

## CONSULTATION SUMMARY

Consultation subject:	<b>rule changes related mergers and acquisitions treatment</b>
Consultation started:	May 2022
Summary published:	28 September 2022

### **Summary:**

A consultation took place in May 2022 and June 2022 regarding different aspects of mergers and acquisitions treatment for all Euronext Indices.

For most elements there is a consensus among respondents to implement the proposed changes, while for some parts of the proposed changes there is no consensus and therefore for these parts the proposed changes will not be implemented. For some parts Euronext has decided to make small changes to the proposed rule changes as result of comments received. As a consequence Euronext has decided to implement or keep the following merger and acquisition rules:

- For Free Float Market Capitalisation weighted Indices, Euronext will update the Free float of the target Company if a bid has become unconditional and the bidder has obtained control over less than 85%. In case the bidder obtained control over more than 85%, Euronext will remove the target company from the applicable Index.
- For Free Float Market Capitalisation weighted Indices that have a Free Float factor of 1 for all constituents, the target Company will not be removed from the index. The Company will only be removed at delisting.
- For Non-Market Capitalisation, in case the bidder obtained control over more than 85%, Euronext will remove the target company from the applicable Index. No changes will apply when an offer is seen as unconditional and the acquirer has obtained control over between 50% and 85% of the shares of the target company.
- For Non-Market Capitalisation weighted Indices that are based on PAB or CTB, Euronext will remove the target Company from the Index if a bid has become unconditional and the bidder has obtained control over more than 50%.
- For Mandatory offers on FF Market Cap weighted Indices and Non-Market Cap Indices, Euronext will use the same thresholds and treatments as mentioned above.
- In the event that a tender offer results in an additional listed and active "tendered" line prior to the tendered shares being accepted and exchanged for settlement, Index Design will decide to switch to the tendered line if certain conditions are met.
- The price used for removal of companies is the last known traded price. For instances where trading is suspended, Euronext will use the offer price.
- Euronext will make a company eligible for index inclusion after three months following the removal of company from the Index, considering a free float of 10% or higher.
- Euronext is making it more explicit when an offer is considered unconditional. In addition, it adds country specific situations to the new rules
- For situation where the bid is made in shares, the constituent will be replaced by the newly formed company, provided that such company will be included in the Index Universe and complies with continuous eligibility criteria. If not, the target company will be removed from the index

To recap, this would mean the following:

Type of situation	Type Index	Subtype Index	Control % bidder	Treatment
Acquisition in cash	Free Float Market Cap Weighted	All except indices with Free float of 1	50% - 85%	Target company stays in index with adjustment of Free Float factor
			>85%	Removal of target company
		Indices with Free float of 1	>50%	Only removal at delisting
	Non-Market Cap Weighted	All except based on PAB or CTB	50% - 85%	Target company will stay in the Index without change
			>85%	Removal of target company
		Based on PAB or CTB	>50%	Removal of target company
Full Market Cap Weighted	All	All	Only removal at delisting	
Mergers and takeovers in shares	Free Float Market Cap Weighted	All	>50%	Replacement or removal of target company
	Non-Market Cap Weighted	All	>50%	Replacement or removal of target company
	Full Market Cap Weighted	All	All	Only removal at delisting

These rules changes will be implemented per Monday 28 November 2022. All details of the new rules can be found below.

**Number of Responses:**

Between 5 and 10 responses were received to the consultation.

**Follow up:**

Most elements of the consulted rule change will be implemented, while some parts of the proposed changes will not be implemented. In addition, it will make some small amendments to the proposed changes. The new rules will be effective as from 28 November 2022.

**Details new rules:**

For Mergers and Acquisitions, a distinction is made in treatment between Free Float Market Capitalisation weighted indices, Non-Market Capitalisation Weighted indices and Full Market Capitalisation weighted

Indices and between a situation where a bid is made in cash and a situation where a bid is done in shares. In addition, Euronext will make adjustments to the index as from the moment an offer is considered unconditional.

### **Unconditional offer**

Euronext considers an offer unconditional if three general conditions are fulfilled. Besides that, country specific situations may apply.

#### **General**

An offer is seen as unconditional when all of the following conditions are fulfilled:

- 1) All authorities have approved the transaction, there are no pending regulatory approvals anymore.
- 2) The acquirer deems the offer as successful (i.e. The minimum acceptance threshold as set by the acquirer has been achieved).
- 3) The acquirer has obtained control over more than 50% of the share capital.

#### **Country specific situations**

- France: For French offers, the offer deems to be successful once announced by the AMF instead of the acquirer
- United States and Canada: For US and Canadian companies, if the only condition left is regulatory approval and if the expected completion date is made public, the offer is considered unconditional
- Great Britain, Australia, New Zealand, Hong Kong and Singapore: In case of a Scheme of Arrangement, if the only condition left is Court hearing sanctioning the Scheme and if the expected completion date is made public, the offer is considered unconditional. The offer being considered unconditional will follow the expected completion date timeline.

### **Acquisitions in cash**

#### Free Float Market Capitalisation weighted Indices

In case an offer is seen as unconditional and the acquirer has obtained control over more than 85% of the shares of the target company, the target company will be removed from the index. The removal will take place with effect after the close of the first full business day following the offer becoming unconditional. If a company is removed from the index, the divisor will be adapted to maintain the index level.

In case an offer is seen as unconditional and the acquirer has obtained control over between 50% and 85% of the shares of the target company, the target company will remain in the Index but a potential update of the Free Float Factor will take place. Euronext will conduct a new Free Float Factor analysis for the target company and takes into account the changes as result of the offer. In case the rounded Free Float Factor changes with 5% or more, this will be reflected in the index. This change will take place with effect after the close of the second full business day following the offer becoming unconditional. Note that Euronext rounds the Free Float Factor to the nearest 5%.

Euronext will use public sources and the published result of the offer to determine the new Free Float Factor. In case Euronext cannot determine from which shareholders the acquirer has obtained the shares, the Free Float Factor adjustment will just reflect all shares that are controlled by the acquirer.

If the acquirer extends the offer period while the acquirer has obtained control over between 50% and 85% of the shares of the target company after the initial offer period, Euronext will not make any adjustments and will wait for the end of the extended offer period to make any (potential) adjustment.

In case the acquirer has obtained more than 85% of the shares of the target company after the initial offer period while the offer period is also being extended, Euronext will remove the target company in line with the initial offer period. Note that these principles apply to every extension of the offer period, but does not apply to new offer periods after the (initial) offer has become unconditional. In this case the offer is treated as a new offer.

For Indices that have a Free Float Factor of 1 for all constituents, the target Company will not be removed from the index. The Company will only be removed at delisting.

For the non-standard situations of mandatory offers and offers with a tendered and untendered line specific treatments are required. These treatments are described below. For other non-standard situations Index Design can also apply a specific treatment. These specific treatments and details will be announced via the usual communication channels to the market in a timely manner.

### ***Mandatory offers***

For mandatory offers (whereby the bid is triggered by the crossing of a certain ownership threshold), Index Design will use the same thresholds as mentioned above.

### ***Replacing ordinary line by tendered line***

In the event that a tender offer results in an additional listed and active "tendered" line prior to the tendered shares being accepted and exchanged for settlement, Index Design will decide to switch to the tendered line if all the following conditions are met:

- 1) The offer is considered successful by the acquirer (i.e. the minimum acceptance threshold set by the acquirer has been achieved).
- 2) The acquirer obtained control over more than 50% of the share capital of the target company
- 3) An additional offer period is launched to tender shares
- 4) The tendered shares will still trade after the expiration of the additional offer period.

The switch to the tendered line will be announced two trading days in advance. In case the offer is later cancelled and the original shares are returned to the shareholders who did tender their shares, the Administrator will decide to include the original shares in the index again. This switch will also be announced two trading days in advance.

### ***Non-Market Capitalisation Weighted Indices***

In case an offer is seen as unconditional and the acquirer has obtained control over more than 85% of the shares of the target company, the target company will be removed from the index. The removal will take place with effect after the close of the first full business day following the offer becoming unconditional. If a company is removed from the index, the divisor will be adapted to maintain the index level. No changes will apply when an offer is seen as unconditional and the acquirer has obtained control over between 50% and 85% of the shares of the target company.

For Indices that are based on the PAB objective or CTB weighting procedure, in case the offer is seen as unconditional and the acquirer has obtained control over more than 50% of the shares of the target company, the target company will be removed from the Index. The removal will take place with effect after the close of the first full business day following the offer becoming unconditional. If a company is removed from the index, the divisor will be adapted to maintain the index level.

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### ***Full market Capitalisation weighted indices***

For full market Capitalisation weighted indices, the target Company will not be removed from the index. The Company will only be removed at delisting.

### ***Price used for removal***

A Company removed from the index following an acquisition in cash will be removed using the last known traded price. In case the Company is suspended on the day of removal the price of the offer will be used.

### ***Re-inclusion of a removed company***

In the event that a company has been deleted from the index but retains a listing with a Free Float Factor of at least 10% (rounded) it will be considered for index eligibility following a period of three months after it has been removed from the index. The same logic will apply for companies that are taken over but were not part of a particular index, these companies will be eligible for index inclusion three months after they otherwise would have been removed from that index. All relevant data will be gathered based on the period after the offer situation has ended. Note that index specific eligibility rules can be applicable here as well.

## **Mergers and takeovers in shares**

### ***Free Float Market Capitalisation weighted Indices and Non-Market Capitalisation Weighted Indices***

In the event of a merger, acquisition or similar situation where the bid is made in the form of shares, the constituent will be replaced by the newly formed company, provided that the offer is unconditional and such company will be included in the Index Universe and complies with continuous eligibility criteria as defined in the index reviews section, if applicable. The replacement will take place in line with the schedule of the transaction. The replacement of the shares of the relevant index constituent by the shares of the newly formed company will be executed on the basis of the bid ratio.

In case the company will not be included in the Index Universe or does not comply with the continuous eligibility criteria as defined in the index review section while the bid has become unconditional, the target company will be removed from the index. The removal will take place with effect after the close of the first full business day following the offer becoming unconditional.

### Full market Capitalisation weighted indices

For full market Capitalisation weighted indices, the target Company will not be removed from the index. The Company will only be removed at delisting.

### **Mixed transactions**

In case a of a mixed bid of cash and shares the bid will be treated as merger in shares if the share part amounts to at least 75% of the offer price, on the day of the publication of the terms of the offer. The replacement of the shares of the relevant index constituent by the shares of the company that continues to be traded will be executed on the basis of the bid ratio. The divisor will be adapted only for the cash part of the offer price.

### **Other non-standard situations**

Index Design reserves the right to apply a specific treatment in non-standard situations. This includes (but is not limited to) competing bids with differing closing dates or structures and takeovers in which a company as result of the transaction lacks any meaningful assets (as determined by Index Design in its sole discretion), whether effected by way of a direct acquisition by the issuer or a subsidiary, an acquisition by a new holding company of the issuer, a legal merger, demerger or otherwise, of a business, a company or assets which in substance results in a fundamental change in the business. A separate announcement detailing the specific treatment will be issued timely to the market

### **Feedback received in the consultation:**

See below for a summary of received comments:

*Are all proposed new treatments for mergers and acquisitions acceptable and replicable for you?*

- Yes, the proposed method is acceptable and replicable for me but I would prefer to make some adjustment to the proposed method.
- Yes, the proposed method is acceptable and replicable for me
- No particular opinion about the topics of this consultation
- Yes, the proposed method is acceptable and replicable for me but I would prefer to make some adjustment to the proposed method. The replacement of the shares of the relevant index constituent by the shares of the newly formed company will be executed on the basis of the bid ratio. -> we would like Euronext to wait until the newly formed company shares have been paid in the account. if the shares are not in the account we would not be able to sell them in the market.
- Please refer to responses for the following questions.

*Do you agree to change the free float when between 50% and 85% of the shares have been acquired through the offer and the offer is seen as unconditional for FF Market Cap weighted Indices?*

- Yes, I support to change the free float if between 50% and 85% of the shares have been acquired
- Yes, I support to change the free float if between 50% and 85%, but do not support to take effect after the second full business day. We would like the implementation to occur before (one day after the announcement will be good). We are afraid of the diminution of the liquidity in the market.

*Do you agree with to keep the target company in the Index for Non-Market Capitalisation Weighted Indices when between 50% and 85% of the shares have been acquired through the offer and the offer is seen as unconditional?*

- Yes if the FIF is changed also in the index for non market cap weighted indices (not sure if it is the case here)

*Do you support the treatment for mandatory offers for FF Market Cap weighted and Non-Market Weighted Indices?*

- Yes, I support to use the same thresholds as for other acquisitions in cash

*Do you support the proposed treatment for replacing an ordinary line by the tendered line for FF Market Cap weighted and Non-Market Weighted Indices?.*

- No, I would not like to see the replacement of ordinary lines by tendered lines in any case
- Yes, I support the proposed treatment of replacing when all four criteria have been fulfilled
- No opinion

*Do you agree with the price used for removal?*

- No, the last known traded price should be used in all cases
- Euronext should use the lowest of the last traded price or the offer price in case the company is suspended from trading before its deletion.
- Yes, I support to use the last known traded price and in case of suspension on the day of removal to use the price of the offer

*Do you support the proposed treatment for re-inclusion of removed company?*

- Yes, I support to make the company eligible for index inclusion again three months after the end of the offer period, conditional to the free float being at least 5% (rounded)
- No, I do not agree with the 5% free float condition. I think it should be higher. I think a company could be included when the merger is still going on and not all the shares are with the acquiring company.
- No, we do not agree with the 5% free float condition. We believe a higher free float of 15% should be applied.

*Do you agree that the constituent will be replaced by the newly formed company provided that the offer is unconditional and such company will be included in the Index Universe (and if applicable comply with continuous eligibility criteria as defined in the index reviews)?*

- Yes, I support the replacement by the newly formed company

*Do you agree to remove the target company if the newly formed company will not be included in the Index Universe (or does not complies with the continuous eligibility criteria as defined in the index review section) after one full business day when the bid has become unconditional?*

- Yes, I support the removal of the target company after one full business day
- Other suggestion. We validate the proposal but we would like to be sure that Euronext does not remove the newly formed company before the newly formed company has been paid on the accounts. Main concern is that it sometimes takes up to 15 days before the newly formed company has been paid on the accounts of them (depending on Company)
- We support the removal of the target company after two full business days notification.

*Do you support the three criteria that determine if an offer is unconditional?*

- Yes, I support the use of these three criteria

*Do you agree with the country specific situations and their treatment regarding offers being unconditional?*

- Yes, I agree with these country specific situations and their treatment

*Other general remarks*

- We would like to precise that for Asian equities, we need to be informed 2 days before any change (removal / change of NOSH) in order to be able to trade at the same time as the index. They raised the point that an EICC at 16:30 is not early enough to implement after close the next day. They would prefer to have an extra day (only needed for Asian equities).