CHAPTER 3

CORPORATE FINANCE AND THE QUALITY OF FINANCIAL DISCLOSURE

The AMF lays down disclosure rules for listed companies. It regulates and supervises all transactions involving financial instruments placed through public offers, including public tender offers. The AMF also ensures that issuers make full, fair and timely disclosure of high quality information to all market participants.

In terms of disclosures and corporate finance, 2006 was a particularly eventful year, with the implementation of new rules stemming from the Prospectus, Market Abuse and Transparency Directives, which have had a major impact on issuers' financial disclosures. It was also a year in which the law governing public offerings was reformed as a result of the Takeover Directive, and the AMF's procedure for approving tender offer was recast.
Changes to accounting rules in 2006 also enabled issuers to reinforce their use of the International Financial Reporting Standards (IFRS).

1 > Regulatory developments

A > Transposition of the Transparency Directive[1]

The Breton Act of 26 July 2005 prepared the way for the transposition of the Transparency Directive by amending the provisions of the Commercial Code dealing with notification of major holdings[2] and introducing Article L. 451-1-2 et seq of the Monetary and Financial Code on the periodic reporting requirements for issuers of financial instruments listed on a regulated market. The AMF set up two working groups in the first quarter of 2006 to work on the periodic reporting requirements and the dissemination and storage of information disclosed by issuers.

1 > Notification of major holdings

Article 222-12 et seq. of the AMF General Regulation[3] specify the procedures for calculating shareholdings and the cases in which a person may be exempted from giving notification of a major holding, as well as the contents of the notification.

In accordance with the legislation, the AMF General Regulation does not require notification for:

- The parent company, in the case of shares held by collective investment schemes managed by the management company that it controls, or shares held in a portfolio managed by an investment service provider that it controls under the conditions and within the limits set out in the AMF General Regulation[4];

- Shares hold solely for the purposes of clearing or settlement;

- Shares held in an investment service provider's trading portfolio, as long as the holding does not represent more than 5% of the voting rights and the voting rights attaching to the shares are not exercised or used in any way to influence the management of the issuer;

- A shareholding of more than 5% held by a market maker that does not intervene in the management of the issuer or exercise any influence to encourage the issuer to buy the shares or support their price.

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[1] *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 directiv2001/34/EC*
[2] *Article L. 233-7 et seq.*
[3] *Now Article 223-11 et seq since the Ministerial Approval Order of 4 January 2007.*
[4] *Article 222-12-1 (now 223-12) of the AMF General Regulation.*

Article 222-12-3, which is now Article 223-14, also specifies the contents of the notification, which can be written in French or in another language customary in the sphere of international finance.

2 > Disclosures about the total number of voting rights and shares

For the purposes of the Act of 26 July 2005, Article L. 233-8 II of the Commercial Code requires companies listed on a regulated market to publish the total number of voting rights and shares making up their capital on a monthly basis, if there is any change from the previously published numbers. The procedures for disseminating this information have been aligned with those for regulated information[5] since 20 January 2007.

Consequently, companies listed on a regulated market are deemed to meet the disclosure requirements applicable to all joint-stock companies set out in I of Article L. 233-8, which requires such companies to publish the number of voting rights in the fifteen days following the ordinary annual general meeting and again between two annual general meetings if the total number of voting rights varies by more than 5%. Furthermore, since the Decree of 11 December 2006[6] was published, this information is no longer published in the national official gazette (BALO); it is now published in a public notice inserted in the official gazette of the administrative area (département) where the company's registered office is located, no later than fifteen days after the date of the ordinary annual general meeting or after the date on which the company learns of a variation of 5% or more in the total number of voting rights between two annual general meetings.

3 > Periodic reporting requirements for companies listed on a regulated market

The General Regulation[7] stipulates the contents of the annual and half-yearly financial reports that companies listed on a regulated market are required to publish within four months of the end of the financial year and within two months of the end of the first half year[8.]

The Monetary and Financial Code also requires quarterly financial information to be published within 45 days of the end of the first and third quarters, with the net turnover by business segment in the previous quarter, a general description of the company's financial situation and earnings and those of the entities that it controls, along with an explanation of material transactions and events during the quarter and their impact on the company's financial situation. Companies[9] may refer to the position published by industry associations for guidance on compiling the quarterly financial reporting[10.]

The AMF has also explained how these various documents relate to the registration document. Article 212-13 of the General Regulation was amended to allow companies that so wish to be exempted from publishing a separate document from the annual financial report and the news release concerning the fees paid to the statutory auditors when they file a registration document containing the information required in the financial report and the news release within four months of the end of the financial year. Similarly, if an updated registration document contains the information required in the company's half-yearly financial report or its quarterly financial report, the company is exempted from publishing a separate document with this information, provided that the update is made public within the time limits for publishing the half-yearly or quarterly financial report.

The AMF backed up the publication of its General Regulation with a news release dated 16 October[11] explaining the procedures for applying the new periodic reporting requirements and posted a list of

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[5] See page xx below in this chapter, Ministerial Approval Order of 18 September 2006.

[6] Decree 2006-1566 of 11 December 2006 amending Decree 67-236 of 23 March 1967 on commercial companies.

[7] Amended by the Order of 4 January 2007.

[8] Article 222-3 to 222-6 of the AMF General Regulation.

[9] This does not concern issuers of debt securities.

[10] The industry associations are: the French private enterprise association (AFEP), the National joint-stock company association (ANSA), The French investor relations association (CLIFF), the French employers' federation (MEDEF), the European Midcap Committee (MiddleNext) and the French society of financial analysts (SFAF). The position can be viewed at the following URLs: http://www.ansa.asso.fr/site/position_AFEP.asp ; http://www.medef.fr/site/core.php?pag_id=10377 ; http://www.sfaf.com/internet/IMG/pdf/Transparency_06_05_31_Letter.pdf.

[11] AMF News Release of 16 October 2006: http://www.amf-france.org/documents/general/7383_1.pdf.

questions and answers about the new financial reporting requirements for companies listed on Eurolist Paris[12] to its website on 30 November 2006.

Following discussions at the European level, the AMF also clarified its interpretation of how the new reporting requirements would come into force:

- financial years and interim periods ending before 20 January 2007 will not be subject to the new periodic reporting requirements;

- financial years and interim periods beginning after 20 January 2007 will be subject to all of the new periodic reporting requirements;

- financial years and interim periods beginning before 20 January 2007 and ending after that date, companies will be required to comply with reporting deadlines and dissemination procedures, but they are entitled to publish narrative statements, without prejudice to the provisions of the Commercial Code and the requirements for accurate, reliable and fair reporting. Companies that choose to publish financial data must refer to the AMF Recommendations on disclosures containing estimated financial data, where appropriate[13].

In addition, companies with listed shares are still subject to the requirements and deadlines for publishing legal notices set out in the Commercial Code and Decree 67-236 of 23 March 1967 on commercial companies. The table below explains the information to be published in various situations.

Periodic disclosure requirements for listed companies with financial years ending on 31 December

Reporting periods	Legal notice requirements under the terms of the Commercial Code and Decree 67-236 of 23 March 1967	Disclosure requirements under the terms of the Monetary and Financial Code (Article 451-1-2)
FY 2006	Notice of turnover in BALO within 45 days. Publication of provisional annual and, where appropriate, consolidated financial statements in the official gazette (BALO), along with the planned allocation of earnings, within 4 months. Publication in the BALO of the final financial statements and decision on the allocation of earnings within 45 days of their approval by the annual general meeting.	No disclosure needed under the new requirements in the Monetary and Financial Code
1st quarter FY 2007	Notice of turnover in BALO within 45 days.	Narrative quarterly reporting disseminated by electronic means within 45 days.
1st half of FY 2007	Notice of turnover in BALO within 45 days. Publication in the BALO of an activity report and a table of activity and earnings within 4 months.	Half-yearly report disseminated by electronic means within 2 months. The content may be narrative. If the report contains financial statements, the company must include a statement by the people responsible for the report and the statutory

[12] *Questions and answers about the new financial reporting requirements, 30 November 2006: http://www.amf-france.org/documents/general/7492_1.pdf.*

[13] *"AMF Recommendations on disclosure of estimated financial data", Revue mensuelle de l'Autorité des marchés financiers - No. 7*

		auditors' report.
3rd quarter FY 2007	Notice of turnover in BALO within 45 days.	Quarterly notice complying with the layout and content defined by the Monetary and Financial Code (turnover, explanation of material events and transactions, description of financial situation and earnings) disseminated by electronic means within 45 days.
FY 2007	Notice of turnover in BALO within 45 days. Publication of provisional annual and, where appropriate, consolidated financial statements in the official gazette (BALO), along with the planned allocation of earnings, within 4 months. Publication in the BALO of the final financial statements and decision on the allocation of earnings within 45 days of their approval by the annual general meeting.	Annual report disseminated by electronic meanswithin 4 months. The content may be narrative. If the report contains financial statements, the company must include a statement by the people responsible for the report and the statutory auditors' report.
FY 2008 and following years	Publication in the BALO of the information stipulated by the Commercial Code and Decree 67-236	Dissemination of reports by electronic means following the procedures and content requirements set out in the Monetary and Financial Code

4 > Dissemination and storage of regulated information

a) List of regulated information

The General Regulation[14] defines regulated information by giving a list of the reports and information concerned:

- The annual financial report;
- The half-yearly financial report;
- Quarterly financial reporting;
- The report on internal control and corporate governance;
- The news release on the fees paid to the statutory auditors;
- Monthly disclosures about the total number of voting rights and shares making up the company's share capital;
- The description of share buyback programmes;
- News releases that issuers publish under the ongoing information requirements;
- The news release specifying the procedures for obtaining the prospectus;
- The news release specifying the procedures for obtaining or consulting the documents prepared for the general meeting;
- Monthly news release summarising the weekly reports on share buybacks;
- Any changes in the rights attaching to financial instruments issues or any new debt issues.

In the case of companies making public offerings, but without any instruments traded on a regulated market, regulated information includes the report on internal control and corporate governance, the news release on the fees paid to statutory auditors, the news release specifying the procedures for obtaining the prospectus and the new releases published by the company under the ongoing disclosure requirements.

[14] *Article 221-1 of the AMF General Regulation.*

b) Dissemination of regulated information

Any company making public offerings must ensure full and effective dissemination of the regulated information. Regulated information must be filed with the AMF when it is disseminated.
In the case of companies traded on Eurolist, full and effective dissemination must be made via the Internet in compliance with the criteria set out in the General Regulation, which requires dissemination to a wide audience within the European Union in accordance with the procedures for ensuring secure dissemination of information. Companies may choose to disseminate regulated information themselves, or they may use the services of a professional disseminator who complies with the criteria set out in the General Regulation and who is on the list published by the AMF[15]. In the second case, the issuers are deemed to have ensured full and effective dissemination.

In addition, listed companies are required to make financial disclosures through the print media. Companies must determine the procedures for this financial disclosure, including intervals and presentation, in accordance with their ownership structure and size, as specified in an AMF Recommendation[16].

c) Storage of regulated information

Any company making public offerings is required to post regulated information on its website. This information must remain on the site for at least five years after the dissemination date.

For companies that have made a public offering but that do not have any financial instruments traded on a regulated market, posting regulated information to their website is deemed to constitute full and effective dissemination.

Some other documents are governed by the provisions applying to the dissemination and storage of regulated information, including the news releases published during an offering or information provided to the market in the case of takeover rumours.

B > New provisions on fairness opinions

The twenty-five recommendations put forward by the AMF working group on fairness opinions and financial valuation, which was chaired by AMF Board member Jean-Michel Naulot, included regulatory changes that were implemented in Title VI of Book II of the General Regulation and approved by the Order of 18 September 2006.[17]

1 > Appointing an appraiser

Article 261-1 of the General Regulation establishes the principle of the takeover target's appointing an appraiser if there is a conflict of interest that is likely to jeopardise the objectivity of the reasoned opinion handed down by the board of directors or the supervisory board of the target company, or if the public tender offer is likely to jeopardise the equality of financial instrument holders. The list of cases where the working group felt a fairness opinion was needed has been included in the General Regulation. The list is not exhaustive. It deals mainly with cases where the target company is already controlled by the offeror before the public tender offer is launched, or where the managers have made an agreement with the offeror that is likely to affect their independence or, if there are other transactions related to the public tender offer that are likely to have a material impact on the prices or ratios proposed. An appraiser still has to be appointed for squeeze-outs, unless the AMF is not required to rule on compliance because the fairness opinion was established before the initial public offering.

An appraiser must also be appointed in the case of a reserved capital increase at a discount that enables a shareholder to gain control of the company[18]. Finally, Article 261-3 of the General Regulation gives any issuer the right to produce a fairness opinion voluntarily, as long as all of the provisions of Title VI are applied.

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[15] *Articles 221-3 to 221-6 of the AMF General Regulation.*
[16] *http://www.amf-france.org/documents/general/7590_1.pdf.*
[17] *A summary of the responses to the public consultation was posted on the AMF website under the heading Consultations > consultations AMF > Sujets autres, on 16 December 2005*
[18] *Article 261-2 of the AMF General Regulation.*

The General Regulation establishes the principle of the appraiser's independence. The appraiser must be able to produce a statement testifying to the lack of any past, present or future links known to the appraiser with the companies concerned or their advisers that could jeopardise the independence of his judgement. The cases in which a person is ineligible to be appointed as an independent appraiser are specified in Instruction 2006-08 of 25 July 2006. In a Recommendation dated 28 September 2006, the AMF specified the due diligence requirements for the Supervisory Board or the Board of Directors, which is responsible for producing a reasoned opinion on the public tender offer.

2 > Appraisal report

The appraisal report must be published in the target company's reply document in the case of a public tender offer. In other cases, it must be made available at the issuer's registered office and published in a news release. The issuer must ensure full and effective dissemination of the news release and post it on its website.

The report must contain the appraiser's statement of independence, a description of the verifications performed and a valuation of the target company. The conclusions must be presented in the form of a fairness opinion. Instruction 2006-08 of 25 July 2006 stipulates all of the elements that must be included in the report and the AMF reviewed the various valuation methods in its Recommendation of 28 September 2006 on independent appraisal.

3 > Rules for independent appraisers

The AMF Recommendation reiterates the working group's conclusions with regard to the human and material resources that appraisers require, as well as their code of conduct. The Recommendation also states that the appraisers should be paid the same fee, regardless of the outcome of the transaction, and that the fee should be proportionate to the complexity of the transaction. The appraiser should also take out professional insurance or have enough assets with regard to the risks incurred in doing business as an appraiser.

The independent appraiser must adopt a code of conduct that defines the principles of integrity, independence, competence and organisation, as well as the procedures for accepting and carrying out appraisals. The code of conduct also defines the procedures for submitting appraisal reports for quality control, with a focus on the consistency and the relevance of the methodology used.

The appraiser may also join a professional association recognised by the AMF under the terms stipulated in Article 263-1 et seq of the General Regulation.

C > New regulatory framework for public tender offers

The Act of 31 March 2006[19] transposed the legislative provisions of Directive 2004/25/EC of 21 April 2004 on public tender offers into the French Commercial Code and Monetary and Financial Code. This Act left it up to the AMF General Regulation to complete transposition of the regulatory provisions of the directive.

The General Regulation, published on 28 September 2006, finalised the transposition of the directive into French law. It also combined the acceptability and approval procedures inherited from the previous regulatory structures into a single compliance decision. All of these provisions draw their inspiration from the proposals put forward by the working group[20] chaired by AMF Board members, Claire Favre and Dominique Hoenn, which was set up in October 2005. The working group's findings were published in the 2005 AMF Annual Report[21].

[19] *Act 2006-387 of 31 March 2006 on public tender offers.*
[20] *See page 24, Chapter 7 of this Report.*
[21] *See 2005 Annual Report.*

1 > Implementing measures for the Economic Confidence and Modernisation Acts of 26 July 2005 and 31 March 2006

a) Definition of the competent authority for supervising a public tender offer and the mutual recognition principle

The AMF is now the supervisory authority in the following cases[22]:

- The target company's registered office is in France and its shares are traded on a regulated French market;

- The target company's registered office is in another Member State of the European Community and its shares are traded on the French market only;

- If the company's shares are traded on several markets, the French regulated market is the one where the shares in the target company were first listed;

- If the first listing was made simultaneously on several European markets and took place after 20 May 2006[23], the target company chose AMF as the supervisory authority for the public tender offer. To make such a choice, the target company sends the AMF a statement on the first day of the listing at the latest. The target company's statement must be posted on the AMF website and should be made using a standard form presented in Instruction 2006-07 of 25 July 2006 on public tender offers.

The contents of the offer document and the authority to supervise the public tender offer have been harmonised throughout the European Community. This means that an offer document approved by the supervisory authority in another Member State of the European Community entitles the offeror to the mutual recognition procedure, subject to the translation of the offer document, where applicable. The AMF may require a warning about certain exceptional characteristics of the offeror, the target company, or the securities concerned by the bid to be included in all advertising[24].

b) Overriding restrictions on transfers of shares or the exercise of voting rights

Article L. 233-40 of the Commercial Code leaves it up to the AMF General Regulation to set the conditions and procedures for requiring companies to notify the AMF if they amend their articles of association to provide for overriding of restrictions in the articles of association or shareholder agreements on the transfer of shares and the exercise of voting rights during the offer period or after the offer. The General Regulation stipulates that such amendments to the articles of association must be submitted to the AMF for posting on its website. This reporting requirement applies not only to French companies, regardless of where their shares are traded and including companies that have applied for a listing on a regulated market; it also applies to companies with their registered office in another country in the European Economic Area that are listed on a regulated French market[25].

The Commercial Code[26] also leaves it up to the General Regulation to establish the threshold for automatic suspension of restrictions on the exercise of voting rights in the articles of association, along with the threshold for voluntary suspension of the restrictions in articles of association or in shareholder agreements on the exercise of voting rights or extraordinary rights to appoint or dismiss board members and corporate officers at the first meeting following the end of the tender offer. Under the terms of the directive, the automatic suspension threshold must be between two-thirds and three-quarters of the voting rights and the General Regulation opted for the two-thirds threshold. The General Regulation[27] opted for the threshold of one-half of the shares or voting rights in the target company in the case of voluntary suspensions.

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[22] Article 4 of the directive on the competent authority for supervision of the bid as transposed into Article L. 433-1 of the Monetary and Financial Code.
[23] Deadline for transposition of directive.
[24] Article 231-36 of the AMF General Regulation.
[25] Article 223-20 of the AMF General Regulation.
[26] Articles L. 225-125, L. 233-38 and L. 233-39
[27] Articles 231-43 to 231-45 of the AMF General Regulation.

c) Warrant issues

Article L. 233-32 of the Commercial Code allows the extraordinary general meeting of the target company, voting under the quorum and majority requirements for an ordinary general meeting, to issue warrants for shares in the target company on preferential terms and distribute them to shareholders at no charge. The general meeting may delegate this power to the board of directors or the executive board.

The target company must make its intention to issue such warrants public, before the offer closes. The general meeting determines the conditions for exercising the warrants, which must apply to the terms of the offer or any rival offer, and their characteristics (exercise price or price-setting procedures) or it may delegate this task to the board of directors or the executive board. The warrants automatically lapse when the offer or any rival offer fails, becomes void or is withdrawn.

The wording of Article 232-11 of the General Regulation was clarified to remove any ambiguity about the offeror's option to withdraw its bid if the target company announces its intention to issue warrants. The new wording stipulates that the "offeror may also withdraw an offer if it is frustrated or if the target company adopts measures that modify its substance, either during the offer or in the event that the offer is successful".

d) Challenging the equivalence of defensive measures

Article L. 233-33 of the new Commercial Code transposes Article 12 of the directive on the reciprocity of takeover defences. The target company may invoke the lack of reciprocity to derogate from the principle of having the implementation of any defensive measures be subject to the authorisation of the general meeting held during the bid period, if it is the target of a bid by an offeror that does not apply this principle or any equivalent measure. In this case, the measures implemented by the board of directors, the supervisory board, the executive board, the CEO or one of the deputy CEOs of the target company must have been explicitly authorised by the general meeting in the event of a public tender offer in the eighteen months preceding the start of the bid.

Furthermore, the Decree of 11 December 2006 amends the provisions of the 1967 Decree on commercial companies to make it possible to call a general meeting at short notice. Notice of the meeting must be published in the BALO at least fifteen days before the meeting is held, and the time that shareholders have to request the inclusion of motions on the meeting agenda is reduced to five days after the publication of the notice. If a general meeting is called under the terms of Article L. 233-32 of the Commercial Code to decide on measures that are likely to frustrate the bid, the notice period is reduced to six days for the meeting held after the first notice and four days for the meeting held after the second notice[28].

The AMF rules on any protests about the applicability of this principle or equivalent measures. The person making the protest must submit the arguments and documents that the protest is based on to the AMF and the target company simultaneously. The target company will then have ten trading days to submit its remarks to the AMF. The AMF then has five trading days after receiving the target company's reply to make its decision public. This deadline is suspended if the AMF asks for further information[29]. The AMF's decision may be appealed.

e) Squeeze-out price

The Monetary and Financial Code[30] stipulates that the price offered in a squeeze-out must be at least equal to the highest price paid by the offeror during the twelve months preceding the launch of the public tender offer, and leaves it up to the General Regulation to establish the "circumstances" and "criteria" under which the AMF may request or authorise a change to the squeeze-out price. The directive itself lists such circumstances as "where the market prices of the securities in question have been manipulated, where market prices in general or certain market prices in particular have been affected by exceptional occurrences, or in order to enable a firm in difficulty to be rescued". This list is not exhaustive, so Article 234-6 of the General Regulation reiterates the principle of enabling the AMF to request

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[28] *Decree 2006-1566 of 11 December 2006 amending Decree 67-236 of 23 March 1967 on commercial companies.*
[29] *Article 231-42 of the AMF General Regulation.*
[30] *Article L. 433-3 of the Monetary and Financial Code transposing Article 5.4 of the directive.*

or authorise price adjustments in the event of manifest changes in the characteristics of the target company or in the market for its securities and then lists some examples.

f) Cash payment option requirement

Article 231-8 of the AMF General Regulation, which transposes the provisions of the Takeover Directive on this point into French law, stipulates that where the securities provided in exchange are liquid securities traded on a European market, the bid must include a cash payment option. In addition, the bid must include a cash payment option if the offeror, acting alone or in concert, has paid cash to acquire securities giving it more than 5% of the shares or voting rights in the target company in the twelve months before the bid is filed.

g) A new squeeze-out possibility

The Economic Confidence and Modernisation Act stipulates that if a public tender offer concerns a company holding more than one-third of the shares or voting rights in a French or foreign company with shares listed on a regulated market in another country in the European Economic Area or on an equivalent market governed by foreign law, and if such shares constitute the bulk of the company's assets, then the filing must be backed up by documents proving that an irrevocable and fair tender offer is or will be filed for all of the shares in the French or foreign company, on the date when the first offer opens at the latest.

The terms for applying this provision have been incorporated into the General Regulation dated 18 September 2006. More specifically, these terms stipulate that, in such a case, the bid must be filed with the competent authority along with a bid document or a draft and any other legally binding document proving that an irrevocable and fair bid has been or will be filed for all of the shares in the company in which the shares are held. This document must also be included in the prospectus that the offeror compiles on the company holding the shares.

h) Squeeze-outs

Article L. 433-4 of the Monetary and Financial Code extended the scope of squeeze-outs to complex equity securities[31] that were not tendered to the tender offer or to a first public offer and that, when added to the existing untendered equities, do not account for more than 5% of the equities. The General Regulation was amended accordingly.

Furthermore, Article L. 433-4 of the Monetary and Financial Code has created a new squeeze-out situation where, in the three months following the end of any public tender offer, the offeror may buy all of the shares that were not tendered to the offer by minority shareholders, as long as they do not represent more than 5% of the voting rights. This means that a squeeze-out may be implemented without coming after a buyout offer and that it must be made on the same financial terms as the initial bid. In keeping with the rationale of the directive, the AMF does not rule on the compliance of the squeeze-out plan if it includes the same cash settlement offered in the last bid and if it comes after a public tender offer conducted according to the normal procedure or an offer for which the AMF was provided with a multi-criteria valuation and a report by an independent appraiser. In the latter case, cited in 2° of Article 237-16 I of the General Regulation, the appraisal report must explicitly find that the financial terms of the bid would be equitable in the event of a future squeeze-out.

Under these circumstances, the offeror notifies the AMF of its intention to implement the squeeze-out and it is not required to publish a prospectus or "other information". It must publish a news release and ensure its full and effective dissemination. The contents of the news release are specified by Instruction 2006-07 of 25 July 2006 on public tender offers.

i) Dealing with rumours

Under the terms of Article L. 433-1 of the Monetary and Financial Code, the AMF may ask any person that it has reasonable grounds to think is preparing a public tender offer to state its intentions, especially if the securities market is experiencing significant fluctuations. This information is made public by means of a news release that must be submitted to the AMF beforehand. If the reporting entity

[31] *Securities that may be created by conversion, subscription, exchange, redemption or any other way.*

confirms its intention to file a bid, the AMF fixes the public disclosure and filing timetable for the bid. If the reporting entity states that it has no intention of filing a bid, or if the timetable established by the AMF is not respected, the entity will be banned from filing a bid (or place itself in a situation where it is obliged to file a tender offer) for six months, unless there are material changes in the environment, the circumstances or the ownership of the entities concerned[32].

2 > The new procedure for the AMF's examination of proposed public tender offers

The entry into force of the General Regulation approved by the Ministerial Order of 18 September 2006 has resulted in substantial changes in the official procedure used by the AMF to examine proposals for public tender offers. The main changes are summed up below.

As explained earlier, the General Regulation now requires an independent appraiser appointed by the target company to issue a fairness opinion if there are conflicts of interest that are likely to jeopardise the objectivity of the reasoned opinion presented by the board of the target company[33]. In this case, the proposed public tender offer requires separate offer documents from the offeror and the target company (Article 231-13), except in the case of a squeeze-out following a buyout bid or a squeeze-out in the three months following the end of a public tender offer, where a draft offer document must be compiled, or a when an issuer makes a bid for its own shares, such as a share buyback bid.

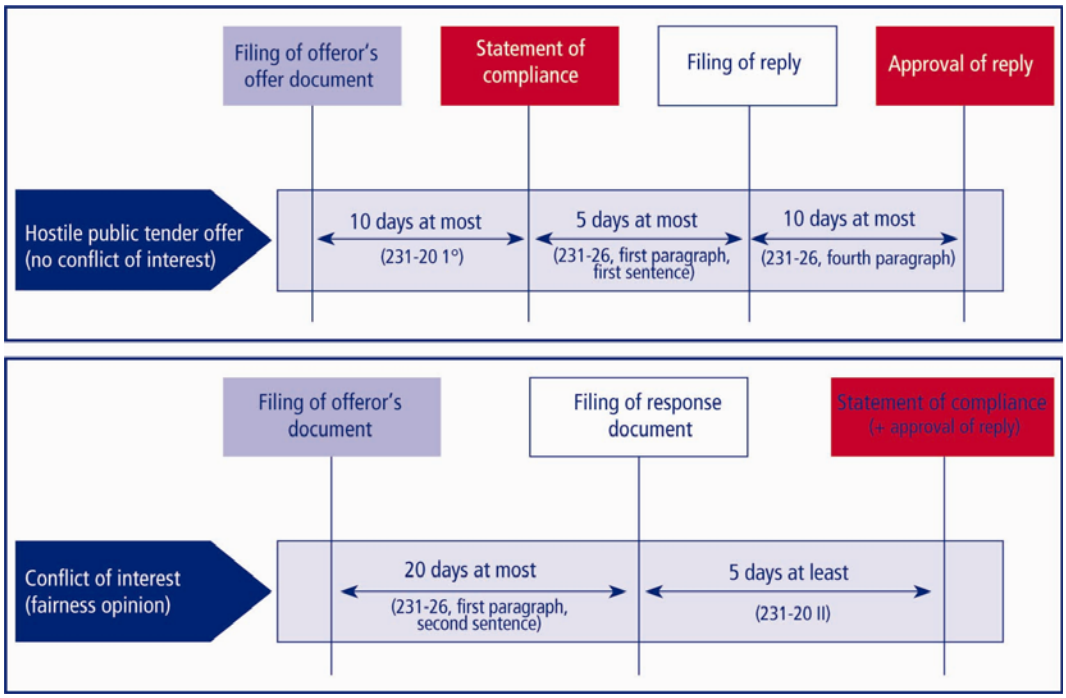
The filing of the proposed offer with the AMF now requires simultaneous public disclosure of the offeror's draft offer document and, where applicable, the response of the target company[34]. The plans are likely to change during their examination by the AMF. Furthermore, the information about the legal, financial and accounting characteristics of the offeror and the target company ("other information") do not appear in the offer document, which is restricted to dealing with the "bid contract" primarily. This information must be disseminated on the day before the bid opens at the latest (Article 231-32). Once the prospectus has been approved by the AMF, it is eligible for the mutual recognition procedure stipulated in the Takeover Directive and the "other information" may in some cases be "passported".

The AMF's examination of compliance with the principles applying to public tender offers, which has taken the form of the acceptability decision up until now, and the supervision of information provided to the market in information/tender offer documents, which took the form of approval, are now combined into a single statement of "compliance"[35]. This statement of compliance constitutes approval of the offeror's offer document and thus includes two aspects: supervision of the information provided to the market in the offer document and, in some cases, supervision of the financial terms of the planned deal. Furthermore, when a proposed offer results in separate documents from the offeror and the target company in the event of a fairness opinion, the AMF also approves the reply drafted by the target company.

When the offeror and target company publish separate offer documents, the time lag between the statement of compliance and the filing of the draft prospectuses is not the same, depending on whether the offer documents are separate because the public tender offer is unsolicited, or because there is a conflict of interest[36] that required the target company to appoint an independent appraiser.

In the first case, as the table below shows, the AMF may rule on the compliance of the proposed public tender offer before the target company files its reply. In the case of a conflict of interest, on the other hand, the AMF does not rule on compliance for at least five trading days after the filing of the reply[37].

[32] *Articles 222-22 to 222-25, which are now Articles 223-32 to 223-35 of the AMF General Regulation.*
[33] *Article 261-1.*
[34] *The detailed content of the draft prospectus and other information is described in Instruction 2006-07 of 25 July 2006.*
[35] *Articles 231-20 to 231-23 of the AMF General Regulation.*
[36] *Article 231-13.*
[37] *Article 231-20 II.*



Article 231-21 lists the items that the AMF examines to assess the compliance of the proposed public tender offer. Multi-criteria analysis is no longer mentioned directly in the compliance assessment criteria. Yet, such analysis is still critical for assessing the compliance of proposed public tender offers in many cases for the following reasons:

- It is used in the offeror's prospectus (Articles 231-21 4° and 231-18 2° a): "price assessment information";

- When a fairness opinion is required (Article 261-1), as is most often the case in practice, the appraiser must conduct his own multicriteria assessment and a critical review of the work by the presenting bank (Article 2 of Instruction 2006-08 of 25 July 2006 on fairness opinions). The AMF then examines the financial terms of the public tender offer with regard to the appraisal report (Article 231-21 5°);

- If the offeror intends to implement a squeeze-out as part of a first public tender offer, the provisions relating to the squeeze-out apply to the initial bid as well (either in the form of "serial bids" such as those carried out before the 31 March 2006 Act, or under the terms of Article 237-16 I 2° of the General Regulation);

- Furthermore, in accordance with Article 231-22, the AMF verifies the specific provisions regarding the price or exchange parity, depending on the nature of the bid.
In the case of a public exchange offer, the compliance examination is conducted in consideration of the nature, characteristics, listings and markets for the securities offered in exchange[38] (Article 231-21 2°).

D > Instruction on statutory auditors' fees

On 22 January 2007, the AMF published Instruction 2006-10 of 19 December 2006 on disclosure of the fees paid to statutory auditors and members of their networks. The charts in the old COB Instructions[39] were updated in view of amendments made to the General Regulation and the new provisions in the National Company of Statutory Auditors' code of conduct.

[38] *Article 231-21 2° and Article 231-8.*
[39] *For the implementation of COB Regulations 98-01 and 98-08.*

E > Developments in regulations on the compensation of senior managers of listed companies

The Act of 30 December 2006[40] changed the rules on options and free distributions of shares to senior managers.

1 > Stock options

The board of directors of a joint-stock company must now prohibit managers from exercising their stock options while they are still employed by the company, or else the board must require managers to hold the shares obtained by exercising options as registered securities until they stop working for the company. The board's choice in this manner must be included in the management report submitted to the annual general meeting of the shareholders. These provisions apply to options distributed as of the date of the publication of the Act.

2 > Bonus issues of shares

The Act of 30 December 2006 specifies that the limit on bonus issues of shares to 10% of the share capital shall be assessed on the date when the board decides to proceed with the distribution and not the date of the general meeting that votes on the matter. If the distribution involves shares to be issued in the future, the extraordinary general meeting's authorisation automatically constitutes a waiver of the shareholders' preferential subscription rights in favour of the beneficiaries of the bonus shares. The corresponding capital increase is definitively accomplished solely on the strength of the definitive distribution of the shares to the beneficiaries.

The distribution of the shares to the beneficiaries become final after an acquisition period lasting at least two years to be defined by the extraordinary general meeting of shareholders. It is now possible to distribute such shares with an acquisition period lasting for four years instead of two. If this is the case, the mandatory two-year holding period may be reduced or eliminated.

This measure is helpful for plans with foreign beneficiaries who may be taxed as soon as they acquire the shares, even though they hold onto them afterwards. On the other hand, as is the case for stock options, the board must extend the holding period for managers either by prohibiting them from selling their bonus shares as long as they work for the company or by setting a proportion that must be held as registered securities while they work for the company. The board's choice in this matter must be included in the management report.

At the end of the mandatory holding period, the shares must not be sold within ten trading days before and after the date on which the consolidated financial statements, or, failing that, the annual financial statements, are disclosed, nor in the time between the date when the company's decision-making bodies learn of insider information and ten trading days after such information is disclosed.

The Act also stipulates what happens to such bonus shares in the event of a share swap. If the swap is the result of a merger or demerger carried out during the acquisition or holding periods, the remaining restricted trading periods at the date of the swap will apply to stock options and shares received in the swap. The same holds true for share swaps resulting from public tender offers, stock splits or reverse stock splits occurring during the holding period. In the event of a capital contribution to a company or an investment fund with assets made up exclusively of equity securities issued by the company, the holding requirement still applies to shares or units received in exchange for the contribution for the remaining holding period on the date of the contribution.

3 > Transparency on compensation

In companies listed on a regulated market, the chairman of the board's report on corporate governance and internal control must now set out the principles and rules that the board has decided upon for determining the pay and benefits of senior managers.

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[40] *Act 2006-1770 of 30 December 2006 on the development of employee shareholding and various economic and social provisions.*

Under the terms of Act of 26 July 2005, companies listed on a regulated market are required to submit any commitments made by the company, or companies that it controls or that control it towards senior managers that correspond to compensation, financial consideration or advantages that will accrue or are likely to accrue when they leave the company's employ to the procedure used for regulated agreements and, consequently, to the general meeting of shareholders. Therefore, the Decree of 11 December 2006[41] extends the chairman of the board's obligation to notify the statutory auditor of regulated agreements within one month to agreements dealing with senior managers' compensation. The statutory auditors' special report must now describe the nature, the amount and the procedures for granting each of the benefits or indemnities owed or likely to be owed to senior managers.

F > Attendance at general meetings

The temporary share blocking requirement was replaced by a record date three days before the meeting. This record date system was recommended by the working group chaired by AMF Board member, Yves Mansion, on the exercise of voting rights at general meetings of shareholders.

G > Sports teams

Following the reasoned opinion of 13 December 2005[42] that the European Commission sent to France stating that the ban on sports teams making public offerings was contrary to the principle of free movement of capital, the Act of 30 December 2006 amended Article L. 122-8 of the Sports Code, which now stipulates that sports teams planning to issue or sell equity instruments with voting rights must produce a prospectus that includes information about their sports development plans and planned acquisitions of assets to enhance their stability and soundness, such as ownership of the sports facilities used to hold the sporting events and competitions that they take part in.

H > Forecasts

Issuers had many questions about the treatment of profit forecasts following the entry into force of European Regulation 809/2004 of 29 April 2004 implementing the Prospectus Directive.

The European Regulation gives a potentially broad definition of the notion of forecasts and requires a statutory auditors' report certifying that forecasts are based on the assumptions indicated and that the accounting methods used are consistent with those that the issuer uses to compile its financial statements, whenever an issuer decides to include a profit forecast in a prospectus.

Therefore, the AMF set up a working group with the task of analysing the notions of "forecasts" and "trends" mentioned in the European Regulation. After the group completed its work, the AMF published a position in July 2006 to clarify these notions[43].

Henceforward, a profit forecast means "a form of words which expressly states or by implication indicates a figure or a minimum or maximum figure for the likely level of profits or losses for the current financial period and/or financial periods subsequent to that period, or contains data from which a calculation of such a figure for future profits or losses may be made, even if no particular figure is mentioned and the word 'profit' is not used."

The working group made a special effort to situate the notion of forecast in relation to the concepts of "objectives" and "outlooks". In brief, the AMF position indicates that:

- Figures arrived at directly (operating profit, profit before tax, net profit) must be considered to be profit forecasts, whereas other figures arrived at indirectly (net profit margin, EBITDA, turnover, etc.) will not be deemed to constitute a profit forecast unless other data provided by the issuer can be combined with them to calculate the likely future amount of profit. These indicators must also be judged with due consideration of the time horizon. The farther out the time horizon for the information is, the more difficult it is to determine the likely amount of profit.

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[41] Decree 2006-1566 of 11 December 2006 amending Decree 67-236 of 23 March 1967 on commercial companies.

[42] Act 2006-1770 of 30 December 2006 on the development of employee shareholding and various economic and social provisions.

[43] "Implementation of European Regulation 809/2004 of 29 April 2004 on prospectuses. Clarification of the notion of forecasts."

- Certain information provided in narrative form is considered to be a profit forecast, if the time horizon is specified and the wording is such that an estimate of the likely level of profit can be made.

This frame of reference should lead issuers to review their practices with regard to communicating their objectives, insofar as the approach and the terms used may mean that the objectives could be qualified as forecasts, with major consequences under the terms of the European Regulation. Issuers may disclose profit forecasts or objectives freely in their registration document. However, if a registration document is incorporated into a prospectus, issuers must use the analytical criteria chosen by the working group to determine whether the forward-looking information given in the registration document constitutes profit forecasts.

I > Rotating the statutory auditors

In May 2003, the COB published transitional provisions regarding the rotation of key audit partners for companies making public offerings. The Financial Security Act of 1 August 2003 defined the rules[44] for rotating the statutory auditors for companies making public offerings. It stipulated that the provisions regarding rotation would be applicable three years after the Act was promulgated, meaning as of 1 August 2006 and that auditors' engagements in force at that time could not be extended beyond 1 August 2009.

The AMF wished to draw attention to the interpretation guide for Article L. 621-22 of the Monetary and Financial Code that it published jointly with the CNCC. This interpretation requires an audit firm proposing a renewal of its engagement to explain its procedures for rotating the partners conducting the audit in the letter notifying the AMF of its proposal to renew its engagement.

The Act applies only to the key audit partner, unlike the transitional provisions introduced by the COB, which also applied to the other leading audit partners involved in the team. However, Directive 2006/43/EC of 17 May 2006 (Eighth Directive), which must be transposed into French law by 29 June 2008, defines the persons to be rotated. Pending transposition of the directive, the AMF urges audit firms to rotate the audit partners in accordance with the transitional provisions of May 2003.

2 > Activity in 2006

A > Corporate finance in 2006

The AMF issued 41% fewer approvals in 2006 than in 2005 as the number of approvals fell from 772 to 453[45]. The decrease is primarily attributable to the elimination of the approval requirement for share buy-back programmes, which accounted for 257 approvals in 2005, and for the final terms of debt security issuance programmes, following transposition of the Prospectus Directive.

In 2006, initial public offerings on Eurolist raised EUR 9.3 billion and debt issues raised EUR 27.1 billion. Debt issues approved by the AMF in 2006 raised EUR 14.3 billion of the total.

1 > Listings, delistings and transfers

The AMF issued approvals for 75 new listings on Eurolist and Alternext in 2006.

It issued 34 approvals for listings on Eurolist:

- 6 companies in compartment A;
- 16 companies in compartment B;
- 12 companies in compartment C.

It issued 41 approvals for listings on Alternext[46].

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[44] Article L. 822-14 of the Commercial Code: "A natural person acting as an auditor and a member of a firm of statutory auditors shall be prohibited from certifying the financial statements of legal entities making public offerings for more than six years in a row."

[45] Not including cancelled applications.

[46] In 2006, 50 companies were listed on Alternext. 41 new listings were approved and 9 companies were listed directly following a private placement.

The AMF also issued approvals for 23 new listings on the Marché Libre, as opposed to 18 in 2005.

The number of delistings was down slightly from 56 in 2005 to 50 in 2006:

- 23 companies were delisted following a buyout bid followed by a squeeze-out or a directly by means of squeeze-out;
- 17 foreign companies were delisted following a sales facility;
- 2 companies were delisted following mergers;
- 6 companies were delisted following court-ordered winding up or a transfer of assets;
- 2 companies were delisted following public tender offers (excluding squeeze-outs).

2 > Other financial transactions

a) Issues, sales and listings of equity securities

The number of issues on Eurolist remained stable with 52 approvals issued, as opposed to 54 in 2005.

	2005	2006	CHANGE
Issues and listings on a regulated market	54	52	-2
With pre-emptive rights	30	37	+7
Shares	21	27	+6
Shares with warrants attached (ABSA)	7	5	-2
Shares with warrants for the acquisition of existing shares and/or subscription for new shares (ABOASA)	0	0	0
Bonds with redeemable warrants (OBSAR)	1	5	+4
Subordinated bonds redeemable in shares (OSRA)	0	0	0
Bonds redeemable in shares (ORA)	0	0	0
Convertible bonds (OCA)	1	0	-1
Without pre-emptive rights	24	15	-9
Shares	10	9	-1
Shares with warrants attached (ABSA)	3	0	-3
Shares with warrants for the acquisition of existing shares and/or subscription for new shares (ABOASA)	0	0	0
Share warrants (BSA)	1	0	-1
Cooperative investment certificates (CCI)	1	0	-1
Bonds convertible into new shares or exchangeable for existing shares (OCEANE)	6	4	-2
Perpetual notes redeemable in shares (TDIRA)	0	0	0
Convertible bonds (OCA)	1	1	0
Bonds with redeemable warrants (OBSAR)	1	1	0
Bonds redeemable in shares (ORA)	1	0	-1
Bonds redeemable in shares or cash (ORAN)	0	0	0

Source AMF

The number of other public offerings outside of the regulated market (secondary transactions on Alternext and on Marché Libre) was down sharply in 2006 (10 approvals, versus 24 in 2005), and approvals of sales by public offering were up from 3 in 2005 to 4 in 2006.

The number of approvals relating to debt securities (issues/listings, listings, issuance programmes) fell from 164 in 2005 to 130 in 2006. The decrease can be attributed to the introduction of the European passport under the terms of the Prospectus Directive.

b) Registration documents

	2005	2006	Change %
1. Registration documents	388	359	- 7.5
Post-publication review	302	273	- 9.6
Pre-publication review	86	86	0
2. Updates and corrections to registration documents	129	159	+ 23.2
Corrections to registration documents	14	12	- 14.3
Updates to registration documents	115	85	- 26.1
3. Registration documents for listing on a regulated market	24	62 (a)	+ 158.3

Source AMF

(a) Includes 31 registration documents for listings on Alternext, following the amendment of the AMF General Regulation in December 2005, which allows companies listing on Alternext to file an offering circular.

B > Tender offers in 2006

There was little takeover activity in 2006. The number of public tender offers launched was the lowest since the 1990s.

On the other hand, the combined effects of the transposition of the Takeover Directive[47], the specific provisions introduced by Act 2006-387 of 31 March 2006, including provisions on the use of warrant issues as a defence against public tender offers, and the reform of the AMF's supervision of public tender offers[48], meant that there were many developments on the regulatory front.

Tender offers initiated in 2006	2003	2004	2005	2006
Offers: standard procedure	13	5	14	6
Offers: simplified procedure	16	17	23	23
Public offers of withdrawal	1	4	3	3
Public offers of withdrawal followed by a squeeze-out	36	35	29	19 [49]
Share buyback offers	8	5	8	2
Standing offers	2	6	9	6
Total	**76**	**72**	**86**	**59**
Squeeze-out with no compliance statement (Article 237-14)	na	na	na	4

Source: AMF

The cases described below represent an opportunity for clarifying the scope of some of the new provisions resulting from the changes to the takeover laws.

[47] *Directive 2004/25/EC of 21 April 2004 on public tender offers (transposed by Act 2006-387 of 31 March 2006 on public tender offers and the General Regulation approved by Order of the Minister of the Economy, Finance and Industry of 18 September 2006..*

[48] *Including the combining of the acceptability procedure with the approval procedure and greater use of fairness opinions.*

[49] *Plus one offer deemed unacceptable, which was consequently cancelled.*