acquire this share or to enter into financial contracts or financial futures on it, in order to mitigate this risk ;

- the obligation on French financial intermediaries selling fractional shares to acquire the entire underlying share could put them at a disadvantage compared to foreign financial intermediaries, who would not be required to do so but could nevertheless offer fractional shares, in particular under the freedom to provide services.

47. 3°) Thirdly and finally, the financial intermediary selling a financial product sold as a fractional share should be required to allocate ownership of the entire underlying share to the purchaser when the latter comes to hold, in the books of the selling financial intermediary, a number of fractional shares reconstituting the entire share.

Similarly, the working group felt that this name was only legitimate if the selling financial intermediary is obliged to allocate ownership of the entire underlying share to the buyer, when the latter comes to hold a number of fractions of a share reconstituting the entire share.

In support of this position, it was also pointed out that :

- the purchase of a fraction should be aimed towards the acquisition of the entire underlying share and the exercise of the prerogatives associated with the status of shareholder, in particular the right to vote at shareholders meetings of the issuing company, if the aim is really to encourage "*investment in shares*" by individual investors; consequently, the absence of exercise of the rights attached to the underlying share by the purchaser of a fraction of a share can only be transitory;

- the risks associated with the stock split for the buyer, the selling financial intermediary and the issuer of the underlying share would thus be limited to this transitional period; they would cease as soon as the ownership of the entire underlying share was allocated to the buyer ;

- a fraction of a share can only be eligible for the Stock Savings Plan if the selling financial intermediary is obliged to allocate ownership of the whole underlying share to the buyer, when the latter comes to hold a number of fractions of a share reconstituting the whole share.

2.2. AVAILABLE "STOCK SPLIT" PROCESSES

48. 1°) In return for respecting this primary regime, the working group considered that financial intermediaries should be free to choose the legal form of financial products sold as "*fractional shares*", within the limits of the legal qualifications available.

49. In this regard, the working group noted that :

- In other countries, the offering of fractional shares has developed on the basis of established law, particularly in Germany and the Netherlands, where the system of joint ownership is favorable to this practice;

- In France, too, this service has been developed for the time on the basis of existing law, particularly within the framework of the service of receiving and transmitting buy and sell orders on behalf of third parties, delivered by Shares Financial Assets and relating to debt securities.

50. Therefore, French financial intermediaries should be able to continue to offer, under the name of fractional shares, financial products in the form of debt securities, for example according to the existing Shares financial assets model or according to the certificate model promoted by Euronext.

However, they should not be able to offer under the same name financial products in the form of financial contracts, financial futures or rights over a trustee in a management trust.

The working group considered that the latter types of financial product were too far removed from the holding of the underlying share to be legitimately offered under the name of fractional shares.

51. 2°) In addition, the working group considered that two additional forms could possibly be accommodated under French law, in order to encourage the offering of fractions of shares by French financial intermediaries, or even their participation in the central order book for the underlying shares.

52. Firstly, the use of joint ownership could be encouraged, in particular to place French financial intermediaries in a situation equivalent to that of German and Dutch financial intermediaries.

As French law currently stands, the general system of joint ownership, even when supplemented by special provisions specific to shares (art. L. 225-110 FCC), does not appear to be suitable for the offering of fractions of shares.

Article 815 of the Civil Code, in particular, was identified by the working group as a potential obstacle to this offer.

It establishes in principle the right of any joint owner to bring about the partition of the joint ownership, in the following terms:

"No one may be forced to remain in joint ownership and partition may always be brought about, unless it has been suspended by judgment or agreement".

Furthermore, the positive law applicable to the exercise of voting rights attached to shares held in joint ownership does not necessarily appear to be adapted to the context of a stock split.

Indeed, Article L. 225-110, paragraph 2, of the French Commercial Code provides that joint owners of undivided shares must be represented at general meetings by one of them or by a single proxy, repeating in this the principle set out in the second paragraph of article 1844 of the French Civil Code.

However, in the light of this requirement, the lower courts have been able to consider that the proxy's mission is to obtain the opinion of the joint owners prior to the votes, and not

their agreement, and thus to act only in the interest of the joint ownership, subject to the question of his possible professional liability. [13]

In other words, the representative of the joint ownership cannot be required to follow the voting instructions of the co-owners, although he must obtain them beforehand.

53. The possibility of creating a special joint ownership regime for fractional shares could therefore be explored.

Such schemes already exist, particularly in financial matters.

Article L. 214-8 of the Monetary and Financial Code, in particular, sets out a special joint ownership regime for investment funds:

"Subject to the provisions of article L. 214-8-7, the mutual fund, which does not have legal personality, is a co-ownership of financial instruments and deposits, the units of which are issued and redeemed at the request, as the case may be, of subscribers or unitholders at the net asset value increased or decreased, as the case may be, by fees and commissions. The provisions of the Civil Code relating to joint ownership and those of articles 1871 to 1873 of the same Code relating to joint ventures do not apply to mutual funds

The units may be admitted to trading on a regulated market or a multilateral trading facility under conditions laid down by decree.

The General Regulations of the Autorité des marchés financiers set the conditions for the subscription, sale and redemption of units issued by the mutual fund.

54. Euronext then told the working group that it was considering a stock split solution based on the existing offer of French-registered certificates.

55. Certificates are financial products, issued in the form of debt securities by financial institutions, which have been admitted to trading for over thirty years.

[13] Court of Appeal of Versailles, 31 March 2022, no. 21/05568.

They allow you to take a position on an underlying asset, such as a share, without actually buying it directly.

Each certificate has a ratio (or parity), defined at issue by the issuer.

A ratio of 1,000:1 means that it takes 1,000 certificates to replicate the equivalent of one underlying asset.

In other words, by buying a single certificate, the buyer replicates the purchase of one thousandth of the underlying asset.

The certificates themselves can only be purchased in whole units.

However, depending on the number of certificates purchased, which may be lower than the ratio defined by the issuer, it is possible to replicate the fractional purchase of the underlying asset, without holding the underlying asset on a fractional basis.

56. This technique, which is already familiar to the Financial Markets of Paris, could be a possible way of carrying out a stock split.

However, it would need to be adjusted in the light of the objectives pursued by the working group, since Euronext still states, with regard to this technique, that[14] :

- The certificates that provide for the payment to the buyer of a sum of money equal to a fraction of the dividend detached from the share adjusted to the defined ratio are rare in practice;

- The certificates do not give the purchaser the right to vote at shareholders meetings of the company issuing the underlying share;

[14] Appendix 10: Note drawn up by Euronext, "Replication of fractional trading with certificates", 11 April 2025.

- when the buyer comes to hold a number of certificates reconstituting the whole share, the selling financial intermediary is not usually obliged to allocate ownership of the whole underlying share to the buyer : it is up to the buyer to request this allocation.

However, this request could potentially be exercised in advance by the buyer in the contract with the selling financial intermediary.

2.3. POSSIBLE TAX TREATMENT OF STOCK SPLIT

57. In return for respecting this same primary regime, the working group considered that the financial products in question could be eligible for the Stock Savings Plan, in particular the Young Stock Savings Plan, when the underlying share of these products is a share that is itself eligible for this plan, and on condition that these products are registered in an account.

58. 1°) Article L. 221-31 of the French Monetary and Financial Code sets out an exhaustive list of assets eligible for the Stock Savings Plan.

As the text currently stands, only whole shares, units and securities are covered. The tax authorities therefore deduce that shares, units and securities which are split up or undivided are not eligible for the PEA (BOI-RPPM-RCM-40-50-10, nos. 40 and 50; BOI-RPPM-RCM-40-50-20-20, nos. 590 and 600).

Article L. 221-31 of the Monetary and Financial Code could therefore be amended to provide that financial products that comply the conditions of the primary regime and are registered in an account are eligible for the Stock Savings Plan, when their underlying share is a share that is itself eligible for the Stock Savings Plan.

This would encourage financial intermediaries to offer more fractional shares.

The equity needs of French companies would also be better met.

59. 2°) The rules governing the operation of the Stock Savings Plan, on the other hand, should not be changed.

In particular:

- fractional shares should be purchased by using a sum of money previously credited to the cash account of the plan;

- Fractions of shares purchased should be credited to the securities account of the plan and then managed and administered by the financial intermediary holding the plan;

- sums paid by financial intermediaries selling fractions of shares should be credited to the securities account of the plan.

3. RECOMMENDATIONS

60. In light of the above, the working group makes the following recommendations.

Recommendation No. 1

61. Financial products sold as fractional shares should satisfy three cumulative conditions that together form the primary regime for fractional shares.

62. 1°) Firstly, the purchaser of a financial product sold as a fractional share should first receive accurate, clear and non-misleading information on :

- the legal status and characteristics of the product purchased: this information should mention that a fractional share is not a division of the share, so that the purchaser does not acquire the status of shareholder of the company issuing the underlying share by virtue of his or her purchase; in particular, he or she does not acquire the right to vote at general meetings of shareholders, nor the other rights attached to this share (right to a dividend, right to a liquidation bonus, preferential subscription right to a capital increase, etc.). However, the working group did not consider it appropriate to prohibit the use of the term "fractional share", which has become accepted in practice;

- the costs associated with the product purchased ;

- the legal status of the selling financial intermediary ;

- risks to the buyer :

    - market risk: the value of the underlying share and, with it, that of the fraction of the share purchased may fall;

    - counterparty risk: the selling financial intermediary may default on payment of the sums of money promised to the buyer;

- the risk resulting from reduced liquidity: the fraction of the share purchased cannot in principle be traded, other than on a platform that may be managed for this purpose by the selling financial intermediary, but must be liquidated; in the latter case, the selling financial intermediary must pay the purchaser a sum of money equal to the value of the share in relation to the fraction of the share liquidated ; it may also default on payment of this sum of money.

- the obligation on the selling financial intermediary to acquire and retain ownership of the entire underlying share: the selling financial intermediary could hold the underlying share by itself, possibly credited to a special purpose account provided for by law, or through a third party, in the event that the selling financial intermediary is not authorised to provide the proprietary trading investment service;

- the conditions under which the selling financial intermediary intends to exercise the rights attached to the underlying share;

- the obligation on the selling financial intermediary to allocate ownership of the entire underlying share to the buyer, if the latter comes to hold, in the books of the selling financial intermediary, a number of fractions of a share reconstituting the whole share;

- whether or not the product purchased is eligible for the Stock Savings Plan;

- whether or not the product purchased is eligible for the securities guarantee mechanism provided for in articles L. 322-1 et seq. of the Monetary and Financial Code;

63. This information should be provided by the selling financial intermediary or distributor to the purchaser in the form of general terms and conditions prior to the first purchase of a financial product sold as a fractional share.

64. It would benefit from being presented in such a way as to ensure that it is properly understandable and comparable between the different forms of fractional share, on the one hand, and between the different offers of the selling financial intermediaries, on the other.

65. 2°) Secondly, the financial intermediary selling a financial product denominated as a fractional share should be required to acquire and retain ownership of the entire underlying share.

66. The selling financial intermediary may hold the underlying shares by itself, possibly credited to a special purpose account provided for by law, or through a third party, in the event that the selling financial intermediary is not authorised to provide the proprietary trading investment service.

67. 3°) Thirdly and finally, the financial intermediary selling a financial product sold as a fractional share should be required to allocate ownership of the whole underlying share to the purchaser when the latter comes to hold, in the books of the selling financial intermediary, a number of fractional shares reconstituting the entire share.

Recommendation No. 2

68. In return for respecting this primary regime, financial intermediaries should be free to choose the legal form of financial products sold as "*fractional shares*", within the limits of the legal qualifications available.

In the future, they should be able to continue to offer, under this name, financial products in the form of debt securities, for example according to the existing Shares financial assets model or according to the certificate model promoted by Euronext.

On the other hand, they should not be able to offer, under the name of fractional shares, financial products in the form of financial contracts, financial futures or rights over a trustee in a management trust.

Recommendation No. 3

69. Two additional legal forms could possibly be introduced under French law to encourage French financial intermediaries to offer fractions of shares, or even to participate in the central order book for the underlying shares.

The use of joint ownership could be considered, in particular to place French financial intermediaries in a position equivalent to that of German and Dutch financial intermediaries.

Euronext is currently promoting a stock-split solution based on the existing offer of French-registered certificates.

Recommendation No. 4

70. In return for compliance with this same primary regime, the working group considered that the financial products in question could be eligible for the Stock Savings Plan, in particular the Young Stock Savings Plan, when the underlying share of these products is a share that is itself eligible for this plan, and on condition that these products are in an account.

71. Specifically, article L. 221-31 of the Monetary and Financial Code could be amended to provide that financial products that meet the conditions of the primary regime and are registered in an account are eligible for the Equity Savings Plan, when their underlying share is a share that is itself eligible for this plan.

72. The rules governing the operation of the Stock Savings Plan, on the other hand, should not be changed.

APPENDIX 1

Composition of the working group

COMPOSITION OF THE WORKING GROUP

on fractional shares

CHAIRMAN

- **Antoine GAUDEMET**, Professor of Private Law at the University of Paris-Panthéon-Assas, Chairman of the working group,

MEMBERS

- **Pierre ALAPHILIPPE**, General Counsel France and Benelux, Citibank.
- **Alexandre ATLANI**, Euronext Paris
- **Christophe ARNAUD**, *function to be specified*
- **Rodolphe BAROUKH**, Treasury Department
- **Valentine BONNET**, Director Corporate Governance and Compliance, AFG
- **Morgan BRIAND**, Editor, Company Law and Audit Office
- **Adèle CHARTOUNY**, Deputy Head of the Business Financing and Development Office, Treasury Department
- **Corentin COUVIDAT**, BlackRock
- **Delphine D'AMARZIT**, Chief Executive Officer, Euronext Paris
- **Diane DE ARAUJO**, Legal Counsel, Issuers Division, Legal Affairs Directorate, AMF
- **Muriel DE SZILBEREKY**, Managing Director, ANSA
- **Jean-Guillaume DE TOCQUEVILLE**, General Secretary, HCJP
- **Olivier DUDOUIT**, Euronext
- **Mehdi EZZAIM**, Deputy Head of Savings and Financial Markets Unit, Directorate General of the Treasury
- **Julien GOLDSZLAGIER**, Head of the Company Law and Audit Office, Civil Affairs and Seal Department
- **Léa HADJADJ**, *function to be specified*

- **Delphine HILLARD**, Legal Affairs, Société Générale
- **David HOROWITZ**, Doctoral student in law, Université Paris-Panthéon-Assas
- **Armance JUVIN**, *function to be specified*
- **Marine LANNOY**, *function to be specified*
- **Jules LECHÊNE**, Doctoral student at Université Paris-Dauphine, Associate at the HCJP
- **Vincent MALASSIGNE**, Professor of Private Law, University of CY Cergy Paris
- **Victor MAUJEAN**, Treasury Directorate General
- **Emilie MAZZEI**, Lawyer
- **Marine MICHINEAU**, Senior Lecturer, University of Paris Nanterre
- **Elisabeth MAHE**, *function to be specified*
- **Marie-Aude NOURY**, Partner, Squair
- **David POIRIER**, Legal Counsel, Société Générale Securities Services
- **Patrick RENARD**, Director of Shareholder Services, Air Liquide
- **Arnaud REYGROBELLET**, Professor of Private Law, University of Paris Nanterre, Partner, CMS Francis Lefebvre Avocats
- **Saule RAUDAITE**, Lawyer, BPCE
- **Olivier SABA**, Partner, Bredin Prat
- **Clément SAUDO**, Head of the Markets and Crypto-Assets Services Division, Legal Affairs Directorate, AMF
- **Florian SURRE**, *function to be specified*
- **Jérôme SUTOUR**, Partner, CMS Francis Lefebvre Avocats
- **Thiebald CREMERS**, General Counsel, AMAFI
- **Abel VIDIL**, Student, College of Europe, Contributor to the HCJP
- **Christophe YVON**, Head of Market Operations Law, Société Générale

APPENDIX 2

Background note from the AMF

AMF FRAMEWORK NOTE

The Autorité des Marchés Financiers (AMF) has noted that retail investors, especially younger ones, are increasingly being asked to invest in "fractional shares", possibly via platforms. This type of investment seems to be offered by a variety of players: some seem to want to democratise and rejuvenate stock market investment among retail investors, while others are promoting purely speculative investments to more vulnerable individuals. In response to the growing number of fractional share offerings, the AMF and ESMA have both warned investors about the specific risks associated with these investments (AMF : Les fractions d'action: points d'attention et pièges à éviter, 27 May 2021; ESMA: Public Statement On derivatives on fractions of shares, ESMA35-43-3547, 28 March 2023), depending on the legal nature of the instrument effecting the share split and the risks associated with it.

Several instruments seek to circumvent the principle of indivisibility of the share (Article L. 228-5 of the Commercial Code: "with regard to the company, the securities are indivisible, subject to the application of Articles L. 225-110 and L. 225-118") by offering exposure to the share, or a fraction thereof, via another instrument. The impossibility of splitting the share is in effect valid vis-à-vis the company, but not vis-à-vis third parties with whom contractual provisions may organise such a split. The overview below describes the instruments used to offer investments in fractions of shares; it does not deal with share splits as organised by the Act of 3 January 1983, i.e. splitting the share into two separate securities, an investment certificate representing financial rights on the one hand and a voting certificate representing voting rights on the other, the issue of which was abolished for the future by Order no. 2004-604 of 24 June 2004. Nor do we deal with the division of ownership between usufruct and bare ownership, or the splitting of shares, which amounts to multiplying the number of shares by reducing their nominal value, or share denominations (in some public limited companies, in particular those which offer their employees the possibility of subscribing to the capital, and in public limited companies with worker participation, share denominations may be found), fractional shares, or decimals of units or shares in UCITS.

a. Financial instruments whose underlying security is a fraction of the share

Some of the offers to invest in "fractional shares" involve a promise by an intermediary to pay a share of dividends in return for the investor paying a sum calculated in proportion to the share price. It is a contract for valuable consideration, which is uncertain and subject to successive performance. In the civil law sense, it may be a contract by mutual agreement or by adhesion.

This type of investment does not involve the creation of new shares. From the investor's point of view, it does not create any rights with regard to the issuer of the shares, to which he is in no way linked. The investor is not the owner of the share, only of a financial instrument that replicates the share's performance, but is a creditor of the intermediary that issued the financial instrument. The sum paid periodically by the intermediary to the investor is not legally a dividend but a simple pecuniary consideration.

An example of this type of investment can be found, abroad, in the existence of Depositary Receipts (on this subject, see V. Malassigné, Les titres représentatifs, Essai sur la représentation juridique des biens par des titres en droit privé, Dalloz,2016), and in particular American Depositary Receipts, which are certificates representing securities issued by foreign companies for distribution to investors located in the market of a given country, and for which there is no obligation to establish parity between the number of DRs or ADRs issued and the number of underlying shares.

Although several legal or contractual definitions of Depositary Receipts exist, they provide little guidance as to the nature of these securities. Article 4, §1 of the MIFID 2 Directive states that a depositary receipt is "a security, tradable on the capital market, which evidences ownership of securities of a foreign issuer, is eligible for trading on a regulated market and may be traded independently of the securities of that issuer". Some market rules, such as the Hong Kong Stock Exchange Listing Rules or the Euronext Harmonised Rules (but not the Euronext Paris Market Rules), also mention DRs without defining their legal nature (Hong Kong Stock Exchange Listing Rules, 1.01: "depositary receipts": instruments issued by a depositary on behalf of or at the request of an issuer which are listed or are the subject of an application for listing on the Exchange and which evidence the interests and rights in shares of the issuer as provided bythe deposit agreement executed between the depositary and the issuer; Euronext Harmonised Market Rules: "security" is defined as any negotiable security falling within one of the following categories [...] (iii) depositary receipts).

French law makes no mention of depositary receipts. However, it would appear that, in the same way as financial instruments enabling investment in fractions of a share, they are genuine financial instruments, distinct from the shares represented.

The concept of "fractions of a share" can be understood in terms of derivatives (the category of financial instruments referred to in article L. 211-1 of the French Monetary and Financial Code includes derivatives). Classically, a derivative is a product whose value depends on that of an underlying asset and which makes it possible to obtain a future performance, in principle by physical delivery of the underlying asset or in cash (see in particular the AMF analysis of the legal qualification of derivatives on crypto-assets available on the AMF website as published in 2018 and updated in February 2021 (the "AMF Analysis of Derivatives on Crypto-Assets").

A derivative generally takes the form of a contract giving rise to reciprocal obligations between two parties. In French law, this type of product is included in the concept of "financial contract", which encompasses the products mentioned in Article D. 211-1 A of the Monetary and Financial Code. Article D. 211-1 A 1° states that financial contracts include "options, futures, swaps, forward rate agreements and all other forward contracts relating to financial instruments [...] which may be settled by physical delivery or in cash".

In practice, certain financial instruments provide economic exposure to a fraction of a share. For example, the owner of a share and a counterparty may enter into a contract that allows the counterparty to obtain synthetic exposure to a portion of the share's value, with the periodic payment of a return corresponding to a fraction of the dividend.

This classification has consequences for the regulations applicable to their issuers, for the "secondary market" in "fractional shares", but also for the risks associated with them.

Given its classification as a financial contract, the counterparty to the contract would be likely to provide an investment service (proprietary trading and/or order execution on behalf of third parties, unless it falls within the scope of an exemption). The transaction is also subject to EMIR regulations.

In the case of a financial contract, the "resale" of a "fractional share" is not legally the transfer of an asset, but the transfer of a contract. If there is no secondary market organised by the intermediary, the investor must make his own arrangements.

In addition to financial contracts, derivatives can also take the form of financial securities, which some authors refer to as "derivative securities" (T. Bonneau, F. Drummond, Droit des marchés financiers, No. 141. See also Droit financier, Alain Couret and Hervé Le Nabasque, Marie-Laure Coquelet, Thierry Granier, Didier Poracchia, Arnaud Raynouard, Arnaud Reygrobellet and David Robine, paragraphs 1136 et seq.) These securities have the same economic characteristics as financial contracts, but differ in that they take the form of financial securities. As a result, the ways in which these derivative securities are held (by book entry) and sold (negotiable instruments) will differ from those of financial contracts.

In terms of risks, the first is that inherent in any direct or indirect investment in financial instruments, i.e. an unfavourable trend in the underlying value and its profitability. On the other hand, the particular method of investing in 'fractional shares' by means of a financial instrument gives rise to a counterparty risk that is different from that of the issuer of the share, especially if the intermediary is not an authorised intermediary, the danger being that he will not build up a sufficient portfolio of shares and will default when the time comes.

b. Stock tokens

A new practice has recently emerged, with institutional crypto-asset trading platforms offering tokens representing a fraction of a listed share, known as "stock tokens" (see the tokens offered by the BINANCE platform. https://www.binance.com/en/stock-token).

At this stage, these tokens are likely to have the characteristics of financial instruments because they have all the features of "derivative" financial securities. As such, they would not constitute digital assets but financial instruments, and their issue would therefore have to comply with the regulations governing the issue of financial instruments, and service providers would have to comply with the regulations governing investment services.

In addition, despite their designation, these "tokens" may sometimes not be registered in a shared electronic registration system.

c. Monthly investment programmes

Some offers allow you to actually buy fractions of a share, in particular through a monthly investment programme, and automatically consolidate the fractions into "whole" shares as soon as possible. This is no more and no less than an investment in shares, although there are specific rules for combining fractional shares to form a whole share.

APPENDIX 3

Background note drawn up by Antoine GAUDEMET, 27 February 2024

HCJP working group on fractional shares Framework note on certain forms of fractional shares[15]

27 February 2024

Article L. 228-5 of the French Commercial Code establishes the principle that shares are indivisible:

> *"With regard to the company, the shares are indivisible, subject to the application of Articles L. 225-110 and L. 225-136. L. 225-118* ".

There are exceptions to this principle: the share may be split between a beneficial owner and a bare owner (art. L. 115-110 FCC) or undivided between several co-owners (art. L. 225-118 FCC), in particular.

The Working Group does not deal with these temperaments, nor with the following situations:

- splitting the share into an investment certificate and a voting right certificate (possibility introduced by Act no. 83-1 of 3 January 1981, then abolished for the future by Order no. 2004-604 of 24 June 2004);
- the division of the share into share fractions (art. L. 228-8 FCC);
- the division of the share into new shares by reducing its nominal value ("*split*") (art. L. 228-8 FCC);
- the "*split*" *of* the share on the occasion of a transaction affecting the company's capital (not. art. L. 228-29-1 et seq. C. com;
- decimals of units or shares in undertakings for collective investment in transferable securities.

In reality, the principle of the indivisibility of the share is not at issue in what certain financial intermediaries propose under the name of "*fractional share*":

- despite its name, a fractional share is not usually a division of the share[16] ;
- moreover, the principle of indivisibility of the share exists only in relation to the company that issued it; it does not apply to the relationship that a financial intermediary has with its customers.

*

The "buyer" of a fractional share pays an amount equal to a specified fraction of the value of a share.

[15] Corresponding to the "*financial instruments underlying a fraction of the share*" mentioned in a) of the AMF memorandum dated 7 February 2024.

[16] Except perhaps in the case of the "*monthly investment programmes*" mentioned in c) of the AMF memorandum dated 7 February 2024: to be documented in the light of the German and Dutch examples.

In return, the "*selling*" financial intermediary grants the investor at least two rights:

- the right to receive an amount equal to the same fraction of the dividend detached from the share;
- in the event of a "*sale*", the right to receive a sum equal to the same fraction of the share's value.

These rights arise from a contract concluded between the "*buyer*" and the "*seller*".

This contract can certainly be described as a "*financial contract*", or the equivalent.
A "*financial futures instrument*" within the meaning of article L. 211-1, III of the French Monetary and Financial Code.

In particular, it is covered by the very broad provisions of 1° of I of Article D. 211-1 A of the Monetary and Financial Code, which stipulates :

> *"Options, futures, swaps, forward rate agreements and all other forward contracts relating to financial instruments [...], financial indices or financial measures that can be settled by physical delivery or in cash*".

*

The rights to which this contract gives rise may also be recorded in an entry credited to an account opened in the name of the "*buyer*" in the books of the "*seller*" intermediary.

In this case, the alternative qualification of debt security may be considered.

Under article L. 213-0-1 of the French Monetary and Financial Code :

> *"Debt securities each represent a claim on the legal entity [...] that issues them*".

This qualification is, moreover, the one adopted by the majority of legal writers with regard to *depositary receipts*, whose similarity to fractional shares should be noted.

Mr Malassigné, in particular, writes:

> *"Depositary receipts are, by default, debt instruments under French law. This classification appears to be entirely appropriate, since holders of depositary receipts have a series of rights vis-à-vis the "depositary" bank. In particular, they may require the bank to pay them the dividends distributed by the company issuing the shares represented, to translate for them the information issued by the company and, where applicable, to do its utmost to exercise the voting rights attached to the said shares in the manner they have requested*" (Malassigné, Les depositary receipts, Bull. Joly Bourse janv. févr. 2017, no. 31).

2

However, in order to apply the same qualification to fractional shares, it must be accepted that they may be :

- issued as a unit in the relationship between the "*seller*" financial intermediary and the "*buyer*", as are negotiable debt securities (art. L. 213-1 C. mon. fin.), and not collectively, as are transferable securities (art. L. 228-1 FCC)[17] ; and
- negotiable only by transfer from an account opened in the books of the "*selling*" financial intermediary to another account opened in the same books or in the books of another financial intermediary affiliated to the first.

*

Whatever the form of a fractional share, *the* "*buyer*" of that share bears two risks in any event:

- a default risk: the risk that the "*selling*" financial intermediary does not pay the promised sums to *the* "*buyer*";
- a risk resulting from reduced liquidity: a fraction of a share may not be traded, other than on a platform that may be operated for this purpose by the "*selling*" financial intermediary, but may be liquidated; in the latter case, the "*selling*" financial intermediary must pay the "*buyer*" a sum equal to the value of the share in relation to the fraction of the share liquidated; it may also fail to pay this sum.

However, these risks can be mitigated by a number of techniques, which must be taken into account in the legal analysis:

- the "*selling*" financial intermediary may be obliged to acquire the entire share (this is the case for a custodian bank issuing *depositary receipts*);
- it may be obliged to allocate this share to the "*buyer*", when the latter comes to hold a number of fractions of a share reconstituting the whole share;
- it may be obliged to join a securities guarantee scheme for the fractions of shares it "*sells*", like the *Securities Investor Protection Corporation* in the United States.

[17] In theory, it is conceivable that fractions of shares could be issued collectively by the "*selling*" financial intermediary for the purpose of being offered to a "*buying*" clientele. These fractions of shares would then constitute "*debt securities*", within the meaning of Article L. 228-36-A of the French Commercial Code, and would be similar to *depositary receipts*, known in Article 4(1)(25) of Directive 2014/65/EU of 15 May 2014 as "*representative certificates*". In practice, however, this hypothesis seems unlikely, if only because it would undoubtedly put the "*selling*" financial intermediary in the position of making a public offer of financial securities.

APPENDIX 4

ESMA, Public Statement on derivative on fractions of shares

28 March 2023
ESMA35-43-3547

Public Statement

On derivatives on fractions of shares

Background

The active marketing and sale of so-called 'fractional shares' by firms to retail clients is a relatively new phenomenon that has gained momentum in the context of on-line trading platforms and neo-brokers.

Fractional shares' allow investors to participate in the share performance of an issuer by way of an instrument that tracks the share price but is available at a smaller purchase price, namely the pro rata share price of the underlying share. 'Fractional shares' usually allow the investor to receive the economic benefits stemming from dividends, but normally do not carry voting rights.

Fractional shares' raise specific investor protection concerns.

While different structures are, from a commercial point of view, described as fractional shares, this statement focuses on instruments enabling investors to access fractions of shares by way of derivatives which derive their value from the price of an underlying corporate share. This statement, therefore, does not pertain to products providing access to fractions of shares in any other way, e.g., co-ownership structures. It should be noted, however, that other structures of fractional shares also raise some investor protection concerns and that some of the clarifications given in this statement may also be relevant for such structures.

This statement, which is addressed to firms[1] and NCAs, clarifies the application of certain investor protection requirements established under MiFID II[(2)] [2] (and its implementing measures).

Derivatives on fractions of shares

Disclosure Requirements

Firms are required to provide clients in good time before the provision of investment services with a description of the nature and risks of the relevant financial instruments. This includes:

[1] Reference to "firms" include investment firms and credit institutions providing investment services to clients in accordance with MiFID II.
[2] Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments.

General information requirements[3]

All information to customers, including marketing information, shall be fair, clear, and not misleading.

Derivatives on fractions of shares are not corporate shares. No client information on these instruments, including marketing communications, shall therefore suggest to a client that he or she is being offered a fraction of a corporate share. To the contrary, the disclosure shall clearly and prominently describe in plain language that the investor is buying a derivative instrument and explain the differences between these derivatives and corporate shares, also with respect to rights inherent to corporate shares such as dividend and voting rights. The disclosure shall further point out specific risks of these derivatives such as counterparty and liquidity risks. It should also be clear on how, and if relevant, where an order of such derivatives will be executed and how the execution price will be determined.

As derivatives on fractions of shares are not corporate shares, firms should not use the term fractional shares when referring to these instruments. ESMA would deem such use of the term misleading and therefore in breach of MiFID II requirements.

Information on costs and charges including mark-ups and mark-downs

Firms offering these derivatives must clearly disclose all direct and indirect costs and charges relating to them and the services provided. This includes structuring and other costs embedded in these derivatives, as well as mark-ups and mark-downs compared, on a pro-rata basis, to the market price of the underlying corporate share.

Requirements on product governance

As derivatives, these instruments are complex products under the product governance rules. Consequently, the target market for these instruments needs to be identified in more detail considering, inter alia, counterparty and liquidity risks. This is expected to result in a narrow target market.

Requirements on appropriateness

As derivatives are complex financial instruments, an appropriateness assessment needs to be carried out where non-advised services are provided.

PRIIPs

Where derivatives on fractions of shares are packaged retail and insurance-based investment products, the PRIIPs Regulation[4]applies and firms need to provide retail clients with a PRIIPs KID.

[3]While this public statement only relates to fractional shares created by firms by way of derivative structures, any other structures of fractional shares shall, of course, be equally clearly, fairly, and comprehensively described and disclosed.
[4]Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs).

APPENDIX 5

Presentation by Shares Company

PRESENTATION BY SHARES COMPANY

HCJP - Fractional Shares Workshop - 25 April 2024 - Shares Notes

Can you briefly introduce the business and activities of your firm?

Nicolas Negrilic : Chief Legal, Risk & Compliance Officer of Shares for the last 2 years, where I got the company authorised and set up the compliance programme. Before that, I spent years on the trading floors of HSBC in Advisory Compliance, and before I was a consultant.

Robin Jacquet : Regulatory Project Manager, in charge of all our regulatory projects in stocks but also crypto (authorisations, tax reporting...) and also public affairs. Worked in Legal and Compliance in France and abroad in both the fintech and fund management industry.

Shares is a stock and crypto trading platform with an integrated social network. It is the first app in France to be authorised as both an investment firm by the ACPR (since july 2023) and a digital asset service provider by the AMF (since april 2023). As part of these authorisations, we had the opportunity to propose and have authorised by the AMF a fractional share trading offering. This allows our users to be able to buy EU and US stocks, from 1€.
The other main feature of our app is our social platform, where you can post your trades, comment trades from other traders, see the performance and trades of people you are linked to. There are also "premium investors" on the platform that have been carefully selected, underwent a due diligence and that are on the platform to share insights on their own choices and help our user base gain financial knowledge.

Finally, we are developing new products:

- Employer-sponsored savings and retirement plans (PEE+ PERECO)→ testing phase ;
- Company Accounts→ testing phase to begin soon ;
- PEA→ planned before EoY.

What is the share of "fractional shares" in these activities (stock and flows)?

Our application and brokerage model are based on trades being placed by invested amounts, not number of financial instruments purchased or sold. As a consequence, all of our users buy fractions by default and this is the only way we offer our product. The only means for a user to buy a full share directly would be to place an order for the specific value of a full share at a given time, which may anyway result in price slippage and grant more or less than a full share in the end.

In your opinion, what are the prospects for the development of this type of "product" in France and, more broadly, within the EU?

European Fintechs such as Shares and its competitors (Revolut or Trade Republic, for example) already offer fractional shares and make it very successful amongst retail customers. When it comes to more traditional institutions, we are aware of ABN Amro developing such a product, but not others.

However, we think fractions have a bright future. Since we have been licensed to sell them as a French regulated Investment Firm, several people from the financial services ecosystem have shown interest in the legal qualification and the way we operate with our brokers to provide them. On the customer side, recent reports have shown people invest more and more but do not have enough money to buy high price full shares of certain flagship values (LVMH, Google, etc.).

Can you detail the financial characteristics of the products offered under the name "fractional shares"?

We offer fractional shares to our users as we would full shares, ie via traditional Reception and Transmission of Orders to specialised brokers with market access. The instrument is fully liquid, not subject to a secondary market or any other reselling constraint, and is subject to all MiFID rules applying to full shares. The user benefits from a pro rata dividend amount, when any, but not from fractional voting rights (as agreed with the AMF on the latter).

What legal qualification(s) do you attribute to these products?

During the Investment Firm authorisation process, Shares Financial Assets has put forth a legal analysis stating that the fractions were qualified as debt instruments and not actual fractions of equity. They are not a complex instrument (and therefore not subject to appropriateness questions) but do qualify as a packaged retail investment product (since their price depends on the price of an underlying asset) requiring a Key Information Document to be delivered to the user (see below for further development on this).

Are there reasons to offer these products from another EU Member State or a non-EU country, rather than from France?

From a regulatory standpoint, the legal qualification itself may be a reason to look at different providers and different countries. The UK or Germany have different regimes for example, where the fractions are respectively equity fractions (UK) and subject to a co-ownership structure (Germany). However, unless the user registers on a cross-border manner to a user account provided under the law of a different country, the fractions will be subject to French constraints within a user account subject to the French Monetary code.

According to us, compared to the current qualification applied to and by Shares, the German law co-ownership has an advantage (there is no longer an "underlying asset" indexing the

price of the fraction which is therefore no longer subject to PRIIPS and the obligation to feature a KID) and an inconvenient (co-ownership restricts the possibility to sell the fraction which can not be just divested as it can in the French model).

On a different note, other providers offer fractions as derivatives and/or CFDs, but that does not seem linked to a country or another, unless local rules on reporting or marketing such products have an impact here.

When it comes to other aspects of fractional shares trading, neither of them appear to us as being specific to the format, i.e. different from full shares (transaction rules, reporting, venues selection, etc.) and therefore justify evading the French and/or EU regimes.

Do you think the legal regime governing "fractional shares" needs to be clarified? If so, in what way(s)?

Either the regime is the same as for full shares, in which case there is indeed a need to make that clear. Or fractions are confirmed as debt instruments and the regime needs to be literally created. So far, and to the extent of our knowledge, the products offered by Shares Financial Assets as fractional shares are the only ones duly reviewed and authorised by the AMF and the ACPR, which means the rules we go by are specific to us and not (yet) doctrine. The fact that several EU firms provide fractions under different regimes is detrimental to the user and creates confusion.

One thing to look at is the consistency between the characteristics of the fraction: in the current setup applied to Shares, the instrument is both non-complex (this waiving the appropriateness requirements) and subject to PRIIPS.

This last point creates a few operational and legal complexities:

- One document must be produced and updated for each fraction, which means, for Shares, for each instrument offered on the platform.
- The other EU firms providing KIDs for their fractions are Vivid and BitPanda which offer derivatives (see the point above on confusion for the user).
- An accurate level of risk is difficult to assess for each share since they are all negotiated on the same markets and subject to the same type of volatility. However, a single risk assessment for all fractions is not satisfactory either since it gives a false image of the risk level associated with stock trading.
- The performance scenario rules are currently not adequate for the manufacturing of KID on fractional shares and rules, designed with the industry, should be implemented.

A specific point Shares would like to stress is the potential inclusion of fractional shares in tax wrappers such as the PEA - or PER titres - in France. The fact that this wrapper does not allow for debt instruments to be included limits the investment perspectives when it comes to investing and preparing the future in a tax-efficient manner. In the UK, The Government authorised fractional shares in Investment Savings Accounts (equivalent to the French PEA) last year. As for Germany, they authorised fractional trading in savings plans years ago, which led to a massive increase of *dollar-cost averaging* investment in local ETFs.

Should a regime about fractional shares be created and such fractional shares considered as debt instruments, Exchange-traded funds should be left outside of said regime. ETFs are intrinsically units of collective investment, a financial product for which ownership of fractions of units or shares is already authorised for "standard" mutual funds.

About Shares
Founded in 2021, Shares is a neo-broker offering a mobile app, which allows its users to invest in financial products such as stocks, ETFs and crypto-currencies and to trade and track other users' activities and investments.
Since its creation, Shares has raised three rounds of funding totalling $90 million from Valar Ventures, the fund of PayPal founder Peter Thiel, alongside Singular, Global Founders Capital and Red Sea Ventures, in order to accelerate its development in the UK and Europe. Later in the year, the two Williams sisters joined the venture as brand ambassadors. The company now employs 120 people in France, the UK and Poland. Already active in the UK, in June 2023 Shares became the first French neo-broker to receive PSI authorisation and PSAN registration from the Autorité de Contrôle Prudentiel et de Régulation and the Autorité des Marchés Financiers respectively. In 2024, it will launch its employee savings scheme and PEA.

For more information, visit ***https://shares.io/.***

Contact - Shares
Nicolas Negrilic - Group Chief Risk & Compliance Officer -nicolas.negrilic@shares.io Robin Jacquet - Regulatory Project Manager - robin.jacquet@shares.io

APPENDIX 6

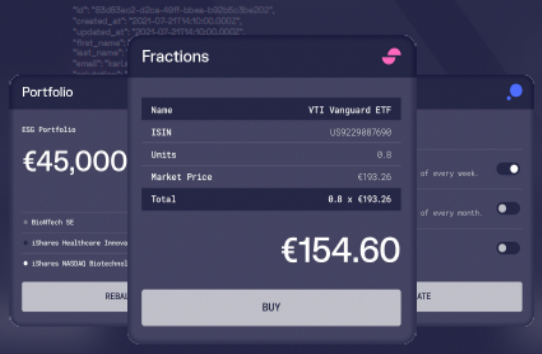
Presentation by Upvest

upvest

Upvest
Fractional Securities under German law

Presentation Paris High Level Legal Committee
April 25, 2024

Dr. Lukas Philipp Köhler, MJur (Oxford)
Head of Product Legal



upvest

01 | Introduction to Upvest – providing infrastructure in two legal business models

02 | Fractional trading is important for retail investors

03 | German law already provides for a satisfactory solution, even cross-border

04 | However, there is a EU-wide need for further clarity and reform

Agenda today

Key takeaways

I — real fractional co-ownership possible under German law (*Bruchteilseigentum*)

II — co-ownership allows for pro-rata distribution of proceeds

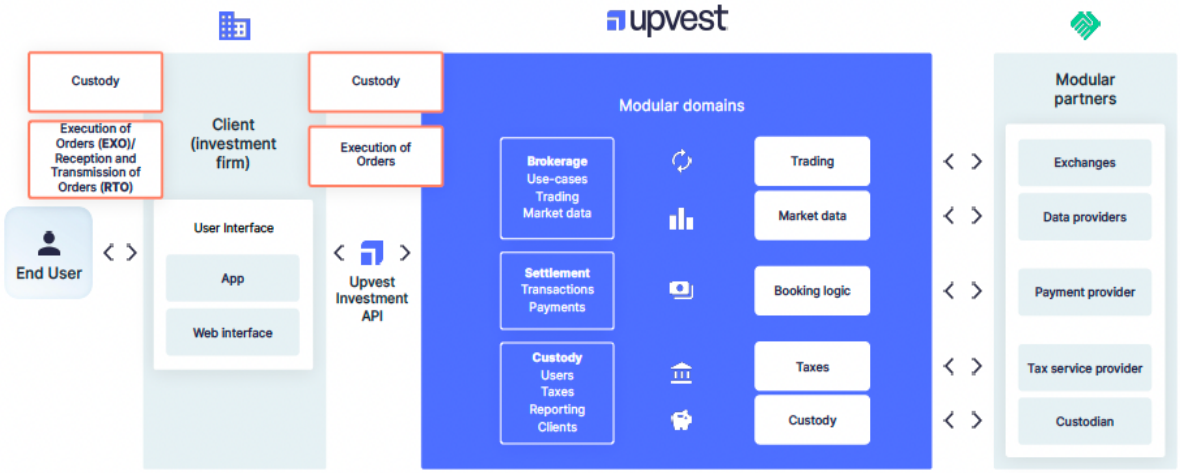
III — German fractions are MiFID-transferable securities, not derivatives or CfDs

2

01 | Bring-Your-Own-License (BYOL): Providing brokerage infrastructure to investment firms

- Upvest provides investment services to licensed Client (EXO, Custody)
- Client provides investment services to End User (EXO, Custody)

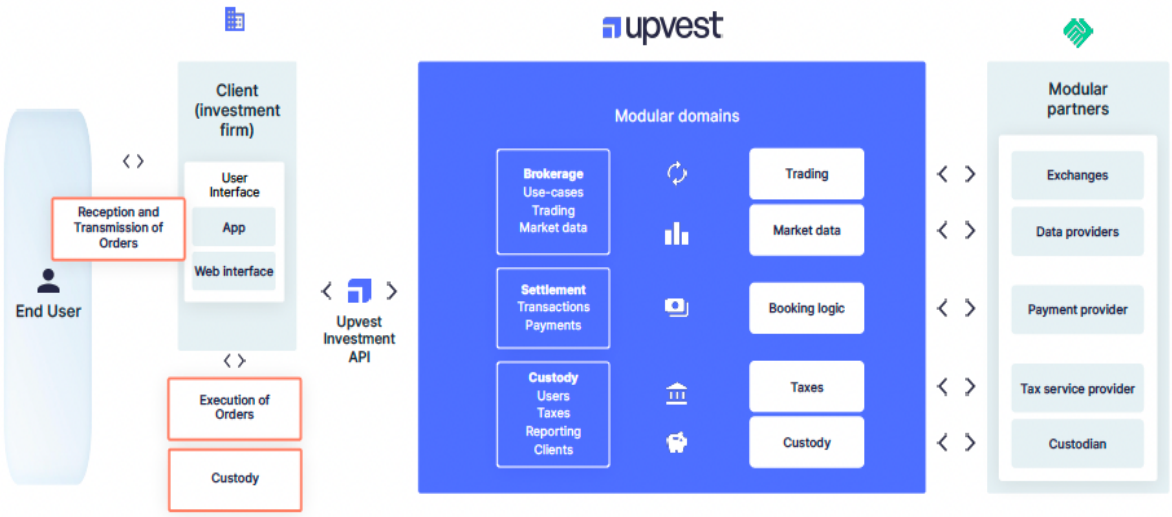
B2B



01 | Take-Our-License (TOL): Providing brokerage infrastructure directly to End Users

- Upvest provides investment services to End User (EXO, Custody)
- Client receives and transmits orders from End User to Upvest (RTO)

B2B2C



02 | Fractional trading is important for retail investors

01 Nominal orders market practice

02 Required functionality for savings plans

03 Access to greater instrument universe, diversification

Retail investors' financial needs

Retail investors' legal needs

04 Insolvency remoteness

05 Consumer protection

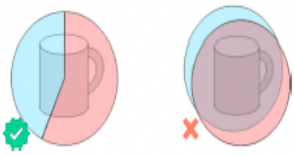
06 Legal Certainty

03 | German law provides satisfactory solutions for fractions already today

insolvency remoteness

yes, joint co-ownership, own distinguishable ideational part of an object, **individual divestment**

≠ "concurrent" ownership, where all co-owners own the entire object, only joint divestment



absolute right to fractional security can be issued

- **German global security note**: joint **co-ownership** *(Bruchteilsgemeinschaft)*

custody chain

- **Level 1 – CSD** credits fraction of security note, but denominated in **full unit to Upvest**/subcustodian (collective safe custody)
- **Level 2 – Upvest** fractionalises and administrates **pool of co-owners:** booking logic credits fractional positions **denominated in fractional unit to** TOL-**End User** or BYOL-**Client**
- **Level 3 – BYOL-Client/custodian** credits fractional position **to End User**

- **internationally held security notes:** similar level structure but wrt **obligatory fiduciary claim** against foreign depositary (security invoice - *WR-Gutschrift*),
- **insolvency administrator could transfer** security to **fractional owners**

03 | German law provides satisfactory solutions for fractions already today

Proceeds

yes, **pro rata** distribution

Corporate Actions

in theory, **yes**

Flexibility

no, account transfer not possible

Proceeds and administration determined by contract

- Broker's **Terms and Conditions determine rules** for co-ownership
- typically provides for split of dividends, rights issued, best effort with regards to other corporate actions

~ **participation in events possible in theory, not feasible in practice**

- right to **co-administration**; in theory exercise of shareholder rights
- in practice excluded in Broker's Terms and Condition

transfer of securities smaller than 1 unit to other custody account not possible

- in practice, account transfer not possible, owner needs to sell fraction to exit
  - **taxable** event
- end-users locked into platform of broker as buyer

03 | the German co-owned security fits into EU regulatory and International Private Law

MiFID

transferable security

PRIIP-Regulation

not applicable

International Private Law

cross-border TOL – German law

cross-border BYOL – German law "intervenes"

- **fractional security is ordinary transferable security in sense of MiFID**
- **no KID required, since fractional share is not a PRIP;** amount repayable neither subject to
  - performance of reference values nor
  - performance of assets not directly acquired

  because fraction acquired *IS* the asset
- **TOL: German law** local consumer law should not overrule e.g. as not required for consumer protection purposes (Art. 6 para 2 Rome-I Regulation)
- **BYOL** – **custody chain**
  - **Level 2 – Upvest<>local investment firm:** Upvest credits fractional position to local investment firm, **German law**
  - **Level 3 – local investment firm<>End User: even if local law** would apply, firm should be able to pass on what it receives to End Users (concept of RTO) => **German law**

04 | Clarify and reform: There is a EU-wide need for further client protection

Clarification and Harmonisation

MiFID: transferable security

local IPR clarification

default for corporate actions

Reform

legalise fractional ownership (corporate actions, transfer)

client asset segregation

potential rulemaking instruments

- clarify **MiFID to reflect different member state civil laws**, fraction does not have to be derivative or other structured product — ESMA GL/Q&A
- clarify that **home state law of fractionalising custodian** applies with regards to fractions — Rome-I-Regulation
- COM could set **default for brokers to exercise certain corporate actions**, e.g. voting rights according to defaults/proxy consultants ('stewardship code') — COM DelReg 2018/1212 (SRD)
- **partially harmonise civil laws with regard to fractions**: create (opt-in) 28th EU capital markets specific civil law / property law regime (*Veil*) — Regulation/Directive
- **asset segregation** rules with regards to fractions are **burdensome, not necessary** and should be **abolished** — ESMA GL/Q&A

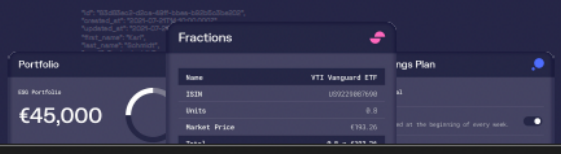
Key takeaways

I. real fractional co-ownership possible under German law (*Bruchteilseigentum*)

II. co-ownership allows for pro-rata distribution of proceeds

III. German fractions are MiFID-transferable securities, not derivatives or CfDs

lukas@upvest.co



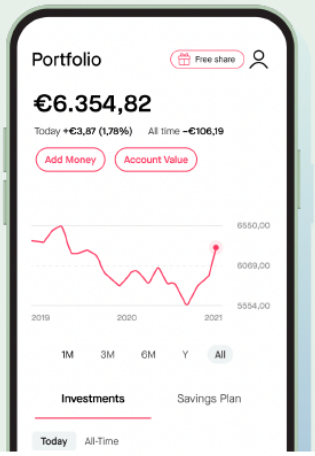
APPENDIX 7

Presentation by BUX

BUX

Deepdive Fractional Trading

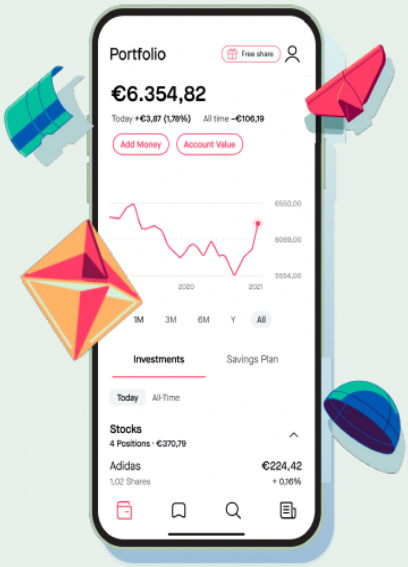
BUX



Agenda

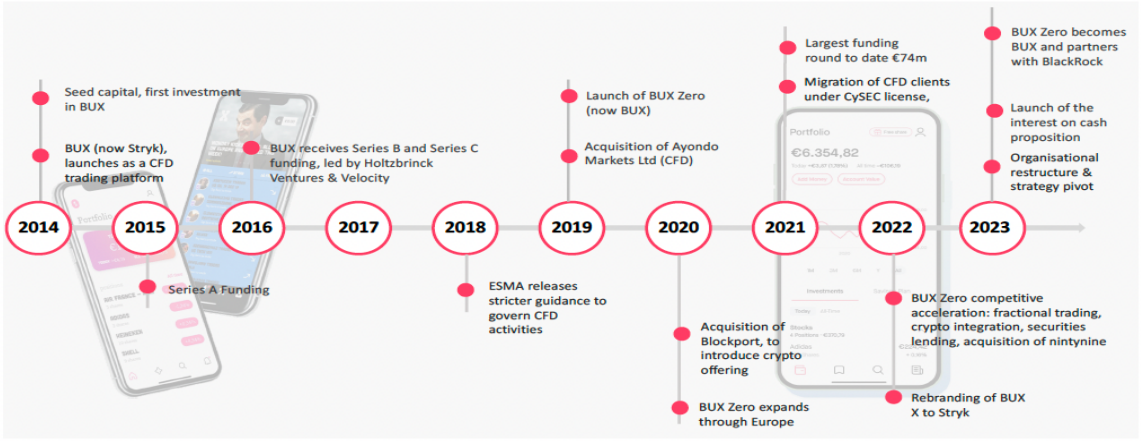
Let's get started

1. Introduction of BUX
2. Fractional shares at BUX
3. Operating model fractional shares
4. Regulatory considerations with the introduction of fractional shares
5. Clarification of Dutch legal framework

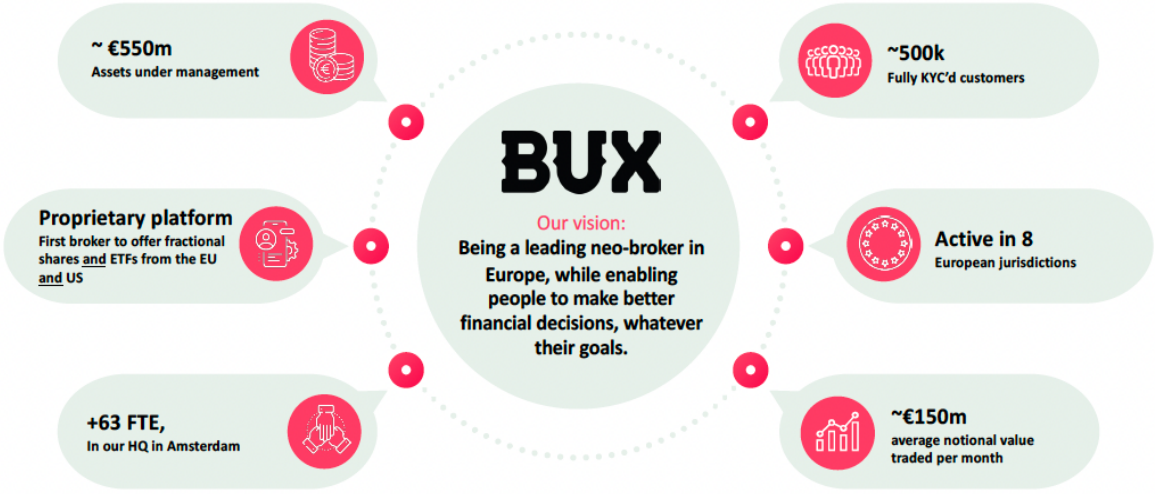


BUX

In 10 years BUX has grown from an idea to a well-respected European player



BUX is the innovation leader in neobrokerage in Europe



BUX

Fractional trading is popular with BUX clients and a key feature for our Investment Plans

BUX Product Coverage

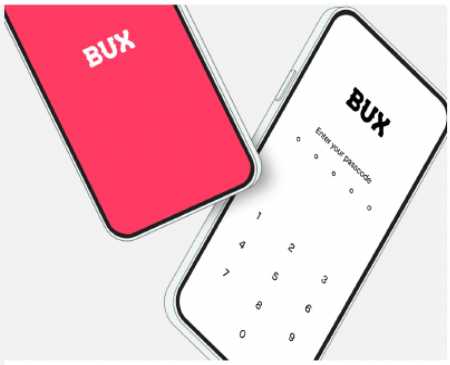
EU stocks
- 860 securities
- 182 fractional

US Stocks
- 3498 securities
- 213 fractional

ETF & ETCs
- 236 securities
- 211 fractional

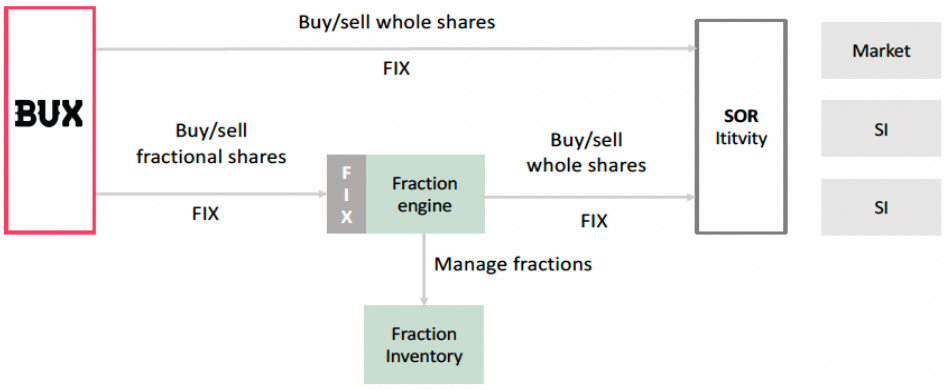
Fractional Adoption

- On average 95% of ETF orders are fractional orders, including Investment Plans
- On average 85% of the stocks are traded fractional (if avalaible for fraction) This percentage still goes up over time.



BUX

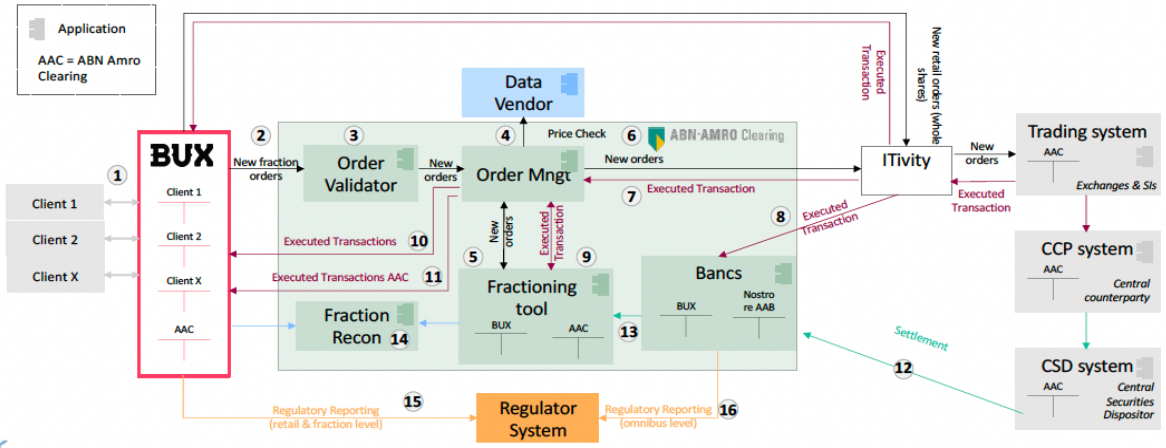
High level overview of existing set up for providing fractional investing



BUX

6

Detailed overview of existing set up for providing fractional investing



BUX

Detailed overview of existing set up for providing fractional investing – cont'

The Basic Flow proceeds in the following steps:

1. Client places Buy order in amount
2. Order is sent to AAC
3. Order management checks market prices to assess required quantity in 8 decimals
4. Available quantity is checked in fraction management
5. Order manager determines number of whole shares to be bought in market and sends order to Smart Order Router
6. SOR sends order to Exchange/MTF/SI based on best execution policy
7. Executed Transaction confirmation is received via Itivity in the OMS
8. Executed Transaction confirmation is send to the fractioning tool to determine exact fraction with market price and executed fraction transaction is confirmed to OMS
9. Executed transaction is confirmed to broker
10. Additional fraction transaction of AACB account is confirmed to broker as executed transaction
11. Executed Transaction confirmation is received via Itivity in Bancs in the BUX account
12. Settlement confirmation is received from the CSD in Bancs
13. Settlement confirmation is sent from Bancs to the Fractioning tool
14. Fraction reconciliation between fraction tool and Broker
15. Regulatory reporting on retail level in fractions
16. Regulatory reporting on Bancs omnibus level

BUX

8

Regulatory Considerations/Reporting

Why trades are executed on a SI via BUX:

Share Trading Obligation (Art. 23 MIFIR):
A broker trade should be executed on a regulated market, MTF, OTF or SI. Fractional trades are not supported by an existing RM/MTF or OTF. Therefore fractional trades are executed via the AACB SI.

MiFID Transaction Reporting:

- AACB assumes the role of principal in the transaction since the BUX order differs from AACB's order to the market. To accommodate this, a standing instruction for AACB Fraction book (acting as BUX's client) has been established. The existing reporting system accommodates decimal numbers in the Quantity field, enabling reporting of fractions.

APA reporting:

- Trades executed on the AACB SI are reported to an APA for post-trade transparency (including US shares)

CSDR reporting:

- AACB reports the fractional transactions as they are not CCP cleared because executed against the fraction book of AACB. Reporting takes place based on number of shares and effective value. Transactions don't have to be reported on an individual basis, they may be netted over ISIN code and transaction date. The buy and the sell are reported both as absolute number of shares and settlement value.

BUX

Legal qualifications according to Dutch law

- Fractional shares aren't a legal term. The term 'fraction' usually refers to an entitlement to part of a share. This can be an economic entitlement or an entitlement to a community to which a share belongs. A fraction of a share is non-existent in a civil law sense. There is a share or no share and although there may be an entitlement to part of a share, this entitlement must eventually be reduced to one or more (whole) shares.

- The Dutch law does, however, provide for cash compensation for lost arithmetic fractions of shares in the event of a euro conversion, merger and split. Under these provisions, the fractions of shares do not actually exist, but only serve as an arithmetic basis on the basis of which the financial compensation can be determined. With the amendment to the Wet Giraal Effectenverkeer (hereinafter: Wge) that came into force in 2011, fractions of shares were also brought under the Wge system. In principle, they can also be traded. However, securities within the meaning of the Wge are not shares within the meaning of Book 2 of the Dutch Civil Code. The underlying shares are not fractionated.

- A fraction offered by BUX is not a synthetic or derivative, but it is also not a real stock. It is an (economic) entitlement (to a community for BUX customers to which a share belongs). That entitlement must ultimately be reduced to one or more (whole) shares. So, no access to the AGM if you do not have a whole share, distribution of dividend on the basis of fractions, etc..

BUX

APPENDIX 8

Cyprus Securities and Exchange Commission, Circular on Fractionalisation of Shares, 26 September 2024

TO	**Cyprus Investment Firms (CIFs)**
FROM	**Cyprus Securities and Exchange Commission**
DATE	**26 September 2024**
CIRCULAR NO.	**: C659**
SUBJECT	**Fractionalisation of Shares**

1. PURPOSE OF THIS CIRCULAR

1.1. The Cyprus Securities and Exchange Commission ('**CySEC**') has issued this Circular to provide guidance on the cases where fractional exposure in *shares in companies*, within the meaning of the Investment Services and Activities and Regulated Markets Law, transposing MiFID II[1] ('**Shares**'[2]and '**Law 87(I)/2017**' respectively), would qualify as exposure in Shares *per se*.

1.2. In the case of paragraph 1.1 the investment and ancillary services provided by Cyprus Investment Firms ('**CIFs**') authorised under Law 87(I)/2017, would qualify as investment and ancillary services relating to Shares and be subject *inter alia* to the Share trading and holding related obligation laid down in Law 87(I)/2017 and in MiFIR[3].

2. BACKGROUND INFORMATION

2.1. Firms operating under the national laws of Member States of the European Union ('**EU**') transposing MiFID II, including CIFs ('**MiFID II firms**'), enabling their clients to undertake fractional exposure in Shares that have been issued under the laws of EU Member States and third countries in non-fractional form, is a relatively new phenomenon that has gained momentum in the context of on-line trading.

2.2. Depending on the details involved, the aforesaid fractional exposure may be achieved either through investments :

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[1]Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU.

[2]Section 2(1) of Law 87(I)/2017 and Article 4(44)(a) of MiFID II respectively.

[3]Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012.

i. under trust arrangements which result in fractional beneficial ownership of Shares; or
ii. in another financial instrument that tracks the performance of the Shares in Companies in question.

2.3. The European Securities and Markets Authority ('**ESMA**') in an effort to shed light on the latter case and the regulatory implications thereof, issued a public statement[4]dated 28 March 2023 on Derivatives on Fractions of Shares (the '**ESMA Statement**').

2.4. The ESMA Statement acknowledged the various structures used by MiFID II firms to offer their clients the opportunity to undertake fractional exposure in Shares. The scope of the ESMA Statement was confined to the case of derivatives on fractions of shares.

3. SCOPE OF THIS CIRCULAR

3.1. CIFs enabling their clients to undertake fractional investments in Shares, which have been issued under the laws of U Member States and third countries in non-fractional form through trust arrangements, fall under the scope of this Circular.

3.2. For the avoidance of doubt CIFs providing investment and ancillary services in fractions of Shares, which have either been created as a result of a corporate action or issued in fractional form under the corporate laws of countries which permit the issuance of shares in fractional form and which are traded as such, are excluded from the scope of this statement. The reason for this exclusion is that the aforesaid qualify as Shares without the need of specific legal structuring (i.e. without the need of fractional ownership of the Shares to be held through trust arrangements).

4. TRUST ARRANGEMENTS FOR FRACTIONAL BENEFICIAL OWNERSHIP

4.1. A trust arrangement for fractional beneficial ownership of Shares can be formed where Shares are held by the CIF and two or more parties are the beneficial owners of the Shares.

4.2. Under Cypriot Law, a trust arrangement for fractional beneficial ownership of Shares may be established by virtue of a CIF acting as a trustee holding fractions of Shares in trust for the client. This creates a fiduciary relationship between the firm and its client

[4]Available here.

under which Shares are held in the legal ownership of the CIF but are beneficially owned by the clients in the proportion corresponding to the clients' agreed fractional exposure to the Shares. For the avoidance of doubt such arrangements must always be constructed in a way compliant with the rules governing the holding of financial instruments belonging to clients, laid down in Law 87(I)/2017 as further substantiated by means of CySEC Directive DI87-01 for the Safeguarding of Financial Instruments and Funds belonging to Clients[5]

4.3. The trust arrangement should be documented in writing by the CIF putting in place appropriate documentation. For instance the arrangement can be documented in the agreement between the CIF and the client as appropriate. It is clarified that the proportion of beneficial ownership over the Shares conferred to the client (including through sub-custody arrangements) should be reflected in the records of the CIF, which shall serve as evidence of ownership.

4.4. Under a trust arrangement for fractional beneficial ownership of Shares, all rights emanating from the Shares should be proportionately conferred to the clients on the basis of their beneficial entitlement in the Shares. Depending on the type of Share in question such rights could include:

i. **Voting Rights:** The CIF should ensure and safeguard the effectiveness of the ability of the beneficial owner to exercise voting rights, bearing in mind the corporate laws of the country where the Shares have been issued;

ii. **Dividends distribution:** Economic rights evidenced by entitlement to capital distribution such as dividends;

iii. **Residual Interest:** Right to participate in the distribution of assets on the winding up of the issuer;

iv. **Transferability:** A trust arrangement for fractional interests shall not affect the qualification of whole Shares thereunder as transferable securities, within the meaning of Section 2 of Law 87(I)/2017[6].

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[5]Transposing Commission Delegated Directive (EU) 2017/593 of 7 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to safeguarding of financial instruments and funds belonging to clients, product governance obligations and the rules applicable to the provision or receipt of fees, commissions or any monetary or non-monetary benefits.
[6]Article 4(44) of MiFID

5. NEXT STEPS

5.1. CIFs must[7] *inter alia* provide, in comprehensible form, clear accurate and non- misleading information to clients and prospective clients on the financial instruments they offer and their services. To this end, financial instruments enabling investors to undertake fractional exposure in Shares, under arrangements that do not constitute trust arrangements shall not be presented and/or treated as Shares.

5.2. The provision of investment services in Shares held under such trust arrangement entails the regulatory implications of the Share trading and holding related obligation laid down in Law 87(I)/2017 and in MiFIR, including (but not limited):

i. The share trading obligation of Article 23 of MiFIR; and

ii. Where the Systematic Internaliser ('**SI**') definition of Section 2 of Law 87(I)/2017[8], as further specified in Article 12 of the Commission Delegated Regulation 2017/565[9]is met, the SI related obligations, of Title III of MiFIR.

iii. The obligations relating to safeguarding client assets as laid down in Law 87(I)/2017 and CySEC Directive DI87-01 for the Safeguarding of Financial Instruments and Funds belonging to Clients, transposing the Commission Delegated Directive (EU) 2017/593.

Sincerely,

Panikkos Vakkou
Vice Chairman of Cyprus Securities and Exchange Commission

---

[7]In compliance with paragraphs (1), (4a)(ii) and (5) of Section 25 of Law 87(I)/2017.

[8]Article 4(20) of MiFID II.

[9]Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.

[10]Commission Delegated Directive (EU) 2017/593 of 7 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to safeguarding of financial instruments and funds belonging to clients, product governance obligations and the rules applicable to the provision or reception of fees, commissions or any monetary or non-monetary benefits.

APPENDIX 9

Note prepared by France Post Marché, " Financial instruments split regime", 11 October 2024

France Post-Marché

Financial instrument splitting regime

Analysis and position of France Post Marché

Working document V6 - 11 October 2024

INTRODUCTION

The recently passed law aimed at increasing the financing of companies and the attractiveness of France (Law no. 2024-537 of 13 June 2024, published in the Official Journal no. 138 of 14 June 2024) introduced a provision aimed at authorising the splitting of securities in France. The reform is expected to be implemented by mid-2025, via an ordinance to be prepared by the government on the basis of a recommendation to be made by the HCJP (Haut Comité Juridique de Place).

France Post Marché has set up an ad hoc working group comprising the various parties concerned to analyse the procedures for implementing stock splitting in France.

This working document presents the position of France Post Marché, translates the analyses and is intended to be used in the future.
to be enriched as contributions are received.

The document is structured as follows:

A- Summary of France Post Marché's position

B- Presentation of the project and analyses by France Post Marché

1. The motivation of public authorities and the project
2. The organisation set up within FPM
3. The German example and the main models involved
4. The experience of decimalising UCIs
5. The challenges in terms of development and service in France
6. Details of the principles recommended by FPM
7. Structural issues and legal adjustments to be made
8. Structural issues and tax adjustments to be made
9. Operational adaptations and impact on securities businesses

C- Appendices

Appendix 1 - Article of the law
Annex 2 - Background note from the HCJP
Annex 3 - AMF: Fractions of shares: points to watch out for and pitfalls to avoid (27 May 2021)
Annex 4 - ESMA: Guidance on fractional shares (23 March
2023) Annex 5 – Composition of the WG and action plan
Appendix 6 - Comparative legal characteristics of Trade Republic, Bux and Shares
Appendix 7 - Details on Trade Republic
Appendix 8 – Details on BUX
Appendix 9 - Details on Shares
Appendix 10 - Details on Upvest
Appendix 11 - Details on UCI orders Appendix 12-
Comparative tax characteristics

A - SUMMARY OF FRANCE POST MARCHÉ'S POSITION

In order to meet the government's objectives and investors' needs, and by observing the offers made abroad, FPM has defined **6 principles** aimed at defining a competitive French regime based on customers' needs:

Principle 1 - a commercial offer and an optional service for financial intermediaries

Principle 2 - an organisation with no impact on post-market infrastructures

Principle 3 – The new regime must be based on observed standards of client rights and investor protection, and put French intermediaries on a level playing field with foreign providers of this service:

Principle 4 - Structural changes to securities law must be avoided

Principle 5 - Customers must be fully informed of the limits and risks associated with buying and selling products.
holding such fractions of shares

Principle 6 - A marketing facility that promotes the competitiveness of French establishments

See section 6 - Details of the principles recommended by FPM

B - PRESENTATION OF THE PROJECT AND FPM'S ANALYSES

1. The public authorities' motivation and the project

As part of the law aimed at increasing the financing of companies and the attractiveness of France (Law no. 2024-537 of 13 June 2024 published in the Official Journal no. 138 of 14 June 2024), a provision authorising the splitting of securities was adopted. This article 5 ter was passed on the government's initiative.

See Appendix 1 - Article of the law

The public authorities believe that this provision could encourage the French to invest in equities and want to develop this practice, which is already in use by e-brokers, particularly in Germany, where it is enjoying great success via programmed payments into securities and ETFs. A number of new brokers are offering this service with great success, including to French customers, many of whom are opening accounts abroad with these players, most of whom currently operate under the freedom to provide services. The aim is not only to encourage innovation that will promote the development of equities for retail investors, but also to ensure the competitiveness of the French financial centre (to prevent French investors from continuing to leave the country).

The Haut Comité Juridique de Place (HCJP) has been asked by the government to prepare a report by the end of the year. Its opinion is awaited on the legal conditions to be met, particularly from the point of view of investor protection (including the information given to customers).

In the discussions that took place prior to the project, stakeholders noted that splitting was already legally possible in France (when it takes place via debt securities - see 3. The main models involved), with discussions focusing on the conditions required in terms of investor protection on the one hand, and the points to be borne in mind with regard to the business model of the players offering this service on the other (risks associated with smaller financial areas and profitability, and potential difficulties down the line, particularly in the event of a downturn in the markets).

See Appendix 2 - Background note from the HCJP

It should be noted that stock splits have already been the subject of an AMF article (presenting the various legal forms that fractional shares can take and highlighting the points of attention and risks for investors associated with this new market practice) and an ESMA opinion (specifying the requirements when fractional shares are created in derivative format).

See Appendix 3 - AMF: Fractional shares: points to watch out for and pitfalls to avoid (27 May 2021)

See Appendix 4 - ESMA: Guidance on fractional shares (23 March 2023)

2. The organisation set up within FPM

France Post Marché has set up an ad hoc working group to analyse the issues and impacts on the post-market professions and to prepare this position paper, with the support of Frame, the idea being to mobilise the various skills and working groups concerned, as well as certain establishments that have already studied the subject in particular:

- Legal Observatory
- Tax Observatory
- The Conservation Group
- The Transmitters group
- Flux and Stock OPC Group
- AMAFI
- Equity Market Group
- To be completed

Several working meetings have been held since July**, resulting in the France Post Marché position described in 6. The principles FPMrecommended by , which was presented to the HCJP and the AMF** in September.

See Appendix 5 - Composition of the WG and action plan

3. The German example and the main models

The spectacular success of investment plans in Germany

Germany stands out in Europe's ETF landscape, accounting for 135 of the €200bn in retail ETF assets under management (source: extraETF), based on the great success of savings plans. Savings plans were launched in 2010, enabling investors to invest fixed sums every month in a pre-selected ETF (e.g. MSCI World, S&P 500, etc.) without transaction costs (because the broker aggregates the orders).

Between 2018 and 2023, the number of plans in Germany rose from 0.5 million to 7.6 million, with €14 billion invested in these plans by 2023, with each plan generating an average of €165 of investment per month.

Across Europe, other countries are following this trend, including Italy, Spain, the UK and the Nordic countries, and the number of plans is expected to reach 32 million by 2028, representing an investment volume of €650 billion, according to Blackrock.

The different possible forms for fractional shares

According to our understanding and the analysis of the AMF and the HCJP (see articles in appendices 2 and 3), there are three possible legal forms for fractional shares:

- **Fractions of shares in the true sense of the term**, i.e. an investment in shares
  This holding of "real" fractions of shares is based on the investor's participation in co-ownership of certain shares. This is the case with **Trade Republic** in Germany, where the law has been adapted to facilitate such co-ownership.

- **Financial securities or financial contracts (derivatives)** that vary according to the movement in the price of the underlying asset of a share.

does not hold the share but only a financial instrument that replicates the performance of the share itself. These securities or contracts are issued by the intermediary (or one of its partners, the execution broker). This is the dominant case, as we understand it, and that of Shares, for example, which opens accounts under French law holding securities issued by Upvest and Alpaca, which execute the orders collected by Shares.

- **Fractions of shares representing *tokenised* shares** which may also constitute derivatives. To the best of our knowledge, this possibility does not exist.

The comparative analysis of these different models is as follows:

Diet	Joint ownership by agreement	*Depositary receipts - Certificates*	Derivative products
Operational impact			
Marketing[1]	Deemed non-complex	Complex product	Complex product
Accounting	The shares are registered in a securities account deemed to have been opened in the name of all the undivided co-owners - the share of each undivided co-owner must be recorded elsewhere by the institution offering the service.	The shares are registered in the name of the intermediary/issuer of the certificate – the certificate is registered in the name of the customer.	The shares are registered in an account in the name of the counterparty
Risk of fractional shares being returned	Each co-owner is the "owner" of the share up to the amount of its pro rata share	Credit risk on the intermediary/issuer of the certificate	Counterparty credit risk
Identification of shareholders	Yes (name of each interest holder and of the intermediary as authorised agent)	No (shares registered in the name of the intermediary)	No (shares registered in the name of the counterparty)
Legal impact			
Feasibility	Complex – on the assumption that conventional joint ownership is possible, particular attention will be paid to the drafting of the joint ownership contract (procedures for joining and leaving joint ownership, mandate (acts of administration and disposal) and management powers of the intermediary, duration of joint ownership and dismissal of the manager, exclusion of UCI and de facto partnership regimes, etc.).	A priori simple (issue contract)	A priori simple (financial contract)
Voting rights	No (unless a mandate is given to the intermediary – a voting policy could be necessary in this case)	No (the intermediary is a shareholder)	No (the counterparty is a shareholder)
Tax impact			
Neutrality in relation to whole shares	Total	Partial	Low
See details at 8. Tax issues and adjustments			

[1]) Fractions of shares: points to watch out for and pitfalls to avoid| AMF (amf-france.org)

It can be seen that investor rights are fairly equivalent for the models observed, with fractions being non-transferable, offering no voting rights, giving the customer the benefit of a fraction of the dividend/coupon (tax treatment to be specified according to legal form) and simple participation in OSTs only in the best of cases.

Illustration:

	Trade Republic	Bux	Shares
Transferability of fractions	No: Customers may only dispose of a fraction of a financial instrument held in their securities account once the securities account concerned has been fully sold or once all the securities they hold have been transferred to another securities account.	No: Transfer of fractional shares. Fractional shares are not transferable. If the account is closed, the fractional shares held in the account will have to be liquidated.	No: fractional shares (i) are not tradable and are illiquid outside the Application, (ii) **are not transferable in kind** and (iii) cannot be liquidated and their proceeds transferred by bank transfer. There is therefore no secondary market for the fractions of shares.
OST / Dividend	Distributions and dividends will be credited in proportion to the fractions held. Trade Republic allows the Customer to participate in securities transactions for fractions of securities when the opportunity arises. Cash dividends, when paid to the Client in proportion to the fraction booked on a security. However, fractional securities do not participate in certain other corporate actions. The design of securities transactions is the responsibility of the respective issuer. Trade Republic does not intervene not on this point.	Dividends will be paid to holders of fractional shares. Dividend payments will be split on the basis of the fraction of a share held, then rounded up to the nearest cent.	Holding fractional shares entitles you to **dividends in proportion to** the fraction of a whole share you hold. The terms of dividend payment are set out in Article 5 of these terms and conditions. Securities transactions are managed by our Execution Brokers. Any Financial Instrument, and in particular fractional shares, **will not necessarily allow you to execute your rights on your Positions**, as this is a matter for the final discretion and organisation of the Execution Broker.
Voting rights	No: Customers may not exercise any voting rights.	Yes (?): Voting rights. Fractions of shares do not exist outside the BUX system. This means that BUX will round up the total number of shares eligible to vote to the nearest whole share.	No: You can only exercise voting rights as a holder of whole shares. These **rights do not apply to fractions of** shares, so you will not benefit from rights in proportion to your holding of a whole share if you hold a fraction. action
Applicable law	German law	Dutch law	French law

4. The experience of decimalising UCIs

The decimalisation of fund units has made it possible for some fifteen years to take and execute S/R UCI orders **in amounts** satisfactorily.

The market has organised itself to deal with decimalised quantities of fund units. The market took massive action some fifteen years ago, with increased decimalisation of fund units (to 5 decimal places) via a decimalisation OST campaign.

Custodian account-keepers, in particular retail account-keepers, take orders for amounts from their customers and may themselves issue aggregated orders for amounts to UCI centralisers.

The centraliser calculates the quantity on the basis of the previous NAV (orders are at an unknown price), generating a "commercial rounding".

However, while the processes implemented may inspire players in certain operational areas (e.g. calculation of share quantities, management of rounding differences, etc.), the mechanisms implemented have proved to be very costly and impactful for the Place and each of the players involved.

- The management companies involved must define the decimalisation procedures in their prospectuses.
- Post-market systems have also been adapted (SWIFT messages, R/L system with Euroclear, T2S, decimalisation, control and resolution of R/L discrepancies which are capped by T2S management rules, etc.).
- The process is also relatively complex within the TCCs and centralisers (e.g. management of "rounding" accounts with rounding differences that are periodically adjusted, and differences linked to the globalisation of orders, etc.).

It should also be noted that a few years ago Euronext wanted to launch a solution for executing fund units on the stock exchange, but this was not successful and was discontinued. One of the main limitations was that the brokers involved in processing orders for fund units did not know how to handle decimals.

The professionals at France Post Marché strongly advise against reproducing such an overly complex model for handling fractional shares.

See Annex 11 - Details on UCI amount orders

5. Development issues

To meet the needs of the market, particularly young investors with an appetite for this type of service offering, it is important that the French regime that will be created enables French players to offer the service under satisfactory competitive conditions.

The very low price of the services that neo-brokers have introduced to the market makes it impossible to envisage
solutions that are costly to run and therefore uncompetitive.

The worst-case scenario would be to develop a costly, off-market system that would ultimately not be subscribed to by any French investors, who would continue to operate under the freedom to provide services as they do today.

6. Details of recommended principles

Proposed objective: define a competitive French system based on customer needs

Principle 1 - a commercial offer and an optional service for financial intermediaries

- splitting must be a service that certain establishments can offer to their customers. without forcing other players to do the same;
- investors and issuers may not decide to split the shares.

Principle 2 - an organisation with no impact on post-market infrastructures

- Fractionalisation is carried out by the financial intermediary (and its execution and processing partners) offering the service to its customers, who manage the "transformation" between fractions and whole securities;
- trades on post-market infrastructures (CCP, CSD) are in shares only and remain unchanged;
- establishments that decide not to offer the service are not affected by the introduction of this new scheme.

Principle 3 - The new regime must be based on observed standards of client rights and investor protection, and put French intermediaries on a level playing field with foreign providers of this service:

- no participation in General Meetings and no voting rights on fractions;
- fractions are not transferable ;
- no optional STOs, and simple STOs handled by the institutions in line with their commercial offers;
- no registered securities (essentially registered securities not eligible for the service, and no fractions of shares in securities occasionally converted to registered form nominative)

Principle 4 - Structural changes to securities law must be avoided:

- As the law currently stands, it is possible for French players to create such offerings in France under the debt securities model, which is currently the dominant model;
- regardless of the legal form applied, fractions of shares should be taxed in the same way as whole shares;
- the exhaustive effects of using a model of co-ownership of securities as applied in Germany are not known at this time (operational, marketing, financial, etc. aspects). taxation, investor information, legal feasibility, etc.).

Principle 5 - Customers must be fully informed of the limits and risks associated with buying and selling products. holding such fractions of shares, in particular :

- the legal form of fractions ;
- the nature and location of the players involved in providing the service ;
- risks to the potential issuer ;
- the terms and limits for transferring fractions.

Principle 6 - A marketing facility that promotes the competitiveness of French establishments

- requirements in the sales/subscription process comparable to those for shares ;
- simplicity of the product for the client (e.g. possibility of displaying aggregate positions in securities + fractions) ;
- simplicity of the system, the cost of which encourages French networks and players to roll out the offer to their customers.

7. Legal issues and adaptations

How should securities law and customer agreements be adapted?

- What legal form(s) should fractions take? Several forms (e.g. co-ownership, right of credibility...)?
- How can I hold fractions? Can they be included in the CTO / PEA / PER securities account?
- How do you define restrictions and limits?
    - 1/ types of orders (e.g. programmed investment plans, simple orders, etc.)
    - 2/ scope of securities available for splitting
    - 3/ currencies
- How will this evolve (what happens to stocks if an intermediary decides to discontinue the service for a particular product?
  value?)
- What are the requirements and consequences in terms of invoicing and invoicing rules?

See Appendix 6 - Comparative legal characteristics

8. Tax issues and adjustments

The explanatory memorandum to the amendment adopted as part of the Attractiveness Act contains the following passages:
"The splitting of financial instruments is a financial and legal innovation that makes it possible to overcome this difficulty by allowing investors to invest small amounts (potentially as little as one euro) to acquire a proportion of shares, bonds or fund units of less than 1. These fractions of shares allow them to benefit from the same rights as a shareholder holding a full security, except that the performance, risk and dividends are proportional to the proportion of the security acquired.
"However, French law establishes a principle of indivisibility that requires specific rules to be developed for the splitting of split instruments. This means amending a series of provisions of the Commercial Code and the Monetary and Financial Code to specify how they apply to split financial instruments, ensuring that the legal framework applicable to split instruments follows the rules applicable to unit-linked instruments, which justifies the use of an ordinance.

Even if the observation that fractional shares entitle holders to the same rights as whole shares needs to be qualified (absence of voting rights, for example), it seems possible to deduce a principle of tax neutrality between fractional shares and whole shares, to prevent the objective pursued by the creation of fractional shares (to encourage investment in shares by small savers) from being prevented by tax provisions that are unfavourable to these savers, or on the contrary from being hijacked by other players seeking to benefit from a windfall effect linked to possibly more favourable tax provisions.

In addition, the tax treatment of fractional shares will depend on their legal status. According to the work of the AMF, there are three possible systems (the second of which can be subdivided into two systems):

- Fractions of shares are treated as an investment in shares,
- Financial securities or financial contracts (derivatives) that vary according to changes in the price of the underlying asset of a share; to this extent, the investor does not hold the share but only a financial instrument that replicates the performance of the share itself. There are two possibilities under this system:
    - Fractional shares may be treated as debt securities under the following conditions of art. L. 213-0-1 of the French Monetary and Financial Code (financial securities).

They can thus be likened to the "depositary receipts" known under American law (infra pt. 6), known as "depository receipts" under the MiFID 2 directive.
    - They could also be described as financial contracts: they would be similar to "prepaid forwards", as defined in article L. 211-1 III of the French Monetary and Financial Code.
- Fractions of shares representing tokenised shares which may also constitute derivatives. As this case currently appears to be theoretical and not operational, we have excluded it from the tax analysis at this stage.

After analysing the three remaining qualifications (assimilation of fractions to whole shares, assimilation to depositary receipts or assimilation to a financial contract) with regard to the taxation of dividends, the taxation of capital gains, eligibility for the PEA, the application of the FTT and registration fees, and the reporting obligations of institutions (IFU) and investors, the following initial conclusions seem to be possible.

From a tax point of view, assimilating fractions of shares to whole shares would probably be the best solution for preserving tax neutrality between fractions of shares and whole shares, and guaranteeing a simple tax system for investors.
Classification as a "depositary receipt" would preserve overall tax neutrality but could present practical difficulties (particularly with regard to withholding tax on dividends and PEAs).
Classification as financial contracts would allow a more favourable tax regime in terms of withholding tax and FTT, but the eligibility of fractions for the PEA would probably be very compromised. Specific treatment in the IFU would be necessary. This classification could therefore break the tax neutrality between fractions of shares and shares, to the detriment of small resident investors (with the risk of a windfall effect for certain players).

A detailed analysis can be found in Appendix 12.

See Appendix 12 - Comparative tax characteristics

9. Operational issues and adaptations

Operational adaptations	
1/ Taking orders for amounts, transformation and execution	
Taking orders in amount	**How do you process orders for amounts and transform them into orders?** Should the rules take account of costs and VAT on a security or a basket of securities? What about rounding and fracturing? Should the rounding rules be unique and standardised, or left to the discretion of each school? These mechanisms already exist for UCIs.
Execution of orders, transformation and management of split accounts	**What organisation is needed to transform and execute?** **What are the roles, processes and requirements for originators, brokers and execution platforms?** The transformation puts the ordering intermediary and the broker in a position to take positions on the quantities of securities completing the fractions to arrive at whole quantities (i.e. This is known as the "split account".) What status/approval is required to carry out this service (i.e. performance on behalf of third parties)?
2/ Retention and rights attached to these fractional shares	
Conservation Issuers	**What are the rights and rules for holding fractions?** **STOS? General Meetings? Transfer of shares?** The rules may differ depending on whether the fraction is specifically recognised under securities law or is a debt. What is the impact on registered shares? What impact and knowledge will this have for issuers?
Data	**How do you reference and value fractional shares?** Fractions are valued according to the same rules as the whole security. In certain cases, professionals may be asked to create specific codes (ISIN for the whole share; QS for the fraction). How many decimal places are required? Do I need a DIC on the fraction (this is the case for Shares, for example)?
Customer and regulatory reporting	**How do you return positions to customers?** **What are your regulatory reporting needs?** Fractional positions are aggregated with whole positions to produce a total (trade confirmations, portfolio statements, etc.). What regulatory reporting should include positions on fractions (RDT? APA? CSDR?...)?

C - APPENDICES

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Appendix 2 - Background note from the HCJP
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APPENDIX 10

Note drawn up by Euronext, "Replication of fractional trading with certificates", 11 April 2025

From Alexandre ATLANI Date 11 April 2025

Subject **Replication of fractional trading with certificates**

General principle

Warrants & Certificates (W&C) are financial products, issued in the form of debt securities by financial institutions, and listed on the stock exchange for over 30 years (1989 - the year the first warrant was issued by Société Générale). They allow you to take positions on an underlying asset (such as a share or an ETF) without buying it directly.

Each W&C has a ratio (or parity), defined at issue by the issuer and which may be different for each product. A ratio of 1000:1 means that it takes 1000 certificates to replicate the equivalent of one underlying asset. In other words, by buying a single W&C, the investor is replicating an investment of one thousandth of the underlying asset.

Replication model for fractional trading with certificates

W&Cs are always traded in whole units. But depending on the quantity traded, which may be less than the ratio and is not limited to multiples of the ratio, it is possible to replicate fractional investment in the underlying without ever trading the underlying asset on a fractional basis.

W&C and dividends

W&Cs that pay a dividend, or a coupon equal to the ratio-adjusted dividend, are rare.

- For W&Cs that have a maturity date (generally up to 18-24 months) and are of the European type (exercised only at maturity), the dividends that are anticipated up to the maturity of the W&C are already taken into account in the price of the W&C.

- For W&Cs with no maturity date or American-style products (exercisable at any time), their prices do not take into account dividend anticipation. Their prices are therefore impacted directly each time a dividend is detached from the underlying asset.

  To offset this effect, some W&Cs may pay a coupon equivalent to the ratio-adjusted dividend (but this is rare as it is often more expensive than the coupon itself).

- On other W&Cs, dividends (adjusted to the ratio) can be reinvested in the W&C. In this case, each W&C increases in value, so the ratio is reduced with each dividend reinvestment.

For all these reasons, most W&Cs do not pay dividends.

W&C and voting rights

W&Cs which do not confer any voting rights on their holder.

W&C and underlying securities

When a W&C issuer sells call W&Cs (bullish position), it must hedge its position by buying the underlying assets, among other things. The quantity of underlying assets to buy depends on :

- The quantity of W&C sold
- The W&C ratio
- From the Delta[18] from W&C

If fractional trading is replicated using certificates, the certificates in question ("tracker certificates") always have a Delta equal to 100%.

The issuer of the certificate will therefore buy one share for every 1,000 it sells.

Conversion of certificates into shares

In the proposed fractional trading replication model, it is also sought to convert the certificates (when their number reaches the quota) into the underlying share or ETF. This must be initiated by the investor or preferably by his intermediary (if this has been contractually agreed between the intermediary and the investor as part of a programmed investment plan, for example).

There are several ways of converting certificates into shares:

1. Resale of certificates and purchase of shares

When an investor holds at least 1,000 certificates, he can decide to resell 1,000 (or a multiple of 1,000) to the issuer or any other investor with a buying position in the order book at the same time.

The investor can then use the proceeds from the sale of the certificates to buy the corresponding share(s).

Please note:

- If the certificates are not eligible for the PEA, the investor will have to pay income tax and social security contributions if there is a capital gain on the sale of the certificates. They may then no longer have enough capital to buy the corresponding share(s).
- If the issuer has to buy back a very large number of certificates at the same time, it will have to sell back a very large number of shares (which it had bought to hedge its position) at the same time. If this sale of a large quantity of shares can affect the price of the underlying share, even temporarily, the issuer will not be able to buy back all the certificates at the same price. So, even without taking into account the taxation of potential capital gains on the sale of the certificates, the investor could run out of capital to buy the share(s) corresponding to the sale of the certificates.

2. Swap of certificates for shares

[18] Delta expresses the sensitivity, adjusted to the ratio, of a W&C (or derivative product as a general rule) to a variation of one monetary unit in the price of the underlying asset. For example, for a W&C with a 10:1 ratio and a Delta of 45%, when the price of the underlying asset changes by €1.00, the price of the W&C will change by : 1,00€ * 45% / 10

When an investor holds at least 1,000 certificates, they can decide to exchange 1,000 (or a multiple of 1,000) for one or more shares with the issuer.

In practice, this exchange breaks down into a transaction in the certificates and a transaction in the corresponding share(s).

In contrast to the previous option, if the issuer is certain of being able to resell all the shares it has bought to cover its position at the same price, it can also buy back all the certificates at the same price.

In the case of an exchange (or swap), it must be guaranteed that the 2 transactions will take place between the same two counterparties.

Please note:

- Taxable capital gains. If the certificates are not eligible for the PEA, any capital gain realised on the sale of the certificates is subject to income tax and social security contributions, which may limit the investor's ability to buy the corresponding shares.

3. Cash exercise of certificates and purchase of shares

If the prospectus for the issue of the certificates provides for "cash settlement", when an investor holds at least 1,000 certificates, he may decide to ask the issuer to exercise 1,000 (or a multiple of 1,000) certificates. The investor will then receive an amount equivalent to the share price (generally equal to the closing price of the assets on the day of exercise).

The investor can then use the capital received from the exercise of the certificates to buy the corresponding share(s).

Please note:

- The time taken to receive the funds following exercise may be long (from several days to 2 or 3 weeks). Between the exercise request and the receipt of funds, the price of the underlying asset may have risen, requiring additional funds to purchase the corresponding share(s).
- Taxable capital gains. If the certificates are not eligible for the PEA, any capital gain realised when the certificates are exercised is subject to income tax and social security contributions, which may limit the investor's ability to buy the corresponding shares.

4. Physical exercise of share certificates

If the prospectus for the issue of the certificates provides for "physical settlement", when an investor holds at least 1,000 certificates, he may decide to ask the issuer to exercise 1,000 (or a multiple of 1,000) certificates. The investor will then receive the corresponding share(s) from the issuer.

Please note:

- If the certificates are not eligible for a PEA, this situation is much more complex from a tax point of view. The certificates would be acquired outside a PEA, but the shares received in the event of physical exercise could be transferred or even received directly into a PEA. How and when should I calculate/tax a capital gain between a transaction outside a PEA and a transaction within a PEA?
- If he had been able to buy fractions of shares in the PEA, the investor would not have had to pay income tax or social security contributions as long as he did not withdraw funds from the PEA.

5. Conclusion

We recommend solution 2 because :

- This is the most automatable:
  - Using the Optiq messaging system already in use between Euronext and all market members, financial intermediaries can transmit orders to sell certificates and buy the underlying shares/ETFs, guaranteeing that the 2 transactions will take place between the same two counterparties.
  - Conversely, there is no widespread electronic system for transmitting exercise requests (physical or in cash) to certificate issuers and financial intermediaries, as would be necessary for solutions 3 and 4.
- This is the solution that can guarantee a perfect exchange between a unit of certificates and an underlying security (without the risk of the investor running out of funds following the sale of the certificates, as could happen in solution 1).

However, if solution 2 is to be deployed, the certificates will need to be PEA-eligible in order to avoid tax avoidance.

Certificates and taxation

As explained in each of the conversion options above, if the certificates are not eligible for the PEA, the capital gains realised on the certificates will be subject to income tax and social security contributions, reducing the amount available to purchase the corresponding shares.

In the case of physical exercise, the situation seems so complex that individual investors may not know what tax to apply and when.

Conversely, with genuine fractional trading in a PEA, there would be no tax until the funds are withdrawn. And any withdrawals from the PEA would be subject only to social security contributions.

A change to the Monetary and Financial Code, Article L221-31 §2, therefore seems necessary in order to authorise certificates in the PEA.

W&C and post-trade

Although each W&C represents only a fraction of an underlying asset, each W&C is a whole unit. Clearing and settlement of W&Cs is therefore carried out in the traditional way and in the same way as for (whole) shares themselves.

Certificates and regulations

The type of certificates used to replicate fractional trading have been around for almost 30 years. They are tracker certificates issued on the basis of a base prospectus, with terms & conditions and KIDs, and classified under MiFID II as Securitised Derivatives.

Some brokers have pointed out that this classification as Securitised Derivatives could be a brake on the adoption of replication of fractional trading with certificates:

- Suitability tests :

  Before authorising their clients to trade in securitised derivatives, financial intermediaries must carry out a suitability test on each client.

  Although most of their clients can pass the suitability tests for investments in equities (whole or fractional), only a limited number of investors will pass the suitability tests for securitised derivatives. The rest will not be allowed to trade these products, including certificates used to replicate fractional trading.

- Marketing / Promotion :

  The marketing/promotion of securitised derivatives is highly regulated, and often restricted and/or restrictive. Warnings must mention the risks of all products, including those relating to the most complex/risky products.

  Any promotion of fractional trading with certificates would have to follow these same rules and would therefore be much more restricted and/or restrictive than an equivalent communication but for fractional trading via another mechanism. And this despite the fact that the certificates in question do not include any conditionality or optionality.

  Consideration should be given to relaxing the rules on the marketing/promotion of fractional replication certificates so that they are more or less in line with the rules on the marketing/promotion of fractional trading via other models.

APPENDIX 11

Note prepared by Emilie MAZZEI and Vincent MALASSIGNÉ on US law 7 March 2024,

HCJP working group on fractional shares Meeting of 7 March 2024

Note on American law
Emilie Mazzei and Vincent Malassigné

This note will consider the legal classification of fractional shares under US law (I), the legal classification of *American Depositary Receipts* (II) and, finally, the elements of comparison between these two techniques that may be of interest to the work of this group (III).

I - Legal classification of fractional shares in US law Emilie MAZZEI

In the United States, fractional shares are not currently considered by the regulations as a distinct category of financial security, but rather as portions of shares of which they are a *split,* without creating a new security or derivative product.

While the Securities and Exchange Commission (SEC) has not issued any specific regulations dealing exclusively with fractional shares, it nevertheless recognises their existence and provides guidance on their use via investor bulletins. In particular, an Information Bulletin published on 09 November 2020 on the SEC website (*Fractional Share Investing - Buying a Slice Instead of the Whole Pie*) [1]defines a fractional share as follows:

"A fractional share is when you own less than one full share of a stock or other security.

In other words, the SEC pragmatically considers that fractional shares do not require a different legal classification from that of their underlying. Fractional shares are therefore not considered to be debt instruments distinct from the shares themselves, nor are they considered to be financial contracts or derivatives.

The principle that stock splits do not result in the creation of new securities is based on a 1979 Second Circuit decision[(2)] (*Abrahamson v. Fleschner*). This Second Circuit decision, applying the provisions of Section 10(b) and *Rule 10b-5* of the *Securities Exchange Act* of 1934[3], states that "*before changes in the rights of a security holder can qualify as the 'purchase' of a new security under Section 10(b) and Rule 10b-5, there must be such a significant change in the nature of the investment or in the investment risks as to amount to a new investment*.

As a result of this case law, a change in the rights of a security holder is only considered to be the purchase of a new security if there is a significant change in the nature of the investment or the associated risks. Conversely, if the change in the nature of the investment or the associated risks is insignificant, there is no purchase or sale of a new security. The case in point concerned an investment managed under mandate. The principle was subsequently applied to the principle of stock splits.

The question was whether the share split constituted a significant change such as to create a new financial security.

[1]Investor Alerts and Bulletins *Fractional Share Investing - Buying a Slice Instead of the Whole Pie* - 9 November 2020
[2]568 F.2d 862 (2d Circ. 1977)
[3]Pub. L. Tooltip Public Law (United States) 73-291, 48 Stat. 881, enacted June 6, 1934, codified at 15 U.S.C. § 78a et seq.

It was therefore considered by legal writers and by the US regulatory authorities (see the SEC Information Bulletin mentioned above) that the split mechanism is not such as to give rise to a new security, different from the share that is the subject of the split. The fractional share therefore has no legal status of its own and does not give rise to the creation of a new financial security.

II - Legal status of *American Depositary Receipts* (*ADRs*)[4]Vincent Malassigné

Brief presentation and origins of the DR technique - *Depositary receipts* are commonly defined as "certificates representing" shares and, more broadly, securities (debt or equity) that have been issued by foreign companies, i.e. whose registered office is in a country other than that of the bank issuing the DRs[5].

The first DRs were created almost a century ago by the American bank JP Morgan to represent shares issued by an English company[6]. This led to the creation of the best-known and most widely used DRs to date, *American depositary receipts* or ADRs.

In other words, ADRs are financial instruments created by banks headquartered in a given state, the United States, which are deemed to 'represent' other securities - mainly shares - issued by foreign companies, such as CAC 40 companies. ADRs enabled US institutional investors to invest in securities issued in emerging countries and, more generally, to circumvent the requirement under US law to hold a minimum proportion of securities issued by US issuers.

Consequently, DRs are an alternative and very specific form of
"indirect holding" of foreign shares by non-residents. Rather than "directly" acquiring a share issued by a French company, a US investor acquires another security - an *American Depositary Receipt* issued by a US bank - which is American and denominated in US dollars, this security being deemed to represent a French share or a fraction of a French share or a multiple thereof.

Coexistence of two distinct financial securities. It is essential to understand that an ADR is a financial security in its own right, distinct from the share represented. An ADR refers to two
These are "elements" in the same way as any *security* or financial instrument.

- First of all, it refers to a 'certificate' - an *instrumentum* - which 'represents', 'materialises' or 'incorporates', depending on the analysis, a right, i.e. a *negotium*. It is the *"Receipt*" in the strict sense.

- But an ADR is also, and above all, a right. Contrary to appearances, this right does not correspond to the share issued by the foreign company. It is a set of prerogatives arising from the conclusion of a contract between the investor - the holder of the ADR - and the American bank known as the "depositary". The holder of an ADR therefore has a bundle of rights, known as an *American Depositary Share* [7], which it can exercise vis-à-vis the bank.

For example, the definition of the term "*security*" in section 2.a.1 of the US *Securities Act* of 1933 includes depositary receipts in a more or less clear manner, as confirmed by the SEC in its study of ADRs[8].

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[4]The present elements are drawn from the fruits of research begun as part of a thesis (Vincent Malassigné, *Les titres représentatifs - Essai sur la représentation juridique des biens par des titres en droit privé*, pref. A. Ghozi, Dalloz, 2016) and continued in an article (Vincent Malassigné, "Les *Depositary receipts*", *Bulletin Joly Bourse* January-February 2017, p. 24-38).

[5]Dir. No 2014/65/EU, 15 May 2014, on markets in financial instruments (known as MIFID 2), art. 4.1, 45).

[6]SEC "Investor Bulletin: American Depositary Receipts", www.sec.gov/investor/alerts/adr-bulletin.pdf.

[(7) V]. SEC Code of federal regulations (CFR), Title 17, § 240.12b-2 "Definitions": "Depositary share. *The term "depositary share" means a security, evidenced by an American Depositary Receipt, that represents a foreign security or a multiple of or fraction thereof deposited with a depositary*.

[8]SEC, "ADR Concept Release", *Register Federal*, vol. 56, no. 104, 30 May 1991, p. 24421 et seq., spec. p. 24426. and 24430.

It should be noted that the harmonised Euronext Market Rules also emphasise the coexistence of two different securities by defining a *Depositary Receipt* as: "*A security incorporating the ownership of specific rights attached to an underlying security, issued by an entity other than the issuer of the underlying security*".

The issuer of the represented shares is therefore not the issuer of the ADRs, contrary to what certain provisions suggest. At most, this company can "sponsor" the issue of ADRs, which is different.

Coexistence of two types of ADR issuance programme - There are two types of ADR issuance programme, depending on whether or not the issuer of the shares represented participates in the transaction by "sponsoring" the issuance of the ADRs.

- The issue of ADRs is said to be "sponsored" if it is carried out at the joint initiative of the company issuing the shares represented and the "depositary" bank. A contract will then be concluded between these two parties, the purpose of which will be to organise the exercise of voting rights attached to the shares represented by the American investors who have subscribed to or acquired the ADRs.

- The issuance of ADRS will be qualified as "unsponsored" if it is carried out exclusively on the initiative of a US bank.

The Depositary Bank's obligations to retain and return the represented shares. Finally, in the context of an ADR issue programme, the bank is bound by an obligation to retain the said shares. It must therefore hold as many shares as the number of shares represented by the ADRs. It must also return these shares - in their entirety - on first request, up to the amount of ADRs held by the investor, subject to certain conditions[9].

9 SEC, Code of federal regulations (CFR), Title 17, § 239.36 :
"*(a) The holder of the ADRs is entitled to withdraw the deposited securities at any time subject only to*
(1) temporary delays caused by closing transfer books of the depositary or the issuer of the deposited securities or the deposit of shares in connection with voting at a shareholders' meeting, or the payment of dividends,
(2) the payment of fees, taxes, and similar charges, and
(3) compliance with any laws or governmental regulations relating to ADRs or to the withdrawal of deposited securities;"

III - Comparison of the two techniques

- **The point of convergence**: as we have seen, ADRs and, more broadly, DRs make it possible to split shares indirectly. But that is where the similarities between these two techniques end, because there are several important differences between them.

- The differences

  - **1° The purpose of ADRs is essentially to represent, and possibly split, a foreign share**. In other words, the purpose of the DR technique, as it has been conceived, is not to represent, and possibly split, shares issued by a "national" issuer.

  - **2°** Although ADRs make it possible to represent a fraction of a foreign share, **the splitting that takes place is not the essence of the** ADR **technique**. As long as two different securities coexist, anything is conceivable. Thus, 1 ADR can represent :
    - 1 share (in which case there is no split) ;
    - or 1 share multiple (1 ADR represents 3 shares) ;
    - or a fraction of a share ($1/10^{(th)\ of}$a share).

  - **3° Existence of a single security / coexistence of two distinct financial securities:** in the context of a share split in the United States, there would be only one financial security: the share. Conversely, in the case of ADRs, there are necessarily two financial instruments, one American (the ADR issued by an American bank, which may be listed on the American market) and the other foreign (the foreign share, which will be listed on another market).

  - **4° Differences in voting rights attached to shares :**

    In the case of ADRs, the terms of the contract for the issue of ADRs, particularly in the case of a sponsored issue programme, seek to ensure that the US investor has rights similar to those of a shareholder of the foreign company. The US investor may therefore give a voting instruction to the US bank which, depending on the circumstances, will have to comply with it (obligation of result) or - quite often - endeavour to comply with it while allowing itself a certain degree of freedom (obligation of means).

    Conversely, in the case of stock splits, the investor's prerogatives are often confined to the financial rights attached to the shares, as the SEC is quick to point out.

  - **6° Impact on the qualification of the title**

    A stock split involves a single security - the share - which is therefore a capital security.

    In the context of ADRs and, more generally, DRs, the ADR is distinct from the share, which means that the qualification of an ADR must be determined independently of that of the share represented. It is not easy to determine the nature of an ADR. There are many arguments in favour of classifying an ADR as a debt security, insofar as an ADR confers on its holder a bundle of prerogatives that can be exercised against the bank issuing the ADR. However, because an ADR represents a share, it could also be argued that it should be classified as an equity security. This logic is also found in the Mifid directive.

- **7° The possibility of transferring the security following the split**

  In the case of a stock split, investors may only sell their fractional share(s) through the broker who initiated the split. There is currently no organised secondary market in fractional shares. Conversely, an ADR is obviously transferable and negotiable, and there is a secondary market.

- **8° Collective issuance of ADRS vs. splitting up actions over time**

  The issue of ADRs undoubtedly corresponds to securities within the meaning of French law (art. L. 228-1, para. 2 of the FCC), which presupposes fungibility between several identical financial securities.

  Conversely, share splits appear to be carried out on an ad hoc basis by an intermediary. And, in any event, no securities other than shares are issued.