Chapter III - Financial disclosure and corporate finance

The AMF has the same jurisdiction over financial disclosures and corporate finance as its predecessor institutions, the Commission des Opérations de Bourse (COB) and the Conseil des Marchés Financiers (CMF).

The AMF establishes the rules governing the business practices of companies making public offerings of securities. It also regulates and oversees all transactions involving the public placement of securities, such as new listings, capital increases and mergers, as well as tender offers for publicly issued securities.

The AMF ensures that companies listed on regulated markets deliver complete, high-quality disclosures to the entire market in a timely and fair manner.

I – Developments in 2003

A – REVIEW AND APPROVAL OF CORPORATE FINANCE TRANSACTIONS

Activity was down for the second year running, with the COB, and then the AMF, issuing 1,148 visas in 2003, after 1,274 in 2002. The decline can be attributed to an across-the-board decrease in all types of fund-raising transaction in the primary markets, including new listings, secondary issues, asset contributions and public tender offers. Conversely, the average size of transactions increased sharply, reflecting a broad-based market rebound in 2003.

However, one-half of the 11% overall decline in visa issuance in 2003 is attributable to the way that warrant issues are structured. Specifically, these issues, which continue to enjoy strong appeal, now tend to include more tranches, with the result that fewer visas are required.

1 – Admissions, delistings and transfers

A total of 11 visas were issued for admission to listing and trading on regulated markets in 2003: six to exchange traded funds (ETFs) and five to companies. By comparison, 19 visas were issued in 2002: 11 to ETFs and eight to companies.

	2002	2003	Change
1. Visas admitting companies to listing and trading on a regulated market	**19**	**11**	**- 8**
. Premier Marché	*11*	*7*[1]	*- 4*
. Second Marché	*6*	*4*	*- 2*
. Nouveau Marché	*2*	*0*	*- 2*

Seven visas were granted for the Premier Marché. Six of these were for ETFs, while the seventh was issued to Alcan Inc for its public offer in cash and shares for Péchiney. One foreign company, Kesa Electricals PLC, was exempted from obtaining a visa under the mutual

[1] includes 6 ETFs.

recognition procedure, while another, Wereldhave NV, obtained an exemption under the "Eurolist[2]" procedure. The four new listings on the Second Marché resulted from transfers of companies previously listed on the Marché Libre, namely ABC Arbitrage, Afone, Avenir Finance and Vet Affaires. There were no new listings on the Nouveau Marché in 2003.

In terms of effective listing dates, 13 new issuers were actually admitted to regulated markets in 2003: six ETFs, three companies on the Premier Marché and four companies on the Second Marché.

All regulated markets have seen a substantial number of delistings in the past two years: 63 companies in 2003 and 76 in 2002.

The number of Premier Marché delistings rose sharply from 23 in 2002 to 31 in 2003, 15 of which involved foreign companies. In all, 13 of the delistings resulted from sales facilities, 13 from mandatory buy-outs and three from mergers or acquisitions. One took place at the company's own initiative and another was the result of bankruptcy.

The Second Marché recorded 18 delistings in 2003, down from 31 in 2002. Mandatory buy-outs were responsible in 14 cases, while the other four were the result of bankruptcies.

In all, 14 companies were removed from the Nouveau Marché in 2003, after 13 in 2002. Half of these delistings were caused by mandatory buy-outs or bankruptcy proceedings.

2 – Other financial transactions

a) Visas for issuance, disposal or listing of equity or equity-related securities

The number of issues on regulated markets also declined, with 50 visas granted in 2003 after 61 in 2002. There was a marked increase in issues of shares with pre-emptive subscription rights: 27 issuers opted for this technique in 2003, compared with 21 in 2002.

[2] Pursuant to Article 12-5 of Commission Regulation 98-01 transposing Directive 94/18/EC, an issuer that submits a request to be admitted to a regulated market for equity securities may be granted an exemption from the prospectus requirement provided that it has been listed for more than three years on a regulated market in Europe and that it makes available to the French public any prospectus published within the previous 12 months, together with accounting documents and a summary in French of key information about the company. Known as the Eurolist exemption, this procedure may only be used the first time a company's shares are admitted to trading. Prospectus exemptions may be granted for subsequent listings under the mutual recognition procedure (Articles 18 to 33 of Regulation 98-01 on requests for listing on the Premier Marché and Second Marché and Article 8 of Regulation 95-01 if the company intends to seek a listing on the Nouveau Marché. These provisions are transposed from Directive 87/345/EC.).

	2002	2003	change
ISSUANCE/LISTING ON A REGULATED MARKET	**61**	**50**	**- 11**
1. With pre-emptive rights	**21**	**27**	**+ 6**
. Shares	*20*	*23*	*+ 3*
. Shares with warrants attached (ABSA)	*1*	*2*	*+ 1*
. Shares with warrants for the acquisition of existing shares and/or subscription for new shares (ABOASA)	*0*	*1*	*+ 1*
. Subordinated bonds redeemable in shares (OSRA)	*0*	*1*	*+ 1*
2. Without pre-emptive rights	**40**	**23**	**- 17**
. Shares	*8*	*2*	*- 6*
. ABSA	*5*	*1*	*- 4*
. ABOASA	*3*	*1*	*- 2*
. Shares warrants (BSA)	*3*	*0*	*- 3*
. Cooperative investment certificates (CCI)	*1*	*0*	*- 1*
. Bonds convertible into new shares or exchangeable for existing shares (OCEANE)	*12*	*10*	*- 2*
. Perpetual notes redeemable in shares (TDIRA)	*0*	*1*	*+ 1*
. Convertible bonds (OCA)	*1*	*1*	*-*
. Bonds with redeemable warrants (OBSAR)	*4*	*5*	*+ 1*
. Bonds redeemable in shares (ORA)	*2*	*1*	*- 1*
. Bonds redeemable in shares or cash (ORAN)	*1*	*1*	*-*

The number of unlisted offerings was broadly unchanged, at 20 in 2003 after 19 in 2002. Meanwhile, sales through public offerings fell sharply, with 13 visas issued in 2003, after 19 in 2002. Listings on the Marché Libre resulting from the sale or issuance of securities also declined: just 15 visas were issued in 2003, compared with 21 in 2002.

The number of reserved issues followed by the admission of securities to a regulated market held steady at 22 in 2003, compared with 25 in 2002. These issues chiefly concerned restructurings and, in most cases, included a tranche reserved for new entrants. Also in 2003, 15 companies chose to make bonus issues of equity warrants, chiefly in order to open up issues to former shareholders or to replace pre-emptive rights.

b) Visas for issuance and admission of debt securities

The number of visas for the issuance and admission of debt securities fell from 354 in 2002 to 291 in 2003. The decline in the number of visas for simple admissions or issuance can be attributed essentially to the increase in multiple warrant tranches, a trend that is greatly reducing the number of visas issued. In all, 185 visas were issued for warrants in 2003, compared with 255 in 2002.

The number of programmes fell from 28 in 2002 to 22 in 2003. The number of visas issued for mortgage bonds remained stable at 20.

c) Public tender offers

The number of visas issued in connection with public tender offers for equity or equity-related securities fell sharply, from 97 in 2002 to 77 in 2003[3]. Buyouts with and without squeeze-outs also declined, with 37 visas issued in 2003 after 43 in 2002.

Two tender offers for debt securities received visas in 2003, compared with one in 2002.

d) Mergers, demergers and partial mergers

The number of mergers and partial mergers fell from 24 in 2002 to 16 in 2003. No demergers have been recorded in the last two years.

e) Share buyback programmes

The number of share buyback programmes was practically unchanged, at 359 visas in 2003, after 364 in 2002. However, the number of companies that used their buyback programmes in 2003 was down slightly on the previous year[4].

f) Registration documents

	2002	2003	Change
1. Registration documents	**369**	**390**	**+ 21**
. ex post review	*159*	*218*	*+ 59*
. pre-filing review	*210*	*172*	*- 38*
2. Registration documents: updates and corrections	**36**	**121**	**+ 85**
. Corrections (ex post only)	*2*	*34*	*+ 32*
. Updates (all documents)	*34*	*87*	*+ 53*
3. Offering circulars for listing on a regulated market	**1**	**2**	**+ 1**

The number of registration documents continued to rise in 2003, with 390 registered or filed compared with 369 in 2002. The increase also concerned issuers of debt securities (17 documents in 2003, after 14 in 2002). In all, 270 companies elected to submit their document in the form of an annual report, while the others opted to prepare a specific registration document.

The majority of documents were submitted for ex post review – 218, compared with 159 in 2002 – while 172 were recorded under the pre-filing review procedure.

Of the companies reviewed ex post, 34 made corrections to their published registration documents, two at the request of the market authority. The corrections mainly involved accounting items, risk insurance and hedging, corporate governance, off-balance sheet commitments, debts and covenants.

[3] For the purpose of comparison, these figures include 13 visas issued for standing offers, as well as certain buyout offers that did not require visas before 22 April 2002, i.e. securities notes prepared by bidders and defence documents issued by their targets.
[4] The number of issuers using their buyback programme during the first nine months of the year fell by 7% from 273 to 252.

Many companies took advantage of the option to update their registration documents in the course of the year: 87 in 2003 compared with 34 in 2002. Most of the updates concerned intermediate accounting items, recent developments, the company's cash position and corporate governance.

g) Offering circulars

In July 2002, as part of the second stage of reform of the registration procedure[5], the COB introduced a two-step system for IPOs on regulated markets. In step one, the company files an offering circular containing key corporate information. In step two, a visa is issued for the securities note giving details of the IPO.

No offering circulars were prepared in respect of the ETFs and foreign companies admitted to listing in 2003, because of the procedures used for these admissions. Of the four new companies listed on the Second Marché following their transfer from the Marché Libre, just two issued extra shares and were thus required to file an offering circular.

B – MONITORING THE ONGOING DISCLOSURES OF COMPANIES MAKING PUBLIC OFFERINGS OF SECURITIES

In 2003, the AMF built on previous years' efforts to improve the monitoring of ongoing and periodic disclosures from companies making public offerings of securities. As part of these efforts, it ensured that companies published their financial statements as required by law, gave guidance to issuers on earnings disclosures, verified that Nouveau Marché companies prepared registration documents, and issued recommendations designed to upgrade the content of registration documents.

1 - Publication of company accounts in the legal gazette

The AMF identifies any company listed on a regulated market that fails to meet its statutory duty[6] to publish its quarterly revenues, interim financial statements or annual financial statements in the legal gazette (BALO), once these documents have been prepared by the company's board and approved by its general meeting of shareholders. In 2003, 851 written requests were sent out to securities issuing companies, instructing them to take corrective action. Of these, 46% concerned the late publication of quarterly revenues, 22% concerned annual financial statements prepared by the board, 23% concerned annual financial statements approved by the AGM, and the remaining 9% concerned interim financial statements.

The AMF has introduced a two-stage procedure to ensure that the requisite information is published promptly. First, it posts on its website a list of companies that fail to meet their disclosure deadlines. Second, it refers the matter to the Paris Court of First Instance, seeking injunctions and penalties and requiring the company to publish the relevant information, pursuant to Article L.621-17 of the Monetary and Financial Code.

In September 2002, the AMF began to publish online the names of companies that fail to meet their disclosure obligations. Updated twice monthly, this list simply indicates which companies have failed to make the required disclosures in timely fashion, without analysing the reasons for

[5] See Chapter II on Market Transparency of the COB's 2002 Annual Report.
[6] Articles 295 to 299 of the Decree of 23 March 1967.

delays. On average, in 2003, the requisite disclosures were made within two weeks of the list being posted in 68% of cases involving quarterly revenues, 40% of cases involving interim financial statements, 44% of cases involving provisional annual financial statements and 30% of cases involving final annual statements.

The Court of First Instance dealt with 34 cases in 2003. In all, 88% of the companies in question took corrective measures as soon as they received a court order. Under the terms of the order issued by the presiding judge, companies were given eight days from the order date to make the necessary disclosures or face a fine of EUR 1,500 per day beyond that period.

2 – Publication of registration documents by Nouveau Marché companies

Under Article 3-1 of COB Regulation 95-01, companies listed on the Nouveau Marché are required to prepare an annual registration document, which they file with the AMF for review. The associated implementing instruction specifies that the document should be filed within two months of the company's financial year-end.

The AMF checks which Nouveau Marché companies have not filed or registered their documents in the 12 months following the close of their financial year, and publishes a list of all such companies on its website. Of the 33 companies on the first list, posted in July 2003, 22 took the necessary corrective action, six failed to file their documents on time and five still had not registered their documents at year's end.

Under Article L. 621-17 of the Monetary and Financial Code, the AMF can also ask the Paris Court of First Instance to serve an order on companies that fail to file a registration document within two months of the accounting statement date. Three companies were served orders for this reason in 2003. Note that this procedure does not apply to companies in bankruptcy proceedings.

The AMF follows Article L. 621-18 of the Monetary and Financial Code in cases where a document cannot be registered because the company has failed to comply with requests to supply additional information or to make changes to the draft version of the filed document. Accordingly, the AMF publicly issues observations to the company in question, instructing it to supply, at its own expense, the missing information required to keep the market properly informed.

3 –Guidance to issuers on earnings disclosures

In March 2003, the COB issued a news release reiterating its earlier recommendations on earnings disclosures by securities issuing companies, after observing that more and more firms were using financial terms with no strict accounting definition when making statements about their profitability or cash position.

In its communiqué, the COB repeated that it was not against the use of specific financial indicators, such as EBITDA or free cash flow, that might satisfy a particular need among investors or analysts, depending on the company or sector. However, it insisted that the information in question had to be true, precise and comparable over time.

The COB added that indicators that did not comply strictly with French accounting definitions had to be precisely defined, be used consistently from one year to the next, and tally with the company's financial statements. It also said that if companies restated intermediate operating totals to prepare such indicators, then they should describe, explain and compare these restatements with the previous year's data in their public earnings announcement.

In addition, the COB stressed again that listed companies' disclosures should not be based either solely or mainly on concepts that are not defined under French accounting standards. Accordingly, even if such indicators are clearly explained and compared with the financial statements, issuers must also provide information on all the intermediate operating totals provided for in the French accounting system, up to and including consolidated net profit.

The COB demanded public corrections from around ten companies that failed to comply with its recommendations.

4 – Recommendations on preparing registration documents

Although the total number of registration documents produced in 2003 rose by 5.3% compared with 2002, the number of documents actually registered fell by a sharp 9.6%. This is chiefly attributable to small number of new listings and a sizeable 14.9% increase in registration documents submitted for ex post review[7]. In response to the growing use of the ex post procedure, the AMF increased its efforts to clarify the information required on key market issues or on areas receiving unequal or partial treatment by issuers.

As part of its drive to provide greater clarification, the AMF joined forces with several associations representing listed companies, including the Association of Private Companies (AFEP), the Association of Corporate Treasurers (AFTE), the Association of Investor Relations Managers of French Listed Companies (CLIFF) and the employers' federation, MEDEF. It took into account the numerous recommendations made in January 2003[8], when 14 areas were identified for improvement and further action by issuers in terms of communicating to the market about the transition to International Accounting Standards (IAS)/International Financial Reporting Standards (IFRS)[9], internal control and corporate governance.

The AMF clarified a number of positions taken in January 2003[10], notably on the use of pro forma financial indicators and information about financial debts and covenants. It also issued new recommendations on four sensitive areas.

Impairment of intangible assets and goodwill

Too many companies gloss over their policies for valuing intangible assets by including a general description in a note on the firm's accounting principles. The AMF observed, however, that at end-2002, considerable portion of the consolidated balance sheets of listed companies consisted of intangible assets and goodwill. Indeed, the combined value of these items at 31 December 2002 for all the non-financial corporations in the CAC 40 index exceeded the consolidated shareholders' equity of these companies and would thus constitute a major risk factor if economic conditions were to deteriorate.

---

[7] This procedure applies automatically to issuers that have had such documents registered three years in a row (COB monthly bulletin, issue 365, February 2002).

[8] COB monthly bulletin, issue 375 (January 2003).

[9] Final recommendation by the Committee of European Securities Regulators (CESR) published on 30 December 2003 as part of preparations for the switch to IFRS.

[10] AMF monthly review, issue 1 (March 2004), page 5.

When such information is sensitive and material, especially in terms of the ratio of intangibles to equity, the AMF wants companies to state whether they have opted for early application of Regulation 2002-10 of the Accounting Regulations Committee (CRC). If they have not, the AMF wants them to specify which policy they are using to value intangibles and goodwill, describing, where appropriate, the indicators used to determine impairment.

Where an impairment test has been carried out, it is important for the company to summarise the methods used. If the approach is based on discounted cash flows, the company should describe the segmentation process as well as the method employed to establish key variables, such as the growth rate and the discount rate.

More specifically, if the test results in a write-down, the issuer must describe the assumptions used in each individual instance (growth rate, discount rate, projection horizon and method used to calculate terminal value) and comment on the results with respect to earlier financial statements.

Furthermore, the AMF recommended that companies filing or registering their documents after releasing their first-half financial statements should also specify in their interim statements whether they are using the same asset depreciation method as that described in the preceding set of annual accounts. Thus, companies would review the impairment indicators at the interim period-end, and, if necessary, book a new provision for impairment, to be described in the notes to the financial statements.

Provisioning for risks and disputes

The AMF urged companies to strive for greater transparency in disputes. It made the following recommendations:

- Where sensitive information or large amounts are concerned, the overall "provision for risks and charges" should be broken down to show the total amount set aside for disputes. Meanwhile, disputes that require provisioning should be divided into broad categories and analysed.
- Similarly, the AMF considered that companies that had implemented an overall policy for applying the abovementioned accounting principles should say so in their registration documents.
- In addition, the AMF recommended that any disputes deemed serious enough to be mentioned individually should be identified, along with a description of their current status and an annual update. Details should be included of the type of funded obligation, expected maturity, uncertainties over valuations or maturities, the size of expected payments, and so on.

Disclosures for credit derivatives

In view of the increasing use of credit derivatives, and while advancing cautiously on this issue, the AMF in 2003 instructed the companies concerned, mainly credit institutions, insurance companies and reinsurers, to make specific disclosures in this area.

The information contained in these disclosures should make it possible to identify the issuer's market position and strategy in credit derivatives. The AMF further suggested that issuers might describe the organisational structure set up to initiate, monitor and control such transactions, as well as the specific reporting and control procedures put in place.

Transparency of criteria for recording asset financing arrangements
Modern financial techniques offer tremendous flexibility and diversity in terms of asset financing. To foster transparency, the AMF recommended that companies describe their asset financing policies, review any large individual transactions of this type, and detail the criteria used to record financing arrangements as liabilities or off-balance-sheet items.

II – Accounting issues

A – DEVELOPMENTS IN FRENCH ACCOUNTING REGULATIONS

The French Accounting Standards Board (CNC) and the Accounting Regulations Committee (CRC) published numerous regulations, opinions and communiqués in 2003. The COB and subsequently the AMF were closely involved in drafting these documents, especially those pertaining to companies making public offerings of securities.

1 – Companies in all sectors

a) CRC Regulations

Regulation 2003-01 of 2 October 2003 on the accounting treatment for internet-based barter transactions

Adopted following publication of CNC Opinion 2003-06 of 1 April 2003, Regulation 2003-01 extends the national chart of accounts to include the notion of an exchange of lots where at least one of the lots is an internet advertising service. Companies should record such exchanges at market value, which should in turn be determined with reference to standard sales, i.e. settled in cash or another form of consideration that has a reliably measurable value[11].

Regulation 2003-04 of 2 October 2003 on the accounting treatment of the proceeds from disposals of revalued fixed assets

The voluntary revaluation of tangible fixed assets and long-term investments gives rise to a revaluation surplus, which is recognised in equity and may not be distributed (Article L. 232-11 of the Commercial Code). There are some questions over the accounting treatment of this surplus when the revalued asset is sold.

Adopted following publication of CNC Opinion 2003-10 of 24 June 2003, Regulation 2003-04 states that the surplus may be considered to be fully realised when the revalued fixed asset is sold. Alternatively, the surplus may be realised in stages, as the additional depreciation on the revalued portion of the fixed asset is recognised.

---

[11] The COB approached this issue by proposing to follow the principle put forward by the US Emerging Issues Task Force in EITF 99-17. EITF 99-17 supplied the basis for IASC Interpretation SIC 31, which then provided the underpinning for the principles set forth in the adopted French regulation. See COB monthly bulletin, issue 352 (December 2000), pages 14 et seq.

Regulation 2003-05 of 20 November 2003 on the accounting treatment of website development costs

The national chart of accounts contains no particular provisions on the accounting treatment for website development costs. As a result, following publication of CNC Opinion 2003-11, the CRC adopted the above regulation to allow companies to capitalise these costs, provided specific requirements are met. The regulation also describes the types of costs that are eligible for this treatment.

Regulation 2003-07 of 12 December 2003 amending Article 15 of CRC Regulation 2002-10 on asset amortisation and depreciation

This regulation modifies, with immediate effect, the transitional provisions pertaining to first-time application of Regulation 2002-10 on the amortisation and depreciation of assets. It reiterates that the effect of adopting the regulation should be recorded as a change of accounting policy[12]. It also emphasises, however, that modifications to a depreciation/amortisation schedule or to the procedures for calculating value-in-use as a result of events occurring prior to the first-time application of the regulation constitute a change of estimate[13].

Amendments were also made to the transitional measures for use of the component approach to record major-overhaul costs. These measures are applicable up to financial years beginning on or after 1 January 2005, when the non-transitional provisions of the regulation come into effect.

b) Opinions issued by the Urgent Issues Task Force

Opinion 2003-D of 11 June 2003 on accounting treatment of compensation for the destruction of fixed assets

The Task Force concluded that such insurance benefits should be recorded in their entirety as income and could not be spread over the depreciable life of the new fixed asset. Furthermore, the Task Force said that it made no difference to the accounting treatment for such events whether the benefits were paid by the company's own insurer or by the third party presumed to be responsible for the claim.

Opinion 2004-A of 21 January 2004 on the accounting treatment of changes to commitments in respect of retirement bonuses, following application of the Pension Reform Act 2003-775 of 21 August 2003

Article L. 122-14 of the Labour Code defines two procedures for calculating retirement bonuses:

- If employees retire at their own initiative, they receive the statutory bonus or the bonus provided for by a collective agreement or by any other means if this is greater. Social security contributions are levied on these bonuses.
- If employees retire at the company's initiative, the employer pays the retirement bonus provided the employee in question has reached a certain age and is entitled to receive a full pension. These bonuses are calculated according to the formula provided by law or by a collective agreement if the latter is more favourable. The portion of this bonus not subject to income tax is also exempt from social security contributions.

[12] i.e. the effect is calculated retroactively and impacts equity.

[13] i.e. the effect is calculated prospectively and impacts earnings during the period of the change, as well as future earnings.

The Task Force noted that:

- The Pension Reform Act has introduced the option of extending the contribution period to obtain a full pension and modified the procedures for taking retirement
- Employees leaving a company voluntarily are no longer entitled to claim their retirement benefits before the age of 60[14]
- Employers may no longer to ask employees to retire before the age of 65[15].

The accounting impact of the changes arising from the new legislation will depend on the method used by each company to record its pension commitments.

If companies record their commitments in accordance with CNC Recommendation 2003-R-01 on the rules for recording and valuing pension commitments[16], all the modifications resulting from the new act should be viewed as the result of a change in the post-employment benefits scheme, effective for accounts closing after 22 August 2003. Consequently, all modifications should be recorded on a straight-line basis over the average vesting period, starting from the date on which the scheme changed. In the case of retirement bonuses, this period corresponds to the average residual career length of employees entitled to such payments.

The same treatment applies when companies record retirement bonuses only, while still applying the provisions of the recommendation (partial funding).

If companies do not follow the recommendation when determining their commitments and record them in full or in part, the accounting impact of the new legislation will constitute a change of estimate for accounts closing after 22 August 2003. The difference arising from the new estimate must be recorded as follows:

- If it is possible to identify the portion of the difference resulting from the impact of the new legislation, the modifications should preferably be taken to the income statement for the period and recorded on a straight-line basis over the average vesting period, starting from the date on which the benefit scheme changed.
- Otherwise, the difference including the modifications arising from the new legislation should be taken to the year's income statement.

2 – Insurance companies

Opinion 2004-B of 21 January 2004 on the accounting treatment of provisions for unrealised capital loss exposures in individual and consolidated financial statements, following publication of Decree 2003-1236 of 22 December 2003

Before the Decree of 22 December 2003 was published, insurance companies were allowed to spread allocations to the special reserve for unrealised capital loss exposures (***provisions pour risque d'exigibilité***) over several financial years, provided they obtained the necessary authorisation from the Insurance Supervisory Commission (CCA). Under the new legislation, this reserve must always be established progressively, except under exceptional circumstances (allocation equal to one-third of the unrealised loss recognised at the end of the period).

[14] Except people who began working at a very early age and have had a long career.

[15] Except under a collective agreement whose terms must be settled before 1 January 2008 or if employees are covered by an early retirement agreement.

[16] Issue 383 of the COB monthly bulletin (October 2003), pages 183 to 189, explains how this recommendation applies to securities issuing companies.

For individual statements, this means a change of accounting estimates, i.e. forward-looking treatment in the 2003 accounts. Reserves recorded at 31 December 2002 are therefore to be maintained, provided the following adjustments are made:

- If, because of financial market trends in 2003, the reserves recorded at 31 December 2002 exceed the amount of the total net capital loss calculated at 31 December 2003, the provisions should be adjusted so that the reserves at 31 December 2003 match the amount of the total capital loss.
- If, because of financial market trends in 2003, the reserves recorded at 31 December 2002 are lower than the total net capital loss calculated at 31 December 2003, the allocations for FY2003 must be calculated according to the new legislation. Note that the total reserve at 31 December 2003 may not exceed the amount of the total net capital loss calculated at the same date.

Each group has to decide whether to maintain a reserve for unrealised capital loss exposures in its consolidated accounts. Thus, the reserve recorded at 31 December 2003 must:

- either be recognised in full for all group entities that meet the appropriate criteria (i.e. that recognise an end-of-period unrealised capital loss) if the reserve corresponds to a risk not recognised elsewhere, or
- be restated in full in the consolidated accounts.

Accordingly, depending on the group's situation, the following applies.

- If the group records a provision for unrealised capital loss exposures in the consolidated financial statements at 31 December 2003 and if it has always recorded this provision in full and for all group entities, the reserves recorded at 31 December 2002 are maintained. Allocations and reversals in respect of FY 2003 are taken to the income statement.

- If the group records a provision for unrealised capital loss exposures in the consolidated accounts at 31 December 2003 but did not record this provision in full or for all group entities at end-2002, recording such a provision in full for all group entities entails a change of accounting policy that must be treated retroactively.

- If the group stated and explained in the notes to the 2002 consolidated financial statements that the reserve was not assigned to a specific item in the consolidated accounts because it was recognised at 31 December 2002 solely owing to a prudential increase in loss-risk estimates, the reserve recorded at 31 December 2002 is deemed not to be allocated to a specific item and is taken to income in 2003.

- If at end-2003 the group decides for the first time that the provision for unrealised capital loss exposures is not allocated to a specific item in the consolidated financial statements, this constitutes a change of accounting policy that must be treated retroactively. The provision recorded at the end of FY 2002 should therefore be taken to equity at the beginning of FY 2003.

3 – Banks

a) CRC Regulation 2003-06

Regulation 2003-06 of 20 November 2003 on recording deferred-settlement securities trades executed by companies under the authority of the Banking and Financial Regulations Committee (CRBF)

The deferred-settlement mechanism for trade orders affects the transfer of title to securities bought and sold on organised equity markets as well as commitments to receive and deliver securities. As a result, Regulation 2003-06 sets forth the procedures for recording securities trades with deferred settlement.

b) Opinions issued by the Urgent Issues Task Force

Opinion 2003-A of 12 February 2003 on procedures for first-time application of CRC Regulation 2002-13 of 12 December 2002 on credit risk arising on restructured loans held by companies that under the authority of the CRBF[17]

This regulation states that outstanding loans restructured at non-market rates should be recorded separately in a sub-category of performing loans until they mature. Foregone principal or interest, whether due or accrued, is recognised as a loss when the loan is restructured. Also at the time of restructuring, a discount should be recorded in respect of the present value of any future interest differential between the rate charged and market rates at the restructuring date if market rates are lower than the initial loan conditions or, if not, between the rate charged and the initial loan conditions.

The Task Force deemed that application of the provisions for discounting restructured loans followed a change in accounting regulations and that the effect should therefore be calculated retroactively.

Opinion 2003-B of 9 April 2003 on the procedures whereby companies that are under the authority of the CRBF and are subject to the deposit guarantee fund mechanism provided for under Act 99-532 of 25 June 1999 record contributions to the fund in their individual financial statements

Act 99-532 of 25 June 1999 changed the way that cash deposits are protected by setting up a single guarantee mechanism. Every company under the authority of the CRBF must adhere to the new mechanism.

The Urgent Issues Task Force deemed that the statutory contributions to the deposit guarantee fund made by companies under the CRBF's authority are part of operating costs, except for the first payment made to the fund in FY 1999, which is an exceptional expense.

[17] See CNC communiqué of 21 November 2003, below.

Opinion 2003-G of 18 December 2003 on the procedures for classifying non-performing loans as jeopardy loans, set forth in CRC Regulation 2002-03 of 12 December 2002 on the credit risk exposure of companies under CRBF authority

Article 9 of the regulation states that "if a counterparty's solvency position is such that the loan cannot be reclassified as "healthy" in the foreseeable future after a reasonable period of being classified as a non-performing loan, the loan in question should be separately identified as a jeopardy loan in the "non-performing loan" category, either by making an accounting entry in the accounts provided for this purpose, or by means of attributes. […] In any event, a loan shall be identified as a jeopardy loan no later than one year after being classified as a non-performing loan".

The Task Force felt that the most suitable approach for determining the procedures for reclassifying non-performing loans as jeopardy loans would be to record them as such if (a) they were uncollectable and had necessitated recognition of a provision or (b) if the company felt that they were ultimately likely to be written off.

The Task Force indicated that the expression "in any event" was intended to encourage companies to review all outstanding loans to a given counterparty after 12 months at most, and regularly thereafter, to determine whether individual loans needed to be reclassified.

In general, the Task Force considers that jeopardy loans are loans with very little likelihood of collection. Accordingly, the reclassification procedure was not intended to apply to non-performing loans if the terms of the loan agreement were being observed or if guarantees were in place to ensure collection.

c) CNC Communiqué of 21 November 2003[18]

The CNC issued a communiqué on 21 November 2003 setting forth transitional measures to assist certain credit institutions that had encountered practical difficulties in applying Regulation CRC 2002-03 on the accounting treatment of loans restructured at non-market conditions.

The CNC deemed that the following rules should be applied for the purposes of preparing the FY 2003 financial statements and until such time as the Urgent Issues Task Force released a notice on the subject[19]:

- The overall provision sometimes included in provisions on the liabilities side of the balance sheet and generally calculated on a statistical basis to cover the credit risk on the entire portfolio of individual restructured loans may have to be reclassified as a deduction from assets.
- The company will have to provide information in the notes to the individual and consolidated financial statements on the size of the provision together with the associated procedures. These items are submitted for the usual checks by the auditor, who will verify in particular that the provision recorded on the assets side of the balance sheet constitutes a reasonable estimate of the discount resulting from application of Article 6 of the regulation.

If the provision is insufficient, the amount to be added to any existing overall provision will be subject to the usual rules for changes in estimate or policy, whichever applies.

[18] See above, Opinion 2003-A of 12 February 2003 on procedures for first-time application of CRC Regulation 2002-13 of 12 December 2002 on credit risk arising on restructured loans held by companies under the authority of the CRBF.
[19] At this writing, the Task Force still has not issued a notice.

4 – Listed real-estate investment companies

Urgent Issues Task Force Opinion 2003-C of 11 June 2003 on the accounting impact on the individual and consolidated financial statements of listed real-estate investment companies, arising from application of the new tax regime provided for in Article 11 of the 2003 Budget Act

Under the new tax regime, listed real-estate investment companies are entitled to opt for an exemption from corporation tax on rental income, provided at least 85% of this income is distributed, and on disposal gains, provided at least 50% of these gains is distributed. As a quid pro quo of this transparency regime, companies will be immediately liable for a 16.5% tax on unrealised capital gains, payable over four years. Election for the regime is irrevocable. The associated accounting treatment will depend on whether tangible fixed assets and long-term investments have been revalued.

In the case of listed real-estate investment companies that revalue their tangible fixed assets and long-term investments in their individual financial statements, the Task Force deemed that the revaluation reserve in respect of assets that were eligible for the new tax regime and on which tax had been paid should be recognised net of the withholding tax at the beginning of the financial year in which the option was exercised. The same would apply in the consolidated accounts. Moreover, the Task Force said that deferred tax assets in respect of assets that were eligible for the new regime should not be recorded in the consolidated accounts. The opinion further specified that listed real-estate investment companies had until the end of the first financial year following the year in which the option was exercised to downwardly adjust the initial revaluation of qualifying assets.

The Task Force indicated that listed real-estate investment companies that did not revalue their tangible fixed assets and long-term investments in their individual financial statements when switching to the new tax regime should recognise the withholding tax in the year's expenses. The same treatment should be used in the consolidated financial statements.

B - APPLICATION OF ACCOUNTING AND FINANCIAL REGULATIONS

In their monthly bulletins from January 2003 to March 2004, the COB and the AMF sought to highlight several matters to be taken into account by issuers when preparing the 2003 financial statements:

- As part of preparations for the transition to IAS/IFRS, the COB reminded issuers of the conditions under which accounting policies could be changed within the French regulatory framework[20].
  Furthermore, to alert issuers at the earliest possible stage to likely future disclosure requirements for the transition to IAS/IFRS, the COB presented the main provisions of the draft CESR recommendations on this issue[21].
  Once the European regulators had finalised their recommendations, the AMF took them on-board and published its own recommendation[22].

[20] COB monthly bulletin, issue 383 (October 2003), pages 178 and 179.
[21] COB monthly bulletin, issue 383 (October 2003), pages 179 to 181.
[22] AMF monthly review, issue 1 (March 2004), pages 27 to 33. See also below, Chapter II – International Activities.

- Clarification was provided on the criteria for classifying hybrid financial instruments in the consolidated financial statements[23].

- Clarification was also supplied on the impact of changes made by the Financial Security Act to the concept of corporate control and hence to the consolidation of controlled entities where no equity links exist[24].

- Issuers were encouraged to apply CNC Recommendation 2003-R.01 on the rules for recording and valuing commitments in respect of pensions and like benefits[25]. Returning to this important matter, the AMF published the paper that had prompted this position, which dealt with pension disclosures by CAC 40 companies[26].

- The AMF recommended that companies making public offerings of securities should apply CNC Recommendation 2003-R.02 of 21 October 2003 on addressing environmental issues in individual and consolidated financial statements[27].

C – VERIFYING THE RELIABILITY OF FINANCIAL STATEMENTS

The Financial Security Act brought major changes in 2003 to the procedures for statutory audits in France.

1 – The Financial Security Act introduces new institutional relations

In the aftermath of Enron's fraudulent collapse, the ensuing disappearance of Andersen and a string of market-shaking scandals, countries had no option but to collectively rethink the procedures for regulating financial disclosures, and in some cases to review the regulatory model itself. On most major markets, lawmakers, standard-setters and financial regulators came up with radical responses.

France abolished the exclusive principle of self-regulation by auditors. Government involvement is now a central principle of audit regulation, not just in US standards but also in the standards set by the International Organization of Securities Commissions, the International Federation of Accountants and, shortly, the European Union[28].

a) Creation of the HCCC – a supervisory authority for the audit industry

Role of the new body

The Financial Security Act created a new supervisory authority for the audit industry, the Haut Conseil du Commissariat aux Comptes (HCCC), which reports to the Justice Ministry. The HCCC provides oversight for the audit industry, in conjunction with France's Institute of Statutory Auditors (CNCC).

The Financial Security Act entrusts the HCCC with two key missions: to oversee the industry and to ensure compliance with ethical standards and auditor independence requirements.

---

[23] COB monthly bulletin, issue 380 (June 2003), pages 27 and 28.
[24] COB monthly bulletin, issue 383 (October 2003), pages 181 to 183.
[25] COB monthly bulletin, issue 383 (October 2003), pages 183 to 189.
[26] AMF monthly review, issue 1 (March 2004), pages 43 to 56.
[27] AMF monthly review, issue 1 (March 2004), pages 35 to 37.
[28] See below, Chapter II – International Activities.

To fulfil these missions, the HCCC is tasked with:
- Organising supervision of auditors' activities
- Issuing an opinion on the code of ethics used in the accounting industry [29]
- Issuing an opinion on audit standards
- Identifying and promoting best practices[30]
- Defining and supervising the guidelines and framework for periodic inspections[31].

The HCCC was also given disciplinary powers as the appeals body for disciplinary and registration decisions by regional boards.

The HCCC's organisation and operating procedures are set out in Decree 2003-1121 of 25 November 2003, which amends Decree 69-810 of 12 August 1969 on the organisation of the accounting industry, the professional status of statutory auditors, and the HCCC.

Composition of the HCCC

The HCCC has 12 members:
- Three judges, one from the Court of Cassation, one from the State Audit Office and one from the judiciary. The Court of Cassation judge chairs the HCCC
- The AMF chairman or his representative, a representative of the Minister of the Economy and an academic specialised in legal, economic or financial issues
- Three individuals with expertise in economic and financial matters. Two of these members will be experts in public offerings of securities, while the third will have specialist knowledge of small and mid-sized companies and non-profit associations
- Three auditors, two of whom are experienced in auditing the financial statements of entities that make public offerings of securities or are funded through public donations.

One government commissioner appointed by the Justice Minister sits in an advisory capacity on the HCCC.

b) Relations between the AMF and auditors

Regarding direct relations between the AMF and the statutory auditors of companies making public offerings of securities, the Financial Security Act drew heavily on the previous framework, confirming and extending existing rules and practices.

Article 113 of the act adds a section on relations with auditors to the section of the Monetary and Financial Code dealing with the AMF. The new section sets out the rights and obligations of auditors as regards communications with the AMF throughout the duration of their engagement. These rights and obligations include the following:
- The AMF must be informed of proposals to appoint an auditor. The AMF is entitled to inform shareholders if it has any reservations
- Auditors have a duty to inform the AMF if they intend to deny an opinion on the company's accounts, if phase II of the alert procedure has been triggered, or if they have to report irregularities or misstatements to the annual general meeting of shareholders

[29] Until now, this role was played essentially by the Committee on Ethical Standards for Auditor Independence (CDI). See the section below on opinions issued by the CDI in 2003.
[30] See the section below on opinions issued by the HCCC in this area.
[31] Until now, this role was played essentially by the CNCC. See the section below on the National Audit Review Committee (CENA).

- Auditors have the right to consult the AMF on any matter that could have a bearing on the financial disclosures of the audited party.
- These provisions are designed to make financial disclosures more reliable by enabling the AMF to act at an early stage in the event of problems with the application of accounting standards or with business continuity. The new provisions also clarify the position of auditors by turning practices that are dimly viewed by some company directors into unassailable and duly protected professional obligations.

2 – HCCC opinions

The Financial Security Act overhauled auditors' duties in terms of reporting to annual general meetings of shareholders. Most of these duties are set forth in Article L. 225-235 (amended) of the Commercial Code. The changes to this article concerned two separate aspects of auditing:

- First, changes were made concerning the auditor's chief mission, namely issuing an opinion on the annual and consolidated financial statements. The following phrase was added to the article's first and second paragraphs: "Providing justification for their assessments, auditors shall certify that the annual and consolidated financial statements give a true and fair view […]"
- Second, a new paragraph was added requiring auditors to prepare a report for inclusion with the company's internal control report, in which the chairman "describes […] the internal control procedures in place in the company". In their report, auditors have to comment on the chairman's report, with specific reference to "internal control procedures relating to the preparation and handling of accounting and financial information".

The CNCC prepared and finalised two technical opinions in this regard, for application in audits of FY 2003 statements.

Within the body of regulations that exists for the audit industry, such opinions do not have the standard-setting value of the industry norms defined by the Financial Security Act:

- They are adopted solely by the executive committee of the CNCC's National Council, whereas standards have to be adopted by the National Council itself
- They are not subject to approval by the Justice Ministry, which is the process set out in the Financial Security Act for approving industry standards.

These opinions are transitional. The CNCC and other interested parties, including the HCCC, the AMF and the business community, will review the arrangements in the course of 2004.

In a letter dated 11 February 2004, the Justice Minister asked the HCCC to give its opinion on these technical opinions as regards best practices in the industry, which the HCCC is tasked with identifying and promoting under Article L. 821-1 of the Commercial Code[32]. The HCCC issued its opinion on 4 March 2004[33].

[32] See the section above on the HCCC's role.

[33] These notices are available on the HCCC's website:http://www.justice.gouv.fr/h3c/accueil.htm

a) Opinion on the requirement for auditors to justify their assessments

CNCC Technical Opinion on first-time application of the provisions of the first and second paragraphs of Article L. 225-235 of the Commercial Code requiring statutory auditors to justify their assessments

The opinion states that "the law does not seek to impose additional formal requirements to be observed by auditors when preparing their reports. Rather, it requires that they explain their conclusions in the audit report by indicating their assessments of material accounting policies reflected in the financial statements, if the audited company has taken important decisions in the course of the financial year". This interpretation takes account of work being done by parliament. It gives auditors latitude in the preparation of audit reports so that they can include additional comments on the material issues discussed in the financial statements.

The opinion defines the concept of "assessments" by referring to the three main areas covered in the course of an audit, to which auditors make express reference in the paragraph of the report detailing the work they have performed:

- assessment of the company's accounting principles
- assessment of any significant estimates made
- assessment of the overall presentation of the financial statements.

The opinion emphasises that auditors are not supposed to dispense financial information and that companies should therefore include a detailed note to the financial statements on any matter subject to a "justification" in the audit report.

During the preparatory work on the CNCC's opinion, the question of the volume of information to be included in the justification led to a difference of views, with some arguing for a concise summary and others for an exhaustive description of the auditor's assessments. The opinion strikes a balance by stating that the contents of any reports the auditor may have made to corporate governance officers should be consistent with the content of justifications provided in the report. The opinion states, however, that auditors must continue to observe the rules of business secrecy by which they are bound. This wording will encourage auditors to provide a concise public summary of the main points discussed by the audit committee and the statutory auditors when preparing the financial statements. However, the opinion introduces a safeguard by recalling the importance of business secrecy.

The CNCC notice also seeks to ensure that French audit reports are in line with international standards, because the section on "justifications" must come after the opinion section[34].

HCCC Opinion

In its Opinion of 4 March 2004, the HCCC stipulated that auditors should observe the following three points when justifying their assessments:

- auditors must review the assessments they make in the course of an audit and select those they consider to be significant

[34] Under international standards, emphasis-of-matter paragraphs that do not impact the auditor's opinion should be placed after the opinion section.

- auditors should express themselves concisely and, assuming they are issuing an unqualified opinion, their justifications should be positive and consistent with their opinion
- a justification should not be a disguised qualification

b) Technical opinion on internal control procedures

CNCC Technical Opinion on the first year of application of the provisions contained in the last paragraph of Article L. 225-235 of the Commercial Code

This opinion was prepared at the same time as the AMF's news release of 29 January 2004 and thus requires no special comment. Note however that it allows for the possibility, in FY2003 at least, for a dual interpretation of the legislation. As a result, a company chairman can choose to give an assessment of whether the internal control procedures are appropriate, whether they have been properly applied and whether they are effective.

If the chairman's report does not include an assessment of this kind, the auditor ensures that the report describes any failings or serious shortcomings in internal control that he has identified and reported on. This provision is consistent with the procedure implemented by the AMF.

HCCC Opinion of 4 March 2004

In an opinion issued on 4 March 2004, the HCCC stipulated that the statutory auditor should prepare a report, regardless of the content of the chairman's report. The auditor should plan and perform the audits necessary to verify that the information contained in the chairman's internal control report is fairly presented.

If, on completing his investigations, the auditor discovers information in the chairman's report that is not corroborated by his own findings, he must make the observations that he deems necessary in his report. If the chairman does not prepare a report, the opinion states that the statutory auditor should prepare a report to that effect.

3 - AMF news release on audits of 2003 financial statements

In response to a series of company failures in Europe and subsequent criticism of the reliability of the audits performed on these firms' financial statements, the AMF on 21 January 2004 reminded the statutory auditors of companies making public offerings of securities that they should take the following remarks into account when performing the 2003 audits[35]:

- Seeking external confirmation of balances and transactions recorded in consolidated balance sheets and income statements is essential to obtaining conclusive evidence of the existence and identity of counterparties and the accuracy of amounts recorded in the accounts or disclosed as off-balance sheet items. Statutory auditors should have sole responsibility for preparing requests and monitoring the receipt of responses.
- The presence of consolidated or unconsolidated subsidiaries or affiliated entities in tax havens should prompt auditors to implement appropriate direct audit verifications if the effect on a company's financial situation and results may be significant.
- In planning the audit of consolidated financial statements, if the auditors of a company's consolidated accounts do not themselves audit certain significant subsidiaries, they should

[35] AMF monthly review, issue 1 (March 2004), pages 73 to 74.

scrutinise the work of the professionals responsible for the audit of these subsidiaries and should determine whether and to what extent they need to investigate these subsidiaries directly.

4 – CDI opinions

The Committee on Ethical Standards for Auditor Independence (CDI) issued a number of opinions and recommendations that were published in the COB's monthly bulletins in 2003. Responsibility for these areas was transferred to the HCCC on its creation[36].

- Opinions issued at the meeting of 19 December 2002[37]:
  - Legal support for disposals, mergers and acquisitions (2002/12/19-1A)
  - Assistance in setting up an integrated management information system (2002/12/19-2A)
  - Assistance in disposing of an operating division (2002/12/19-3A)
  - Assistance in setting up an account reconciliation system (2002/12/19-4A)
  - Auditing treasury accounts and upgrading the associated procedures (2002/12/19-5A)
  - Assistance in creating an operating entity (2002/12/19-6A)
  - Accounting arrangements for a sector of activity (2002/12/19-7A)
  - Tax services (2002/12/19-8A)
  - Assistance in disposing of a branch of activity (2002/12/19-9A)
  - Co-audit procedures (2002/12/19-10A)
  - Preparation of a manual of administrative and financial procedures (2002/12/19-11A).

- Opinions issued at the meeting of 16 January 2003[38]:
  - Assistance with tax and customs issues (2003/01/16-1A)
  - Investigation conducted in connection with the refinancing of corporate groups (2003/01/16-2A)
  - Legal and tax support (2003/01/16-3A)
  - Preliminary study for an IT master plan by a consulting firm in the auditor's network (2003/01/16-4A)
  - Preparation of Document E by the legal entity of the auditor's network (2003/01/16-5A).

- Opinions issued at the meeting of 14 February 2003[39]:
  - Assistance in setting up an e-commerce project (2003/02/14-1A)
  - Auditor independence and the existence of excessive financial ties (2003/02/14-1A).

- Opinion issued at the meeting of 19 March 2003[40]:
  - Engagement to investigate historical financial statements and examine data in the business plan prior to appointment as statutory auditor (2003/03/19-1A).

- Opinion issued at the meeting of 22 May 2003[41]:

---

[36] See the section above on the role of the HCCC.
[37] COB monthly bulletin, issue 379 (May 2003), pages 100 to 140.
[38] COB monthly bulletin, issue 379 (May 2003), pages 141 to 157.
[39] COB monthly bulletin, issue 379 (May 2003), pages 159 to 165 and COB monthly bulletin, issue 380 (June 2003), pages 72 to 74.
[40] COB monthly bulletin, issue 380 (June 2003), pages 75 to 79.
[41] COB monthly bulletin, issue 380 (June 2003), pages 81 to 85.

- Performance of engagement by the auditor or a member of the auditor's network followed by appointment as statutory auditor (2003/05/22-1).

- Opinions issued at the meeting of 16 October 2003[42]:
  - Delegation of audit duties (2003/10/16-1 A)
  - Assistance in preparing the consolidated quarterly statements of a company making public offerings of securities (2003/10/16-2 A)
  - Assistance in organising an IT programme (2003/10/16-3 A)
  - IT management system: assistance in modelling an information system and selecting software (2003/10/16-4 A)
  - Assistance in organising a data room (2003/10/16-5 A)
  - Provision of legal services by a member of the auditor's network. Material assistance in preparing business contracts (2003/10/16-6 A)
  - Assistance in calculating provisions for retirement bonuses (2003/10/16-7 A)
  - Material business relations between the subsidiary of an audited company and a member of the auditor's network (2003/10/16-8 A)
  - Imbalanced co-audit situation (2003/10/16-9 A)
  - Legal and tax services and involvement in delivery of an ERP solution – Provision of significant services falling outside the scope of the audit engagement (2003/10/16-10 A).

- Opinion issued at the meeting of 6 November 2003[43]:
- Compliance by auditors of credit institutions with the rules for auditor independence - Financing granted by a bank to a consulting firm in the same network as the bank's auditor (2003/11/06-1 A).

5 – Disclosure of fees paid to auditors and members of their networks

In 2002, the COB adopted Regulation 2002-06 on the disclosure of fees paid to auditors and members of their networks by companies making public offerings of securities[44]. The regulation is designed to serve the interests of issuers and the market by demonstrating auditor independence. The COB monthly bulletin[45] supplied additional clarification on Regulation 2002-06, which supplements Regulations 98-01 (Premier and Second Marchés), 98-08 (public offerings of securities) and 95-01 (Nouveau Marché).

The Financial Security Act strengthened the principle of independence by adding provisions that severely restrict the services that may be provided to a company making public offerings of securities by professionals belonging to the same network as the auditor of the company's financial statements. This reinforced the principle – already enshrined in the 1966 Companies Act – that auditors are entrusted with a specialised mission. At the same time, the HCCC was given responsibility for setting the exact limits for services directly linked to the statutory engagement.

Services provided by other members of auditor networks are now subject to two bans:
- A ban on supplying services to the audited entity. Some freedom is allowed in the provision of services to subsidiaries, on condition that the provider complies with existing bans on the preparation of information and involvement in management processes or disputes

[42] COB monthly bulletin, issue 383 (October 2003), pages 243 to 280.
[43] COB monthly bulletin, issue 383 (October 2003), pages 281 to 283.
[44] COB monthly bulletin, issue 375 (January 2003), pages 5 to 16.
[45] COB monthly bulletin, issue 376 (February 2003) pages 3 to 8.

- More generally, a ban on supplying any service that generates material risks for the audited entity.

6 - Rotation of audit partners

In September 2002 the COB said it would put in place a system to ensure that audit partners were rotated every seven years at most. In May 2003, it provided clarification on which engagements and partners were subject to rotation, the deadline for first-time application as well as procedures for calculating the seven-year period.

The Financial Security Act also includes the principle of partner rotation. However, it sets the maximum rotation period at six years rather than seven. The rotation provisions are applicable within three years from promulgation of the act, i.e. 1 August 2006. In practice, this gives partners extra time to organise the rotation of auditors reappointed after the Financial Security Act was published. However, a system must be in place by August 2009 at the latest. For example, if an audit partner is reappointed in 2004, he or she will be entitled to issue an opinion on the financial statements for the financial years running from 2004 to August 2009. If the partner is reappointed in 2005, he or she will be entitled to certify the financial statements from 2005 to August 2009 only.

7 – 18th Annual Report of the National Audit Review Committee

On 6 November 2003, CNCC Chairman Michel Tudel presented the 18th annual report of the National Audit Review Committee (CENA) to Gérard Rameix, General Director of the COB.

In its report, the Committee reiterated that statutory auditors make a vital contribution to the orderly operation of markets by guaranteeing the credibility of corporate financial statements. They also provide safeguards for shareholders, creditors and other interested parties. With the Financial Security Act, parliament has reinforced that mission by legalising quality controls.

The annual report describes the findings of quality controls carried out in 2002/2003 on auditors' engagements[46]. The controls covered 187 companies or undertakings supervised by the COB, including 49 companies listed on the Premier Marché, 45 on the Second Marché, 50 on the Nouveau Marché, 36 collective investment schemes, and six mergers or acquisitions.

The firms that audit these companies vary in size and structure. In all, 143 audit firms were reviewed as part of the 2002/2003 quality control exercise. An analysis of the firms employed by the 151 companies selected for review, listed on three markets (Premier Marché, Second Marché, Nouveau Marché), showed that 21% of these companies had their accounts audited by firms that were members of networks and carried out audits for many listed companies, 27% were audited by firms that were not members of a network and carried out audits for fewer listed companies, while 52% were audited by both types of firm.

The Committee examined these audits for compliance with accounting principles and industry standards, which underpin auditors' opinions. It found 90% of the audits to be satisfactory, which testifies to the continued high standard of work done by the audit profession.

[46] This task now comes under the responsibility of the HCCC (see above section on the HCCC's role).

If it deems that the work done by auditors is not entirely satisfactory, the Committee may decide to conduct another full or partial review in two years' time, or the following year, provided this gives the auditors time to implement any recommendations made. Repeat reviews were deemed necessary in 10% of cases in 2003 (14% for reviews involving collective investment schemes).

One of the Committee's central concerns is to ensure compliance with the rules on auditor independence. For this reason, the Committee's powers of review were extended in 1998 to include non-audit services, and they will doubtless be further strengthened in the future. Following an examination of non-audit services, the Committee found that these were reported in 51% of the reviews carried out. In 88% of cases, the Committee concluded that the services rendered merited no particular remarks regarding their compatibility with the auditor's statutory engagement. However, the Committee did issue a few recommendations on the need to make formal note of services provided by the network and to demonstrate the compatibility of non-audit services with the statutory audit engagement.