

CHAPTER 3

Corporate Finance and the Quality of Financial Disclosure

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Corporate finance transactions picked up to some extent in 2009. Although the AMF issued only four approvals for initial public offerings on the stock exchange, two of them for listing on Euronext Paris's professional segment, capital increases and bond issues increased sharply in 2009 compared with 2008. Several listed companies made new issues of shares with pre-emptive rights, raising a total of more than €18 billion.

One of the AMF's prime concerns in this context was the appeal of Paris as a financial centre. It made a strong commitment, notably in connection with the initiatives of the Financial Services High-Level Committee, to take measures encouraging the financing of the economy and business on the capital markets, in particular by facilitating access to the stock market for small and medium-sized enterprises (SMEs). Several measures were taken to help revive the primary market in bonds by adapting regulatory requirements to the characteristics of issues of this type and providing a higher quality of service to issuers. Then, following adoption of the Act of 19 October 2009 seeking to enhance access to credit for SMEs and improve the operation of financial markets, the AMF General Regulation was amended to make it easier for SMEs listed on Euronext Paris to move over to Alternext Paris. Provided they meet the relevant conditions, companies wishing to transfer their listing will be able to do so, thus benefiting from a set of rules better suited to their size and resources. Lastly, provisions relating to initial public offerings were eased to reflect market conditions.

The AMF also paid close attention to corporate governance and internal control in 2009. On the issue of executive compensation, which has clearly aroused debate, an AMF study found that large listed companies had made a significant effort to improve transparency and that the AFEP/MEDEF Code¹ had brought about a positive change in practices. In its sixth report on corporate governance and internal control, the AMF also observed a continuing improvement in companies' governance practices as well as growing use of the internal control reference standards published in 2006. The AMF nonetheless outlined areas for discussion concerning both compensation and governance, for further consideration by working groups set up by industry associations. Furthermore, following transposition of the Statutory Audit Directive, a working group was formed to put forward proposals for the setting up of audit committees.

Major reforms affecting legislation on public offers were undertaken 2009. The Executive Order of 30 January 2009 amended the regime for notifications of major holdings and declarations of intent, and provisions of the AMF General Regulation on trading and trading restrictions during a pre-offer and offer periods were also amended. Other reforms that were set in train should be completed in 2010. The AMF came out in favour of lowering the mandatory offer threshold on Euronext Paris from one-third to 30%. On 16 December 2009 the Council of Ministers adopted a bill that called for eliminating the standing market offer procedure, thus giving the AMF jurisdiction over registration, and introducing a regime of mandatory offers and squeeze-outs on Alternext. These measures are all aimed at enhancing market transparency, adapting the rules to evolving financial techniques and products, and speeding regulatory convergence within Europe.

In terms of publications, the AMF continued to disseminate its policy on transactions and financial and accounting disclosure. These publications are both important and useful for companies and industry professionals, and will therefore continue as the AMF goes forward with its New Strategy Proposals. Disseminating policies and making them easier to access is one of the thrusts of the proposals. Educational efforts have already been made with the publication in 2009 of guides to aid professionals in, for example, drawing up bond prospectuses and registration documents. As in previous years, the AMF also published recommendations regarding companies' 2009 financial statements, as the quality of accounting disclosure is key to investor confidence.

Lastly, the AMF continued to participate in and contribute to the work of international bodies, in particular via CESR and IOSCO. For the review of the Prospectus Directive, the AMF supported the European Commission's proposals to improve the summary prospectus and adapt the content of the prospectus to the size of the issuing company.

¹ AFEP: Association française des entreprises privées (Association of French Private-Sector Companies).
MEDEF: Mouvement des entreprises de France - French Business Confederation

1 – Legislative and regulatory developments and AMF activity in 2009

A – Reviving the primary market in bonds

As part of efforts led by the High-Level Committee to revive issuance in the Paris bond market, the AMF took a number of steps to make it easier for French-law corporate issuers to bring issuance programmes currently filed with other regulators back to Paris².

It issued a guide to preparing bond prospectuses³ in order to answer issuers' practical questions on obtaining approval for a straightforward application for admission of debt securities to Euronext Paris⁴. Clarifications were provided on the time limits for AMF scrutiny of the application, the requirements for approval and the language in which the prospectus must be written.

The AMF also amended certain aspects of its General Regulation to adapt it to the special characteristics of bond issues⁵. The completion letter requirement was eliminated for all bond issues. In addition, issuers having filed or registered a registration document in French were given the possibility, subject to certain conditions, of filing or registering it in a language customary in the sphere of finance so that it can be incorporated by reference in the bond prospectus.

B – Adapting the prospectus for public offerings of shares of mutual banks and cooperatives

Executive Order 2009-80 of 22 January 2009 reformed the regime for public offerings of securities and put various new provisions in its place. A new concept, "public offering of financial instruments", was introduced and the AMF was directed to define the disclosure requirements for an offer to the public of shares in mutual banks and cooperatives. The AMF consequently amended its General Regulation⁶ and issued an Instruction⁷, applicable to all mutual bank networks and cooperatives, specifying the information that must be incorporated in the prospectus.

The new provisions ease a number of the requirements for the content of the prospectus (the statement of working capital and the statement of equity and debt are no longer required, and two years of financial statements can be presented instead of three) while maintaining a satisfactory level of investor disclosure.

The AMF has kept in effect the "mutualist exception" principle, whereby offers of a mutual bank's or cooperative's shares do not require a prospectus if they are subscribed or acquired in conjunction with a product or service provided by the institution⁸.

The promotional literature accompanying these offers, regardless of the form it takes or how it is distributed, must be submitted to the AMF, which scrutinises it carefully.

C – Transfer of a listed company from Euronext to Alternext

Act 2009-1255 of 19 October 2009, seeking to enhance access to credit by SMEs and improve the operation of financial markets, amended the Commercial Code so that trading in the securities of such companies could be transferred from Euronext Paris to Alternext. This measure was in line with the

² Unlike most issuers in the para-public sector and the banks, which routinely file for approval by the AMF (although this does not prevent the latter also having issuance programmes approved in Luxembourg).

³ Guide to preparing bond prospectuses and obtaining approval, 23 September 2009, available on the AMF's website (www.amf-france.org) under "Publications > Guides > Professional guides".

⁴ On the subject of bond issues placed by public offering, the AMF has also published a guide to best practices in marketing to retail investors, available on the AMF's website (www.amf-france.org) under "Publications > Guides > Professional guides".

⁵ Ministerial orders of 26 October 2009 approving amendments of Articles 212-14 and 212-15 of the AMF General Regulation and 24 December 2009 approving amendments of Article 521-1 of the AMF General Regulation, and the amendment of Instruction 2005-11 of 13 December 2005 regarding the information to be disclosed for an offer to trade financial securities on a regulated market, adding an item e to point II of Article 5.

⁶ Amendment of Article 212-38-1 of the AMF General Regulation – approved by order of the French finance minister on 24 December 2009, came into force 1 January 2010.

⁷ Instruction 2009-10 of 3 November 2009 regarding the prospectus for a public offering of shares of a mutual bank or cooperative pursuant to Article 212-38-1 of the AMF General Regulation.

⁸ Article 212-38-1 as amended of the AMF General Regulation.

proposals of the working group chaired by AMF Board member Jean-Pierre Pinatton, and also with the public consultation on the possibilities of such transfer and with proposals made by the government.

Companies wishing to apply for transfer to Alternext must meet the following conditions set by the Act and the AMF General Regulation:

- > the issuer's market capitalisation must be less than €1 billion;
- > a general meeting of shareholders must be held at least two months before the proposed transfer in order to vote on it;
- > the public must be informed by two notices disseminated effectively and in full: the first, at least two months before the intended transfer date; the second, following the general meeting that approved the proposed transfer and after the decision of the issuer's executive management to go forward with it. The content of these notices is specified in the General Regulation⁹.

The law applicable to companies admitted to trading on a regulated market in respect of tender offers, notification of major holdings and declarations of intent continues to apply to companies transferred to Alternext for a transitional period of three years.

Companies applying for transfer must also meet the NYSE Euronext requirements for a minimum free float of €2.5 million and must secure the services of a listing sponsor within three months of the transfer. In return, these companies benefit from a "fast track" admission procedure.

D – Rules on public offerings and major holding notifications

1 > Reforming the rules on notification of major holdings and declarations of intent

Following the review conducted by the working group chaired by AMF Board member Bernard Field, the Executive Order of 30 January 2009 implementing the Economic Modernisation Act of 4 August 2008 amended the regime for notifications of major holdings and declarations of intent. This was done to improve transparency in financial markets and adapt the rules to the sophisticated financial techniques used by some market participants to exert influence within a listed company.

The new legislative provisions led the AMF to modify certain articles of its General Regulation. After a public consultation, the amended rules came into force on 1 August and 1 November 2009¹⁰.

The reform of the regime for major holding notifications relates mainly to strengthening the assimilation requirement of Article L233-9 of the Commercial Code, which was expanded to include outstanding shares that could be acquired by the declarer, immediately or in future and at its sole initiative, by virtue of an agreement or a financial instrument.

To go along with this change, the scope of the "separate disclosure" to be made when a holding threshold is crossed was also broadened. The main thrust of the reform concerns shares underlying contracts or financial instruments that are purely cash-settled and that have the same economic effect as shares for the declarer. The General Regulation specifies¹¹ that the notification requirement covers contracts for difference, cash-settled equity swaps and financial instruments exposed to a basket or an index¹². The declarer must also mention shares and voting rights that could be acquired under a contract or financial instrument not settled at the declarer's sole initiative¹³. The separate disclosure continues to apply to securities giving access to shares to be issued¹⁴.

⁹ Article 223-36 of the AMF General Regulation.

¹⁰ Ministerial order of 27 July 2009 approving amendments of the AMF General Regulation. The effective date of the provisions relating to financial instruments subject to separate disclosure was deferred.

¹¹ Article 223-14 III point 3.

¹² These baskets or indices of shares of several different issuers will have to be declared if they are not sufficiently diversified. The AMF intends to recommend a diversification percentage of at least 20% per underlying issuer in the basket. Below this threshold, the entity in question need not declare the similar economic effect of a cash-settled financial instrument of this type.

¹³ For example, "knock-in" options, so long as the barrier has not been crossed.

¹⁴ In particular, bonds convertible into shares, bonds redeemable in shares, bonds with share subscription warrants, share subscription warrants and bonds convertible into new shares or exchangeable for existing shares (OCEANES).

A precise description of each type of financial instrument or contract is required, regardless of whether it is treated as a shareholding for notification purposes (assimilation) or subject to separate disclosure¹⁵.

As regards trading, the waiver allowing investment services providers not to report trading book holdings of up to 5% of an issuer's shares or voting rights remains in place.

For the Alternext market, the General Regulation now sets thresholds of 50% and 95% for holdings that must be reported to the AMF as well as to the issuer¹⁶.

Issuers are reminded that they must publicly disclose the theoretical total number of shares to which voting rights are attached in order to enable shareholders to make their notifications^{17 18}.

Concerning declarations of intent, the requirement to report upward breaches was extended to the 15% and 25% thresholds, and the content of the declaration was expanded to include new items. Henceforth, the declarer must specify how the acquisition is to be financed, what strategy it intends to take towards the issuer, and whether there are any agreements for temporary transfer of title to the issuer's securities. The period during which the declarer is bound by the terms of the declaration was reduced from twelve months to six, and the conditions for changing a declared intent were loosened.

Lastly, the time limits for both types of declaration were reduced. Major holding notifications must now be filed with the AMF not later than the fourth trading day after a threshold is crossed; declarations of intent, not later than the fifth trading day.

2 > Reforming the provisions of the General Regulation relating to rules on trading and trade reporting during a tender offer

The ministerial order of 10 July 2009¹⁹ approved a series of amendments to Title III (Tender offers) of Book II (Issuers and financial disclosure) of the AMF General Regulation. These amendments relate mainly to the rules on trading in the securities involved in a tender offer and on declaring trades in those securities. The rules came into force on 1 October 2009.

A pre-offer period has been introduced. It is defined in Articles 223-34 and 231-2 point 5 of the AMF General Regulation as the time elapsing between:

- > publication by the AMF, subsequent to an announcement to the public by an offeror (legal entity or person), of the characteristics of the proposed offer, in particular the nature of the offer and the price or exchange ratio (the offeror is required to inform the AMF immediately of such announcement), and
- > either the filing of a draft offer (the typical case), or the announcement by the offeror that the offer has been withdrawn, or the determination by the AMF that a draft offer has not been filed within the time period specified in Article 223-33 of the AMF General Regulation (the anti-rumour provision)²⁰.

The definition of this pre-offer period reflects a desire for full application of the trading and trade reporting rules on the securities involved in a tender offer.

New rules govern trading by the initiator of the offer (and persons acting in concert with the offeror) in the securities involved²¹. During the pre-offer period, the offeror may not acquire any securities of the target company²². From the beginning of the offer period until the opening of the tender period, the offeror may acquire securities of the target company, provided these acquisitions do not exceed one-

¹⁵ Article 223-14 IV of the AMF General Regulation.

¹⁶ Note that on Alternext, the person whose holdings exceed the thresholds specified in Article L233-7 indent I must declare them to the issuer.

¹⁷ Pursuant to the second indent of Article 223-11 of the General Regulation, the total number of voting rights is calculated on the basis of all the shares to which voting rights are attached, including shares whose voting rights have been suspended. Issuers may also disclose the number of exercisable voting rights (cf. AMF news release of 15 November 2007).

¹⁸ Following the transposition of the Transparency Directive, this information now comes under the regulated information regime.

¹⁹ Published in the Official Journal of 17 July 2009.

²⁰ Each of these events being the subject of a public notice issued by the AMF.

²¹ Article 231-38 of the AMF General Regulation.

²² Except where the offeror's acquisitions result from a voluntary agreement antedating the beginning of the pre-offer period.

third of the target securities and do not put the offeror in a situation where it has to file a draft offer. It should be emphasised, however, that such purchases are prohibited where the offer involves, in whole or in part, an exchange of securities²³ or where it comes under the standard procedure and is subject to one of the conditions referred to in the AMF General Regulation²⁴.

The general regime for reporting trades in securities involved in a tender offer²⁵ has been modified. The main changes are the following:

> The increase in holding that generates the obligation to notify is raised from 0.5% to 1%²⁶, and it now pertains only to the equity holding (voting rights are no longer considered); thus, persons are required to make notifications daily if they acquire more than 1% of the target's equity (in one or more transactions) starting from the beginning of the pre-offer period.

> The obligation to notify is extended to holders of securities of the target company other than shares (warrants, convertible bonds, bonds redeemable in shares, etc.); thus, holders of more than 5% of these securities and persons that acquire more than 1% of them are subject to the obligation.

> The starting point for calculating the increase in equity holding is the beginning of the pre-offer period (if there is one; if not, the beginning of the offer period).

> The declaration of intent is no longer required when the 5%, 10%, 15%, 20%, 25% and 30% thresholds are crossed. It is required only in the event of an increase in the equity holding of more than 2% since the beginning of the pre-offer period.

> The content of the declaration of intent is specified (existence of concert parties, intention to pursue further acquisitions, intention to contribute the securities acquired to the offer), and the principle of publication by the AMF is affirmed. The possibility of a change of intent is introduced.

The new rules also introduce an exceptional regime for the "service providers concerned", that is, the presenting banks and advisers of the offeror and the target (Article 231-2, indent 4 of the AMF General Regulation), as regards trading and trade reporting during an offer.

Normally, the investment services providers (ISPs) concerned would not be permitted to trade in the securities involved in the offer (where this is understood broadly to include both the target securities and derivative financial instruments on those securities)²⁷. However, under the exceptional regime, the ISPs concerned do not have to comply with these restrictions in their proprietary trading, provided they meet five conditions²⁸:

1. Trading is done by personnel with resources, objectives and responsibilities distinct from those working on the offer, and the former are separated from the latter by a Chinese wall.

2. Trading is consistent with the ISP's usual practices in hedging risks on trades made at the request of a client or associated with market making.

3. The ISP's trading position and the change in its commitments resulting from proprietary trading do not diverge significantly from what is customarily observed.

4. Before making any trade for its own account, the ISP has taken all necessary steps to assess the effect its trading will have so as to avoid affecting the outcome of the offer and unduly depressing the price of the target securities.

5. The trading complies with the principles set forth in Article 231-3 of the AMF General Regulation.

As regards the reporting obligations of the ISPs concerned, they are subject to less stringent requirements²⁹ compared with the general reporting regime: declarations are limited to the daily closing position, they are required only when the position increases by more than 1% of the equity, the AMF does not publish them, and no declaration of intent is required.

²³ Article 231-41 of the AMF General Regulation.

²⁴ Articles 231-9 to 231-1 and Article 232-14 of the AMF General Regulation.

²⁵ Articles 231-46 to 231-48 of the AMF General Regulation.

²⁶ Article 231-46 of the AMF General Regulation.

²⁷ In accordance with Article 231-42 of the AMF General Regulation.

²⁸ Article 231-43 of the AMF General Regulation..

²⁹ Article 231-51 of the AMF General Regulation.

Lastly, service providers other than the "service providers concerned" are not subject to any restrictions. As regards the reporting obligations they may have, on the other hand, these ISPs can now benefit from the "streamlined" regime for ISPs concerned³⁰ for their proprietary trading, provided they meet the criteria of points 2 and 3 of Article 231-43 of the AMF General Regulation. If they do not meet those criteria, they are subject to the general reporting regime³¹.

3 > Public consultation on amending the provisions of the AMF General Regulation relating to tender offers

Following on from the conclusions of the AMF's working group on notifications of major holdings³² and the industry consultation by the finance ministry on legislative reform of the regime for tender offers³³, the AMF launched a public consultation on a draft amendment of relevant provisions of its General Regulation³⁴. This consultation was held between 19 May and 30 June 2009.

The contemplated changes were introduced in the banking and financial regulation bill adopted by the Council of Ministers on 16 December 2009. They will not take effect until the end of the process of enacting the bill into law.

a) Modifications of the AMF General Regulation concerning regulated markets

Firstly, the AMF has proposed amending its General Regulation to lower the threshold for a mandatory public tender offer³⁵ from one-third to 30% of the equity or voting rights, as well as the threshold for a mandatory offer in the event of indirect crossing of the offer threshold³⁶. The reason is that the threshold had become increasingly far removed from the notion of de facto control evincing a real influence over the company, and lowering it would move it closer to actual practice in France and most other large European countries.

Secondly, the AMF proposed introducing a transitional provision for any shareholder with between 30% and one-third of the equity or voting rights at the time the amendment comes into force. Under this transitional provision,

- > the one-third threshold would stay in effect for this shareholder for a period of between five and seven years (barring application of one of the cases for a waiver listed in Article 234-9 of the General Regulation), and

- > by the end of this period at the latest, the shareholder would be required to reduce the holding to below 30% of the equity and voting rights.

In the consultation draft, the AMF was proposing that once this time period was up, a shareholder holding between 30% and one-third of the equity or voting rights would be required to file a draft offer. This transitional provision would also apply to a shareholding via a controlled holding company of an interest between 30% and one-third in the equity of a company constituting an essential portion of the assets of the holding company.

b) Amendments to the AMF General Regulation concerning organised multilateral trading facilities (OMTFs).

In connection with the finance ministry's proposal to introduce a procedure for tender offers on OMTFs such as Alternext to replace the standing market offer, which would be eliminated, the AMF proposed to:

³⁰ Article 231-51 of the AMF General Regulation.

³¹ Articles 231-46 to 231-48 of the AMF General Regulation.

³² The report of the working group on notification of major equity holdings is available on the AMF's website (www.amf-france.org) under "Publications > Working group reports".

³³ The consultation paper and the responses to it are available at http://www.minefe.gouv.fr/directions_services/dgtpe/secteur_financier/haut_comite_place/index.htm.

³⁴ Provisions of Title III of Book II of the General Regulation regarding public offers.

³⁵ Article 234-2 of the AMF General Regulation.

³⁶ Article 234-3 of the AMF General Regulation.

- > set a threshold of 50% of the equity or voting rights (the current threshold for the standing market offer) which, when crossed by any person acting alone or in concert, would trigger a mandatory offer on the OMTFs;
- > set a threshold of 50% for the mandatory offer triggered by indirect crossing of the offer threshold on OMTFs³⁷;
- > extend the possibility of a temporary crossing of the threshold to apply on OMTFs as well as regulated markets³⁸;
- > apply methods of determining the offer price similar to those applied to regulated markets³⁹.

In addition, the AMF proposed adding an article to its General Regulation that would extend to OMTFs the possibility of granting a waiver of the obligation to file an offer in the same cases and on the same conditions as on regulated markets.

Lastly, the AMF notes that the government's banking and financial regulation bill would extend the squeeze-out procedure to OMTFs. This is the mechanism that enables shareholders holding a very large majority (95% or more of the equity and voting rights) to require minority shareholders to sell their shares for fair consideration.

E – AMF reports on compensation of executive directors of listed companies and implementation of the AFEP/MEDEF recommendations⁴⁰

As part of its annual report on corporate governance and internal control, the AMF issued a report on compensation of executive directors of listed companies on 9 July 2009 and a supplementary report on 8 December 2009. These reports look at how listed companies have applied the recommendations issued by AFEP and MEDEF in October 2008 by examining registration documents and checking information provided for corporate finance transactions or pursuant to ongoing disclosure requirements. The supplementary report also incorporates the AMF's comments on the AFEP/MEDEF report 18 November 2009 regarding application of the corporate governance code by companies in the SBF 120 and CAC 40 indices.

The main findings established by these reports support the finding that a large majority of companies in the sample apply the recommendations of industry groups. The AFEP/MEDEF Code has had a positive effect on the compensation practices of large listed companies, even though a code of this kind can come into effect only gradually. These companies have made a significant effort to achieve greater transparency by presenting clear, precise and individually detailed information on the various elements of executive pay. The conclusions of the AFEP/MEDEF report on application of the code thus coincide with those of the AMF and point to a genuine improvement in transparency.

The AMF provided a number of observations to improve application of the AFEP/MEDEF Code, in particular on:

- > disclosing full, individually detailed information on potential future rights associated with supplementary retirement schemes;
- > making the acquisition or exercise of all shares or options granted to executive directors conditional on performance criteria, or if this is not done, explaining the company's policy in this regard.

The AMF is also calling on industry groups to conduct a further review on the following points:

- > definition of the qualitative criteria used to determine certain elements of compensation in accordance with the AFEP/MEDEF Code;
- > a formal commitment from senior executives not to hedge stock options;

³⁷ Following the approach of Article 521-1 of the AMF General Regulation with regard to regulated markets.

³⁸ Article 234-4 of the AMF General Regulation.

³⁹ Article 234-6 of the AMF General Regulation.

⁴⁰ AFEP: Association française des entreprises privées (Association of French Private-Sector Companies). MEDEF: Mouvement des entreprises de France - French Business Confederation. The AMF's report on compensation of directors of listed companies and on implementation of the AFEP-MEDEF recommendations is available on the AMF's website (www.amf-france.org) under "Publications > Working group reports".

- > applying the provision of the Code concerning the combination of corporate office and an employment contract to the executive directors of listed companies' subsidiaries;
- > the compensation arrangements for non-executive chairmen;
- > taking into account the Recommendation issued by the European Commission on 30 April 2009⁴¹.

F – Discontinuation of publication of the AMF's individual decisions in the BALO: impact on the starting point of the time limit for entering an appeal

Decree 2009-1409 of 17 November 2009⁴² provides that the time limit for entering an appeal against an individual decision of the AMF begins to run on the date the decision is posted on the AMF's website, rather than on the date of publication in the official gazette, the BALO, as previously. The AMF has consequently stopped publishing individual decisions in the BALO. The decree also requires the AMF to ensure effective public access to its website, keep posted decisions online throughout the appeal period, and retain and store such decisions.

2 – Publication and dissemination of AMF policy in 2009 (excluding tender offers)

A – The AMF supplements its position on share buybacks and reminds issuers of the applicable disclosure rules for buybacks and liquidity contracts

The Executive Order of 30 January 2009⁴³ on share buybacks, notifications of major holdings and declarations of intent amended several articles of the Commercial Code. It eliminated the requirement for companies buying back their shares to draw up a special report for the general meeting, giving shareholders an account of how the buyback programme they authorised was carried out. At it was, some of the information in this special report duplicated information presented in the management report. To simplify the disclosure requirements and make them more consistent, the specific information of the special report is now included in the management report presented to the general meeting⁴⁴.

Also with a view to simplification, companies are no longer required to present an account of the implementation of the preceding buyback programme in the description of the current one.

The order of January 2009 simplified the implementation of liquidity contracts by changing the method of calculating the 10% ceiling and eliminating the requirement that securities acquired in performing these contracts be put in registered form. Once these new provisions came into force, the AMF General Regulation and Instruction 2005-06⁴⁵ were amended to reflect the simplifications. A new form for reporting share buybacks was posted on the AMF's website to complete the amendments.

The AMF also updated the position statement on share buybacks that it published in 2005⁴⁶. It has received many queries from banks and listed companies regarding the possibility of using share buyback arrangements with guaranteed discounts and variable prices and periods. Companies using such arrangements cannot benefit from the safe harbour provided by the Market Abuse Directive⁴⁷ at

⁴¹ European Commission Recommendation of 30 April 2009 complementing Recommendations 2004/913/EC and 2005/162/EC as regards the regime for the remuneration of directors of listed companies.

⁴² Published in the Official Journal of 19 November 2009 and amending Article R621-44 of the Monetary and Financial Code.

⁴³ Executive Order 2009-105 of 30 January 2009 regarding share buybacks, notification of major holdings and declarations of intent.

⁴⁴ Cf. professional guide (Publication rules applicable to share buybacks and liquidity contracts), 19 November 2009, available on the AMF's website (www.amf-france.org) under "Publications > Guides > Professional guides".

⁴⁵ AMF Instruction 2005-06 of 22 February 2005 on the information that issuers must declare to the AMF and make public when a share buyback programme is in progress and on the procedures for declaring transactions for the purpose of stabilising the price of a financial instrument, available on the AMF's website (www.amf-france.org) under "Texts > Access by category of text > Instructions AMF".

⁴⁶ "Implementation of the new regime for buybacks of own shares", AMF Monthly Review, number 12, March 2005 – position updated in December 2005 and November 2009, available on the AMF's website (www.amf-france.org) under "Publications > AMF monthly review".

⁴⁷ Directive 2003/6/EC of the European Parliament and the Council of 28 January 2003 on insider dealing and market manipulation (market abuse).

the time the arrangement is put in place, since the purchase price of the shares has not been determined⁴⁸. The AMF nevertheless believes that, so long as a number of conditions are met, arrangements of this kind raise no particular problem compared with the conditions set out in the aforementioned position on the use of derivatives.

B – Updated guide to preparing registration documents: new recommendations and a list of questions and answers

The Guide for Compiling Registration Documents covers every aspect of the AMF policy's on the information to be provided in the main chapters of listed companies' registration documents. The AMF updated the guide on 10 December 2009⁴⁹ to summarise its recommended principles for drawing up the document and to specify the information to be included under certain headings, pursuant to regulation. The new recommendations cancel and replace three items that appeared in the 2006 edition of the guide: Interpretation 2 on risk factors⁵⁰, Interpretation 6 on principal activities and markets⁵¹, and Recommendation 3 on major shareholders and capital structure⁵².

The updates relate to three topics:

- > presentation of risk factors,
- > description of main activities and markets,
- > description of the capital structure.

Regarding the presentation of risk factors in particular, the AMF recommends issuers to avoid overly general and standardised descriptions and to apply the materiality principle⁵³. It also recommends that, for each specific risk, they provide a section describing the linkages between the activity affected and the risks in question and another section on managing and monitoring these risks; they should also go into greater detail about how earnings and net assets may be affected.

The AMF also details the information that it recommends issuers to provide on the main risks.

The new version of the guide also includes the AMF's December 2008 recommendation on compensation of executive directors in accordance with the AFEP/MEDEF Code. The AMF points out that the special regulatory framework for registration documents of small and mid-caps is set forth in a preparation guide written expressly for these companies, which has likewise been updated⁵⁴. The AMF further notes that as part of the review of the Prospectus Directive, a prospectus and a set of prospectus templates will be designed specifically for SMEs and mid-tier enterprises, with obligations proportionate to the companies' size. Furthermore, in response to the main issues raised by companies and their advisers on the drafting of registration documents, the AMF published a list of questions and answers⁵⁵ addressing various practical matters relating to these documents.

⁴⁸ Commission Regulation (EC) 2273/2003 of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament and the Council as regards exemptions for buyback programmes and stabilisation of financial instruments. This regulation requires issuers to set a ceiling on the intervention price equal to the higher of the latest quoted price and the best limit price on buy orders in the order book at the time the repurchase is executed.

⁴⁹ " Guide for Compiling Registration Documents: Regulations In Force and AMF Interpretations and Recommendations" December 2009 and available on the AMF's website (www.amf-france.org) under "Publications > Guides > Professional guides".

⁵⁰ Interpretation 2, "Risk factors", in the Guide to Compiling Registration Documents issued 30 January 2006.

⁵¹ Interpretation 6, "Markets and competition", in the Guide to Compiling Registration Documents issued 30 January 2006.

⁵² Recommendation 3, "Capital structure: statement of changes in equity in the past three years and shareholders' pacts", in the Guide to Compiling Registration Documents issued 30 January 2006.

⁵³ Under this principle, only subjects of "material" importance need be mentioned in detail. Information is deemed to be of material importance if omission or inaccuracy of that information could influence the economic decisions that users make on the basis of annual financial statements.

⁵⁴ Guide to Compiling Registration Documents for small and mid-cap companies, updated 10 December 2009 and available on the AMF's website (www.amf-france.org) under "Publications > Guides > Professional guides".

⁵⁵ Questions and answers on preparation of registration documents, 10 December 2009, available on the AMF's website (www.amf-france.org) under " Texts > Access by category of text > AMF positions ".

C – AMF recommendation on financial disclosure by distressed companies

The AMF reminds companies that they remain subject to periodic and ongoing disclosure obligations regardless of the type of court procedure that has been initiated⁵⁶. There is an exception to the ongoing disclosure obligation under which publication of certain information can be deferred so as not to harm the company's legitimate interests, provided non-dissemination is unlikely to mislead the public and the issuer is able to ensure the confidentiality of the information by controlling access to it.

With a protection procedure, a question arises as to the linkage between two apparently contradictory standards: on the one hand, the confidentiality obligation under the protection procedure for distressed businesses, founded on Article L611-15 of the Commercial Code; on the other, the transparency obligation established by Articles 223-1 et seq. of the AMF General Regulation that requires disclosure of financial information to the market. Although the duty of confidentiality applies to "any person who has taken part in the composition proceedings or in a special commission, or who, by virtue of his duties, knows about these", this principle cannot be grounds for the issuer to provide no information at all on its financial position, whether to the AMF or to the market. Accordingly, a company in this situation should inform the AMF that a protection procedure has been initiated while maintaining confidentiality about the procedure itself; it should also inform the market about the difficulties it has encountered, in particular about the levels of its debt and available liquid assets. In the case of collective proceedings, the Commercial Code imposes no particular confidentiality obligation. It provides that court orders initiating protection, reorganisation and liquidation proceedings should be made public by an announcement in a legal gazette and notification to the commercial registry. For its part, the issuer, under the supervision of the court-appointed administrator, has a duty to disclose information to the market as required by the AMF General Regulation. The company must accordingly inform the AMF and the market when the procedure is opened as well as at each significant later stage.

D – Modifying characteristics of share warrants through a public exchange offer

The AMF recommends that any significant modification of the warrant issue contract should be submitted for shareholder approval in the form of a specific resolution. This should be done at an extraordinary general meeting at which a new expert's report is presented on the consequences of the modification and especially on the amount of the resulting benefit for the warrant holders⁵⁷. Public exchange offers of new warrants with better terms than earlier issues have the same substantive effects on the outstanding warrants as would modification of the issue contract, and they circumvent this recommendation by avoiding a vote on a specific resolution at a general meeting.

For this reason, where an exchange offer is targeted at warrants held by executive directors and/or large shareholders, thus giving rise to a material conflict of interests, the AMF recommends that⁵⁸:

- > the use of a public exchange offer should be authorised by a specific resolution,
- > the shareholders holding the warrants targeted by the exchange offer should abstain from voting where the conflict of interests is manifest.

The AMF also recommends that the independent expert's report should:

- > explain how the proposed exchange offer could be advantageous to the company and its shareholders;
- > describe the conflict of interest arising from the fact that executives or certain major shareholders are substantial holders of the warrants targeted by the exchange offer;

⁵⁶ AMF recommendation on financial disclosure by distressed companies, published 28 July 2009 and available on the AMF's website (<http://www.amf-france>) under "Texts > Access by category of text > AMF recommendations".

⁵⁷ Chronicle of corporate finance: "Modification of share subscription warrants after issuance – Guidance on the independent expert's report", 27 November 2008. Available on the AMF's website (www.amf-france.org) under "Texts > Access by category of text > AMF positions".

⁵⁸ "Modifying characteristics of share warrants by means of a public exchange offer". AMF recommendation of 19 January 2010, available on the AMF's website (www.amf-france.org) under "Texts > Access by category of text > AMF recommendations".

> quantify the benefit to these holders under the proposed exchange offer;

> state in conclusion that the proposed exchange ratio is fair from the holders' standpoint and does not adversely affect the rights of shareholders.

3 – Activity in 2009 (excluding tender offers)

A – Corporate finance in 2009

The number of approvals issued by the AMF increased in 2009, to 358 compared with 291 in 2008.

More particularly, the number of approvals for corporate finance transactions increased, rising from 195 in 2008 to 251 in 2009.

1 > Initial public offering and listings

Approvals issued for initial offerings and listings	2008	2009
Compartment A	1	1
Compartment B	0	0
Compartment C	2	0
Professional segment	1	2
Foreign Securities Compartment	1	1
Euronext	5	4
Alternext	6	0

Source: AMF

The AMF issued four approvals in 2009 for initial public offerings or listings on Euronext: CFAO, Partner Re Ltd, Cliffs Natural Resources and Weatherford International Ltd.

The securities of Cliffs Natural Resources, a mining and natural resources company, and Weatherford International Ltd, an oilfield services company, were admitted to trading in the professional segment of Euronext Paris. These two listings raised to four the number of companies (at 31 December 2009⁵⁹ listed in the professional segment, which was created in December 2007.

The AMF issued no approvals for initial public offerings on Alternext.

2 > Delistings

Delistings	2008 Company	2009 Company
Compartment A	6	0
Compartment B	10	4 (*)
Compartment C	20	15 (**)
Professional segment	1	0
Special Compartment	0	2
Foreign Securities Compartment	6	4
Euronext	43	25
Alternext	2 (***)	7 (***)

(*) includes 1 foreign company: Paris Re Holding

(**) includes 1 foreign company: Thenergo

(***) includes 2 foreign companies: China Corn Oil, Conporec

Source: AMF

⁵⁹ Anheuser Busch had been listed but was subsequently delisted after its merger with Inbev.

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Delisting procedures

Delisted subsequent to:	2008	2009
> Buyout with a squeeze-out	9	7
> Squeeze-outs following buyout	20	5
> Sales facility	2	1
> Mergers	4	2
> Court-ordered liquidations, dissolution or transfer of assets /	7	10 (*)
> Market transfer	1	0
> Buyout without squeeze-out	2	0
> Voluntary purchase and sale offers	0	3
> Mandatory repurchases of securities	0	2
> At the company's initiative	0	2
Total:	45	32

(*) includes Conporec: transaction and arrangement plan by the superior court of Québec

Source: AMF

3 > Other financial transactions

a) Issuance, disposal and listing of equity and hybrid securities

The number of issues on regulated markets increased by 70%, with 63 approvals in 2009 compared with 36 in 2008.

	2008	2009	% change
ISSUES AND ADMISSIONS ON A REGULATED MARKET	36	63	70
1. With pre-emptive rights	11	40	-
. SHARES	7	31	-
. ABSA ⁶⁰	1	0	-
. OBSAR ⁶¹	3	6	-
. ORA ⁶²	0	2	-
. OCEANE ⁶³	0	1	-
2. Without pre-emptive rights	25	23	-
. SHARES	13	5	-
. ABSA	2	0	-
. BSAR ⁶⁴	0	2	-
. OCEANE	2	14	-
. OBSA ⁶⁵	0	1	-
. OBSAR	7	0	-
. ORA	0	0	-
. ORNANE ⁶⁶	0	1	-
. ORANE ⁶⁷	1	0	-
. OTHER ⁶⁸	0	0	-

Source: AMF

⁶⁰ ABSA: share with share warrants.

⁶¹ OBSAR: bond with optionally redeemable share warrants.

⁶² ORA: bond redeemable in shares.

⁶³ OCEANE: bond convertible into new shares or exchangeable for existing shares.

⁶⁴ BSAR: redeemable share subscription warrant.

⁶⁵ OBSA: bond with share warrant.

⁶⁶ ORNANE: bond redeemable in cash and new or existing shares.

⁶⁷ ORANE: bond redeemable in new or existing shares.

⁶⁸ OTHER: bond with interest payable in cash and/or new shares.

The number of issues on Euronext with pre-emptive rights for existing shareholders increased significantly, to 40 in 2009 from 11 in 2008, owing mainly to the number of capital increases (31 in 2009 compared with seven in 2008) and issues of OBSARs (six in 2009 compared with three in 2008). The number of issues without pre-emptive rights declined very slightly. In contrast, the number of issues of OCEANEs without pre-emptive rights rose, with 14 transactions in 2009 compared with two in 2008.

The number of approvals for issues outside regulated markets increased sharply⁶⁹ in 2009 relative to 2008, to 48 from 18. Transactions by taxpayers subject to France's wealth tax (ISF) accounted for 26 of these approvals in 2009: the TEPA Act⁷⁰ provides an ISF rebate to encourage investment in SMEs not traded on a regulated market. The investment can be made either directly, by acquiring an equity interest in an unlisted SME, or indirectly, by subscribing to units of a local investment fund (FIP), innovation fund (FCPI) or venture capital fund (FCPR). The AMF is concerned by this tax provision because of its role in issuing approvals to companies and granting authorisations to FIPs, FCPIs and FCPRs, and also because of the direct marketing activities carried on by banks and financial institutions to reach investor clients.

b) Approvals relating to issuance, disposal and admission to trading of debt securities

The number of approvals relating to debt securities rose from 57 in 2008 to 71 in 2009. This 24% increase is attributable to the rise in approvals for admission to trading and for debt issuance programmes.

c) Registration documents and initial offering base documents

	2008	2009	%
1. Registration documents	367	354	3.26
> ex-post review after filing	272	274	1.10
> ex-ante review before registration	95	80	15.78
2. Updates and corrections to registration documents	74	88	18.91
> Corrections to registration documents	3	5	66
> Updates to registration documents	71	83	16.90
3. Initial offering base documents	5	2	60

Source: AMF

Most of the registration documents filed with the AMF are subject to ex-post review: 274 at year-end 2009, compared with 272 at year-end 2008. In addition to these, in 2009 the AMF registered 80 registration documents under the ex-ante review procedure.

Any company listed on Euronext Paris may file a registration document pursuant to the AMF General Regulation⁷¹. The document presents the business, risks, financial position, earnings and outlook of the company, thus providing investors with comprehensive information. The registration document is a hallmark of quality for shareholders and the public. More than half the French companies listed on Euronext Paris prepare one every year, including almost all major companies.

⁶⁹ For equity securities only. The figure given in the 2008 Annual Report was subsequently changed to 18.

⁷⁰ Act 2007-1223 of 21 August 2007 on work, employment and purchasing power.

⁷¹ Article 212-13 of the AMF General Regulation: "1° All issuers of financial instruments admitted for trading on a regulated market may prepare a registration document every year, as specified in an AMF instruction" It is expected that companies listed on Alternext Paris will be given the option of preparing registration documents annually.

4 – Tender offers

A – Statistics on tender offers in 2009

The decline in the number of tender offers in 2008 became a significant trend in 2009: in all, 29 compliance decisions were taken in respect of offers opened during 2009, compared with 41 in 2008.

Tender offers initiated during the year⁽¹⁾	2006	2007	2008	2009
Offers under the standard procedure	6	13	8	5
Offers under the simplified procedure	23	32	18	13
Buyout	3	3	-	1
Buyout with a squeeze-out	19	7	8	6
Share buyback offers	2	2	2	1
Standing market offers	6	9	4	3
Squeeze-outs with compliance statement ⁽²⁾	0	1	1	0
Squeeze-outs without compliance statement ⁽²⁾	4	10 ⁴	18	5
Total⁽³⁾	59	67	41	29

Source: AMF

⁽¹⁾ Offers held to be non-compliant are not counted. Offers that lapsed or were withdrawn by the offeror (e.g., Gemalto's offer for Wavecom in 2008) are counted.

⁽²⁾ Provision introduced by Act 2006-387 of 31 March 2006 on tender offers.

⁽³⁾ Excludes squeeze-outs without compliance statement.

⁽⁴⁾ Includes one squeeze-out authorised by the Luxembourg market authority on a company having its registered office outside France.

The number of tender offers entailing a change in control (in the sense of a post-tender holding of more than 50% of the equity and voting rights of the target company) was 13 in 2009, down from 23 in 2008. These included eight changes of control to be followed by a squeeze-out (standing market offer or simplified tender offer) and five changes of control subsequent to a tender offer under the standard procedure.

Of the five takeover offers opened in 2009 under the standard procedure, only one was unsolicited⁷², compared with four in 2008.

There were four "simplified" tender offers made by the historical controlling shareholder of the target company for the purpose of delisting its shares. All were followed by a squeeze-out. For comparison, there were five such offers in 2008.

⁷² Tender offer of SiegCo for Valtech

6 – Consultative commissions and advisory groups

A – Disclosures and Corporate Finance Consultative Commission

Composition:

Yves Mansion, chairman

Olivier Poupert-Lafarge, vice-chairman

Olivier Assant (Cabinet Bredin Prat), Jean-François Biard (BNP Paribas), Philippe Bougon (Schneider Electric), Jean-Régis Carof (L'Oréal), Franck Ceddaha (Oddo Corporate Finance), Christophe Clerc (Marccus Partners), Jean-Jacques Dedouit (Cailliau Dedouit et Associés), Philippe d'Hoir (Fidal), Marie-Noëlle Dompé (Darrois Villey Maillot Brochier), France Drummond (Université de Paris II Panthéon-Assas), Olivier Dudouit (Euronext), André Dupont-Jubien (Veil Jourde), Jacques Espinasse (independent director), Christian Labeyrie (Vinci), Philippe Lagayette (JP Morgan), Michel Léger (Léger & Associés), Olivier Mallet (Vallourec), Vincent Marcel (Valeo), Alain de Marcellus (CAP Gemini), Patrice Marteau (Acteo), Marie-Christine de Nayer (Société Générale), Hervé Philippe (Havas), Gilles Requillart (PSA), Jacques Rossi (Cabinet Rossi), Eliane Rouyer-Chevalier (ACCOR), Caroline Weber (Middlenext).

The Disclosures and Corporate Finance Consultative Commission met nine times in 2009.

Its opinion was sought and received on the following subjects in particular:

1 > Reforms of the regime for public offers of securities and notification of major holdings implemented pursuant to the Modernisation of the Economy Act⁷³

The commission was consulted on modifications to the AMF General Regulation implementing the reform of the regime governing public offers of securities (*appel public à l'épargne*), which was replaced by a new concept: a public offering of financial instruments (*offre au public d'instruments financiers*). The Commission gave its observations during the scrutiny of the draft order on notifications of major holdings and declarations of intent. It was also consulted on the proposed amendment of the General Regulation provisions on tender offers.

2 > Accounting disclosure

Regarding changes in AMF policy on accounting disclosure, the commission's opinion was sought on the following matters: first-time application of the Transparency Directive and the study on financial disclosure in respect of the first half of 2008; the Statutory Audit Directive and the study on auditors' fees; and preparation of the 2009 financial statements and the AMF recommendations in this regard.

3 > Amendment of the Prospectus and Market Abuse Directives

At the time of the European Commission's consultation on amendments to the Prospectus Directive, the opinion of the commission was sought on that subject as well as on the AMF's draft response to the consultation on revising the Market Abuse Directive.

4 > Changes to information requirements, notably for registration documents

Regarding changes in some of the AMF's positions on corporate finance transactions and disclosures, the opinion of the commission was sought on the following points: the update of the most important aspects of the Guide for Compiling Registration Documents issued in 2006: risk factors, ownership structure, activities of the issuer; the recommendation on preparing financial transactions requiring an approval; and the preparation of a Q&A on preparing registration documents.

5 > Transfer to Alternext and efforts to revive the bond market

The Consultative Commission on Disclosures and Corporate Finance was kept informed during 2009, in particular at the time of the public consultation organised by the AMF, regarding transfer procedures for Euronext-listed companies moving to Alternext.

The commission was also informed about the action the AMF was taking under the auspices of the High-Level Committee to revive the primary bond market in France.

⁷³ Act 2008-776 of 4 August 2008.

6 > Listed company governance and internal control

Regarding corporate governance, and apart from the detailed scrutiny of the transposition of the Shareholder Rights Directive, the opinion of the commission was sought in July 2009 on the AMF's draft report on compensation of executive directors of listed companies and implementation of the AFEP/MEDEF recommendations⁷⁴, and in November 2009 on the AMF's draft annual report on corporate governance and internal control⁷⁵.

The Consultative Commission provided its observations on the December 2008 order requiring listed companies to have an audit committee. It was also informed about the European Commission's Regulation on credit rating agencies, adopted in September 2009, especially as regards the practical consequences for issuers.

B – Cross-industry working groups on issuer activities

1 > AMF and Paris Europlace: joint efforts to revive the primary and secondary markets for bonds

a) Primary market

In the wake of the 2008 crisis, Paris Europlace, under the impetus of the Financial Services High-Level Committee chaired by the French finance minister, set up a number of working groups to explore ways of making Paris more competitive as a financial centre. The Issuers group led by Patricia Barbizet addressed issues relating to the primary and secondary bond markets. Working in parallel with and with input from the Europlace group, the AMF took various actions to simplify its procedures and make the necessary changes to its General Regulation to achieve the High-Level Committee's objective of making the Paris bond market more competitive. The AMF's main objectives were to understand why many practitioners believed that it was fundamentally more complicated to get bonds listed for trading in Paris than on other foreign exchanges; and then to examine solutions to remedy this problem.

On the basis of this work, the AMF adopted the measures detailed below.

In the area of regulation, the AMF proposed two successive amendments of its General Regulation so that a completion letter would no longer be required for bond issues and that matters relating to the translation of documents incorporated by reference would be taken into account. In addition, the AMF set up an internal working group on procedures for tender offers on debt securities. This group was scheduled to complete its work in early 2010.

On the question of interpretations, the AMF issued clarifications on a number of points that might cause difficulties in comprehension for issuers or intermediaries. In particular, the AMF:

1. clarified the time limits for its scrutiny of prospectuses;
2. stated that it would not require a blackout period before an issue and that each issuer could decide on its own at the time of issue whether to impose one, based on the information it would be disclosing and the impact on the market and on the securities it was about to have listed;
3. reminded companies that it was up to them to determine whether to prepare a supplement to their issuance programme, for example when publishing their quarterly reports.

The AMF published a guide to preparing bond prospectuses⁷⁶ and procedures for obtaining approvals. It also organised a briefing for issuers.

b) Secondary market

As part of the effort to revitalise the bond market, the AMF Board tasked two of its members, Dominique Hoenn and Jean-Pierre Pinatton, to report on how the secondary bond market was working and to look at ways of achieving greater liquidity by acting on market structure and market information.

⁷⁴ Available on the AMF's website (<http://www.amf-france.org>) under "Publications > Working group reports".

⁷⁵ Posted on 8 December 2009 on the AMF's website (<http://www.amf-france.org>) under "Publications > Annual Reports > Report on Internal Control and Corporate Governance".

⁷⁶ Available on the AMF's website (<http://www.amf-france.org>) under "Publications > Guides > Professional guides".

This report addressed both the problem of market transparency and the absence of a tool to assist collective investment schemes with bond valuations.

The report proposes four avenues to be explored:

- > Support post-trade disclosure requirements at EU level; in the meantime, an agreement among industry groups to give more information to the market could offer a provisional solution, provided it could be reached quickly.
- > Allow refinancing at the European Central Bank in abnormal market situations.
- > Encourage banks to make a commitment to issuers to maintain liquidity in certain debt issues, which would then bear a distinguishing label.
- > Implement a liquidity maintenance agreement systematically for debt securities offered to the public, so retail investors can be sure that the securities they purchase can be resold on acceptable terms.

On the basis of this work, the Europlace Issuers group looked at developing a structure designed to enhance liquidity in this market and provide better information on traded prices. Led by the High-Level Committee, work continues on implementing an infrastructure for the secondary bond market in 2010.

2 > Working group on audit committees

The Executive Order of 8 December 2008 transposing the Statutory Audit Directive⁷⁷ brought in an audit committee requirement for entities whose securities are admitted to trading on a regulated market⁷⁸.

This committee is responsible for overseeing, *inter alia*:

- > the process of preparing the financial information disclosed by the entity,
- > the effectiveness of the entity's internal control and risk management systems,
- > the statutory audit of the annual and, if applicable, consolidated financial statements by the external auditors, and
- > the independence of those auditors.

In addition, the scope of the chairman's report on internal control procedures was extended in 2008 to cover the entity's risk management procedures.

The AMF decided to establish a working group to address issues concerning audit committees and amendments to the AMF's reference framework for risk management. Composed of industry professionals, the group was chaired by Olivier Poupart-Lafarge, a member of the AMF Board. The first meeting was held in October 2009. The group expected to deliver its work by the end of the first quarter of 2010 at the latest in the form of a practical guide for companies on implementing the provisions of the 2008 order.

3 > Working group to harmonise valuation practices

Markets rely on many types of valuations: independent experts' reports for tender offers, special auditors' reports for mergers or capital contributions, valuations of property portfolios for real-estate collective investment schemes (OPCIs), determinations of net asset values of collective investment schemes – not to mention the valuations involved in preparing the financial statements of listed companies (goodwill, pension obligations and the like) and on which their auditors report. In France, unlike in other European countries, the profession of appraiser or valuation consultant is neither regulated nor organised. To advance its explorations of this subject, the AMF set up a working group led by Michel Prada during the second quarter of 2009. The group's remit is to:

- > ensure better representation of the profession at the international level;
- > harmonise valuation practices and foster a business ethic.

This group met twice in 2009 and will continue its work in 2010. One of its initial conclusions is that a French federation of valuation experts should be established. The purpose of this federation would be to ensure international representation of valuation experts, in particular on the International Valuation

⁷⁷ Directive 2006/43/EC of 17 May 2006.

⁷⁸ And which are not controlled by a publicly traded entity with an audit committee.

Standards Committee (IVSC); to work in favour of adopting IVSC standards and best practices in France; and to foster sharing of knowledge and experience among its members. The group is also considering what role the AMF might have in this area. The group was to report its conclusions by the end of the first quarter of 2010.

4 > Credit rating agencies

Following adoption by the European Parliament and the Council of Regulation (EC) 1006/2009 on credit rating agencies (CRAs), CESR assembled a group of experts on CRAs to draw up the guidance called for in the regulation. Some of these guidance items – the ones CESR was asked to release by 7 June 2010 – were put out to public consultation in November 2009. They address the following provisions of the EU Regulation: registration procedures; the functioning of colleges of regulators; the content of the information to be filed when applying for registration; and the information to be kept in the central CESR registry. During the fourth quarter of 2009 the CESR expert group began to draw up the guidance to be issued by 7 September 2010. This relates primarily to the quality of rating methodologies and to supervision and monitoring of the rating process. The expert group also began work on assessing equivalence of third countries' legal and regulatory frameworks for registering and supervising credit rating agencies. This assessment work was to be submitted to the European Commission during the first quarter of 2010. Lastly, following the decision by the ECOFIN council on 2 December 2009 to transfer registration and supervision of credit rating agencies to the future European Securities Market Authority (ESMA), the CRA Regulation has to be amended. The European Commission must therefore propose a draft revised regulation.

7 – International cooperation on financial disclosure, accounting and audit matters

Many listed companies continued to feel the effects of the financial crisis during 2009. For this reason, the problems of determining the fair value of certain instruments (IAS 39, Financial Instruments: Recognition and Measurement), evaluating impairment of tangible and intangible assets (IAS 36, Impairment of Assets), evaluating employee benefits (IAS 19), and classifying debt instruments with covenants remain of particular concern.

In this still unsettled context, some new initiatives have been taken at international level to carry forward the explorations begun in 2008, notably regarding fair value and accounting for financial instruments.

A – G20 Leaders' Statement

In September 2009 in Pittsburgh, the G20 heads of state and government stated their desire to see international accounting standard setters (primarily FASB⁷⁹ and IASB⁸⁰) work together to propose high-quality accounting standards and finalise their convergence project by 2011. The IASB was once again called on to further enhance the involvement of various stakeholders.

This statement was aimed in particular at the joint IASB/FASB project to revise standards for financial instruments, initiated as a direct consequence of the financial crisis. A number of countries in Europe and elsewhere had called for convergence of accounting standards in order to level the competitive playing field on both sides of the Atlantic. This call came in particular following the FASB's adoption in April 2008 of a standard that served to limit the earnings impact of write-downs on debt securities classified as available-for-sale instruments. In the end, the IASB chose not to propose "marginal" changes to IAS 39 but to forge ahead with its project for a complete overhaul of the standard. That project was launched by the Board in July 2009 with the publication of an exposure draft, Financial Instruments: Classification and Measurement. This was followed in November 2009 by the publication of a final standard, IFRS 9, and a second exposure draft, Financial Instruments: Amortised Cost and Impairment.

⁷⁹ Financial Accounting Standards Board.

⁸⁰ International Accounting Standards Board.

B – Work of the Financial Crisis Advisory Group (FCAG)

On 30 December 2008 the IASB and the FASB announced the formation of a joint expert group, the FCAG, to propose improvements in financial disclosure and reporting on the crisis in order to restore confidence. Former AMF Chairman Michel Prada is a member of this group. CESR has a presence at the FCAG as an observer and is represented by the chairman of CESR-Fin⁸¹.

The FCAG met six times between January and June 2009. On 28 July 2009 the FCAG issued a report⁸² to members of the FASB and the IASB. The report proposes four broad principles as well as a series of recommendations to improve the process of developing international standards, both operationally and in terms of effectiveness.

C – Work of CESR-Fin on accounting and financial disclosure

1 > Organisation of CESR-Fin

The main task of CESR-Fin is to monitor regulatory developments in accounting and auditing at European Union level. To this end, it coordinates action by regulators within the EU and identifies issues that, going forward, will require CESR to become involved⁸³. It provides its expertise to other CESR bodies to help resolve problems that include an accounting dimension. It also serves as the point of contact with the main market regulators outside Europe for international cooperation on financial disclosure.

CESR-Fin maintains close relations with other EU bodies:

- > as observer at the European Commission⁸⁴, and
- > in other bodies within the same domain as itself, such as EFRAG⁸⁵.

In addition, one of CESR-Fin's representatives has participated at meetings of the IASB's Standards Advisory Council since 2005.

2 > CESR work and publications on financial instruments

CESR-Fin continued its exploration, begun in 2008, of the issues in measuring financial instruments at fair value during a financial crisis, and it has made an effort to provide some answers to the market. Its work led CESR to publish the following documents in 2009.

> In January 2009, an update of its survey of principal European financial institutions on their application of the amendment to IAS 39 issued by the IASB in October 2008 in their consolidated financial statements for 2008. This amendment allowed certain financial instruments to be reclassified. As expected, the updated survey showed that a greater number of financial institutions applied the amendment in their year-end statements than did so in their interim statements at 30 September 2008.

> In November 2009, the results of another survey – again, of principal European financial institutions – on application of IFRS 7 in their consolidated financial statements for 2008. The survey results show that European financial institutions still need to improve the information they disclose in the notes to their financial statements, in particular as regards the internal models they use to value certain financial instruments and their ties with special-purpose entities.

3 > European Enforcers Coordination Sessions (EECS)

The EECS, a subcommittee of CESR-Fin, was set up to catalogue and share the main positions taken on application of IFRS so as to ensure that regulators in Europe take a converging approach to enforcement of their use by listed companies.

⁸¹ CESR-Fin, which is CESR's operating group in the area of financial reporting, is a group of CESR experts in accounting and auditing.

⁸² Available on the IASB's website at <http://www.iasb.org>

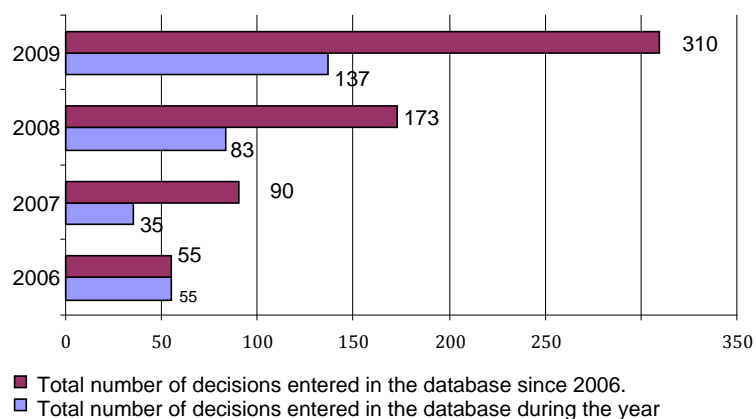
⁸³ For example, by producing or adapting a CESR standard, developing final recommendations or publishing guides to application.

⁸⁴ In particular its accounting regulatory committee and its audit regulatory committee.

⁸⁵ European Financial Reporting Advisory Group, established in 2001 at the initiative of the European Commission but functionally independent of it. EFRAG is charged with providing technical advice to the ARC on new standards and interpretations.

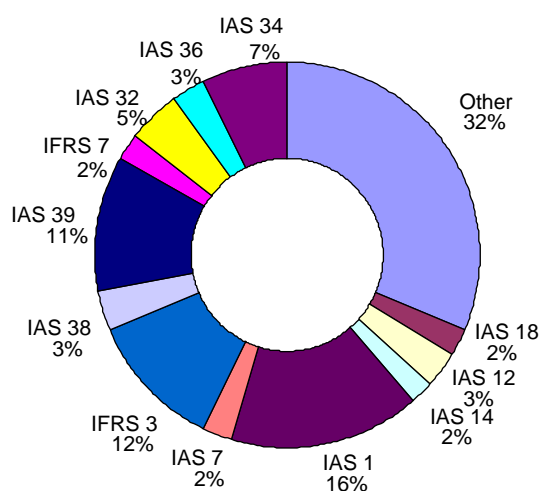
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These sessions (seven in 2009) provide an opportunity for regulators to exchange information on problems they have encountered. The decisions taken at the meetings are included in the subcommittee's database. At year-end 2009, 310 decisions were on record in the database, compared with 180 one year earlier. The following chart shows how the EECS database has grown since it was launched in January 2006.



Source: EECS database

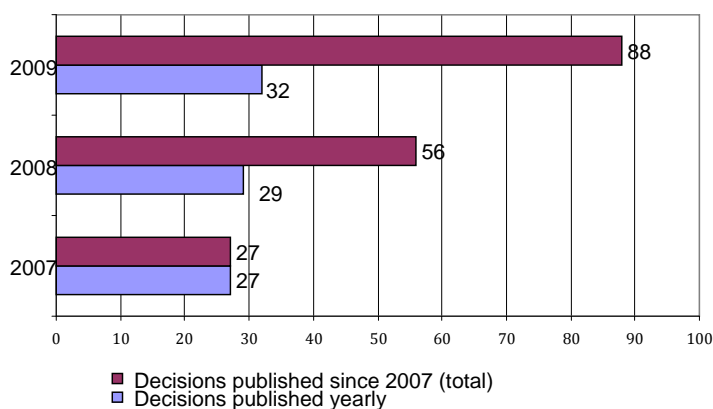
These 310 decisions concern the following IASB standards:



Source: EECS database

Important: The following English text is a translation of extracts from the French version of the 2009 Annual Report. Only the original French text has any legal value. The AMF expressly disclaims all liability for any inaccuracies in the translation

CESR has been publishing extracts of its database regularly since 2007. In 2009 it released three additional extracts containing a total of 32 decisions. To date, 88 decisions have been published. The next chart shows how the number of published decisions has varied since 2007.



Source: EECS database

In this way, CESR performs a useful service by presenting specific cases that can be learned from in a given national framework, since the situations described can serve as a guide for other jurisdictions. Publishing these decisions and the reasons behind them helps to ensure uniform enforcement of IFRS within the European Union.

4 > Contribution of CESR to the work of the IASB and IFRIC⁸⁶

CESR issued comments on the following subjects:

a) Work of the IASB

- > Exposure Draft (ED) on Investments in Debt Instruments;
- > ED proposing to amend IAS 39 and IFRIC 9 on the subject of embedded derivatives;
- > ED proposing an amendment of IAS 24 on relationships with the state;
- > ED 10, Consolidated Financial Statements;
- > Discussion Paper (DP), Preliminary Views on Financial Statements Presentation;
- > DP, Preliminary Views on Revenue Recognition in Contracts with Customers;
- > DP, Preliminary Views on Leases;
- > ED proposing amendments of IAS 39 on the subject of derecognition;
- > ED proposing amendments of IAS 12, Income Tax;
- > DP, Credit Risk in Liability Measurement, on taking credit risk into account in measured value;
- > ED proposing an amendment of IAS 32 regarding classification of rights issues.
- > ED, Financial Instruments: Classification and Measurement;
- > ED, Fair Value Measurement;
- > ED, Discount Rate for Employee Benefits;
- > ED, Improvements to IFRS, on improvements to the 2009 Standards;
- > ED, Rate-Regulated Activities.

⁸⁶ International Financial Reporting Interpretations Committee.

b) Work of IFRIC

CESR's comments on the work of IFRIC related to:

> IFRIC's tentative rejection of the need for clarifications on how the criteria for a "significant or prolonged" decline (IAS 39 paragraph 61) are to be applied.

> the draft interpretation (ED25) on Extinguishing Financial Liabilities with Equity Instruments.

Regarding the ED on classification and measurement of financial instruments (which led to the publication of IFRS 9 in November), CESR made known its position, which is highly critical of the choices the IASB made in developing this draft. CESR emphasised that the staged approach chosen by IASB makes it hard to analyse the consequences of the new rules put forward in phase 1. Thus, it is difficult to tell whether the problems identified during the financial crisis will be dealt with in satisfactory fashion by the draft standard. CESR and other commenters also pointed out how necessary phases 2 and 3 were to a proper understanding of the consequences of the phase 1 provisions. As CESR did not fail to stress, priority ought to have been given to addressing the problems associated with losses of value on equity and debt instruments, as various institutions (including the European Commission) had requested. In its comments, CESR regretted that the IASB had not chosen an approach similar to that taken by the FASB, which decided to tackle this subject by addressing all the aspects at once rather than in phases.

However, CESR recognised that the IASB's draft was responsive to certain important requests from preparers and users of financial statements and from regulators. Particularly notable among the improvements is that the rules for financial instruments are simplified even as two different methods of valuation (fair value and amortised cost) are retained, and the importance of the business model is recognised in determining which method is to be used.

5 > Contribution of CESR to revision of the IASCF constitution⁸⁷

The IASCF's constitution lays down the objectives and governance of the organisation. In particular, it specifies the roles, selection criteria and selection procedures for trustees of the IASCF, members of the IASB (the standard-setter), members of IFRIC (the committee that interprets the standards) and members of the Standards Advisory Council, which is charged with advising the Board on its agenda and any major project. The IASCF began the second phase of the review of its constitution in January 2008. The second phase is scheduled to be completed in 2010.

This phase is further divided into two parts.

> Part I is limited to two aspects which the trustees wished to apply from January 2009 (proposals published in July 2008, comments due by 20 September 2008):

- one relates to governance and responsibility of the IASCF. It establishes a Monitoring Board representing official organisations (including market regulators) that would approve appointments of trustees and conduct a review of the trustee's oversight;

- the other relates to enlargement of the IASB from 14 to 16 members (4 members from Asia-Pacific, 4 from Europe, 4 from North America, 1 from Africa, 1 from South America, 2 others from any region consistent with maintaining worldwide geographic balance).

> Part II covers the other aspects of the constitutional review. It is likewise divided into two parts.

- The first part is a discussion document asking for suggestions on the issues to be covered. This document was published in December 2008 with comments due by 31 March 2009.

- The second part is a document for comment on a proposal of the trustees for specific changes, such as changing the name of the Board, systematic reference to the IFRSs, and the composition and term of office of its members. This proposal was published on 9 September 2009.

In 2009 CESR commented on the two documents of Part II⁸⁸.

⁸⁷ International Accounting Standards Committee Foundation.

⁸⁸ The two comment letters are available on CESR's website (<http://www.cesr.eu>) under "CESR-Fin".

6 > CESR's contribution to the European Commission consultations on auditing

In 2009 CESR sent a comment letter to the European Commission in response to two public consultations organised by the Commission:

- > the consultation launched in November 2008 on ownership structures of audit firms and foreseeable changes in this area. This consultation followed up on an independent study of rules on ownership of audit firms and the consequences for concentration in the audit market.
- > the consultation launched in July 2009 on adoption of the international audit standards (ISA)⁸⁹ in Europe.

7 > Exchanges between CESR-Fin and the SEC

Since August 2006, when CESR and the SEC established a joint work plan, the two bodies have held meetings on a regular basis. They met twice in 2009.

Subjects discussed at these meetings include:

- > the functioning of the IASB Monitoring Board,
- > the SEC's roadmap for adoption of IFRS by US issuers,
- > the FASB/IASB joint work plan.

8 > Other CESR working groups

a) Prospectus working group

CESR established this body in 2005 as a contact group between regulators for the purpose of facilitating operation of the European passport and ensuring harmonised implementation of the Prospectus Directive. In 2009 the working group devoted most of its efforts to the review of the directive.

For the public consultation launched by the European Commission in January 2010, the Prospectus group prepared the response that CESR provided to the Commission. In the response, CESR emphasised the necessity of ensuring greater consistency between the definitions of qualified investors and large undertakings in the Prospectus Directive and the definitions of professional clients and eligible counterparties in the Markets in Financial Instruments Directive. CESR also asked the Commission to clarify the regime for offerings in which companies sell through intermediaries ("retail cascades") to eliminate any likelihood that the intermediaries involved, particularly at the lowest level of the cascade, would be required to draw up a prospectus.

The Prospectus group also continued its work on assessing equivalence for prospectuses drawn up under the laws of third countries. In particular, the group examined the applicable prospectus requirements for issuers based in Israel.

CESR's Q&A on prospectuses was updated three times in 2009. The main update addressed the looser requirements for prospectuses of issuers not quoted on a regulated market in respect of offers of securities reserved for their employees.

b) Transparency working group

In 2009 the Transparency Expert Group (TEG), charged with examining the progress of convergence within the EU under the Transparency Directive and its implementing measures, carried on with the work begun in 2008⁹⁰.

After releasing in late 2008 a status report on transposition of the directive in the various Member States, the TEG in 2009 published a set of positions common to all the authorities, with a view to removing obstacles to harmonised implementation. A first series of questions and answers, available on the website since 19 May 2009⁹¹, addresses, among other topics, the possibility of including the additional disclosures in annual financial reports, offsetting of long and short positions, and

⁸⁹ International Standards on Auditing (ISA). The ISA standards are developed by the International Auditing and Insurance Standards Board (IAASB).

⁹⁰ The authorities' individual responses and a summary of them (2008) are available on CESR's website at <http://www.cesr.eu/index.php?page=groups&mac=0&id=41>.

⁹¹ <http://www.cesr.eu> under "Standing Committees > Corporate finance > Transparency".

implementing the disclosure obligation for regulated information. This Q&A was updated on 27 October 2009 with a second series of questions and answers. Topics addressed include determining the Member State of origin where a third-country issuer is delisted in one state and relisted on a regulated market in another Member State, and a number of clarifications on enhanced content of the quarterly interim report.

A consultation paper was also issued regarding a standard reporting method for financial information⁹². The public consultation was held from 27 October to 30 November 2009. The group's objective is to gather the information already in existence, in particular in states that are already using Extensible Business Reporting Language (XBRL) for reporting, with a view to making an initial assessment. The results of the consultation will be presented in the expert group's report to European Commission in 2010 on development possibilities for the pan-European financial data storage network.

The group also worked on preparing a consultation paper regarding the proposal to extend the major holding notification regime to financial instruments with an economic effect similar to that of holding shares or the right to acquire them. The group's objective is to gather existing information on this subject in Member States so as to coordinate national efforts to reach a more uniform approach. The desired approach would permit common regulatory initiatives at national and EU level and would be outlined in the group's report to the European Commission regarding the revision of the Transparency Directive in 2010.

Lastly, the group continued its work on comparing Member States' forms for notification of major holdings with a view to proposing a new EU-standard form that would be clearly laid out and easy to fill in.

D – Work of IOSCO on accounting and financial disclosure

IOSCO's Standing Committee 1 (SC1)⁹³, tasked with improving accounting and financial standards at international level, continued its work through four subcommittees: Accounting, IFRS Interpretation & Enforcement, Audit and Nonfinancial Disclosure.

1 > Contribution of SC1 to the work of the IASB and IFRIC

Through its accounting committee, SC1 continued its work of monitoring drafts prepared by the IASB and IFRIC. At IFRIC, SC1 has two observers, one from the SEC, the other from the AMF.

SC1 is represented on the Standards Advisory Council, the body that advises the IASB on priorities for its work programme. Since September 2008 SC1 has also been part of the IASCF XBRL Advisory Council, a consultative body of the IASCF that cooperates in the development of XBRL, an electronic language for exchanging business information.

In 2009 the accounting committee commented on numerous proposals for standards including:

- > ED on a modification of IFRS 5, Discontinued Activities;
- > ED on amending IFRS 1 to provide additional exemptions to first time adopters;
- > ED proposing to amend IAS 39 and IFRIC 9 on the subject of embedded derivatives;
- > ED proposing an amendment of IAS 24, Relationships with the State;
- > ED 10, Consolidated Financial Statements;
- > Discussion Paper (DP), Preliminary Views on Financial Statements Presentation;
- > DP, Preliminary Views on Revenue Recognition in Contracts with Customers;
- > DP, Preliminary Views on Leases;
- > ED proposing amendments of IAS 39 on the subject of derecognition;
- > ED proposing amendments of IAS 12, Income Tax;
- > DP, Credit Risk in Liability Measurement, on taking credit risk into account in measured value;
- > ED proposing an amendment of IAS 32 regarding classification of rights issues.

⁹² On CESR's website (<http://www.cesr.eu/>).

⁹³ Standing Committee 1 on Multinational Disclosure and Accounting.

- > ED on Financial Instruments: Classification and Measurement;
- > ED, Fair Value Measurement;
- > ED, Discount Rate for Employee Benefits;
- > ED, Improvements to IFRS, on improvements to the 2009 Standards;
- > ED, Rate-Regulated Activities.

On a more fundamental aspect of the work of the international standard-setting body, in 2009 SC1 contributed to the second stage of the review of the IASCF constitution, as mentioned in the section of this chapter on CESR's contribution to that effort.

2 > Work of SC1 on audit issues

Through its audit committee, SC1 also has a role in promoting international standards for audit quality and auditor independence. It monitors the work of the IAASB⁹⁴ and the IESBA⁹⁵ by being represented on the Consultative Advisory Groups (CAGs) of these two bodies.

In June 2009 IOSCO issued a news release⁹⁶ hailing the completion of the IAASB's Clarity project and on that occasion encouraged regulators to accept audits in their jurisdictions if performed in compliance with the clarified ISA standards.

a) Audit Services Task Force

In 2008 IOSCO's Audit Services Task Force (ATF) initiated an exploration of this subject focused mainly on transparency, internal organisation and means of communication at audit firms, with a view to establishing more uniform relations between audit firms and IOSCO member regulators.

In September 2009 the work initiated by the ATF was entrusted to SC1 for completion. SC1 issued three consultation documents⁹⁷ on:

- > audit firm transparency,
- > content of the auditors' report,
- > ownership structure of audit firms.

Responses to these three consultations were due on 15 January 2010.

b) Monitoring Group review of IFAC reform

In 2003 IFAC undertook a series of reforms of its organisation and governance, a process completed in 2005. IFAC's charter called for a review of these reforms and the application of them to be launched in 2009, five years after they were put in place. The Monitoring Group was tasked with conducting this review⁹⁸.

The purpose of the review is to assess how well the Public Interest Oversight Board (PIOB) is working. The PIOB was set up in 2005 to oversee the activities of IFAC and the four Public Interest Activity Committees – the IAASB and IESBA, already mentioned, and the IAESB⁹⁹ and IPSASB¹⁰⁰ – and the role of their respective CAGs.

⁹⁴ International Auditing and Insurance Standards Board (IAASB), the standard-setting body for internal control. It is one of the standards boards within IFAC, the International Federation of Accountants.

⁹⁵ International Ethics Standards Setting Board for Accountants (IESBA), responsible for setting ethics standards in auditing. It is likewise a board within IFAC.

⁹⁶ Available on IOSCO's website at <http://www.iosco.org/library/statements/pdf/statements-7.pdf>

⁹⁷ Available on IOSCO's website at <http://www.iosco.org/library/index.cfm?section=communicationsdocs>

⁹⁸ The members of the Monitoring Group are IOSCO, the Basel Committee, the International Association of Insurance Supervisors and the World Bank.

⁹⁹ International Accounting Education Standards Board (<http://www.ifac.org/Education/Members.php>), which develops recommendations to improve training standards for accountants and auditors.

¹⁰⁰ International Public Sector Accounting Standards Board (<http://www.ifac.org/PublicSector/CommitteeMembers.php>), which develops recommendations on accounting and financial reporting by government entities at all levels.

3 > Interpretation & Enforcement Committee

The IFRS interpretation and enforcement committee of SC1 was established only recently. Its purpose is to facilitate consistent application of IFRS across jurisdictions by means of a IOSCO-sponsored database of national authorities' decisions interpreting those standards. At 31 December 2009 the IOSCO database contained 82 decisions, 72 of them from members of the European Union.

The committee also held two conference calls in 2009 during which members discussed the problems of IFRS application they had encountered in their enforcement work.

4 > Subcommittee on nonfinancial disclosure

SC1's nonfinancial disclosure subcommittee finalised and released a consultation paper on establishing general principles for the ongoing disclosures required of companies traded on a regulated market. The document was approved by IOSCO's Technical Committee on 21 January 2009. This project falls under IOSCO's objective of covering all the disclosure obligations of companies traded on a regulated market and companies making public offers of securities, especially across national borders, both at the time of the issue and during the life of the securities. It complements previous work published by IOSCO:

- > in 1998 and 2007, on the content of prospectuses by companies seeking admission of their equity or debt securities to trading on a regulated market, or seeking to make a public offer of securities, in particular a cross-border offer;

- > in 2002, on Principles for Ongoing Disclosure.

In this regard, SC1 finds that an annual report with financial statements, a management report and half-yearly interim financial statements are not sufficient. Disclosures on a number of additional points are very important, and where these are not already legally required in the company's financial statements or management report, they should be made at least annually. This work suggests that, in addition to the financial statements and the management report, listed companies should provide further information on:

- > transactions with related parties;
- > compensation of executive directors (including benefits in the form of stock options and retirement packages);
- > corporate governance (independent directors, audit committee, code of ethics, etc.);
- > market risks;
- > shareholders (Who are the principal shareholders? Are there any shareholder pacts? etc.);
- > internal control for financial and accounting procedures.

Following up on the work that went into the report of IOSCO's Task Force on Unregulated Financial Markets and Products (TFUMP), the committee prepared a document on the content of a prospectus for an issue of asset-backed securities (ABSs). A public consultation was held on this document, which was approved by IOSCO's Technical Committee on 21 January 2009. The document's initial concern is with so-called public offerings, i.e. those made by means of an offer to the public or admission to trading on a regulated market. It specifies the nature of the information that ought to be in the prospectus about the role of each stakeholder in the issuance transaction, the structure of the transaction, the underlying assets and the composition of the liabilities of the securitisation vehicle. These principles can serve as a point of departure for other types of investment and other, more complex product structures