French Takeover Rules and Practices ③
From a M&A Banker’s Standpoint
(Interview at Société Générale)

Laurent Meyer*
Hiroyuki Watanabe**

[Introduction]
This is the transcript of an interview with French M&A banker regarding French takeover rules and practices. Mr. Meyer is a managing director of M&A at Société Générale which is a world-wide France-based bank and he has well-experienced the practices of M&A. It’s a well-known fact that Société Générale itself was the target company of the hostile takeover bid by BNP in 1999. The interview was held on February 2011, at the conference room of Société Générale Tower which was located in one corner of La Défense, the financial center in Paris. / (Watanabe)

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1. Hostile takeover bids in France and the role of the employee shareholder

WATANABE: Monsieur. Meyer, thank you very much indeed for taking time to meet with me today. I have been involved in much research on rules and actual practices of takeovers in Europe both in an official capacity and as an individual; however, there are still many points that I would like to clarify. Also, I have a great interest in the characteristics of each jurisdiction’s takeover rules across Europe. As you are a professional expert in M&A practices and takeover bids in France, I would like to ask you some questions in this respect.

MEYER: It’s my real pleasure to meet you again and have a chance to talk with you on French takeover
rules and practices.

**WATANABE:** First, I would like to ask you some questions about the cases of hostile takeover in France and the role of employee-shareholders. I heard that in France you had few hostile takeovers, that they are very rare. Is it true?

**MEYER:** Yes. I used to say that a hostile takeover was a friendly takeover that didn’t start off well. That means that there is an offer that is hostile (although I would rather say one that was not solicited) that ends up after negotiation and very often improved terms as an agreed-upon offer.

It’s very rare that an offer that was not solicited ends up being hostile and successful. Most of the time what happens is that the target negotiates with the bidder, improves the terms, and then makes a recommendation to shareholders to accept the offer. But if you take other cases, such as the Mittal bid for Arcelor, the Pechiney bid for Alcan, the Total-Elf deal, in most cases they turned out to be at the end agreed.

But there are situations, like BNP’s attempt to take over Société Générale, where this remained a hostile offer from start to finish and did not complete.

Getting back to your question, if you want to talk about the role of employee-shareholders, I think the best example is BNP-Société Générale, because Société Générale is one of the CAC-40 companies that has the largest proportion of employee-shareholders (about 10%).

So usually those shares are held by vehicles that basically carry the shares and the voting rights on behalf of the shareholders. If you take the 9% or 10% employee shares, there are actually a significant portion of them held indirectly, via an entity that has its own board and that decides what course of action to take.

And, in Société Générale, using this board, you have half that are employee representatives and half that are management representatives.

So one way for employees to have a say in a takeover situation is through the vote that is being held at the level of the board that carries the shares. I personally own direct shares in Société Générale. So I do own some of the shares in this vehicle, and I do not have voting rights for them, because they are captured by this vehicle. And I also have shares that I directly own, either through stock options that I exercised or through granted stocks that are now vested, which I now own. And with respect to these stocks, I would say that I can decide if I want to tender or not. So that’s the second way I can have some influence on the issue.

And the third way, which has more weight, is the sort of buzz that the employees can create around a certain situation. In some cases you have employee demonstrations at the headquarters of the bidder. They can become vocal. Does this have some impact? Yes, it can have some influence. It’s difficult to quantify. An offer will not fail simply because of a few demonstrations by the employees. But it can create momentum for, or most likely against, the offer. It doesn’t have a definitive impact, but it does create some momentum. Such demonstrations are reported in the press. So it kind of creates a sentiment that there is very strong opposition to the deal.

And the consequence of that is not that it derails the deal but probably helps the target improve the terms of the offer, because the bidder knows that there is strong opposition to the bid, including among those people who take the elevator every day.

**WATANABE:** You mentioned Arcelor’s bid for Mittal. I heard that the employee shareholders were against...
the offer on that case?

**MEYER:** Yes, they were against it, but they did not own a very significant percentage of the shares. So what they did was kind of published a letter in the press, where you had a letter that was signed to a certain extent by a wide number of managers opposing the bid. Then there were some demonstrations and that sort of thing. But it did not go above and beyond this kind of creating some opposition to the bid in the press or in the media, that kind of stuff.

Usually, employee shareholding is very small. If it's 10%, that's obviously important. But it's usually less than 10%. So can it derail an offer? It's very rare.

**WATANABE:** I would like to ask you about the distinction between shareholder decision making and worker protection. In France, in my understanding, workers are provided with opportunities under the law to take part in the takeover process.

**MEYER:** They have to be informed. Basically, you have the board of the target that issues a recommendation to shareholders. And it's up to the board to . . .

**WATANABE:** Recommend or not?

**MEYER:** Correct. And then it's up to the individual shareholders to decide whether or not they want to tender. What is now part of the regulation is the obligation for the bidder and for the target to talk to the employee representatives and present a proposal. And I don't know what at the end of the meeting the employee representatives will say, but they are not empowered to make any recommendation to the shareholders. It is up to the board of the company to make a recommendation.

But you are right in saying that they have opportunities to be informed/consulted. But employees do not have a say. When the board makes a recommendation, they have to say, “On behalf of the company, the employees, and the shareholders, we recommend [or we do not recommend].” Maybe not in this order but they say, “on behalf of the company, the employees, and the shareholders,” because in France we have a distinction between the company itself, which is an entity, and the shareholders, which are a different entity. So the board says, “On behalf of the company, the shareholders, and the employees.”

So that's the board's decision. And the board is sovereign to make those decisions. But once the offer is tabled and is public, there is an obligation for the bidder within a certain number of days to consult the workers' council, to inform them about a proposal.

But that's as far as it goes. It does not go above and beyond that. Even if the employees oppose the bid, it's beyond their control. It's ultimately a shareholder decision.

**WATANABE:** So, ultimately, is the goal of a takeover bid decided by the shareholders?

**MEYER:** Ultimately, shareholders may decide to tender or not to tender, regardless of the board recommendation. If I'm a shareholder in a target company and the board of that company says, “No, we do not recommend accepting that offer,” I am obviously not prevented from tendering my shares to the bidder. It's just a recommendation to the shareholders.

**WATANABE:** I heard that there have been no cases in which the employees themselves stopped a takeover.

**MEYER:** No. They are not vested with the role of approving or not approving a deal. It's very clear. You have the AMF, which has the power and the role to accept an offer or not. They ask, is it in compliance with the rules or not?

**WATANABE:** Do you mean “declaration of conformity” by that?
MEYER: Exactly. That’s compliance. It complies with the regulations. So it’s only the AMF that says basically how it works. I want to file an offer. I go to the AMF. I submit my offer. Ten days before the AMF meeting I provide all the information. And then there is a college of the AMF (17 members) They decide, “Okay. Yes. The offer is compliant. You can go ahead” or “No, it’s not compliant.”

Once this decision is made by the AMF, anyone who is a shareholder of the target can appeal that decision, and then he has a certain time to give the reason for the appeal and go to the Court of Appeals, which decides. That’s the way it works.

So the AMF decides if the offer is compliant or not and can go ahead or not. Then there is an appeal period.

That’s the first part. The second is the board of the target company. The board is empowered to issue a recommendation to the shareholders to tender or not to tender their shares. And the shareholders are totally free to decide what they want to do.

WATANABE: Thank you. Getting back to the power of the employees, I heard that, on the other hand, there were some cases where the employees stopped mergers.

MEYER: No.

WATANABE: No? Has there no such case as the substantial power of the employees stopped a merger, not by legal power?

MEYER: They have no legal power. I would say the only power they have is with the media, the press, creating some buzz, some hostility. But it’s very subjective.

The second thing is that if the employees are shareholders, like any shareholders, they can decide to tender or not tender.

But where this was pretty iconic was in the BNP- Société Générale case, because one idiosyncrasy of that deal was that the banking sector is regulated not only by the AMF but also by another agency, which has to approve a bid on a bank. That only applies to banking. There was an agency called Comité des Establissements de Credit, which has now changed its name, by the way, which had to approve the offers (Autorité de contrôle Prudentiel).

There is a question. You could argue that the very strong opposition of employees could have some impact, but it’s very difficult to say, on the decision not of the AMF but of this committee. But this is very subjective.

Taking a very cynical approach, you can say that the employees can only create some buzz or, to the extent that they are shareholders, decide to tender or not to tender. Aside from that, they are not empowered. It is not their duty to take a view to agree or not agree to an offer.

2. Role of the bank in the process of takeover bids

WATANABE: Thank you. Next, I’d like to move on to the questions about the role of the bank in the process of takeover bids.

I suppose you have been involved with takeover process as a banker.

MEYER: Yes. Let me explain to you.

What is the role of the bank in a takeover situation? Basically, the role of the bank is to be the connecting point between the bidder, the AMF, and the market (the shareholders).
That means that in France in a takeover bid you have to go through a bank. The bank will present the offer insofar as it will file the offer on behalf of the bidder. It will present. This means that it will have the bank’s logo on the prospectus. That is the role of the presenting bank. And a guaranteeing bank is the bank that gives certainty to the shareholders that if they tender their shares they will receive cash or shares from the bidder.

**WATANABE:** Cash confirmation?

**MEYER:** That’s a different thing. Cash confirmation is something that applies in other countries. Here this is different.

It’s difficult, because there is no precedent of an event of default. The guarantee from the bank is a protection for shareholders that in the event of default by the bidder they will receive something. They would not be given back their own shares, but they will receive cash or shares from the bidder.

The good news is that, luckily, there haven’t been any cases where a bidder has defaulted during an offer period. So there has been no precedent of the guarantee actually being triggered to cover the shareholders of the target.

So that’s the rule. You have a presenting bank, which basically does not guarantee. But you have the guaranteeing bank that guarantees.

So, in a way, you can be a presenting bank but not a guaranteeing bank. But if you do guarantee, you are also the presenting bank. It’s asymmetrical.

I would not worry too much about presenting versus guaranteeing bank. It’s not so important. What is important for you to understand is the concept of the role of the bank. In other countries there is a cash confirmation. Basically, you have a statement from the bank that they have ensured that there is sufficient cash on the bidder’s side. And I don’t know what happens if the bidder goes into default. I don’t think that the bank which has issued a cash confirmation would have to foot the bill.

On the other hand, with the French concept of the guaranteeing bank, should there be an event of default on the bidder’s part, then the guaranteeing bank would have to foot the bill.

There is a question mark regarding how that would work. We don’t know, because there is no precedent. Also, how would that work if it were a share-for-share deal? If you are a bank, you can provide cash, and you get the shares in return. But if your client was due to issue shares, you as a bank cannot provide shares that you don’t own.

**WATANABE:** I see.

**MEYER:** So that’s another question mark about how in the event of default, especially in a share offer situation, what the consideration that would be that would be paid by the guaranteeing bank.

But this is unexplored territory, because there has not been any event of default by a bidder during an offer period. But that’s the rule. So to get back to my previous comment about the role of the guaranteeing bank, it is really to be the interface between the bidder and the AMF, because the guaranteeing bank presents the offer to the AMF and files the offer with the AMF. So it’s an interface in that regard. And it is also an interface between the company and market. The guaranteeing bank will also do the settlement and delivery of the shares. They will collect the shares from the shareholders. They will collect the cash from the bidder. And they will do the settlement and delivery.

That’s why the guaranteeing bank really is acting as an interface not only between the bidder and the AMF but also between the bidder and the target shareholders.
WATANABE: Could you explain me more about the situation where the presenting bank in concurrence with the guaranteeing bank?

MEYER: The nuance between presenting bank and guaranteeing bank is this: The bank serves as an interface. The first interface is between the bidder and the AMF, because the bank files the offer with the AMF. Actually, the bidder gives instructions to the bank regarding the purpose of the offer. Then the bank files the offer with the AMF. That’s the first interface. So there is no direct link between the two.

The presenting bank does not take any responsibility to the target shareholders, except with respect to settlement and delivery. The presenting bank will only take responsibility to the target shareholders with regard to whether the prospectus is accurate, sincere, precise, and compliant. So if there is some misrepresentation in the prospectus, then the presenting bank will be liable to lawsuits from target shareholders.

WATANABE: Is it liable just after a publication of the offer documents?

MEYER: Yes. So the presenting bank acts as an interface between the bidder and the AMF. The guaranteeing bank also acts as an interface between the bidder and the target shareholders, because you don’t see any arrows between the two. What they are doing is paying cash to shareholders. And they collect shares from the target. And then they deliver those target shares to the bidder.

And obviously, since they are paying cash, that cash from the bidder goes to the shareholders. It’s very simple.

WATANABE: I see.

MEYER: So let me start from the beginning. I’m the bidder. I have to have a bank. I’m going to instruct this bank to file an offer. Then we are going to file this offer with the AMF. Let’s assume that it is compliant. Then when I file I will ask for the cash to be secured, because I give my guarantee. I have already asked for the cash.

Then, the guaranteeing bank will collect the shares from you and pay cash to you. Then I do the reverse. I basically deliver the shares that I collected from the bidder. And the cash that I used to pay the target shareholders comes from the bidder. Is that clear?

WATANABE: Yes. I could understand well.

MEYER: You never see any dotted line between this or between that. There is no direct interaction between the bidder and the target shareholders or between the bidder and the AMF. The bank plays those roles.

WATANABE: So in France I suppose the takeover rules are enforced by these banks.

MEYER: What is your question?

WATANABE: The presenting bank files the offer document with the AMF and guarantees an irrevocable commitment? So, as a result, the takeover rules in France are enforced through the presenting bank. Is my understanding right?

MEYER: Yes.

WATANABE: By the way, in France, is there any alternative to the penalty by the AMF? I have heard that there is a famous secret in the City in the UK. The advisors are in great fearful of penalties under the Takeover code. So if there is some misconduct, they ask the Takeover Panel strongly not to punish them.

So the Takeover Panel would say, “Yes, alternatively you should take training at the Takeover
Panel.”

**Meyer:** It’s different here. Now you have the same thing recently. But the way it works is quite different here. Usually, there is an indemnity clause. When the bidder instructs the bank, there is an engagement letter. And in that engagement letter there is an indemnity clause that protects the bank. If the bank is sued, except if can be proved that there is gross negligence, it would be indemnified by the bidder.

So it’s very rare for a bank to be sued. I don’t know if it has ever happened that a bank has been sued as a result of its role as a presenting bank. It doesn’t happen, because the bank’s role here is really that of an intermediary. Ultimately, the principal is the bidder.

So in this respect, either the offer is compliant or it is not.

**Watanabe:** Is the punishment by the AMF severe?

**Meyer:** I don’t know. The AMF has done punishments, but for either insider trading or for false information in annual reports. I have never seen (which doesn’t mean it has never existed, but I’ve been in this business for quite some time), any indictment of a bank as part of its role as a presenting bank, I have never seen that.

But the AMF is empowered to impose fines and sanctions on intermediaries. But again, that’s for false information, insider trading, or other misbehavior, for market abuse. But I haven’t seen it for the offers.

**Watanabe:** Getting back to the role of the presenting bank, I have heard that there is a requirement for “bought deals” in securities companies, a requirement for the presenting bank. Bank 1 is a bank, and the second is a securities company that handles the bought deal.

**Meyer:** A “bought deal” is not a public offer. What you do, basically, in a bought deal is that you don’t file. You don’t go to the AMF to do a bought deal. Basically, you are a client, and you have a stake in a company. So I’m going to buy your stake with a discount of 3% on the share price, and I’m going to offload it in the markets. I’m going to do book building. I’m going to offload it. That’s not a public offer per se, because you don’t have to file with the AMF. This is just a market transaction. It’s not a public offer. It is not aimed at the public at large. You just buy from someone and sell. And you pocket the difference.

### 3. Shareholding structure and the function of the takeover in France

**Watanabe:** I’d like to move on to the next question about the real picture and the function of takeover bids in France. I’d like to hear an overview of the shareholding structure in French listed companies.

**Meyer:** Each company has its own shareholding structure. It’s totally different from one company to another. What do you have in mind?

**Watanabe:** For example, concerning the block shareholding over 30%. I have heard that in France about 40% of listed companies are governed by non-listed entities. Is it true?

**Meyer:** What you are saying is that 40% of the French listed entities are controlled by a one shareholder that is not listed, which owns more than 30% or 40%.

Yes. I don’t know the statistics, to be frank. But yes, I have a few examples in mind where you have one or two shareholders that have close to 30%. Let’s take an example. Do you know the hotel group Accor?

**Watanabe:** Accor? Now I’m staying at a hotel in Accor group!
MEYER: Yes, exactly. It has two private equities Eurazeo and Colony. One is French and listed. The other is American. They own more than 30%. That’s one example.

WATANABE: I suppose such a shareholding structure is unusual in other jurisdictions.

MEYER: I think you’ve got a point. In the UK, it’s more the PLC type of shareholding, which is very widespread. And the largest shareholders will have 5-8%, and they will be pension funds. You are right. It’s true.

In Germany it could be different. I don’t know. But the example is the UK, and to a certain extent the U.S. But it’s fair to say that in the UK, you will often find companies that are totally uncontrolled, and the largest shareholders have 5%, and it will be typically Aviva, Legal & General, AXA—people like that. CalPERS, Franklin Templeton, who will own.

But in France it is completely different. Yes, that’s true.

If you take LVMH, Hermes, or Sodexo, the catering company, you have one shareholder who has more than 30%. Yes.

WATANABE: I’d like to ask you one more concrete question. What does the AMF think about “irrevocable undertakings”?

MEYER: you are saying irrevocable undertakings to tender? Yes. First of all, all agreements that pertain to more than 0.5%, all agreements restricting the freedom of shareholders to transfer shares when they go above 0.5% have to be disclosed.

Second, irrevocable undertakings are obviously allowed. They are totally compliant and totally legal. The only caveat to that is when a certain undertaking will prevent a competing offer from being filed (ie when the commitment to tender covers a too substantial portion of the share capital). That’s the position of the AMF, as far as I know.

Again, although I’m not a securities law expert, I have pretty extensive experience with this kind of transactions. I think that’s the best way I would describe the view of the AMF on the irrevocable undertakings. It’s totally compliant. It has to be disclosed.

WATANABE: So, practically it is allowed and commonly used.

MEYER: Yes. Absolutely.

WATANABE: By the way, I suppose the function of takeover in France is very different from that of in the UK. I suppose takeover bids in France function rather as sellout right when change of control occurs. They are different types of models of takeovers between the UK and France.

MEYER: I’m not sure. To me, a takeover is one company that wants to take control of another, as simple as that, and talks directly to the shareholders.

You are a public entity. You talk to the shareholders by giving them basically a put option on you to basically sell their shares to you. And it is the same in the UK.

In that respect, I don’t see any difference. If you were to take the helicopter view and define what a takeover is, then a takeover is a situation where one corporation wants to acquire another listed one. And they talk directly from one corporation’s shareholders to the other’s shareholders or from the company to the target’s shareholders. That’s it.

WATANABE: According to my research on French takeover cases, in many mandatory offers, first the bidder makes an agreements of irrevocable undertaking with large shareholders and acquires a large percentage of the target shares. If so, the threshold of a mandatory offer is not so severe, practically in France.
and the real picture of mandatory offer rule in France is rather “sellout right”, I suppose.

On the other hand, I suppose in the UK the threshold for mandatory offer is very severe because of the widespread shareholding. Consequently, most of the offerors have chosen to make a voluntary offer from below threshold and as a result the mandatory offer rule have led the offerors to make voluntary offers.

MEYER: Yes. The purpose of the mandatory offer is to ensure equal treatment of shareholders. Yes, that’s correct. It says, you have taken more than 30% of a company. Implicitly, you control the AGM, because the quorum very often is going to be 50%. So if you have 30% and quorum is 50%, you basically have a deemed change of control.

So the very reason for having the mandatory offer is to allow the shareholders who haven’t sold, who haven’t been given the opportunity to sell, to be protected and get the same terms and conditions as the party that has sold the 30%.

So you are right. You can view it as a sellout right. I’d rather say it’s to ensure fair treatment of all the shareholders. But you could phrase it differently and say, “sell-out right.” But what is behind it in France is equal treatment of shareholders, which is a basic principle of corporate law. It’s equal treatment of the same class of shareholders.

4. Equity Derivatives and hidden ownership

WATANABE: Next, I’d like to move on to the next question about equity derivatives.

MEYER: That’s a very hot question.

WATANABE: Recently, France also has taken action to tackle this problem, by imposing general regulations on the acquisition of hidden ownership thought the use of equity derivatives rather than stipulating a specific definition of this manner of shareholding.

And what is the exemption for disclosure of equity derivatives in France?

MEYER: It’s an ongoing thought process. And I must say it is very complex. And I might give you an over-simplistic answer. But what you don’t have to disclose is cash-settlement equity derivatives or if there is a physical settlement which is at your option.

I think you should talk to the lawyers, because they will give you the latest. What I can tell you, which is overly simplistic, is that whenever this is a cash settlement you don’t have to disclose it.

Where it becomes more ambiguous and what has happened in recent history is that, first of all, if the banks agree, you can decide to switch from cash settlement to physical settlement, so you can kind of circumvent disclosure.

And the other case is when you do an equity derivative. At some point the bank will have to unfold its own position. When it does a derivative, it covers itself, to be market-neutral.

And what can happen is that the counterparty to the equity derivatives, which is cash settlement, can be the counterparty to the bank when it unfolds its cover. Therefore, it’s another way to kind of circumvent the disclosure requirement.

But in that regard, you really should talk to lawyers. I don’t want to give you over-simplistic answers. But the basic principal is that if you have a physical-settlement derivative, then that has to be disclosed. But this is very much a moving target. There is a lot of thought ongoing, and you really should
talk to the lawyers, just to make sure that they give you the full picture.

WATANABE: And, to my understanding, the French government introduced the notion of “financial instruments”.

MEYER: Yes.

WATANABE: So, what is the definition of “financial instruments”?

MEYER: “Instrument financier”. It’s the same as in English. Or it’s translated into French: “les instruments financiers donnent, peuvent donner accès au capital,” things like that. It’s the same.

It’s covered. And there has been one big example, which is Hermes LVMH situation, where basically LVMH acquired about 17% of Hermes through corporate derivatives.

As you know, there are some certain declaration thresholds, of 5%, 10%, 15%, and 20%. At each 5%, you have to disclose. And what they managed to do was acquire 17% up front and declare that 17% but not having gone through the subsequent declaration of 5%, 10%, 15%. In one shot they managed to acquire 17% through the use of corporate derivatives.

And what the AMF is looking at is “Have they really complied with the law?” And this is a case that is going on as we speak.

5. Reality of the takeover regulation by the AMF

WATANABE: You mentioned the AMF review some time ago. Please assume a condition where, taking all situations into consideration, the AMF thinks that it is the best way to deal with that case, contrary to explicit rules. What would happen?

For example, it is possible for the Panel to make a decision ultimately contrary to explicit rules in the UK. But it’s impossible in Germany.

MEYER: Yes. I think it is impossible in France, as well.

You have a set of regulations. The AMF has the power to interpret its own rules. And very often the rules will not be totally clear, in order to let the AMF decide. So in a way, they are not totally bound by their own rules, because in some cases it is left to their own assessment. There are certain criteria that can be to a certain extent subjective. Therefore, it is up to the AMF to decide.

So they would not go against their own rules, obviously. They will stick to their rules. But they have some margin of interpretation.

WATANABE: So is it impossible for the AMF to decide contrary to explicit rules.

MEYER: Yes. It’s impossible. The only caveat is that certain rules are not clear-cut or do not give very precise guidance on certain things. And this is on purpose, because the AMF will want to have the power to decide and not to have guidelines that are too strict and would restrain their ability to decide on certain matters.

So you have a set of rules where maybe 95% or 98% are very clear. But you have a few provisions that are left open to interpretation by the AMF.

So it’s not that AMF can go against their own rules. They won’t. It’s that the AMF will have the ability to . . .

WATANABE: Is it a discretion within the explicit rule?

MEYER: If the rule just says one thing but doesn’t quantify the question of size or whatever, it has a bit
of flexibility. But it’s fairly minor. And they won’t go against their own rulebook.

**WATANABE:** Thank you. By the way, what do you think about the advantages and disadvantages of French takeover rules from your own point of view? Which rules are good and which rules are not good in your opinion?

**MEYER:** It’s a very open question. Getting back to what the purpose is of the takeover rules, the purpose is to make sure that when a bidder wants to buy a target it does so in a way that respects the fair treatment of shareholders and that allows other bidders to also launch offers, to ensure a level playing field for the various potential bidders for a target.

Those are the merits of the takeover rule. They are to say, “Okay, you are Corporation A, and you want to take over Corporation B.” It is going to tell you how you can do it and how you can not do it, to ensure that shareholders are protected, that they have access to information, that they are being treated equally, and that potential bidders are treated equally.

So, of course, I could tell you that I find some bid awkward, like “Is it good that we now have 30% as a threshold for the mandatory offer? We used to have 33.3%.” It’s very subjective. And the takeover rulebook is very thick. There are lots of rules. So it’s difficult to say that some rule and another is bad.

They are there. And the AMF is consulting on a regular basis with practitioners: the issuers, the lawyers, the bankers, the stakeholders of the stock exchange, and the stock exchange itself to improve their own rule set.

There is an ongoing thought process. And the latest example is the use of equity derivatives.

So it’s really hard for me, without going into great details, to tell you what I think is good and what I think is bad, unless you have something specific in mind.

I think those rules are here for a certain purpose. The purpose is to make sure that the target shareholders are protected, both in terms of being treated fairly and in terms of access to information, or because they can expect a competing offer at a higher price. That’s that purpose of the takeover rules.

**WATANABE:** So is there any concrete demand for reforming the existing takeover rules?

**MEYER:** No. We have been approached by the AMF whenever it does consulting of the practitioners, not me but the bank. The bank responds to questions. Usually, they ask questions, and we do respond or express opinions. And then there is a discussion.

So, yes, like any other big institution, we have been in regular contact with the AMF, but on the AMF’s own initiative. It’s very rare that a bank will ask for a change in the rules. It doesn’t happen.

**WATANABE:** As you said, the AMF seems to be open to questions and meetings.

**MEYER:** Yes. You can talk to the AMF in advance. Before filing an offer, you can go to the AMF and ask their views. Their views will not be binding, though. You can just get a feel for what they think.

In some cases you can ask for something called rescrit, which is that the AMF will give you already clearance in writing on certain points. That gives you some comfort.

But usually, if you are not sure you can talk to the AMF on a confidential basis and get some comfort. You can go to see the AMF staff and say, “Listen, this is what we have in mind. Do you think that works?” And they say yes, no, or okay.

**WATANABE:** So, has the consultation-based regulation by the AMF functioned well?

**MEYER:** Yes. It is very good. It works very well.
6. Realization of “intérêt social”

WATANABE: To conclude, I’d like to ask you a question about the concept of “intérêt social”. Usually, what do the managers in French companies think about the best way to meet the “intérêts sociaux”?

MEYER: I think there is some truth in that for France, as well. It is a pretty wide concept. What is good for the company? I think it’s fairly clear to say good versus bad for the company.

But then, what is the company? Is it its shareholders? Is it its workforce? It is the community where it is located, where it pays tax? Is it the suppliers, the clients, the stakeholders?

So, I agree with what it is here, it is difficult to say who comes first. Is there any reason to say that employees come before suppliers? I don’t think it’s true. You can’t say that, because a supplier has its own employees.

So it’s this concept that was very famous in the 1970s or 1980s that it’s the stakeholders. It’s a large number of people or institutions: the community, the employees, the shareholders, suppliers, and clients.

And it’s fair to say that none of them should come first, because ultimately we are talking about people. And people are equal to other people.

So if you state that if you succeed in your offer you are going to close down eight factories within a single country, then you can say, “Yes, for the purpose of social interest, you can question whether or not it is compliant,” because you are going to put people on the streets, the company is going to have to pay for redundancy, so it is going to impoverish itself, and local communities will face unemployment and will face lower tax revenues.

So that’s a clear case of its not being really compliant with “intérêt social”. But the situation is never that binary. No one buys a company to close down eight factories.

So it is much more vague in reality than what I just portrayed. So it’s one of the areas that are subject to management. And, as I said, the board is the body that recommends or does not recommend.

And, if you recall, what I mentioned at the beginning of this conversation is that the board says, “On behalf of the company, the shareholders and the employees, we do recommend [or we do not recommend].”

So you could argue that whenever they make a recommendation they have in mind l’ intéressant social, the social interest. And the social interest combines many different stakeholders, whose interests may not be aligned. You could argue that the interest of the shareholders is not the same as the interests of the employees.

Let me give you an example. Let’s say you have two companies that want to merge, and they are based in two completely different locations. Let’s say they have no synergies.

The good news for the employees is that there will be no redundancies. The bad news for the shareholders is that maybe there is a company out there that is in the same territory as this company for which it would make a lot of sense to launch a competing bid, which would be good news for the shareholders, who would receive a higher price if this offer were tabled but which could be bad news for the employees, because there would be more redundancies, because the two companies would be in the same location.

So the board will be to some extent schizophrenic, because they have to issue a recommendation,
which is supposed to be reflecting the point of view of stakeholders whose interests are not necessarily aligned. They can be aligned. But they are not necessarily aligned. Is that clear?

WATANABE: Yes.

MEYER: It’s very complex. At the end of the day, the board makes a recommendation, but the shareholders decide.

I see there is some common ground between what you said here and what happens in takeover situations in France when the board has to issue a recommendation.

WATANABE: I understood.

MEYER: Good. It’s not that easy. It’s very subjective. There is a lot of feeling. And there is a cultural element. There are a lot of cultural elements in this.

I think in a way the takeover rules are a reflection of the corporate environment, the perception of the various stakeholders. Who are the stakeholders in a takeover situation? I think the takeover rules are very much a reflection of culture, corporate history, precedents, stakeholders’ interests, definition of the key stakeholders—that kind of thing.

So while you can argue that, especially with the impulse of the EU, there is harmonization. And I think that the French takeover rules are much closer to the UK takeover rules than they used to be. And it’s the same for Germany. Germany used to be very far away. And it is still to a certain extent far away in terms of harmony with the UK. or the French rules.

My feeling is that the French takeover rules are closer to the UK takeover rules that are the German takeover rules. But I'm not an expert on German takeover rules.

We have seen situations, and I have actually advised on some of them, where what happened in Germany could not happen in France. There is this grandfathering clause. I don't know if you are aware of that. In France it's a concept that has just been established but for very specific situations.

My personal view is that the takeover rules are inspired a lot by corporate history, by culture, and by the relative importance of the various stakeholders.

WATANABE: That’s a very interesting point from the point of comparative takeover law, I think.

MEYER: Yes.

WATANABE: But the difficulty indeed lies in this. I myself have realized it in the process of research on takeover law and have had much more interest in comparative takeover law. Thank you very much for taking time and giving an excellent lecture. It would surely contribute to understanding of the French takeover rule in Japan.

MEYER: Thank you very much. I hope my explanations will be useful for you.
Chart: The Roles of the Bank in the Process of Takeover Bid in France

Bidder gives instructions to Bank

Bank files the offer to AMF

AMF files the offer to Target Shareholders

Target Shareholders paying cash to Bank

Bank collecting shares

Bank paying cash to Bidder

Bidder presenting only

Target Shareholders presenting guaranteeing

AMF paying cash to Bidder

Bidder delivering target shares to Bank

Bank paying cash to Target Shareholders

Target Shareholders collecting shares