Chapter 3

Corporate finance and quality of financial disclosure

1 – Regulatory developments and Better Regulation initiative in 2007

2 – Activity in 2007 (other than takeover bids)

3 – Regulation of public tender offers

In 2007 France completed its transposition of the directives stemming from the European Commission's Financial Services Action Plan. The financial disclosure requirements of the Transparency Directive came into force on 20 January 2007. The new procedures for disseminating regulated information have thus been put in place. The implementing measures for that Directive were the focus of further transposition work and a consultation during the second half of 2007. The resulting amendments to the AMF General Regulation, ratified by ministerial order on 8 January 2008, came into force March 2008. Final provisions regarding the storage of regulated information have still to be adopted.

The year 2007 also brought a significant change for financial markets with the entry into force of the Markets in Financial Instruments Directive (MiFID) on 1 November. Although the direct impacts for listed companies are limited at this stage, the AMF has responded by amending some of the provisions of its General Regulation and its position on initial public offerings. MiFID no longer recognises a right of the regulator to oppose the listing or delisting of a company's securities on a regulated market.

The AMF has also worked with the industry to give concrete form to commitments undertaken as part of its Better Regulation initiative. The proposals made by the working groups on small and medium capitalisation issuers, along with simplification of the approval procedure, will allow disclosure and review requirements to be adapted to the size and profile of the issuing company. The creation of a professional compartment on Euronext is yet another measure that will strengthen the competitive position of the Paris marketplace.

On the corporate finance front, 2007 was a relatively quiet year, with a significant decline in IPOs on Euronext and listings on Alternext, especially in the second half. Even so, the total number of approvals issued by the AMF was stable. Furthermore, 2007 was the first full year under the new regime for tender offers stemming from the Takeover Directive and the recasting of the AMF's procedure for approving such offers. In the area of takeover bids, 2007 was notable for two cases in which the AMF held the offer to be noncompliant for reasons of shareholder collusion.

1 – Regulatory developments and Better Regulation initiatives in 2007

A – Final transposition of the Transparency Directive

1 > Transposition of the implementing measures

The detailed provisions stemming from the Transparency Directive are set forth in a series of implementing measures. These include provisions concerning notification of major holdings, procedures for disseminating regulated information, and conditions in which the legislation of a state not party to the European Economic Area Agreement may be recognised as equivalent.

These measures took the form of the directive of 8 March 2007[1], which is being transposed into French law in several stages. The provisions relating to dissemination of regulated information had already been transposed ahead of schedule [2], to provide issuers with a full legal framework for ongoing and periodic disclosure as early as possible.

a) Publication by the AMF of the number of shares and voting rights and notification of major holdings

In 2007 the AMF, with the cooperation of the industry, sought to clarify its rules regarding the notification of major holdings.

Publication of the number of shares and voting rights

Relying on information provided by issuers [3], the AMF used to publish every week the number of voting rights and shares in the capital of companies listed on a regulated market. With the transposition of the Transparency Directive, however, publication of the number of shares and voting rights comes under the rules for regulated information. Monthly changes in voting rights must therefore be disclosed in full by the company concerned and also posted online on the company's website for at least five years.

Consequently, the AMF is no longer publishing this information, which is now being disclosed by the issuers themselves.

Notification of major holdings

The General Regulation was amended on 31 March 2008 to provide that the AMF will now publish notifications of major holdings within three trading days of receiving them. The AMF is providing an electronic inbox to facilitate the filing of these notifications, but use of this inbox remains optional.

Clarification of the AMF's position on major holding notifications

On 17 July 2007 the AMF published a Q&A on the new methods for calculating major holdings. Since the transposition of the Transparency Directive, the AMF General Regulation has specified methods and rules for calculating how many voting rights are held by a shareholder, with the total number of voting rights held being "calculated on the basis of all shares to which voting rights are attached, including shares denied the right to vote"[4]. The AMF thus considers that, barring express provision to the contrary, the holding thresholds specified in Article L.233-7 of the Commercial Code and those mentioned in Title III of Book II of its General Regulation relating to tender offers should be understood on the basis of the notional total number of voting rights [5]. Following the same logic, and inasmuch as this information is intended to enable shareholders to notify major holdings, issuers should likewise take the notional total number of voting rights into account in determining whether they must publish the information specified in paragraph II of Article L.233-8 of the Commercial Code. For the public to be properly informed, the AMF

[1] Commission Directive 2007/14/EC of 8 March 2007 laying down detailed rules for the implementation of certain provisions of Directive 004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market.
[2] Order of 4 January 2007
[3] Companies listed on a regulated market must, pursuant to paragraph II of Article L.233-8 of the Commercial Code and Article 223-16 of the AMF General Regulation, publish the total number of voting rights and shares making up their share capital on a monthly basis, if there is any change from the previously published numbers.
[4] Article 223-11 of the AMF General Regulation.
[5] The notional number of voting rights is the total of all shares to which voting rights are attached, including shares temporarily denied the right to vote.

recommends that companies publish figures for both the notional number of voting rights and the number that can actually be exercised whenever the difference between them is significant[6].

b) Equivalence of legislation of states not party to the EEA Agreement as regards periodic disclosure requirements

Under the AMF General Regulation, the equivalence of non-EEA Member States' legislation on periodic disclosure requirements can now be recognised. This possibility rounds out the provision that allows issuers [7] to draw up a prospectus containing information equivalent to that required by Regulation 2004/809/EC. These provisions should encourage foreign issuers to list in Paris.

Regarding periodic information, the new Articles 222-10 to 222-16 [8] set forth the conditions in which the AMF can recognise equivalence. These articles address the contents of the annual and half-yearly financial reports and the financial information disclosed quarterly. In particular, a non-Member State's legislation can be recognised as equivalent even if it does not require the annual or half-yearly report to include a statement by the persons responsible for it, provided that at least one person at the issuer assumes responsibility for the financial statements and the management report.

In all cases, the issuer must disseminate the equivalent information, keep copies of it and file it with the AMF in accordance with the requirements of Articles 221-3 to 221-5 of the General Regulation:

> this information must disseminated effectively and in full, if applicable through a primary information provider registered on a list published by the AMF;

> this information must be filed with the AMF at the same time as it is released for distribution, either by the issuer following the procedures specified in AMF Instruction 2007-03 of 27 April 2007 on how to file regulated information, or by a primary information provider;

> this information must remain available on the issuer's website for five years from the release date.

2 > Storage mechanism for regulated information

a) Requirements of the Transparency Directive and transitional measures adopted by the AMF

Article 21 of the Transparency Directive [9] requires each Member State to ensure that "there is at least one officially appointed mechanism for the central storage of regulated information". Whenever listed companies disseminate an item of regulated information, they are required to transmit it to the competent authority and to the officially appointed mechanism for storage in their jurisdiction.[10]

In July 2005, the European Commission requested CESR to formulate recommendations on quality standards for national storage mechanisms as well on the organisation of a European network linking those mechanisms. CESR's recommendations were published on 6 July 2006 in the form of technical advice.

Pending adoption of the implementing measures, the European Commission had also indicated, in a letter to CESR[11], that Member States would have some leeway regarding regulated information storage during a transitional period. The AMF asked companies to keep regulated information available on their websites. Thus, Article 221-3 of the AMF General Regulation [12] requires

[6] See the AMF position paper entitled "Questions and answers on the new methods of calculating notifiable major holdings", published 17 July 2007
[7] Article 212-36 of the AMF General Regulation
[8] Introduced in the General Regulation by Order dated 8 January 2008.
[9] Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC
[10] OAM: Officially Appointed Mechanism
[11] Letter of 20 July 2005 from Alexander Schaub, Director General – Internal Market and Services, European Commission, to CESR chairman Arthur Docters Van Leeuwen: "To the extent that the interim storage mechanism offers to end users some kind of access to regulated information, a wide and flexible interpretation of the Transparency Directive would allow to consider that its letter is respected. Once the implementing measures in place, a secondary transposition period would be established for those measures, taking into consideration the time needed for the adaptation to the new requirements."
[12] Article 221-3 of the AMF General Regulation: "I. – The issuer shall ensure that the regulated information defined in Article 221-1 is disseminated effectively and in full. II. – The issuer shall post the regulated information on its website as

companies to post online any regulated information that they disseminate and to keep it on their website for five years. The obligation to retain this data on company websites applies to all publicly traded companies, whether listed on Euronext Paris or not (thus, it also applies to companies listed on Alternext Paris or the Marché Libre).

On its own website, the AMF has put up a page with links to the websites of companies listed on Euronext Paris. This measure complies with the spirit of the directive by offering the public a centralised point of access to regulated information.

b) Appointing a storage mechanism and building a European network

In early March 2007 the European Commission put a working document out for public consultation. This document defined, among other things, the functionality and security criteria for storage mechanisms. Following this consultation, in October 2007 the Commission published a recommendation [13] specifying technical standards for national storage mechanisms as well as framework principles for developing a European network.

Official appointment of the national storage mechanism

The storage mechanism should meet four kinds of criteria:

> security – the mechanism should be able to protect the information transmitted to it and ensure continuity of service in the event of a breakdown or damage;

> authentification of sources – the storage mechanism should be able to provide certainty as to the source of the information that it receives;

> time recording – the storage mechanism should provide for time– and date-stamping of all filings;

> accessibility – the storage mechanism should be accessible on a continuous basis and should enable users to view, download and print information directly from the storage mechanism's website.

Lastly, regarding the cost to end users, the European Commission considers that retrieval of archived documents in raw format ought to be free of charge, at least for a certain period of time after they have been filed by the issuer.

Member States have until 31 December 2008 to take the necessary measures to select the storage mechanisms and comply with the Commission's recommendation.

Development of an electronic network of European storage mechanisms

Article 22 of the Transparency Directive [14] requires the competent authorities of Member States to draw up appropriate guidelines for facilitating public access to information, with the objective of creating a single electronic network or a platform of such networks across Member States.

In its technical advice of July 2006 [15], CESR had clearly stated its preference for creating an access portal at EU level that would have a roster of all listed companies in the EEA, with hyperlinks to each national storage mechanism. This solution appeared to be the least costly to implement and administer while still offering investors and the public a central point of access to regulated information.

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soon as it has been disseminated. The information shall remain on the site for at least five years from the date of dissemination. Where none of the issuer's financial instruments is admitted to trading on a regulated market, regulated information shall be deemed to have been fully and effectively disseminated, in accordance with paragraph I, if it is posted on the website."

[13] Commission Recommendation of 11 October 2007 on the electronic network of officially appointed mechanisms for the central storage of regulated information referred to in Directive 2004/109/EC of the European Parliament and of the Council.

[14] Article 22 of the Transparency Directive: "1. The competent authorities of the Member States shall draw up appropriate guidelines with a view to further facilitating public access to information to be disclosed under Directive 2003/6/EC, Directive 2003/71/EC and this Directive. The aim of those guidelines shall be the creation of:
(a) an electronic network to be set up at national level between national securities regulators, operators of regulated markets and national company registers covered by the First Council Directive 68/151/EEC of 9 March 1968 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 48 of the Treaty, with a view to making such safeguards equivalent throughout the Community; and
(b) a single electronic network, or a platform of electronic networks across Member States."

[15] Available on the CESR website, http://www.cesr.eu

The European Commission's recommendation retains the model recommended by CESR and lays down, in rather general terms, the conditions that the future European network should meet. The Commission reminded all Member States of the need to ensure that the mechanisms under their jurisdiction take the necessary measures to create the storage network. These measures consist essentially in signing an agreement between national mechanisms that addresses:

> the conditions to be met for joining the network;

> the formation of an entity charged with administering the network and the governance rules of this entity;

> the means by which the network is to be financed;

> the technical characteristics of the network.

The arrangements that will apply in France will be determined in 2008.

B – Impact of MiFID

1 > Elimination of the AMF's right to oppose listing and delisting of financial instruments

Before it was amended with effect from 1 November 2007, the Monetary and Financial Code[16] allowed the AMF to oppose the admission of a financial instrument to trading on a regulated market, or the delisting of such an instrument, under the conditions set forth in Articles 214-3 to 214-5 of the AMF General Regulation. In addition, certain situations in which the right of opposition could be invoked, relating to shareholders' mandatory holding periods, were defined in an Instruction[17].

Accordingly, the AMF could oppose the admission of a financial instrument to trading on a regulated market when it deemed that the listing entailed risks incompatible with investor interests and market integrity. It could oppose delisting for the same reason.

On this basis, the COB and subsequently the AMF had established a body of rules clarifying the circumstances in which the regulator could oppose a listing.

Some of these rules were expressly mentioned in the General Regulation, notably: when the AMF believed that the issuer's financial statements had serious shortcomings; when the issuer's external auditors failed to exercise due care; or when a lack of independence on the part of the auditors was manifest.

The AMF could also oppose the admission to trading of financial instruments when, during the year preceding admission, transactions in the instruments in question had benefited persons that were unduly favoured.

Lastly, the right of opposition had enabled the AMF to develop principles applicable to every company requesting listing or delisting of its securities on a regulated market. These included, *inter alia*:

> general principles relating to warrants and complex debt securities [18];

> requirements relating to the rating and guarantee of debt securities [19];

> ownership of essential assets, including patents and brands, for companies seeking to make an initial public offering [20];

> a requirement that foreign companies seeking to delist their securities provide a sales facility to ensure an orderly buyback [21].

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[16] Article L.421-4 of the Monetary and Financial Code: "I. – The decision to admit financial instruments to trading on a regulated market is taken by the market undertaking, without prejudice to the right of opposition of the Autorité des marchés financiers. The express agreement of the issuer of the financial instrument is required. … III. – The delisting of a financial instrument is decided by the market undertaking, without prejudice to the right of opposition of the Autorité des marchés financiers."

[17] COB Instruction of 13 February 2001 implementing COB Regulation 96-01.

[18] The general principles set forth by the COB in 2003 were amended in December 2005 (AMF position paper of 27 December 2005) in anticipation of the elimination of the right of opposition. At present, issuers should state whether or not they are complying with the principles defined by the AMF.

[19] COB monthly bulletin, number 383, October 2003.

[20] COB monthly bulletin, number 367, April 2002

The entry into force on 1 November 2007 of the new provisions stemming from MiFID transposition [22] has eliminated the AMF's right of veto. MiFID provides that the market operator has sole responsibility for establishing the rules for admission to trading of financial instruments. Accordingly, the new text of the Monetary and Financial Code incorporating Order 2007-544 of 12 April 2007, in Articles L.421-14 and L.421-15 no longer mentions a right of opposition.

Articles 214-3 to 214-5 of the General Regulation relating to the AMF's right of opposition have consequently been abrogated. Accompanying these modifications of the General Regulation, the AMF has introduced the principle that the market operator should inform the AMF in advance of any new listing [23].

2 > Modification of Euronext Paris rules

Anticipating the impact that MiFID would have when it came into force, the AMF worked closely with the market operator to look at possible changes to Euronext Paris's non-harmonised organisational rules with a view to ensuring a high level of investor protection.

The focus was on three points in particular:

> requirements relating to the rating and guarantee of debt securities;

> ownership of strategic assets;

> having a sales facility in place before a foreign company is delisted.

Regarding the rating and guarantee requirements for debt securities, Euronext's harmonised rules now say that the market operator may make listing conditional on having the securities in question rated by a financial rating agency, or require the principal and interest to be guaranteed by a parent company or third party.

The AMF's position on the necessity of ownership of strategic assets – a company seeking to be listed must own the assets essential to its business – has been written into the market rules. Article P.1.1.3 of Book II of the Euronext Paris rulebook consequently provides that the market operator may reject a request for admission to trading if it appears that the issuer does not control an asset essential to its operations.

Regarding implementation of a sales facility, Euronext Paris's rules have also been amended to include this requirement [24].

Lastly, mirroring the principle of AMF notification introduced in the General Regulation, the market operator has amended its rules to provide for gathering the AMF's observations on the proposed listing, if any, five days before the admission decision for the securities of the company in question[25].

3 > Informing regulators in the event of a suspension of trading or delisting of financial instruments

Since MiFID came into force, the competent authorities of other states party to the EEA Agreement must be notified of any decision to suspend trading of or delist a financial instrument traded on a regulated market, whether taken by Euronext or required by the AMF.

Furthermore, when the suspension or delisting is required by a competent authority, the authorities of other Member States must require suspension or delisting of that financial instrument on the regulated markets and multilateral trading facilities under their supervision, if that instrument is traded thereon and unless such suspension or delisting would harm investor interests or disrupt orderly market conditions.

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[21] COB monthly bulletin, number 363, December 2001

[22] Directive 2004/39/EC of the European Parliament and the Council of 21 April 2004 on markets in financial instruments

[23] Article 214-3 as amended by the Order of 30 October 2007: "The operator of a regulated market shall inform the AMF prior to the admission to trading of a financial instrument, within a time period set by the operating rules of that market."

[24] Article P. 1.4.4 of Book II of the Euronext Paris Rule Book provides that "… an issuer that requests delisting of its equity securities but expects those securities to remain admitted to trading on another regulated market, or on a market with equivalent characteristics in another country, must follow an orderly withdrawal procedure defined by instruction. An orderly withdrawal procedure entails offering existing shareholders, before the delisting takes effect, a facility to sell their securities on the most liquid market, with the associated costs borne by the issuer".

[25] Article P. 1.1.2 of Book II of the Euronext market rules

C – Reform of "golden parachutes" at listed companies

France's Labour, Employment and Purchasing Power Act [26] has changed the rules for related-party agreements that include commitments for "remuneration, benefits or other compensation owed or likely to be owed upon cessation of duties or thereafter to officers of listed companies (chairman, managing director, deputy managing director and members of the executive board)"[27]. The relevant provisions of the Commercial Code have been supplemented by the following measures:

> for such "deferred" compensation to be permissible, the agreement must set performance conditions for the beneficiary, and these must be assessed in light of the company's performance;

> the authorisation of the agreement by the board of directors or supervisory board must be made public in accordance with the terms and conditions set by decree;

> the approval of the agreement at the general meeting of shareholders must be obtained through a specific resolution for each beneficiary, and re-approval is required whenever a term of office is renewed;

> the board must ascertain that the performance conditions have been met before compensation is paid, and this decision must be made public in accordance with the terms and conditions set by decree; failing this, the payment is void;

Certain commitments are excluded from the scope of the new provisions (payments under non-compete agreements and top-up pension schemes for executives provided for in the Social Security Code); these are subject only to the ordinary law of related-party agreements as laid down by Articles L.225-38 *et seq.* of the Commercial Code.

Lastly, statutory auditors must now specifically certify "the accuracy and fairness of the information relating to the remuneration and benefits of any kind paid to each company officer".[28]

D – The Better Regulation initiative

The AMF's Better Regulation initiative yielded its first concrete applications in 2007.

1 > Adaptation of financial disclosure requirements for small-cap and mid-cap issuers

A working group chaired by Yves Mansion, a member of the AMF Board, and including Middlenext made a series of proposals intended to adapt the AMF's rules and procedures to small-cap and mid-cap issuers. These proposals have led the AMF to:

> define small-cap and mid-cap issuers as companies capitalised at less than €1 billion, so as to align this category with the criteria already used by NYSE Euronext for the B and C compartments of Euronext Paris;

> recommend, for financial years beginning on or after 1 January 2007, the use of two special guides for small-cap and mid-cap issuers drawn up by the working group, one for preparing their registration document (which replaces a guide published by the AMF in 2006) and the other for preparing and writing their internal control report (which is a simplified version of reference framework published by the AMF in January 2007).

Regarding the content of the registration document, proposed relaxations include:

> mentioning only information that is material, wherever the EC Prospectus Regulation so permits;

> optionally applying AMF recommendations or interpretations for certain sections, and simplifying certain published recommendations of the AMF;

> using references pointing to information elsewhere in the registration document, to avoid needless repetition.

[26] Article 17 of Act 2007-1223 of 21 August 2007 on retirement benefits and benefit commitments to company officers
[27] Articles L.225-22-1 and L.225-42-1 (*société anonyme* limited company with board of directors) and Articles L.225-79-1 and L.225-90-1 (*société anonyme* limited company with executive board) of the Commercial Code.
[28] Article L.823-10 of the Commercial Code

As regards the report on internal control, small-cap and mid-cap issuers are offered:

> a simpler version of the general internal control principles;

> a simplified implementation guide limited to the two questionnaires shown in an appendix, the first on accounting and financial control, the second on risk analysis and risk containment.

2 > Creation of a "professional" compartment of the market

The amendments to Book V of the AMF General Regulation[29] introduce the possibility of having a compartment on the regulated market intended for listings without a prior offering to the public. This regulatory framework enables the market operator to set up a compartment of its regulated market on which a company's securities are admitted by "technical quotation"[30] or following a private placement with qualified investors.

All the legislative and regulatory provisions and accounting requirements stemming from EU directives (Prospectus, Market Abuse, Transparency, etc.) that apply to companies whose financial instruments are admitted to trading on a regulated market apply also to companies with listings on this compartment. On the other hand, provisions specific to French regulation do not apply to companies listed only on this "professional" compartment.

The new arrangement is structured along two lines:

1) Simplification of the conditions for admission, by waiving the requirements for:

> production of a completion letter from the external auditors;

> certification by the investment services provider;

> translation of a summary of the prospectus written in a language commonly used in finance.

2) Relaxation of the ongoing and periodic disclosure requirements, by allowing:

> all regulated information to be published in a language commonly used in finance; and waiving the requirement to:

> publish the fees paid to external auditors, and

> prepare pro forma financial statements as part of the periodic information.

A special section for companies seeking admission of their securities on this compartment has been added to AMF Instruction 2005-11 of 13 December 2005 on information to be disclosed in connection with a public offer of securities. The eased requirements for listing on this compartment relate to the filing to be made with the AMF for review of the draft prospectus and to the procedures for requesting a visa.

Article 10-4 of this Instruction allows a company to obtain approval within five business days, under certain conditions.

3 > Publication and dissemination of regulatory positions

In November 2006 the AMF made a commitment to disseminate its regulatory positions more widely. Accordingly, during 2007 the AMF enhanced its position on corporate finance by providing new guidance explaining its stance on a number of points. The main ones are summarised below.

a) Implementation of the buyback procedure for debt securities admitted to trading on a regulated market that do not give access to the issuer's equity (i.e. debt securities without embedded equity options).

In principle, a buyback of debt securities that do not give access to the issuer's equity [31] should give rise to a public tender offer, the procedure of choice for ensuring investor protection, equal treatment of holders and market liquidity.

However, the AMF deemed that it could relax the rules applicable to buybacks of such securities, under certain conditions designed to ensure that these principles are respected. It could do so by

[29] Ratified by the order dated 7 December 2007 published in the Official Journal of 19 December 2007
[30] Admission by "technical quotation" is admission without a prior public offering
[31] Position published in the AMF Monthly Review, number 38, July-August.

extending the scope of the buyout procedure [32] applied since 2004 to repurchases of debt securities with embedded equity options that are out of the money.

The AMF's position is now as follows:

> Companies may freely buy back up to 30 percent of a debt issue.

> Above this limit, the buyout procedure can be used if the securities were initially placed exclusively with qualified investors. If the securities were initially placed with the public, a public tender offer is required; however, the AMF may make an exception to this principle and authorise a buyout procedure if the extent of holdings by the public is limited.

The technical and practical aspects of the buyout procedure, which must extend over a period of at least five trading days, are to be reviewed by the AMF before implementation. The financial disclosure relating to the buyout offer must be submitted to the AMF for approval.

b) Summary prospectus

The summary prospectus, introduced by the Prospectus Directive, is an integral part of the prospectus submitted for AMF approval. The summary is meant to set forth, "briefly and in non-technical language", the main characteristics of the issuer and the financial instruments involved in the transaction, as well as the main risks presented by the issuer and the financial instruments.

In many cases, however, it has been found that the summary was difficult to read because it consisted merely of a compilation of elements from the full prospectus.

The AMF has consequently reminded issuers [33] that, when writing the summary, they should be guided by an instructional approach that seeks to educate investors. It is essential that the summary be presented in summary form, short but not dense or without a detailed table of contents.

The AMF recommends that companies adhere to a number of principles in writing the summary. After indicating at the very beginning that it is just a summary, inserting a prominent notice that it should be read as an introduction to the prospectus, giving the number and date of the AMF approval number and providing a capsule description of the nature of the transaction, companies are encouraged to group the subsequent contents under four main headings:

1. information about the issuer,

2. information about the offering,

3. dilution and distribution of share capital resulting from the offering,

4. practical information about subscribing to the offering.

c) Secondary market in securities of companies listed on Alternext Paris following a private placement

Since the Alternext Paris market was established, several companies have listed their securities following a private placement reserved for qualified investors. Under that market's rules, companies may have their securities listed on Alternext either by making a public offering of at least €2.5 million or by making a private placement of at least €5 million with at least five different investors.

The AMF was asked whether, once these companies had obtained the initial listing, any investor, qualified or not, would be eligible to buy their securities. In its response, the AMF stated [34] that listing of financial instruments on the market as part of a private placement reserved for qualified investors does not deprive other investors of the right to acquire those financial instruments.

However, before taking an order from a non-qualified investor to acquire a financial instrument in this category, the investment services provider must have assurance that the investor is fully aware of the particular risks entailed by that instrument.

[32] AMF 2004 annual report, page 103.
[33] AMF Recommendation on the summary of prospectus, published 4 October 2007 and available in French only on the AMF website under "Textes de référence> Accès par Type de textes> Recommandations AMF".
[34] Position published in the AMF Monthly Review, number 40, October 2007

This requirement is founded on Articles 314-43 *et seq.* of the AMF General Regulation, which oblige the investment service to determine that the client's investment experience and knowledge is sufficient to enable him to understand the specific risks of the financial instrument to be traded.

In all cases, the selling shareholders and investment services providers must refrain from active marketing, in particular in the form of advertising or canvassing directed at retail investors. On the other hand, retail investors who seek to buy these securities must be informed about the particular characteristics of this market by their investment services provider.

d) Insider lists drawn up by issuers of financial instruments

Article L.621-18-4 of the Monetary and Financial Code requires issuers whose financial instruments are admitted to trading on a regulated market, or for which application for such admission has been made, to draw up, keep up to date, and transmit to the AMF on request a list of (i) persons working at the issuer with access to inside information directly or indirectly concerning the issuer, as well as (ii) third parties acting in the issuer's name or on its behalf with access to such information as part of their business relations with the issuer.

The AMF has stated [35] that statutory auditors acting in the course of their legal duties [36] are not subject to this requirement. Because those duties have been assigned to them by law in the public interest, statutory auditors are deemed not to be acting "on behalf of the issuer" when performing this role.

Their duties under non-statutory engagements, on the other hand, do come within the scope of the insider list rule. Thus, when an audit firm is engaged to perform work other than statutory auditing, the issuer must include, on its permanent insider list, the name of the legal entity within which the natural person who is the issuer's statutory auditor exercises his functions. For its part, the audit firm must draw up its own insider list, on which it must include the names of the statutory auditors, the employees in charge of such non-audit work, and any outside experts called upon to carry out such work.

e) Equity lines and step-up equity financing programmes

Equity lines and step-up equity financing programmes [37] are capital increases divided into multiple instalments spread over time. As such, they must in all cases be implemented under specific authority granted by the shareholders at a general meeting. The authorisation must state the size of the issue, the price, the duration and the name of the covenantee. Capital increases of this kind are effected either in successive instalments or by issuing warrants to subscribe for new or existing shares. Originally reserved for a financial intermediary as covenantee, these programmes are intended to transfer the risk to the public, with the shares bought by the intermediary being resold, generally within a very short period, in part to institutional investors and in part on the open market.

Following the transposition of the Prospectus Directive and the inclusion in the AMF General Regulation of new cases in which the prospectus requirement is waived, the AMF wanted to clarify the conditions in which such operations may be carried out:

> if the total number of shares that could be admitted over twelve months is less than 10% of the company's share capital, the prospectus requirement is waived for the admission of the new shares. In this case, the company is required to inform the public upon implementation of the programme in a news release that describes its main characteristics and the impact it will have on existing shareholders.

> if the total number of shares that could be admitted over twelve months is more than 10% of the company's share capital, a prospectus must be approved before the equity line programme is implemented.

In all cases, the AMF reminds issuers that other relevant conditions remain applicable: the market must be informed of the mechanism before it is put in place, and the covenantee intermediary must abstain from trading in the shares during the reference periods, from pre-selling any of the

[35] Position published in the AMF Monthly Review, number 41, November 2007
[36] In accordance with Articles L.823-9 *et seq.* of the Commercial Code.
[37] Position published in the AMF Monthly Review, number 41, November 2007

shares to be subscribed, and from directly or indirectly hedging its purchase before the actual subscription has taken place[38].

f) Requirement to publish financial statements in the case of a delisting subsequent to a squeeze-out

The AMF has been asked several times whether a company whose securities are admitted to trading on a regulated market must publish annual or half-yearly financial statements in the official gazette (BALO) when those securities are delisted following a squeeze-out [39].

Under Article 215-1 of the AMF General Regulation, loss of public issuer status takes effect on the date that a notice is published in the BALO to inform the market of the change in status. If the AMF has rendered a decision finding a public offer to be in compliance, publication of a notice in the official gazette for this purpose is superfluous.

On the assumption that a compulsory buyout, or any public offer followed by a squeeze-out, is implemented, the loss of public issuer status takes effect on the date that the AMF's compliance decision becomes enforceable, that is, at the earliest, at the end of the period of ten calendar days during which an appeal can be lodged as specified in Article R.621-44 of the Monetary and Financial Code. If the end of the appeal period comes before the deadline for publishing the financial statements, the obligation to publish ceases to exist. If it comes after, the obligation to publish remains.

g) Capital increases effected by issuance of subscription warrants

Several capital increases by means of subscription warrants took place in 2007[40]. The use of warrants for this purpose offers a number of advantages:

> the operation can be completed in a shorter time than a capital increase with pre-emptive rights, because there is no BALO publication deadline and the centralisation process is faster;

> the warrants can be recycled, making it possible to achieve 100% of the issue.

Also, in some cases subscription warrants have characteristics that make them equivalent to, or even a perfect substitute for, pre-emptive rights[41]. This is the case when the warrants are awarded free of charge to all shareholders and are exercisable only during a short period. The AMF therefore wished to clarify the conditions in which such capital increases may be carried out and state its position [42] on the minimum requirements for issues with pre-emptive rights or subscription warrants:

> the exercise price of the subscription warrant may be freely set either before the operation, with a discount comparable to that for an issue with pre-emptive rights (any abnormally high discount must be justified), or at the end of the placement period (and thus close to the market price);

> the limited period during which the warrants can be traded must be no shorter than that allowed to holders of pre-emptive rights, that is, five trading days;

> the capital increase is deemed to have been realised when the amount of subscriptions is at least 75% of the amount of the issue.

4 > Improving the review process for registration documents

As part of its Better Regulation initiative, in late 2007 the AMF revisited its policy on ex-post review of registration documents.

A listed company can draw up a registration document every year. With an updated registration document on file, a company can obtain approval for a financial offering within five trading days. There are two separate procedures for filing and reviewing registration documents. When the

[38] COB 2002 annual report.
[39] This position, published in the AMF Monthly Review, number 42, December 2007, applies also to the periodic publication requirements laid down in the Monetary and Financial Code, Article L.451-1-2 and stemming from the Transparency Directive.
[40] The ad-hoc rules for this type of operation had been accepted by the COB in 2001.
[41] Although legally, under Article L.228-91 of the Commercial Code, the capital increase resulting from exercise of subscription warrants is achieved without pre-emptive rights, the functional similarity of the operation, in that it enables shareholders to subscribe to the increase on the same terms as if they had pre-emptive rights, leads to the position that the legal regime for capital increases with pre-emptive rights should be deemed to apply.
[42] Position published in the AMF Monthly Review, number 42, December 2007

company has not filed and had registered three such documents consecutively, it files a draft registration document that receives ex-ante review by the AMF. Following review and approval, this document is registered and published on the AMF's website. When the company has filed and had registered three consecutive registration documents, it is eligible for ex-post review: the document is filed with the AMF, published under the responsibility of the company, and receives no ex-ante review.

The objective in revisiting the review policy is to adapt the rules and procedures to diverse situations, so that the AMF can differentiate its actions based on the segments of the public concerned, thereby improving the ex-post review procedure.

2 – Activity in 2007 (other than takeover bids)

A – Corporate financing in 2007

The number of approvals issued [43] by the AMF in 2007 was relatively stable compared with 2006, at 446 versus 453 the year before.

The number of approvals for corporate finance transactions, however, was down 11% from the preceding year, falling from 361 in 2006 to 321 in 2007. The decline is mainly attributable to the sharp drop in initial public offerings and in listings of debt securities. The decline was offset in part by increases in the number of public issues, the number of prospectuses filed by foreign companies in connection with transactions reserved for employees, and in the number of takeover bids.

1 > Listings and delistings

a) New listings

Approvals for new listings

	2006	2007
Eurolist A	6	3
Eurolist B	16	5
Eurolist C	12	5
Eurolist Paris	**34**	**13**
Alternext Paris	**41**	**25***

Source: AMF

* Includes one foreign company: Antevenio.

The AMF issued approvals for 38 new listings in 2007: 13 on Eurolist Paris and 25[44] on Alternext Paris. The number of initial public offerings declined by nearly one-half compared with the preceding year.

The IPOs that were made raised a total of €3.2 billion (€2.9 billion on Eurolist Paris and €284 million on Alternext Paris).

On Eurolist Paris, the flotations of Rexel in April 2007 and Bureau Veritas in October 2007 accounted for more than two-thirds of the capital raised. Eight companies, including NYSE Euronext, ArcelorMittal, Eurotunnel Group and Sinclair Pharma, were listed by direct quotation without prior AMF approval. Sinclair Pharma was admitted under a passport issued by the competent UK authority, the Financial Services Authority.

On Alternext Paris, six companies (Cellectis, Brossard, Eurogerm, Demos, Vergnet and Homair) accounted for more than half the capital raised, bringing in a total of €153 million. Also notable in 2007 was an increase in listings via private placement, outside the scope of public offerings. Fifteen companies chose this method of listing in 2007.

The AMF also approved two new listings on the Marché Libre, compared with 23 in 2006.

[43] The number of approvals does not include visas that were cancelled (42 in 2007). It does include compliance decisions on public offers that entail a visa.
[44] Two visas were issued for transactions that ultimately did not give rise to a public offer: in one case, the company listed via direct quotation; in the other, the transaction did not take place.

b) Delistings

Market – Compartment

Delistings	2006 Number of companies	2007 Number of companies
Eurolist A	4	6*
Eurolist B	7	10
Eurolist C	17	18**
Eurolist special compartment	2	1
Eurolist foreign issuer compartment	19	10
Eurolist Paris	**49**	**45**
Alternext Paris	**1**	**2**

Source: AMF

* Includes two foreign companies: ArcelorMittal, Mittal Steel NV
** Includes one foreign company: V CON.

Delisting procedures

Delistings following:	2006	2007
Buyout with squeeze-out	20	7
Squeeze-out	3	8
Sales facility	17	7
Merger	2	14
Court-ordered liquidation, dissolution or transfer of assets	6	7
Buyout without squeeze-out	**2**	**4**
Total	**50**	**47**

Source: AMF

There was a significant decline in delistings following a squeeze-out, which can be attributed to the reform of the tender offer rules. In contrast, the number of delistings following a merger increased very sharply.

Overall, the number of delistings dropped slightly in 2007. The drop is explained by fewer delistings of foreign companies than in the preceding year: 13 companies were deleted from the list, 10 of them in the foreign issuer compartment. The other three delistings were V CON (Eurolist C), ArcelorMittal and Mittal Steel NV (both Eurolist A).

On Alternext, two companies were delisted, one following a standing market offer (Newsweb), the other following a merger (Overlap Group).

2 > Other financial transactions

a) Approvals of issues, secondary offerings and listings of equity and complex equity securities

	2006	2007	% change
Issues and listings on a regulated market	52	63	+21
With pre-emptive rights	37	35	–5
Shares	27	26	–3
Shares with subscription warrants attached (ABSA)(44)	5	4	–20
Shares with purchase warrants for existing shares or subscription warrants for new shares (ABOASA)(45)	0	0	0
Bonds with redeemable subscription warrants (OBSAR)(46)	5	4	–20
Subordinated bonds redeemable in shares (OSRA)(47)	0	0	0
Bonds redeemable in shares (ORA)(48)	0	1	ns
Convertible bonds (OCA)(49)	0	0	0
Without pre-emptive rights	15	28	+86
Shares	9	12	+33
Shares with subscription warrants attached	0	0	0
Shares with purchase warrants for existing shares or subscription warrants for new shares	0	0	0
Subscription warrants (BSA)(50)	0	0	0
Convertible investment certificates (CCI)(51)	0	0	0
Bonds convertible into new shares or exchangeable for existing shares (OCEANE)(52)	4	7	+75
Convertible bonds (OCA)	1	0	ns
Bonds with redeemable warrants (OBSAR)(53)	1	4	ns
Bonds redeemable in shares (ORA)	0	2	ns
Bonds redeemable in cash and in new or existing shares (ORNANE)(54)	0	1	ns
Subordinated bonds convertible into new shares or exchangeable for existing shares (OSCEANE)(55)	0	1	ns
Bonds redeemable in new or existing shares (56)	0	1	ns

Source: AMF

The number of issues on regulated markets rose from 52 in 2006 to 63 in 2007. The number of issues with pre-emptive rights for existing shareholders was stable, whereas the number without pre-emptive rights increased significantly owing to the upturn in issuance of debt securities giving access to equity.

In particular, issues of convertible or exchangeable bonds (OCEANEs) were more numerous (seven in 2007 versus four in 2006), as were issues of subordinated bonds redeemable in shares (8 versus 4).

Outside of the regulated markets, the number of public issues increased in 2007 (26, versus 10 in 2006) but the number of public secondary offerings declined (two in 2007 versus four in 2006).

b) Approvals relating to debt securities

The number of visas issued for primary and secondary offerings and admission to trading of debt securities declined from 130 in 2006 to 83 in 2007, a decrease of 36%.

3 > Registration documents

	2006	2007	% change
Registration documents	359	368	+2
> Ex-post review	273	268	–2
> Ex-ante review	86	100*	+16
Updates and corrections to registration documents	97	103	+6
> Corrections to registration documents	12	8	–33
> Updates to registration documents	85	95	+12
Base documents for listing on a regulated market	62	29	–55

Source: AMF

* This figure includes four documents filed in 2006 and registered in 2007 as well as 96 documents filed and registered in 2007; the total number of registration documents that were filed in 2007 subject to ex-ante review was 106.

Registration documents that were filed subject to ex-post review were by far the majority of the total, at 268 through 31 December 2007. Even so, in 2007 the AMF registered 100 documents under the ex-ante review procedure.

The slight increase in 2007 in documents subject to ex-ante review shows that for the majority of companies, the registration document is still a useful tool of communication and one of real interest in the context of corporate finance. From this viewpoint, implementation of the simplified approval procedure stands to provide a further incentive to prepare a registration document.

For drawing up their registration documents, small-cap and mid-cap issuers now have a new preparation guide [45] that takes the place of the previous guide published by the AMF in January 2006.

Lastly, the AMF points out that the requirement for separate publication of the annual financial report, the annual disclosure document, the amount of auditors' fees and the description of the company's share buyback programme can be waived, provided that:

> this information is included in the company's registration document;

> the registration document is published within four months of the company's year-end;

> the company puts out an electronically distributed news release specifying the procedures for obtaining the document.

In all cases, a company preparing a registration document must include the chairman's report on internal control and corporate governance as well as the statutory auditors' report on that report.

[45] Available on the AMF's website under "Publications> Guides> Professional guides".

3 – Regulation of takeover bids

A – Tender offers in 2007

The number of public tender offers increased slightly in 2007: in all, the AMF issued 67 decisions finding offers to be compliant, compared with 59 in 2006. Activity in the first half was quite brisk, but a marked decline in the number of offers filed was observed beginning in August 2007.

Public tender offers initiated	2004	2005	2006	2007*
Tender offer – standard procedure	5	14	6	13
Tender offer – simplified procedure	17	23	23	32
Buyout offer	4	3	3	3
Buyout offer followed by a squeeze-out	35	29	19	7
Share buyback offer	5	8	2	2
Standing market offer	6	9	6	9
Squeeze-out with compliance statement**	-	-	0	1
Squeeze-out without compliance statement **	-	-	4	10***
Total (excluding squeeze-outs without compliance statement)	**72**	**86**	**59**	**67**

Source: AMF

* For 2007, two offers held not to be in compliance (Eiffage, Gecina) are not counted.

** Provision introduced by Act 2006-387 of 31 March 2006 relating to takeover bids.

*** Includes one compulsory buyout authorised by the Luxembourg market authority involving a company registered outside France.