Association Française de Gouvernement d'Entreprise

La Lettre

de l'AFGE

Lettre d'information sur le gouvernement d'entreprise

N° 35 4ème Trimestre 2013

EDITORIAL

ROLE ET RESPONSABILITES DES MEMBRES DES CONSEILS D'ADMINISTRATION OU DE SURVEILLANCE

Sommaire

Qui fait quoi ?

Mme Danièle NOUY, Secrètaire Générale de l'Autorité Prudentielle ACP a été nommée Présidente du Comité de Supervision du MSU.

Nous vivons une profonde mutation des Etats et des entreprises, plus particulièrement dans l'espace économique européen, qui nous concerne tous. Après l'union économique et l'union monétaire, nous entrons dans l'étape de l'union bancaire et surtout de l'union budgétaire, comme nous le précise dans cette Lettre 35 le Commissaire Michel BARNIER. L'étape suivante devrait être celle de l'harmonisation des régimes fiscaux et des acquis sociaux. Ensuite la phase décisive de l'union politique sera engagée: la construction d'une fédération (ou d'une confédération) des Etats Unis d'Europe, à partir du socle des États membres de l'union monétaire, la zone Euro. Dépassant le stade polémique des transferts de souveraineté, nous parlons maintenant de "souveraineté partagée", de solidarité entre États membres, et de responsabilité réciproque des uns vis à vis des autres, en ce moment précis de l'élaboration des hypothèses et des budgets nationaux pour 2014.

Si les Etats effectuent cette mutation, les entreprises sont confrontées aux mêmes exigences et aux mêmes règles, quelle que soit leur structure actionnariale (actionnariat familial concentré ou actionnariat dispersé composé d'investisseurs institutionnels, d'actionnaires individuels ou salariés, de fonds souverains ou de fonds spéculatifs).

Le cadre réglementaire a été actualisé et enrichi par la Commission Européenne, le Parlement Européen et les Parlements nationaux. Les exigences sont celles des actionnaires institutionnels, fonds de pension et fonds d'investissement de long terme, celles des actionnaires individuels fortement éprouvés par la crise et par la spéculation des acteurs de marchés financiers. Les Hedge funds, les Mutual funds et les fonds souverains ne détiennent pas que des obligations d'Etat, des CDS ou des ETF, ils sont aussi des actionnaires prépondérants des entreprises cotées ; ils sont de plus en plus exigeants et activistes. Ils ne supportent plus que les administrateurs et les mandataires sociaux bafouent les principes de base du gouvernement d'entreprise et les codes de bonnes pratiques. Depuis la crise, qui a sinistré beaucoup d'épargnants et de retraités, les déposants de ces fonds, les investisseurs institutionnels sont impatients de demander des comptes aux membres des conseils d'administration (CA) ou de surveillance (CS), qu'ils ont élus. Les attentes et les exigences du fonds souverain de Norvège (600 milliards d'€), publiées dans cette Lettre sont réalistes et fermes ; la saison des assemblées générales 2014 sera rude.

Le rôle et les responsabilités des membres des CA ou des CS (selon les statuts) seront analysés et discutés avec une extrême attention, notamment sur les points suivants : leurs difficultés voire leur impuissance à définir une stratégie permettant à l'entreprise de s'adapter à un nouvel environnement et de réagir à une concurrence accrue, leur réelle indépendance, leur efficacité dans le contrôle des décisions et des résultats des directeurs opérationnels, leur contrôle des rémunérations et autres avantages des dirigeants, leur aptitude dans l'anticipation et la gestion des risques dont le risque de réputation, leur maîtrise de la communication financière de l'entreprise à destination des parties prenantes, enfin leur effort pour s'imprégner de la culture de l'entreprise et leur courage de défendre l'intérêt social de l'entreprise en toutes circonstances plutôt que les intérêts personnels ou ceux de certains actionnaires ; car les administrateurs ont vocation à représenter l'ensemble des actionnaires (cf. la charte de l'administrateur élaborée par l'IFA).

Nous devrions nous attendre en 2014 à la séparation effective des pouvoirs entre Président du CA ou du CS et Directeur Général ou Président du Directoire, c'est à dire entre le rôle du contrôleur et celui du contrôlé. Les entreprises françaises sont pratiquement les seules à avoir une concentration sur une seule tête de ces 2 rôles et responsabilités; comme l'autorégulation, chère à notre Ministre, l'omniprésent PDG est une exception française dans le processus d'adaptation du droit des sociétés européennes.

En effet, dans plusieurs grands groupes du CAC40, le PDG arrive au CA entouré de ses DG adjoints et VP très compétents et brillants, dont les exposés tétanisent l'auditoire. Qui dirige le Conseil ? C'est la partie DG qui domine la partie Président, c'est humain. Ce sont les opérationnels qui dominent les administrateurs, n'osant pas poser de question de peur de perdre la face ou de dévoiler leur méconnaissance des dossiers présentés ; et le PDG soutient ses collaborateurs sans retenue. Ces pratiques sont contraires aux principes de gouvernement d'entreprise. Qu'elles que soient les raisons évoquées, "raccourcir les circuits de décisions", "être en prise directe avec les réalités opérationnelles pour être proactif", "garantir plus de valeur pour les actionnaires"..., ce sont des prétextes. C'est plus de pouvoir entre les mains d'un seul homme qui ne rend des comptes qu'à quelques actionnaires influents ! Comme en politique, c'est une présidentialisation du pouvoir dans l'entreprise française, au détriment des contre-pouvoirs et de la démocratie actionnariale. Que faire ?

D'abord séparer les 2 fonctions : Président du conseil, Directeur général ou Président du Directoire. Ensuite confier la présidence du conseil à une personnalité extérieure, préalablement élue comme administrateur indépendant par l'assemblée générale des actionnaires, dont les compétences pour présider un conseil, l'autorité morale et l'intégrité sont reconnues. Par contre il est de l'intérêt de l'entreprise que « le patron » des opérationnels soit l'un d'entre eux, choisi pour son leadership, ses compétences et ses brillants résultats dans le groupe. Les autres dysfonctionnements par rapport aux principes de gouvernement d'entreprise se résorberont progressivement, car la clef de voute d'une bonne gouvernance est l'autorité du président du conseil et la qualité des administrateurs, dont le rôle et les responsabilités doivent être redéfinis, afin de regagner la confiance des actionnaires et de toutes les parties prenantes. La décision relève de la Commission Européenne ; le Commissaire Michel Barnier est déterminé à relever ces défis.

Afin de tenir compte des leçons de la crise et de se préparer à partir de 2014 à l'accélération de la phase de consolidation des secteurs banque-assurance, industriels et des services dans la zone de libre échange de l'Union Européenne, les entreprises, qui sortiront vainqueurs de la course à la taille critique, auront radicalement modifié leur type de gouvernance pour gagner et conserver la confiance de leurs actionnaires et des parties prenantes. Or, rappelons-le une fois de plus : la confiance ne se décrète pas, elle se mérite et elle s'entretient.

Jean-Aymon MASSIE

POINT DE VUE REGULATEUR

NOUVEAU CALENDRIER BUDGETAIRE EUROPEEN : UN PROGRÈS SUBSTANTIEL DANS L'INTÉRÊT DE LA FRANCE ET DE SES PARTENAIRES

…Je vais naturellement en venir au regard que porte la Commission européenne sur l'exécution du budget de la France en 2013 et sur les projets de lois de finances et de financement de la sécurité sociale pour 2014.

I – Permettez-moi de dire un mot de la méthode et du nouveau contexte de gouvernance dans lequel nous évoluons.

Comme vous le savez, ce projet de budget pour 2014 est le premier depuis l'entrée en vigueur des deux règlements européens dits « two-pack ». Ou, en bon français, des deux règlements qui viennent renforcer la gouvernance économique européenne – pour des raisons de convenance, je continuerais à employer ce terme de "two pack".

De quoi s'agit-il ? De comprendre enfin que nous ne pouvons pas avoir une union monétaire et une désunion économique et budgétaire. Et que nous ne pouvons plus tolérer qu'un pays qui laisse filer ses déficits, quel qu'il soit, puisse remettre en question la stabilité macroéconomique de l'ensemble de la zone euro. C'est précisément ce qu'avait dit, sans être entendu à l'époque, le Président Jacques Delors.

Au sein de la zone euro, et du fait de l'union étroite que nous avons décidée entre nous, les problèmes économiques, budgétaires ou bancaires des uns ont vite fait de devenir les problèmes de tous.

C'est pour éviter cela que les Etats membres, dont la France, construisent ensemble depuis 2010 une nouvelle gouvernance économique et budgétaire fondée sur des règles claires et sur une coordination renforcée.

Ceci se traduit notamment par un nouveau calendrier commun pour renforcer le dialogue entre la Commission européenne et les Parlements nationaux au stade de la préparation du budget. Et votre invitation d'aujourd'hui en est bien la traduction.

Pour la première fois cette année, tous les Etats membres de la zone euro auront transmis d'ici demain leur projet de loi de finances à la Commission européenne. La France l'a déjà fait le 1er octobre dernier. La Commission rendra le 15 novembre un avis public sur ces projets pour chaque pays, indépendamment des gouvernements. Je sais que cet avis fait parfois débat.

Avant d'aller plus loin, je tiens à rappeler deux choses :

-D'abord, cet avis n'est pas une instruction. Il est la mise en œuvre concrète du nouveau règlement de copropriété de l'euro. Préfère-t-on laisser s'accumuler déficits budgétaires et prévisions irréalistes avant de réagir ? Nous ne l'avons que trop fait par le passé.

-Deuxiemement, cet avis n'est en aucun cas un droit de veto européen sur l'élaboration des budgets nationaux : chaque Parlement national conserve sa pleine souveraineté en la matière. C'est d'abord à la France qu'il appartiendra d'en tirer les conséquences.

Pour avoir été député pendant 15 ans, et membre de la Commission des finances, j'aurais jugé très utile de bénéficier d'un avis totalement indépendant sur les projets de budget du gouvernement. J'aurais également trouvé bon d'avoir un éclairage objectif sur la situation budgétaire de nos voisins.

Ceci sera désormais le cas puisque les avis adressés à chaque pays seront publics et que la Commission européenne transmettra à l'Eurogroupe un rapport sur la situation budgétaire qui résulterait, pour la zone euro dans son ensemble, de l'adoption tels quels des 13 projets de loi de finances. Les pays sous programme d'ajustement macroéconomique – Irlande, Grèce, Chypre et Portugal – ne soumettront pas leurs projets de plan budgétaire étant donné qu'ils suivent un cycle encore plus serre – trimestriel- de surveillance.

Le nouveau calendrier d'automne instauré par le « two pack » s'articulera parfaitement avec le « semestre européen » : il permettra que les recommandations budgétaires adoptées au printemps soient effectivement traduites dans le budget.

1- D'une part, nous tenons désormais mieux compte du critère de la dette publique, depuis l'entrée en vigueur fin 2011 du "six pack" qui a corrigé certaines faiblesses du Pacte de Stabilité et de Croissance. S'assurer que la dette est sous contrôle est une nécessité, notamment en France où la dette s'achemine vers les 100% du PIB et représente déjà environ 30 000 euros par habitant.

Nous ne pouvons pas continuer à hypothéquer l'avenir de nos enfants et même à emprunter à nos enfants pour régler nos dépenses courantes d'aujourd'hui.

Nous ne pouvons pas continuer et à dépenser plus d'argent à payer les intérêts de notre dette qu'à éduquer nos jeunes. Une telle accumulation est simplement anti-sociale. Et, cette dette, je me permets de le rappeler, n'est pas bruxelloise !

2- D'autre part, les règles prennent en compte le solde structurel tout au long du cycle économique : elles évitent que les Etats ne relâchent leurs efforts en haut de cycle. Elles garantissent que seule une politique budgétaire non conforme aux engagements du pays et aux recommandations européennes puisse être sanctionnée et non une dégradation brutale résultant de la conjoncture.

J'ajoute que le nouveau calendrier d'automne (du « two-pack ») doit justement aider les pays membres de la zone euro à éviter les sanctions puisqu'il permettra de voir comment les recommandations adressées à chaque pays au printemps sont prises en compte dans le projet de loi de finances de l'année suivante, et le cas échéant, de permettre aux Etats de corriger le tir. Ces nouvelles règles du « two-pack » sont donc utiles à la fois pour les Parlements et pour les gouvernements des Etats membres de la zone euro. Elles permettent surtout de tirer enfin toutes les leçons du passage à la monnaie unique. Nous avons depuis 10 ans une souveraineté partagée sur notre économie et notre monnaie. Peut-on continuer à avoir 17 et bientôt 18 politiques budgétaires totalement divergentes ? A l'évidence, non !

Au fond, ce que nous faisons ensemble désormais, c'est un « monitoring collectif » et l'évaluation mutuelle des politiques économiques et budgétaires.

Comment cette gouvernance s'applique-t-elle dans le cas de la France ?

II – Permettez-moi de commencer par l'exécution du budget sur l'année 2013.

Comme vous le savez, les discussions se poursuivent entre les autorités françaises et la Commission européenne qui doit apprécier les mesures prises par la France pour corriger son déficit excessif. Il est donc trop tôt pour tirer des conclusions. C'est tout l'objet de l'avis qui vous sera transmis le mois prochain.

Cela dit, nous prenons note de ce que l'objectif d'un déficit nominal de 3,9% du PIB ne devrait pas être atteint, puisque le gouvernement nous a informés qu'il tablait sur un déficit de 4,1%.

En vertu des nouvelles règles dont je viens de parler, la Commission centrera son analyse sur le niveau de l'effort structurel, en distinguant entre la part du déficit qui relève de la conjoncture et celle qui est liée à des décisions de politique économique. Comme vous le savez, la France s'était engagée sur un effort de réduction du déficit structurel de 1,3% du PIB en 2013. C'est bien la preuve que le pacte de stabilité n'est pas aveugle et que notre analyse ne se résume pas au déficit nominal, même si *in fine* il ne peut être sous-estimé puisque c'est lui qui détermine l'accroissement de l'endettement du pays.

Le simple fait que l'échéance pour ramener le déficit nominal sous la barre des 3% ait été reportée de deux ans en juin dernier, après un premier report d'un an de 2012 à 2013, prouve bien que nous tenons compte du contexte macroéconomique dans l'application des règles.

III – J'en viens maintenant aux projets de lois financières pour 2014.

Comme je le disais, le projet nous a été remis par Pierre MOSCOVICI le 1er octobre et nous l'examinons attentivement. Il est là aussi trop tôt pour tirer des conclusions définitives.

1- Ce que je peux déjà dire, même si cela mérite une analyse approfondie, c'est que ce projet comprend plusieurs éléments positifs.

- D'abord, pour la première fois depuis longtemps, le budget se fonde sur une prévision de croissance à 0,9% qui repose sur un scénario jugé plausible par le Haut conseil des finances publiques. Ce progrès n'est d'ailleurs sans doute pas étranger à la création du Haut conseil.
- Ensuite, le projet traduit la volonté de la France de respecter ses engagements européens, puisque le déficit nominal devrait être ramené à 3,6% du PIB avec un effort structurel de 0,9% du PIB, ce qui est en ligne avec les 0,8% demandés par la recommandation du Conseil du 21 juin dernier, dans le cadre de la procédure pour déficit excessif engagée contre la France.
- Enfin, il nous paraît positif que l'assainissement budgétaire passe à 80% par une meilleure maîtrise des dépenses et à 20% seulement par de nouvelles recettes. Il s'agissait-là d'une des recommandations très claires adressées par la Commission à la France.

2- Néanmoins, toute la difficulté consistera à tenir ces orientations volontaristes et le Haut conseil l'a bien souligné dans son avis.

Cela nécessitera d'abord de confirmer le mouvement engagé en faveur de la rationalisation de la dépense, notamment dans le cadre de l'exercice de « modernisation de l'administration publique » (MAP), et, avant cela, de la Révision générale des politiques publiques (RGPP). A cet égard, gardons bien à l'esprit que le projet présenté par la France ne comprend pas de diminution nette de la dépense publique en valeur, et que le taux de prélèvements obligatoires a augmenté de 4 points dans notre pays entre 2010 et 2013, pour atteindre 46% du PIB aujourd'hui.

Nous avons dépassé la ligne rouge et je veux préciser que c'est une responsabilité partagée tout au long de ces années par différents gouvernements.

Il y a trop d'impôt en France, pour un résultat qui n'est pas toujours à la hauteur. La dépense publique dans notre pays atteint désormais 57% du PIB, soit 12 points de plus qu'en Allemagne. Nous n'inverserons pas durablement la tendance sans un effort important et soutenu, qui aille plus loin que la suppression de dépenses ponctuelles ou de la réduction du nombre de niches fiscales, et qui s'inspire notamment des recommandations de la Cour des comptes.

D'autre part, la France réglera d'autant plus facilement ses difficultés budgétaires qu'elle s'engagera résolument sur la voie d'une véritable politique de compétitivité. Le semestre européen a permis de débattre de ces sujets au niveau européen. Notre exercice de revue de la situation des pays a montré que la France a de vrais progrès à faire comme le montre la détérioration sur longue période de ses performances à l'exportation.

Cherchons par tous les moyens à améliorer notre compétitivité hors coût. Le crédit d'impôt recherche, les pôles de compétitivité et la création de la Banque publique d'investissement sont des réformes importantes, mais il faut aller plus loin, notamment en prévoyant des programmes d'apprentissage plus nombreux et de meilleure qualité pour les jeunes, en soutenant activement l'innovation et en restaurant les marges des entreprises exportatrices.

Ayons aussi le courage de nous attaquer à la question du coût du travail. Le crédit d'impôt compétitivité emploi est une mesure qui va dans le bon sens, même si elle ne fait que compenser en partie la hausse de la fiscalité pesant sur les entreprises. Là aussi, je pense qu'il faut aller plus loin, par exemple en déplaçant la pression fiscale du travail vers d'autres assiettes pesant moins sur la croissance et la compétitivité extérieure, comme la CSG, la TVA ou les taxes vertes. Le rapport Gallois contient des propositions sur cette question. N'attendons pas que la situation s'aggrave et devienne intenable ! Que les parts de marché de la France à l'export continuent à dégringoler ! Et alors, nous rejetterons la faute sur l'Europe, sur Bruxelles !

Nous ne comblerons pas le triple déficit des finances publiques, de compétitivité et de confiance évoqué par le gouvernement en optant pour la politique de l'autruche. Nous avons besoin d'une France forte dans une Europe forte, politiquement et économiquement. Pas d'une France recroquevillée derrière je ne sais quelle ligne Maginot, au sein d'une Europe sans stratégie économique ambitieuse, en particulier sur le plan industriel.

Encore une fois, le travail d'analyse des projets de lois de finances et du financement de la sécurité sociale pour 2014 vient de commencer.

Je vous ai donné de premières indications sur la base des règles européennes existantes. Mais j'aimerais vous convaincre d'une chose : si ces règles n'existaient pas, il nous faudrait les inventer ! En tant que députés français, ces règles vous garantissent que votre travail budgétaire se fait sur la base de données indépendante, les plus objectives possible. Surtout, elles vous donnent des informations indispensables sur les autres pays de la zone euro, en vous garantissant qu'aucun d'entre eux ne remettra en cause l'équilibre macroéconomique général par des prévisions erronées ou par un projet de budget qui ne respecte pas ses engagements européens. Car en fin de compte, c'est de la dictature des marchés que ce nouveau règlement de copropriété doit nous prémunir, afin que, tous ensembles, nous restions maîtres de notre destin.

Pendant des années, j'ai entendu les députés français, moi compris, se plaindre d'être obligés de voter le budget les yeux fermés. Avec la création du Haut conseil et l'avis indépendant de la Commission, vous avez de meilleurs outils pour contrôler, modifier et approuver le budget.

Mon message est donc clair: n'ayez pas peur du nouveau calendrier européen: il est dans l'intérêt du Parlement et dans l'intérêt de la France. Merci pour votre attention.

Michel BARNIER
Membre de la Commission Européenne Chargé du Marché Intérieur et des Services
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Nous reprenons, avec l'aimable autorisation du Commissaire Européen, le discours qu'il a prononcé devant les Parlementaires Français, membres de la commission des affaires européennes, et de celle des finances, économie générale et contrôle budgétaire, à l'Assemblée Nationale le 14 octobre 2013

POINT DE VUE INVESTISSEUR

NORGES BANK INVESTMENT MANAGEMENT'S EXPECTATIONS ON CORPORATE GOVERNANCE

In this discussion note 14-2012 (19/11/2012), NBIM's expectations on corporate governance are presented. Expectations directed at boards are discussed, as is the rationale for focusing on board accountability and equal treatment of shareholders. In the discussion, the academic literature underpinning NBIM's approach to corporate governance and opinions offered by leading industry practitioners are presented. Two sets of expectations are included as appendices that conclude the note.

Summary

NBIM publishes herewith two sets of expectations on different aspects of corporate governance. In formulating these expectations, NBIM has considered the challenges of protecting its interests as a globally diversified minority shareholder in light of empirical and theoretical evidence. The literature review identifies evidence of correlation of certain governance factors with measures of company performance. As a shareholder, NBIM must apply these findings carefully, together with professional experience, in defining corporate-governance expectations.

Greater corporate-governance consensus is found in international codes of corporate governance such as OECD principles, the ICGN Principles of Corporate Governance and national codes of best practice. We question the basis for the near-consensus in such codes given the lack of academic evidence and conclude that principles should be seen as best practices and that considered deviation must be expected and welcomed. We address the practical challenges of effective ownership within an investment culture. NBIM's expectations have been formulated with this investment objective in mind. Our intention is not to provide another code of corporate governance for companies to comply with or report against. Rather, the ambition is to set out priorities for corporate governance as a means to foster dialogue and mutual understanding. NBIM welcomes comments from all stakeholders on the expectations at the end of this discussion note.

Findings of practitioner contributions

Subsequent to internal deliberations on the expectations documents at NBIM and Norges Bank, we have consulted selected external practitioners to obtain independent feedback. A first round of consultations in the summer of 2011 included key governance stakeholders – investor, company, academia, regulator, proxy advisor, executive search, standard-setter and emerging-market investor advocacy. A second round in late 2011 and early 2012 focused on 20 selected corporate board chairmen/women and other individuals of recognised corporate influence to "road-test" the NBIM expectations on board accountability.

The samples were not intended to be entirely representative. The process merely focused on obtaining qualitative feedback and ideas and to "road-test" the expectations in discussions with the intended audience and other stakeholders. The consultations, while not altering the overall approach, were valuable in clarifying and nuancing the documents (Chap 5, p 24…).

Main conclusions from chairman meetings

The chairman meetings inspired and renewed our optimism in the possibility that lies within every company and its board of directors. Consequently, the expectations set the stage for vaulting ambition among directors individually and the board collectively. The tone of the document became clearer and less cautious. In particular, the following clarifications were made:

There should be unambiguous expectations on the integrity, behaviour, motivation and character of directors who accept the invitation to join a board, the duty to build value over the long term should not be frustrated by short-term distractions, the primacy of the role of the chairman and a particular skill set for chairmanship should be expressed directly, delineation of duties between the board and the executive should be clarified. We continue to focus on the role of the board and its accountability to shareholders. The complex dependencies that exist between the board and the executive are addressed but, consciously, cannot be the focus of the document.

Other input from chairman and leading board expert consultations

We present a brief summary of the points most frequently raised by chairmen/women and other leading board members in the consultations on the investor expectations on corporate governance.

***On the communication between board and shareholders**

Informed shareholder engagement – to discuss high-level governance, board nomination and strategy issues – is legitimate and, in most cases, welcome, but even top shareholders in major companies are generally quite passive. The lack of relevant initiative on the part of shareholders is generally a bigger problem than any deviations from the official "rulebook" for governance. It is important for institutional investors to have a close dialogue at board level in order to understand whether the board is effective. The chairman has a pivotal role in framing the board dynamic and overseeing management to ensure high performance. "Get to know your chairman!" one chairman said. Shareholders can demand deeper and more honest communication with the board and top management while respecting fair-disclosure guardrails as they apply in different jurisdictions. Management too often chooses to market the stock as a substitute to truthful and balanced information. External asset-manager incentives are generally not tuned into fostering proper corporate-governance dialogue. Even many of the largest institutional investors spend minimal time and resources caring about key governance processes

***On the responsibility of the board**

Shareholders are right in holding the board accountable for financial performance, transaction merits and shareholder return relative to the competition. But close examination of outcomes over reasonable time horizons is necessary. While codes of best practice for corporate governance are useful, due consideration should be given to the specific circumstances and challenges of the individual firm. Governance should not be oversimplified to the point where firms are scored on shallow compliance with codes. It has more to do with actual processes and behaviours that cannot be easily observed from public reporting. The term "board accountability" should be used carefully so as to indicate that the investor is not only focusing on the past. The most important issue is the future and whether the company has a good enough board in that respect.

***On the relations with the executive**

"The way the company is governed is a proxy for the quality of management," one highly experienced board member and previous asset manager said. On corporate governance, the board and the chairman should be the focal point for shareholders, not the CEO. The processes for developing and implementing corporate strategy require a long-term view and commitment, and it is therefore desirable to shield management from an overly short-term quarterto- quarter focus in the market. The board must be able to support management in this respect.

In conclusion, the feedback largely supports our strategy of taking a high-level approach, but at the same time emphasising company specifics and board dynamics in a programme of close contact with the boards of portfolio companies.

NBIM EXPECTATIONS

I. BOARD ACCOUNTABILITY

Norges Bank Investment Management (NBIM) is responsible for investing the assets of the Norwegian Government Pension Fund Global. The goal of our ownership activities is to safeguard and build wealth for future generations. (Appendix 1, p 26).

Purpose

When applied to the ownership tool of company interaction, the purpose of the expectations on board accountability is to provide board members with a clear understanding of what NBIM expects of them individually and collectively.

The document serves as a transparent basis for constructive dialogue between NBIM and the companies in which we invest.

We encourage directors to use our expectations as a reference tool in board corporate-governance discussions and planning. Our intention is not to provide another code of corporate governance for companies to comply with or report against.

Why is board accountability important for NBIM?

As a shareholder, we are one of many contributors of equity capital to the company. This high number of shareholders cannot manage the company without delegating most decision-making authority to the board of directors. For this delegation to function effectively there needs to be a high degree of board accountability towards shareholders. We will not seek to micromanage the company. Rather, we will hold the board accountable and reserve the right to seek changes to the board when it deviates from our expectations.

We regard board accountability as essential to ensure that boards manage invested capital efficiently.

Expectations

Our expectations are laid out in five sections with accompanying requirements. These sections encapsulate what we regard to be the chronology of board accountability:

A. The board has a thorough comprehension of its role

Shareholders receive a return on their equity only after the company has ensured the fulfilment of obligations to all other parties. Shareholders are therefore rightly given prerogatives to influence the company through the appointment of the board and the approval of certain decisions. They will use their rights in support of the goal of maximising the return on equity. This is the starting point for defining the role of the board.

Each board will find value in the thorough contemplation of its role. However, across jurisdictions, cultures and industries, five universal principles exist for the role of the board:

1. *The board must act as representatives of the owners of the equity capital.* Each board member shall promote the interests of all shareholders, without discrimination.

2. *The board shall appoint the chief executive and oversee the implementation of strategy by management.* The board shall monitor and guide management, set its remuneration, and change management when needed.

3. *The board shall approve overarching strategic decisions, without striding into the realm of management or being distracted from its monitoring role.* It shall check that implementation is in line with strategy. The board is ultimately responsible for managing conflicts of interests and relations with affected parties, as well as ethical dilemmas.

4. *The board is responsible for establishing a corporate-governance system that alleviates agency costs.* Wide delegation of powers to the board and subsequently to management is in the interests of shareholders. However, minority protection, shareholder approvals and the right to make changes to the board are necessary safety measures.

5. *The board must ensure adequate and honest information to the market and the shareholders.* Reporting must aim at building trust, and the board must accept responsibility for the entirety of the company's communication.

B. The board fulfils its duties through high-quality work

Good governance starts with a highly qualified, well-functioning and confident board. Our investments are best safeguarded by an exemplary board of directors led by a fully engaged and motivated chairman. NBIM expects every board to have a clear aspiration to create value. All directors are in a privileged position to contribute to the delivery of superior business performance that can be maintained over the long term.

To the board:

We expect directors to possess independent perspectives and competencies that meet the specific and changing needs of the company, so that the board has sufficient industry and financial knowledge to understand risks and to constructively challenge strategy. In order to enrich decisions and channel management, the board must have independent authority.

The board must implement a framework of clear governance that allows management to take a long-term perspective on business development. It is the board's responsibility to ensure that short-term influences cannot distract the company from this task. Principles to delineate the responsibilities between the board, chairman and chief executive must be clearly established and anchored by the board. This framework should shield management from inappropriate intervention by the board in managerial decisions. The board should seek shareholder approval for changes to bylaws/articles of association, share issues, dividends and other changes to equity and shareholder rights. Shareholders should have the right to file proposals at general meetings of shareholders, including bylaw changes. The board should not try to protect itself from shareholders through takeover defences or otherwise. It should not seek to circumvent or manage shareholder approvals or block proposals put forward by shareholders.

To the directors:

Directors should demonstrate behaviour, motivation and integrity worthy of trust. Alternative views, as well as the constructive challenging of management's proposals, are necessary contributions to excellence in decision-making and should be encouraged by fellow board members. Directors should be able to secure all necessary professional resources to support their work and to ensure that all directors can contribute to their fullest capacity.

Board members must ensure sufficient time to prioritise both planned processes and contingencies. Only board members with no executive employment should normally accept more than two outside board assignments. No-one should accept more than three to five board assignments depending on complexities. Before a top executive accepts a board seat in an external company, the board of the company where the executive is employed should consider the trade-off between the corporate benefit of having executives on the specific external board against the usage of executive time in his/ her primary job.

To the chairman:

We consider the role of chairman to be crucial to a well-functioning board. The chairman must ensure that the necessary culture and behavioural dynamics prevail on the board. All board members should be expected to contribute to the deliberations. Constructive debate and the ability to disagree with management and the majority of the board must be promoted. We expect the chairman to act decisively if board dynamics are suboptimal. It is the responsibility of the chairman to present management with firm conclusions after the deliberations of the board, or if necessary explain the further processes needed for the board to conclude. An effective relationship between chairman and CEO is vital. It is the duty of the chairman to ensure such a relationship exists and to seek remedy when it does not. The chairman role demands unconstrained attention and commitment. This will determine the time allocation to other obligations. We expect no chairman of a complex company to be the serving CEO of another company. *The roles of chairman and CEO are fundamentally different and should not be held by the same person. This can best ensure effective monitoring of management, and a balance of power in the governance of the company. A separation provides a greater opportunity to devote the attention each role demands.*

C. Shareholders have the freedom to elect, and change, the board

Shareholders should have the right to approve fundamental changes affecting the company. This will include the right to appoint and remove directors. Moreover, shareholders will benefit from a rigorous nomination process through the phases of board evaluation, criteria identification, candidate search and appraisal, and proposal and explanation.

To the board:

It is incumbent upon the board to ensure a process by which shareholder input into the director evaluation and nomination process has been established. The shareholder body must be close enough to the nomination and election process to determine its outcome. The board or nominating body must demonstrate that it has considered the future needs of the company when recommending board candidates. The required future characteristics and capabilities of the board should be compared with the current composition. The board should provide comprehensive information in a timely manner so that shareholders can make an informed voting decision in board elections. The information to shareholders on the nominees should explain the main qualifications each individual brings to the board in light of the identified requirements of the company. The information provided must include all contractual and non-contractual benefits offered to the director and associates, as well as all information that may have a bearing on an individual director's ability to act in an independent capacity. A board must not establish a formal or informal process that aims to result in its self-perpetuation. We expect the board to establish a nomination process for prospective board directors that is transparent and accommodates alternative pools of candidates. The right to elect directors is contingent upon three key requirements: *All directors should stand for re-election at frequent intervals in line with the global trend towards shorter election terms, each director must be approved by a majority of the shares voted, and there should be a way for shareholders to put forward alternative candidates inexpensively and with reasonable ease.*

To the chairman:

The chairman or, where relevant, the lead director must take particular responsibility for the planning of succession for

the board member and chairman roles. He should facilitate input from shareholders and be open to discussing board development with them.

D. The board sets out its strategies, processes and results in a transparent manner

A company has a choice as to how transparently and consistently it informs shareholders. This choice is demonstrated by the content of financial statements and periodic reporting, including securities market communications, company policies, information on key board processes, ad-hoc statements and all private communication.

To the board:

The board is to be held responsible for all the information that is provided by the company and for how the company chooses to communicate with shareholders and the wider market. We expect the board to ensure the company communicates the corporate strategy and its inherent risks and rewards in a manner that permits the strategy to be understood by shareholders. The board must fully inform shareholders about its structure, activities and procedures so that shareholders have confidence in the outcome and integrity of these processes. The board must not assess the information needs in light of legal requirements only, but rather seek the best possible understanding by shareholders with the likely benefit of higher trust and better evaluation. In doing so, the board should benchmark the information practices against the best practices seen in the global marketplace. We recognize that cultural differences can affect the way businesses must operate to be successful. This should not prevent boards from being transparent and accountable.

To the directors:

Prior to election, and on a regular basis, each director is responsible for providing the necessary disclosures regarding conflicts of interests, independence and competencies, so that shareholders can determine the basis on which director duties will be fulfilled.

To the chairman:

The chairman must ensure the full understanding of the actual information practices of the company, including the investor relations process and private investor communication by management. The chairman is expected to seek an understanding of the views and concerns of shareholders and to communicate these views to the board. It will then be possible for the board to take this information into consideration when it establishes strategy. However, the board cannot be distracted by special interests promoted by single shareholders. The chairman must expect every board member to report whenever a director is at risk of becoming conflicted or his/her impartiality cannot immediately be trusted.

E. The board assumes accountability for outcomes

Shareholders should not seek to interfere with executive decision-making or with the board in the setting of strategy. Wide delegation to the board can only work if there is accountability for outcomes, both individually on the part of directors and collectively on the part of the board. The board must, in turn, ensure full accountability of executive management to the board.

To the board:

The board is responsible for the outcomes of its decisions. Among others, essential outcomes include: *The sustainable profitability of the business, the acceptable treatment of stakeholders, the corporate-governance provisions, the managed levels of financial, commercial and operational risks, the adherence to stated strategies and risk levels, the integrity of financial reporting, the capability to honour dividend policy, the long-term total return to shareholders.*

The board should recognise the long-term nature of value-creation processes and that profitability today is influenced by previous board decisions. We expect the board to maximise long-term returns on shareholders' capital within the understood and communicated strategy and risk. We expect the board to establish sound and rational incentives that provide for good business management. The board should seek cost-efficient ways to align management with shareholder interests, but also guard against the pursuit of private transactions or personal benefits. The board should not shield itself or management from being accountable to shareholders by installing or maintaining control or defence mechanisms.

To the directors:

Individual directors must be prepared to step down from the board if they have material unresolved concerns or doubts over the outcomes or the processes and decisions of the board.

II. EQUAL TREATMENT OF SHAREHOLDERS

This section sets out the document 'NBIM Expectations: Equal Treatment of Shareholders' in its entirety and concludes the discussion note alongside the preceding expectations document on 'board accountability'. Norges Bank Investment Management (NBIM) is responsible for investing the assets of the Norwegian Government Pension Fund Global. The goal of our ownership activities is to safeguard and build wealth for future generations. Our activities are based on the UN Global Compact and the OECD's Principles of Corporate Governance and Guidelines for Multinational Enterprise (Appendix 2,p34).

When applied to the ownership tool of company interaction, the purpose of the expectations on equal treatment of shareholders is to provide board members with a clear understanding of what NBIM expects of them individually and collectively. The document sets out NBIM's ownership priorities for equal treatment of shareholders. It also serves as a transparent basis for constructive dialogue between NBIM and the companies in which we invest. We encourage directors to use our expectations as a reference tool in board corporate-governance discussions and planning. Our intention is not to provide another code of corporate governance for companies to comply with or report against.

Why is equal treatment of shareholders important to NBIM?

NBIM is a diversified investor that, by mandate, holds minority stakes in listed companies. Consequently, the protection of minority shareholders' rights is a necessary requirement to protect and promote the Fund's long-term returns.

Every listed company has made a conscious choice to seek the economic benefits of external capital. By doing so, the board has implicitly accepted the obligations of public-market participation and must act in the interests of all shareholders. This necessitates recognition of the principle of equal treatment of shareholders.

Expectations

Our Expectations are laid out in three sections with accompanying requirements. We establish the requirement for transparency in structure and transactions, and the goal that all transactions benefit shareholders equitably, before concluding on routes to remove aspects of unequal rights:

A. The board will act in the interests of all shareholders

The board is always expected to create value with an eye to the equal benefit of all shareholders. We accept and support that a majority shareholder may seek to exert control via board representation, but not at the expense of other shareholders. Even a controlled company must ensure measures are in place to protect the interests of non-controlling shareholders.

To the board:

We expect the board to demonstrate that it has considered the interests of all shareholders in its decision-making and actions. NBIM expects shareholders to have equal access to all relevant information. The board should provide sufficient transparency of communication to enable all shareholders to make equally informed investment decisions.

The capital structure should be clearly set out. Shareholders should be provided with a description of all authorised share classes and the voting and cash flow rights associated with each class. Any ownership and control structure known to the board that may influence the control of the company should be disclosed annually. This should include cross-holdings, interlocked board representation, pyramid structures and any informal control structure that may impact the governance of the company. We expect the board to describe all inequalities of shareholder rights and what purpose each serves. We expect credible representation of independent directors on the board, and full, auditable transparency of decision-making.

To the directors:

All directors must act in the interests of all shareholders. This will require the highest standards of director integrity and conduct.

B. Board decisions should treat shareholders equitably.

The obligations of public-market participation for companies are framed by laws, formal listing rules and corporate-governance codes. However, the reasonable expectations on board decision-making extend beyond narrow, legal or regulatory compliance requirements. There are further duties resting with directors individually and the board collectively to secure the equitable treatment of shareholders.

To the board:

The company must demonstrate that there is equal treatment of all shareholders within the same class of shares. NBIM expects the board to avoid board members becoming unnecessarily conflicted. The board should establish auditable systems and procedures to manage and regulate such conflicts. This should include a disclosed policy for the recusal of board members from participating in board discussions and voting when there is a potential disqualification, all related-party transactions should be declined, unless such transactions can be shown tobe the best business opportunity and beneficial for all shareholders, the board should treat shareholders equally in the event of a takeover offer. Shareholders' pre-emption rights in capital issuances should be applied and respected. When the board seeks to waive current shareholders' pre-emption rights, including the issuance of convertible securities and other derivatives, it must ensure that the decision fairly benefits all shareholders.

C. The board will consider steps towards equality

In most circumstances, the equal rights of all shareholders, in proportion to their holding, will reduce the potential for conflicts of interests, mitigate agency costs and avoid unnecessary costs of capital.

To the board:

We expect boards of companies with differential rights to consider the arguments in favour of moving to an equal-rights regime. The board should make such an assessment at regular intervals and upon restructuring and capital events. As an outcome of its assessment, we expect the board either to propose steps towards equalisation, or to demonstrate to the satisfaction of shareholders why discrimination is beneficial to all shareholders, we expect the board to demonstrate its commitment to removing differential rights when designing corporate actions, including share buy-backs and issuance, when removal of differentiated rights requires a conversion transaction, the terms must be fair and reasonable. We expect all share classes to approve the transaction, the board should ensure equal treatment of all shareholders when making changes to the corporate structure, and when designing and setting the terms of transactions. Ultimately, we expect the board to implement one share class with each share having oneright to vote.

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Please read his speech at Harvard Law School Forum February 19, 2013. NBIM - Norges Bank Investment Management, Oslo: http://www.nbim.no/en/

AVIS D'EXPERT

EVALUATING THE INDEPENDENCE AND PERFORMANCE OF AN INDEPENDENT DIRECTOR IN CAC 40 LISTED COMPANIES

The AFEP-MEDEF Code (2013) insists on the need for Independent Directors in Corporate Governance of CAC40 listed companies, whether on a one-tier or a two-tier Board. The Independent Director, called I-Dir in this article, is a non-executive Director who contributes by defending corporate interests, avoiding conflicts of interest, and monitoring executives in charge of day-to-day management. Logically, the I-Dir's must simultaneously be independent and performing at a high level. Evaluating their independence and performance has become a very serious and complicated question.

I. Wanted Independent Directors

The Code requires a minimum of one third or 50% I-Dir's, depending on stockholder distribution. It reserves important titles for them such as President of the Audit Committee. Clearly, I-Dir's without independence and high performance cannot contribute appropriately. Defining the concept of independence (also called autonomy in this article) is the first important issue to consider.

Independence from what and from whom?

Functionally, independence has to be related to a reference. This reference could be relational, financial, and could also concern knowledge. In fact, the concept of independence is not clearly defined by the Code. An I-Dir is defined as a Director with no specific relationship to the company. He is neither an employee, nor a significant client nor an important supplier. He is neither company's creditor nor auditor. It is also necessary that he has been neither an executive Director for the last 5 years, nor a Director of the company for more than 12 years. These examples correspond to theoretical conditions of independence from the company.

The Board has to evaluate Directors autonomy and to list independent Directors in the company's annual report. In this case, the "comply or explain" rule applies. If Board considers as autonomous a Director who is not meeting all previous criteria, it has to justify why. AMF, French Financial Market Authority, checks progress, points out its findings on some interpretations, and provides useful recommendations[1].

In some cases, a non-executive Director can represent an important shareholder or a myriad of small ones. Here, even if it is allowed by the Code, this Director should not be considered as independent, as IFA[2] asserts. Additionally, an I-Dir must not have interests in lobby in the field in which the company operates. Financial independence from Director's compensation is also a practical necessity, since the I-Dir has to feel free to resign. Last, but not least, interdependence (for example, cross Board membership) also needs to be avoided. These autonomy conditions, even if respected, may not really lead to true independence. Hence, efforts should be made to go beyond the letter of the written codes and try to **embody the spirit of governance**.

True independence: above all a question of mindset

The Code is unclear concerning I-Dir's' personal relationships with Executives. For instance, a CEO's best friend should not be considered as an I-Dir, because of the risk of becoming a "Cheerleader", as coined by an interesting American study[3]. However it depends on his psychological profile! Yet, since the Board has to support the CEO, non-executive Directors (including I-Dir's) also must support the CEO, even if they are not best friends. Eventually, a very specific psychological and behavioral profile is key for a true I-Dir.

If the I-Dir does not want to support the CEO any longer, he has three choices. He can either position himself to replace the CEO, have the Board replace him (the Board is empowered to do so), or resign if he considers that the final collective decision is not in the corporation's best interests.

The subject of an I-Dir's performance merits equal attention.

Performance expectations for independent Directors

Performance expectations depend on the context. Indeed, if other Board members, and particularly the Chairperson, are expecting an I-Dir to agree on everything, they could evaluate his performance on his lack of activity. This 'quota-filling' type of director is not considered here, so we will focus on a true I-Dir. A pre-requisite is also that I-Dir's can benefit from transparency regarding company information. He has to develop knowledge about the company, the business and the sector in order to effectively fulfill his role. In addition, understanding and applying corporate governance values is vital. He must listen and understand strategic issues. In addition, an I-Dir has to bring new ideas and indications. Moreover, a constructive contestation helps to challenge Executive vision and understanding. Therefore an I-Dir has to clearly express and resolutely defend his point of view.

At the same time, he must be a team-player and accept and even support collective decisions. If the I-Dir is convinced that the final decision made by the Board conflicts with corporate interest, he has to feel free to resign.

II. Dir's independence and performance assessment

Evaluating independence and performance of an I-Dir is also very tricky. Indeed, each Director must simultaneously fill an individual role and a team-player role. From an individual point of view, independence and performance could be assessed on the following criteria.

Relevant criteria for independence and individual performance

First, independence could be defined through four dimensions: personality traits, soft skills, knowledge and finance.

- Necessary personality traits are: critical thinking, constructive thinking, backbone[4], fortitude[3], team spirit, pragmatism, among others. These traits lead to important attributes, such as attachment to corporate interests, detection of conflict of interests and acceptance of collective decisions.
- Soft skills include applying analysis diplomatically, a sense of priorities, cross-cultural understanding, risk awareness, and transparency (relational independence from Executives, other non-executive Board members, shareholders, competitors and related lobbies…).
- Knowledge concerns other companies and other sectors, and Governance issues such as the roles of different actors.
- Financial independence should concern revenues or capital. To ensure defense of corporate interests and financial independence, some companies require all Directors to hold shares (example: 200,000 EUR at Danone in January 2013, according to Pierre CABANE[5]). Here, financial independence could be presumed.

Second, performance has to be evaluated through several criteria. Persuasion, diplomacy, I-Dir's acceptance by all concerned parties, knowledge of the company and the sector, contribution to team work, and confidentiality are the most valuable characteristics.

Third, criteria that reflect both independence and performance should be evaluated. This includes innovation, detecting signs of possible future trends and risk detection.

Independence and performance assessment

These individual criteria should be evaluated through quantitative or qualitative assessment. **A few quantitative indexes** could be measured through the number of mentions in Board committee reports. Fortitude could be measured by

[1] *Corporate governance and executive compensation in listed companies, AMF, 2013*
[2] *Institut Français des Administrateurs, French Institute of Directors*
[3] *Hiring Cheerleaders: Board Appointment of "Independent" Directors, COHEN, FRAZZINI, MALLOY, 2012*
[4] *Richard BREEDEN, Restoring trust, 2003*
[5] *Manuel de gouvernance d'entreprise (Corporate Governance manual), Pierre CABANE, 2013*

counting individual (op)positions; innovation, by new ideas and new topics proposed; and attachment to corporate interest, by the number of conflicts of interests declared.

Qualitatively, self-assessment of independence and performance would be completed by a 360° assessment, not only for I-Dir's, but for all Directors. Moreover, any assessment requires a highly mature Board of Directors, first to be approved and executed, whether internally or by an external agency, and then to accept the conclusions and to apply recommendations. In any case, a high level of confidentiality is essential, since both the professional reputation of each Board member or Executive as well as the reputation of the corporation could be endangered should leaks occur.

In an ideal world, these skills should be demonstrated by all Board members and Executives. Consequently, the only difference is that an I-Dir has to be innovative and opportunistic, even unpredictable at times; qualities which cannot be expected from a Director who knows the company intimately for years.

From a collective point of view, the Board must also be mature enough to let the I-Dir express himself freely. Otherwise, even the best I-Dir would not make any contribution to strategic decision-making.

To conclude, new methods of recruiting I-Dir's should be imposed. Indeed, a traditional cooptation cannot be efficient in guaranteeing independence. Hiring them through an external consulting firm and then confirming this nomination by the Board would ensure that they fit well in current teams to contribute to a real collective intelligence. A true I-Dir deserves a professional status.

In addition, the level of I-Dir's independence and performance depends not only on his personality and skills, but also on the way Board is composed (no one can have all the necessary skills). The ability of a Board of Directors to work toward a collective intelligence relies heavily on how they think and act as a team.

Finally, I-Dir's independence and performance depends on their psychological and behavioral profile, and also on Board's level of maturity.

For these reasons an assessment of independence and performance of an I-Dir must be interrelated to a global assessment of Board performance.

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POINT DE VUE INVESTISSEUR

THE SUPERVISORY BOARD – AN (UN) KNOWN QUANTITY?

The unsung hero of Corporate Governance in Germany, Christian Strenger, was right yet again. He got the legal ruling he was looking for in the wake of the 2011 general meeting on the subordinate status of the Supervisory Board of Solar World vis-à-vis the Roi Soleil Frank Asbeck. The dire straits the company is presently in speaks volumes about the far from irreprehensible conduct of the Board at the time. The issue, though, hardly seems to be causing Asbeck sleepless nights. In theory, he could still seek admission to the Board, a feat that not even Frank Bsirske could accomplish given that he is both Deputy Chair of Lufthansa at the same time as being Chair of the Green party trade union. In 2002 his application for admission was rejected expressly on grounds of conflict of interests.

The issue of supervisory board independence is set to be a focal point in the upcoming 2014 voting, too, thanks to the specialist who drafted the guidelines for voting in ISS (&Co). The issue it boils down to is this; does having one third independence mean having a completely free hand? My question is should situations like what Linde is squaring up for in 2014 on such a crucial issue as cooling-off be subject to a hard and fast guideline with no obligation towards sounding the market or the shareholders? Wolfgang Reitzle may be the best Supervisory Board Chair that Linde has ever had, but who is aware of the fact? I, personally, know that he is in a league of his own, and that his (re)structuring of the company, increasing its worth by a double figure percentage, was nothing short of brilliant. I am also sure that in a case like this, an exception to the rule can be trusted, also (but not only) because the working efficiency of Linde's Board of Management is light years ahead of its Supervisory Board's. His Chairing of Linde's Board of Management did nothing to hinder his success as Chair of Continental's Supervisory Board where he turned the company's fortunes around, taking it from rags to riches. Who could have done better?

Independence and the capability to shoulder responsibility go hand in hand with the courage to take decisions as basic requisites for a (well) functioning supervisory board. A strong Supervisory Board shoulders its responsibilities and doesn't delegate them. The lowest common denominator, though, is a balanced make up in the power structure.

There is one aspect that stands out a mile**. The concentration of control and government** had been identified and understood as one of the roots of all evil as late as the monarchy of Louis 14th. And yet as recently as 2003, the chairman of a company's board of management could attest to the independence that the law demands from prospective candidates, including himself, seeking election to a seat on a Supervisory Board, a vestige which, in the meantime, has been deservedly consigned to the dustbin of history.

Yet there are still countries, **France and the United States** for example, who by favouring their own single-tier board systems, manifestly approve the overlapping of government and control. But what happens when the enforcer takes it upon himself to play the additional roles of judge, jury and executioner? Decision-making is certainly simpler and less hampered by disagreement, and despite its rather démodé sound and the inherent problems, PDGs are still being appointed. Here's to Phitrust progressing in its quest for the post to be abolished.

Fresenius is an example of how a major shareholder (independently of the extent of its holding) can do good. Alas, the opposite is also true, as Haniel has shown in its holding in (Celesio, Metro & Co). There is no doubt that the influence wielded by major players ought to be curtailed to prevent 'dependence' and to forestall situations like that of Volkswagen and MAN. A session of creative vote counting

together with, then, a 30% stake assured the car manufacturer unlimited power over MAN.
The tasks assigned to the supervisory board have not increased at the same rate as their remuneration; the increase over the last ten years has been in the thoroughness and the transparency with which their agendas have been carried out. Supervisory boards are expected to keep the Board of Directors on a tight rein; they must harness the horses that pull the cart. Both of these tasks have to function, but there's little else to it. Private intrigues (Solarworld) or functional muddling as in appointing PDGs; both run counter to the interests of the community as a whole, just as though one of the horses of the team were made to ride in the **coach** box. **Responsibility measured with a ruler; would you call simple-minded or just careless.**

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POINT DE VUE INVESTISSEUR

CORPORATE GOVGERNANCE: THE STATE OF ENGAGEMENT OF EUROPEAN SHAREHOLDERS

Executive Summary

Investors, especially institutional investors, have a crucial responsibility to control the corporations' optimization of long-term value creation in our European financial system. However, the European financial crisis has taught us that the investors' engagement process is not yet well established in Europe. The European Commission takes the investors' lack of engagement and short-term orientation up due to initiatives for new regulations. But is regulation in this way desirable?
This study examines the state of engagement within the scope of corporate governance in Europe. Therefore the study contains results about the three main topics "the form and subject matter of engagement" (section 3), "the engagement process" (section 4) and "the impediments of engagement" (section 5). Highlights of the study include:
− The respondents' attribute first and foremost responsibility to the engagement initiative.
− The execution of engagement is most prevalent in complex investment processes.
− The results emphasize the element of trust in the engagement process.
− The need for standardization of the engagement process is under discussion.
− Mostly the lack of time and the lack of expertise are reasons to delegate the engagement process.
− Only 50% of all interviewed investors check the progress of the engagement as part of the investor's control regarding the process.
− Only a few investors focus on value-based performance indicators for measuring the engagement's success.
− Those investors who do without any engagement justify the missing engagement with impediments that can be wiped out by delegating the engagement initiative.
The results of this study have important practical implications. Before implementing political regulations by law, the results about the investors' measurement of the engagement's success, about the investors' process of control and about the reasons why some investors do not participate in any engagement initiative should be taken into consideration in order to implement efficient and effective regulations.

Conclusions

This study examines the state of engagement within the scope of corporate governance in Europe. Therefore the main topics are structured as follows:
− **The Form and Subject Matter of Engagement**
− **The Engagement Process**
− **Impediments of Engagement**

The results regarding the form and subject matter of engagement show that the respondents attribute first and foremost responsibility to the engagement initiative. The execution of engagement is most prevalent in complex investment processes, such as investments in equity assets, international investment strategies or investment strategies with larger firms in the investment picture. The relevant topics are governance issues, risk management, conflicts of interest for board members and the (in) dependence of board members.
Also the results emphasize the element of trust in the engagement initiative. The respondents' answers imply an important role of the beneficial owner and an interrelationship with benefits for the beneficial owner and the investor. Therefore the results regarding the investor's control are not surprising. Only 35% of the respondents answered that they've requested a vote receipt, which can be interpreted as an indicator for investor's actual control.
The findings about the **engagement process** show that the need for standardization of the engagement process is under discussion. Those investors who have an established engagement process justified this with transparency requirements, the fundamental role of engagement to an investment product or the need to a consistent measurement of progress within the engagement process. On the other side, those who do not have an established engagement process stated that engagement should be flexible and cannot be standardized. Moreover, some respondents quoted that only large institutional investors need standardization.
Also the reactions to problems of the issuer are ambiguous. Half of the interviewed investors indicated that they would get active in this situation. 30% stated that they would choose the exit and sell the shares as soon as possible. These differences can be interpreted as variations in the investors' position of power and potential exertion of influence. The results also show why investors delegate engagement initiative. Mostly the lack of time or the lack of expertise (efficiency, know-how) were named as reasons for a delegation. A significant finding is that only 50% of all interviewed investors check the progress of the engagement as part of the investor's control regarding the process. But in fact, those who check are doing it continuously.
In regard to the measurement of success, most of the respondents showed a focus on the issuers' behaviour. The investors characterized the engagement's success with an observable change in the issuer's behaviour in practice, with an established constructive dialogue with the issuer or an issuer's commitment to changing its behaviour. Only a few

focused on value-based performance indicators and stated that engagement is successful when the investment making money to the investors in the fund through sustainable value creation in the company. These results bring up the question why only a few investors evaluate the output of an engagement initiative on value-based performance.

Concerning the personal **impediments of engagement** this study examines reasons for not participating in engagement initiative and engagement barriers regarding non-domestic assets.

General reasons for not participating in engagement initiative are the lack of time, the cost of information acquisition and a staff shortage. These answers are very similar to the ones about reasoning the delegation of engagement processes. For that, the results raise the question why some investors rather do without engagement at all than delegate it.

For an effective engagement the initiative should not be limited due to national borders. The results show that a majority of 44% is experienced in engagement regarding non-domestic assets. From those who stated having engagement experiences with non-domestic assets, indicated that their experiences are generally positive, but the engagement process is complicated due to foreign restrictions or is very costly.

These results have significant practical implications. Before implementing political regulations the process of investors' measurement of the engagement's success should be examined in detail and perhaps improved in the direction of a value-based performance measurement. Without this, an engagement process cannot be well controlled or governed. Therefore any regulations by law should be considering the support of the investors' measurement of the engagement's success - maybe due to incentives or a comprehensive information initiative.

Furthermore the results regarding the investor's control can be viewed critically. On the one hand, a certain degree of trust in the relationship between the investor and the beneficial owner or the corporation can be advantageous. But on the other hand, a lack of active control (only 50% in this study) can be dangerous for the investment's outcome. So maybe a promising control process is not needed on a standardized level for the whole European system, but on an individual level. Politics should take this into consideration while thinking about regulations on the aggregated level.

In addition, this study points out that those investors who do without any engagement justify the missing engagement with impediments that can be wiped out by delegating the engagement initiative. In view of the fact that an increase of engagement activity is wanted, politics should also think about incentives to delegate the engagement in order to minimize the number of investors who do without engagement at all.

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We publish a Study Conducted by the Club of Florence and the University of Hamburg

POINT DE VUE ENTREPRISE

THE BOARD SECRETARY

In France, unlike other European countries (where the appointment of a Board Secretary is compulsory for listed companies), the position of Board Secretary is not referred to in legal texts and has not yet been mentioned in governance codes. This perhaps explains why in France the contours of this position continue to be insufficiently understood, and why the Board Secretary sometimes remains restricted to a purely technical and administrative role, whereas in fact, this position keeps up step by step with changes and advances in governance, and with the emergence of self-regulation or soft law.

Certain factors have a crucial impact on the role played by, and the remits entrusted to, the Board Secretary (1.1) and, although remits continue to vary from one company to another, they reflect the same underlying trends (1.2).

1. Factors that may affect the role and remits of the Board Secretary

The surveys conducted by the working group have confirmed and highlighted the main external factors that can influence the role played and the remits fulfilled by the Board Secretary.

1.1. Stricter requirements for listed companies

Over the last few years, the Board Secretary of a listed company has seen an inexorable increase in the scope of his/her interventions, because of the new legal and regulatory obligations placed on listed companies.

To illustrate this point, mention may be made here of new obligations such as "Say on Pay", the law on the safeguarding of jobs, and also "Comply or Explain", the periodic evaluation of the Board, the administration of lists of holders of inside information and of conflicts of interest, the existence of the Board's specialist committees, the independence of the Board members, the increasingly strict requirements in terms of transparency, financial publications, the registration document, the Board's reports, and the degree of technicality and length of Board meetings, which are constantly rising.

1.2 Specificities of governance and balance of power within the Board

Other factors, which are specific to each company, influence the nature and scope of the role played by a Board Secretary:

-the role played by the Board in the company and more generally the importance of governance in the group;

-the form of organisation adopted, depending on whether the company has either a Board of Directors or a Management Board and Supervisory Board; whether or not the duties of the Chairman and the Chief Executive Officer are separated; whether or not there is a lead director; whether or not there is a controlling shareholder; whether or not there are directors who represent employee shareholders, or directors who represent employees, bearing in mind that this will be compulsory for most listed companies by the end of 2014.

2. Increasingly diversified remits

In 2007, the working group of the IFA (*Institut Français des Administrateurs* – the French Institute of Directors) had already highlighted the change in the role and remits of the Board Secretary, indicating that the Secretary, originally in charge of the Board's legal secretariat, was gradually becoming the "Governance Secretary". The rapid advances

made over recent years in the governance of listed companies in France, which is now in line with the best international practices, have accelerated this trend and have had a direct and immediate effect on the role and remits of the Board Secretary of listed companies in France.

To the question put to directors by the IFA working group, "*What is the Board Secretary's role in your view?",* the answers given all converge towards an identical answer: "*To ensure that the Board of Directors functions correctly"*. To the same question put to Board Secretaries, the answers given also all converge towards an identical answer: "*a guardian of compliance and governance who guarantees the validity of the decisions taken by the Board while promoting governance inside the company"*.

2.1 Legal secretariat of the Board

The Board Secretary, in the role of "guardian of the temple," carries out all tasks relating to the correct functioning of the Board, including the organisation of relations between the company, the directors and the Chairman. This role makes the Secretary the guarantor of the validity of the decisions taken by the Board, and of the compliance of the Board's *modus operandi*.

a- Minutes of the Board meetings

A remit common to all Board Secretaries, the drawing up of the minutes of the Board meeting, in which the Secretary participates, is an important task. Minutes were once recorded in handwritten pages and are today typed using a word processor, but although the task has changed in its form, it remains identical in its substance. It is not necessary here to point out the considerable importance of the minutes of meetings, to which the directors must pay particular attention, as the minutes "are authentic unless proven to be otherwise in their date and in their content" (Article R 224-22 of the French Commercial Code). On this point, reference should be made to the work of the IFA legal commission of 2013. This is a painstaking and delicate exercise, as the text of the minutes is in no way a verbatim record of the debate, but an overview, which must bring out in a synthetic, succinct but still comprehensive way the main positions adopted and the main decisions carried by a vote.

b- Organisation of the work of the Board

At least one year in advance, and in any case with a vision taking in the next 18 months, the Board Secretary assists the Chairman in organising the work of the Board:

-by managing the preparation of the agendas and ensuring that the convening notices are physically sent to the Board members;

-by defining the annual work programme and the calendar of Board meetings, for which it is essential to make allowance for interactions with the internal divisions of the society that are involved, to integrate the workload of the accounting and financial teams, and to manage the critical paths with the Board Committees;

-by preparing and ensuring that the work dossiers are physically sent, while interfacing with all the internal divisions of the company involved (accounting and finance, human resources, financial communications, internal audit, legal affairs, etc.), while providing them with guidance about the nature and form of the documents to be prepared, and also controlling the quality of the documents and the meeting of deadlines;

-by organising the running order of the Board meeting;

-by monitoring the attendance of the directors, and by managing the follow-up and the payment of the attendance fees;

-by carrying out certain operations, such as the preparation of the share transaction declarations of the senior managers and directors.

c- Guarantor of the compliance of the Board's decisions

The performance of all the practical tasks referred to above must be carried out in accordance with the law and regulations. It is up to the Board Secretary to make sure that the Board carries out correctly and in a timely fashion its traditional remits of closing the financial statements, convening the Annual General Meeting (AGM), renewing the composition of the Board and Committees, and reviewing individual transactions, and more generally, that the legal obligations of the Board are complied with.

d- Annual General Meeting

The organisation of the Annual General Meeting, in which the Board Secretary is actively involved, is becoming an increasingly important part of the Secretary's activities, and is constantly changing.

The recent publication of "Say on Pay" in France and the new law on the representation of employees on the Board will give rise to two substantial new tasks for the Board Secretary, which need to be carried out in the early stages of preparation of the 2014 AGM.

In addition to the traditional legal remits relating to the preparation of the legal documentation decided on by the Board (agenda, text of resolutions and reports), the Board Secretary is often also the Secretary of the Annual General Meeting. In this capacity, the Secretary is the guarantor of the correct functioning of the AGM and its bureau, and ensures that all incidents are correctly managed, including amendments and new resolutions, in accordance, where appropriate, with the handbook ("*vade-mecum*") published by Afep (*Association française des entreprises privées* - the French Association of Large Companies) and ANSA (*Association Nationale des Sociétés par Actions* – the National Association of Public Limited Companies).

The preparation of the Annual General Meeting also involves many other tasks for the Board Secretary, including in the early stages, alongside the head of investor relations, the preparation and follow-up of contacts and negotiation with the proxy voting advisory firms, the audit of the compliance of the group with their voting policies, the mapping of the shareholding structure and of the influence of the proxies, the conception and drawing up of the messages to the shareholders in the registration document and the resolutions, the drawing up of the documentation, and finally the preparation of the questions and answers. In view of the growing interactions between the Board, the AGM and the shareholders, this role is becoming increasingly significant.

The assistance that a Board Secretary can provide to the General Management and the Board on these matters should ensure that all resolutions are approved by an appropriate score, that sensitive issues are anticipated, and that the Annual General Meeting takes place in a harmonious atmosphere.

2.2 Governance Secretary: new remits linked to evolution of governance

The Board Secretary has become, because of his/her remits, a protagonist who is essential for the correct governance of

listed companies. In this field, the Secretary's role varies significantly from one group to another depending on the factors referred to in the first part of this report, but also depending on his/her personality and position in the organisation. The Secretary's remit of permanent monitoring, in his/her capacity as the guardian of compliance (a), is changing, with greater emphasis on the remit as the promoter of governance (b).

a- Permanent monitoring remit

The Board Secretary is clearly the person best equipped to provide support to the Chairman and the Board on all governance issues. The Board Secretary prepares at an early stage and organises with the Chairman the work of the Board of Directors relating to its structure (number of directors and choice of management structure), composition (independence of directors, management of conflicts of interest, feminisation and internationalisation of the Boards, length of terms of office and ages of directors, representation of employees, and holding of shares by directors), its remits and its *modus operandi* (internal rules, evaluation of compliance with reference codes) and the status of the directors (remuneration, number of directorships held, insider trading, and insurance).

In this connection, Board Secretaries are called on to be members of market advisory groups (such as the working group of the AMF [*Autorité des Marchés Financiers* – France's Financial Markets Authority] on Annual General Meetings in 2012). In this way, the Secretary makes sure that the Board's *modus operandi* complies with generally accepted practices for comparable groups, so that his/her group remains in step with its environment.

This permanent monitoring function should rule out the possibility of the Board of the company being challenged or called into question by shareholders at the Annual General Meeting.

b- Promoter of governance

As well as being required to verify compliance, the Board Secretary is also the internal promoter of governance. In this respect, the Board Secretary regularly checks that the Board's internal regulations are up to date and relevant. The Secretary also proposes to the Chairman an annual scoreboard concerning the work of the Board and the information to be passed on to the directors. By setting up this scoreboard, the Board Secretary assists the Chairman in his efforts to ensure that the Board is completely fulfilling all its remits (including those arising from soft law and best practices: risk monitoring, compliance of remuneration systems with generally applied practices, and strategy). The Board Secretary replicates these models in the Board Committees, while taking care to ensure that the work of the Board and that of the Committees are well coordinated (critical paths, interactions, liaison and synergies between work, etc.).

The best practice is thus that the Board Secretary should also be the Secretary of the Audit Committee and/or of the Committees in charge of appointment and remuneration matters. If this is not the case, which must only happen in exceptional circumstances, the interaction must be formally stipulated and the minutes of the meetings of these Committees must be communicated to the Board Secretary.

The Board Secretary also prepares for the Chairman an annual table evaluating compliance with AMF recommendations and/or corporate governance codes. The Secretary proposes the draft report of the Chairman on the work of the Board of Directors. This report, which is a crucial information document from a governance viewpoint, provides shareholders with visibility of the work of the Board. In particular, it shows that the Board is functioning correctly, by bearing witness to the implementation of best practices, for example in terms of the attendance rate of directors, transparency in appointment processes, the level of independence and the management of conflicts of interest.

Similarly, the Board Secretary sets up internally and/or externally the Board evaluation procedure, which is a powerful lever for changing and improving the Board's practices and the group's governance. Going one step further in this role, the Board Secretary will organise, wherever necessary, the training programme for directors, particularly those representing employees, and will participate in the organisation of the directors' seminar and/or the supervision of on-site visits by the directors.

Similarly, the Board Secretary helps to ensure that new directors are well integrated, and responds to their requests for training and information. A point of contact with the directors, the Board Secretary answers their questions, informs them of their rights and obligations, and makes sure that the information communicated to them is organised with maximum effectiveness and in the most clearly understandable way possible.

Finally, the Board Secretary plays a decisive role in the information provided to the Board about governance matters. The Secretary regularly prepares and supplies a benchmark about generally applied practices, and overviews of new texts. **The Secretary endeavours to determine their impact on the Board, and on the Board's interaction with the shareholders and with the proxy voting advisory firms. Lastly, in some groups the Board Secretary participates in contacts at an early stage with the proxy voting advisory firms, alongside the head of financial communications.**

Anne-France ARNOUX-SAUGNAC — Rapporteur du groupe de travail
François BASSET-CHERCOT — Président du groupe de travail

F. Basset-Chercot, Président du groupe de travail « le Secrétaire du Conseil », constitué par l'IFA, nous a proposé cette version anglaise de la 1ère partie de ce document important, que vous pouvez consulter dans son intégralité en français sur le site de l'Institut Français des Administrateurs-IFA (16 p) : www.ifa-asso.com , intitulé « ***Le Secrétaire du Conseil : une fonction essentielle au bon fonctionnement du Conseil et à la dynamique de la gouvernance*** » - Les travaux de l'IFA, septembre 2013 .

POINT DE VUE ENTREPRISE

ROLE ET RESPONSABILITES DE L'ADMINISTRATEUR INDEPENDANT

1. Le rôle de l'Administrateur Indépendant :

Conformément à la loi, l'Administrateur Indépendant est conduit à exercer simultanément ou alternativement une fonction de contrôle (vigile) et une fonction de stratège (éclaireur).

Dans un contexte agité, la mission de vigilance consiste à prévenir les risques et à fiabiliser l'existant:

•Prévenir l'immobilisme qui fait perdre de la valeur à long terme pour les actionnaires ;
•Mettre l'analyse des risques à l'agenda.

Dans un contexte de continuité, on attend d'un Administrateur Indépendant un apport à la réflexion du Conseil sur un développement pérenne. Il s'agit par son rôle de stratège et d'éclaireur de lui apporter de la clairvoyance et du recul.

L'Administrateur Indépendant doit être un soutien non complaisant du dirigeant et, selon les situations, il peut au sein du Conseil d'administration tenir alternativement deux rôles :

- médiateur pour concilier positions et intérêts divergents entre actionnaires et dirigeant ou entre actionnaires eux-mêmes ;
- catalyseur pour regrouper les énergies et les compétences nécessaires au développement de l'entreprise.

Ces différents rôles se déclinent pratiquement ainsi :

- Mandataire social, il n'a pas, bien sûr, de fonction salariée ou opérationnelle dans l'entreprise. Il est dégagé de toute contrainte quotidienne, même s'il est à la disposition du dirigeant qui a besoin de partager une préoccupation.
- Son rôle est essentiellement de soutenir, de conseiller et de challenger le pouvoir exécutif de l'entreprise, en aidant le dirigeant à rompre son isolement.
- Il se doit d'apporter une contribution à la définition de la stratégie de l'entreprise, ainsi qu'à l'identification et à l'évaluation des risques, et de veiller à la bonne application des règles définies dans ce cadre. Il s'assure de la cohérence des décisions avec la stratégie définie.
- Il doit être le garant de la bonne gestion financière et juridique de la société et de sa responsabilité sociétale. Il doit notamment prendre position sur la rémunération des mandataires sociaux. Ses interventions et propositions doivent être destinées exclusivement aux autres membres du Conseil et ne peuvent être ni divulguées ni discutées avec d'autres membres du personnel de l'entreprise sans accord préalable du Président. Il peut se voir confier, par le Conseil et, éventuellement, par l'assemblée des actionnaires, une mission particulière dans le cadre de son mandat, si cette mission donne lieu à une convention réglementée.
- L'Administrateur Indépendant est nommé par l'Assemblée Générale des actionnaires. Il est donc garant et défenseur de l'intérêt social de l'entreprise et doit prendre en compte l'ensemble des parties prenantes. Il veille au bon équilibre et à l'harmonieuse répartition des responsabilités et de l'exercice des pouvoirs dans l'entreprise et ce dans le respect des lois en vigueur.
- Il doit être le garant des règles de bonne gouvernance et de déontologie, et dénoncer toutes pratiques ou positions et acceptée. La valeur ajoutée de l'Administrateur Indépendant est particulièrement importante dans les ME/ETI.

Il ne s'agit pas, en effet, d'appliquer une gouvernance contrainte par la loi ou des recommandations institutionnelles, mais une gouvernance choisie, adaptée et destinée à accroître une création de valeur durable pour la société, tout en respectant un certain nombre de principes de base.

L'Administrateur Indépendant est libre de toute contrainte matérielle et/ou financière et sa nomination doit avant tout avoir pour objectif d'apporter aux dirigeants des compétences et un regard à la fois extérieur mais impliqué. La rémunération, sous forme de jetons de présence constitue une juste rétribution de la responsabilité et de la disponibilité dont doit faire preuve ce professionnel. *(Cahier APIA n°12:« Repères pour la rémunération des Administrateurs Indépendants »)* contraires à ces règles, même si cela remet en question sa position d'administrateur.

2 Les conditions de l'exercice de la fonction d'Administrateur Indépendant

Ce rôle est dévolu à un professionnel désigné par l'Assemblée Générale des actionnaires sur proposition des instances dirigeantes de la société.

Mandataire social, il représente l'ensemble des actionnaires et, de ce fait, son indépendance doit être totalement reconnue

L'Administrateur Indépendant doit avoir :

•les moyens d'exercer son mandat correctement ;
•l'accès à l'information nécessaire, interne et externe à l'entreprise ;
•la communication, dans les délais adaptés, de tous les documents indispensables à une compréhension des enjeux et à la préparation des réunions du Conseil.

3 Les qualités requises pour être Administrateur Indépendant

L'Administrateur Indépendant doit :

- être un professionnel reconnu et respecté pour son parcours, son expérience dans son domaine de compétence. Cela conforte son indépendance et sa capacité à intervenir avec assurance ;
- avoir une maturité certaine pour affronter des situations parfois difficiles. Il est utile que l'Administrateur Indépendant ait acquis une solide expérience de direction au sein d'une entreprise. Pour APIA, cette expérience de dirigeant est un pré requis pour assumer cette fonction ;
- avoir une vision globale de l'entreprise et être à même d'apporter une contribution sur l'ensemble des problématiques de l'entreprise. Sans être nécessairement un spécialiste, il doit pouvoir comprendre et intervenir sur une question précise comme un problème de financement ou de ressources humaines ;
- posséder un sens certain du partage et du dialogue pour entendre le point de vue des autres membres des instances dirigeantes. Mais être aussi une personne de convictions qui défend son point de vue et ses6 analyses et ne cherche pas à composer au risque de se renier. C'est donc une personne courageuse, qui veille à mettre la confidentialité au premier rang de ses préoccupations promouvoir la collégialité au sein du Conseil est également être au centre de ses préoccupations ; il ne suffit pas que les meilleures compétences soient réunies autour de la table, encore faut-il qu'elles puissent bien s'exprimer au mieux des intérêts de l'entreprise ;
- avoir un esprit curieux, être constamment en veille pour se tenir informé des évolutions qui peuvent avoir un impact sur l'entreprise dans son ensemble ;
- être une force de proposition reconnue et un acteur écouté.

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Administrateur d'entreprises, ancien cadre dirigeant du secteur de l'industrie, J.Ph. Marandet a animé le groupe de travail rédactert du document, le Cahier bleu APIA, décembre 2013, intitulé « Pour une gouvernance d'entreprise choisie, la réponse de l'APIA : l'Administrateur indépendant » (16 p), que vous pouvez consulter, ainsi que la CHARTE APIA (en 9 points) et l'ensemble des 23 cahiers APIA sur le site : www.apia.asso.fr

POINT DE VUE INVESTISSEUR

REMUNERATION ISSUES IN SWEDEN

Are "Say on Pay" issues still hot in the Scandinavian countries in general and in Sweden in particular? The boring answer is really "no", but historically they have been and the road to the consensus existing today has not been straight. This article seeks to explore that route and the state of affairs today.

The current Swedish Corporate Governance Code (the "Code") came into force on 1 February 2010 and includes a number of recommendations, with referrals to legislation. The Code is now adhered to by most listed companies (being good practise rather than formal Stock Exchange rules). In the unquoted space, the Code is applied voluntarily and less frequently. One important sector where there are significant deviations is the Private Equity industry. This will be highlighted below.

Before the process of remuneration was more well-organised, informal processes reigned and (as in other countries, not least the USA) resulted in some excesses. The (in) famous case of the Skandia incentive programmes hit the headlines ten years ago.

Skandia, the largest insurance group in Sweden, had established two incentive programmes in the late 1990's Sharetracker (maximised to one annual salary) and Wealthbuilder (maximised to SEK300m (€33m)). At some stage the cap was removed from both incentive programmes, and they were prolonged by two years in 2000. In the spring of 2003, it emerged that the programmes had generated SEK2,037m (€226m) compared with SEK489m (€54m) had the caps still been in place. CEO Lars-Eric Petersson and CIO Ulf Spång were both charged with various offences, but cleared of all these charges in 2007 and 2009 respectively. Both are today respected business men.

These and a number of contested incentive schemes voted on at general meetings (or in some cases not) were very much taken into account when practise developed over the next few years and in establishing the Code in 2010.

The preamble of the Code sets out the key requirements as follows.

"The company is to have formal and openly stated processes for deciding on remuneration of members of the board and the executive management.

Remuneration and other terms of employment of members of the board and the executive management are to be designed with the aim of ensuring that the company has access to the competence required at a cost appropriate to the company, and so that they have the intended effects for the company's operations."

Structure and transparency are, thus, at the forefront of the Code. The Board of the Company in question is required to establish a Remuneration Committee with monitoring and evaluation responsibilities. The Board itself could alternatively act as the Remuneration Committee.

"The shareholders' meeting is to decide on all share and share-price related incentive schemes for the executive management. The decision of the shareholders' meeting is to include all the principle conditions of the scheme."

The principles of having all executive management schemes voted on by a general meetings and all details of the scheme in question to be included, would prevent any repeat of the effects of the Skandia schemes. The fact that executive management is spelt out specifically excludes the (supervisory) Board/non-executive directors. The Code is here based on the Swedish Companies Act. The intention is to make sure that the monitoring role of the Board is not compromised by any potential conflicts-of-interest. Therefore, and unlike in other countries like Germany, non-executive directors in listed companies in Sweden are not expected to participate in incentive schemes. Also, the fact that the Code refers to "the principle conditions of the scheme" is important. It is up to the Board to approve the details of the scheme in question, as in this respect the Board has more insight regarding the details of the operations of the group than shareholders in general. This is, however, being debated and some investors would prefer to vote also on the details.

Executive pay according to the Code comprises, as elsewhere, of fixed salary or fee, variable remuneration, including share- and share-price-related incentive programmes, pension schemes and other financial benefits. Retirement benefits are, generally, rather generous within the private sector in Sweden. There is, however, a special reason for pension schemes to be included in the Code. The most public situation, of a number of similar situations, emerged ten years ago, in parallel with the Skandia affair.

The retiring Chairman of Asea Brown Boveri (ABB) Percy Barnevik had been granted retirement benefits of in total SEK930m (€103m) by the senior representative of the largest shareholder, Peter Wallenberg. After significant media exposure, Mr Barnevik subsequently agreed to give up SEK548m (€60m) of his entitlement, which put his pension more in line with those granted to other leading Swedish CEOs. Percy Barnevik has subsequently rebuilt his image as a Swedish icon thanks to his foundation Hand in Hand (granting micro finance in developing countries) and other important charity work.

It should also be mentioned that all new pension schemes are based on Defined Contribution rather than Defined Benefit, although a few such schemes are still in place. Also, the incentive schemes must all be share-related or share-price-related, according to the Code, in order to secure alignment of interest between executive management and shareholders. Share matching is common, based on achieving certain, well defined objectives. Like in France, share buy-back programmes are often combined with these incentive schemes in order to avoid adverse share price effects.

The vesting period for the incentive schemes differ, but are no less than three years and often longer at banks. As an example the SEB Group has a scheme where the vesting period and restricted selling period in all covers seven years. Another example is Ericsson where all employees may purchase one share and be matched by one share by the company. The 1:1 ratio then increases via senior management to 1:9 for the CEO. A different system, in place since 1973, reigns at Handelsbanken where the profit sharing foundation Oktogonen annually receives exactly the same amount for all employees (outside Sweden taxation considerations may vary this). Amounts are mainly (90%) invested in shares of Handelsbanken and are available the

year the employee (active or former) turns 60. Employees with maximum entitlement in the foundation now have a value in excess of €3m, which is available to withdraw over 1-15 years.

The benefits of the employee schemes are obvious, lock-in of staff and alignment of them as shareholders. Generally, however, employees seem to divest of their shares when they are available for withdrawal.

Finally, the Code states that "*fixed salary during a period of notice and severance pay are together not to exceed an amount equivalent to the individual's fixed salary for two years*". As a result, additional amounts are often paid into pension schemes for the retiring executive in question.

As mentioned above, the management companies of the Private Equity industry has more degrees of freedom, not being listed. Directors of the Boards of these companies are also investors covered by the incentive schemes relating to the carried interest of the private equity funds. The leverage is, however, larger for executive members of the schemes than for non-executive members.

In practice, the remuneration process and issues linked to it are now fully transparent and well-structured and could be said to be very much under control.

The issue of securing best available competence for Swedish Boards has been under debate for years. Apart from the gender and diversity issue, attracting international Non-Executive Directors to join Swedish Boards has been an issue. Considering that many Swedish companies have the overwhelming share of their turnover from international markets, such competence is no doubt important.

The business daily *Dagens Industri* reported this autumn that over the last ten years the fixed remuneration paid to board directors had increased by over 70% which in comparison to wage increases may seem a lot, but the increase came from a low level internationally. Börje Ekholm, CEO of Investor AB, recently advocated a further increase to reach international remuneration levels. Considering new EU requirements on board directors of banks, their remuneration may well need to be increased significantly. The individual exposure of up to €5m and the maximum of three other directorships, all point in this direction.

If the major listed Swedish companies still regard their Board remuneration as insufficient, the fees within the government sector companies are even more limited. As an example, the Chairperson of TeliaSonera (37% owned by the Swedish government) received at SEK1.2m (€133k) only 75% of the remuneration of the Chairman of Husqvarna – in spite of the fact that the telecommunications company having a market capitalisation ten times larger than that of the producer of outdoor power products.

Finally, it could be noted that the Swedish National Pension Funds (1-4) a few years ago wrote to the Government asking that the remuneration for the directors of the Funds be increased, not on competence grounds but on grounds of the responsibility assumed holding such a position. At the time, the annual fee for an AP-fund director was SEK50, 000 (€5,500)…

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AVIS D'EXPERT

LA PRATIQUE DES COMITES D'AUDIT EN FRANCE ET DANS LE MONDE

La dissymétrie de l'information est au cœur des problèmes de gouvernance des entreprises. Les conseils d'administration et, au-delà, les actionnaires sont-ils bien informés des réalités des entreprises ? Comment agissent-ils pour en prendre connaissance ? Les comités d'audit sont les principaux lieux de la collecte et de la synthèse des informations pour les conseils d'administration. Une analyse du fonctionnement de ces comités d'audit permet de mieux comprendre les problèmes et les pistes d'amélioration de la gouvernance des entreprises.

Deux études récentes analysent le fonctionnement de ces comités d'audit :

-Une étude de l'AMF publiée le 4 novembre 2013 « Etude relative aux rapports des Présidents sur les procédures de contrôle interne et de gestion des risques pour l'exercice 2012 » ;

-et une étude internationale de l' « Audit Comitee Institute » de mai 2013 basée sur une enquête auprès des membres des comités d'audit.

Les deux études convergent dans leurs recommandations sur deux points : rechercher l'efficacité globale des comités et des procédures de contrôle interne et se focaliser d'avantage sur les enjeux critiques et la stratégie. Elles préfigurent ainsi les nouvelles spécifications du référentiel COSO3 et de leur déclinaison par l'AMF.

Grandes lignes du rapport de l'Audit Comitee Institute – comparaisons internationales :

KPMG est le sponsor de l'Audit Comitee Institute (www.audit-comitee-institute.fr). C'est un forum d'échange destiné aux membres des comités d'audit. Il a sorti récemment une analyse de la pratique des comités d'audit en France et dans le Monde. Une analyse similaire avait été faite en 2010 et à l'époque cette analyse était très marquée par la crise financière.

Cette étude très complète fait le point sur les pratiques actuelles et sur l'opinion des acteurs face aux nouveaux risques et aux changements réglementaires. Les points qui suivent ne reprennent qu'une partie de l'étude et ont surtout pour objectif la mise en évidence des écarts de pratique entre la France et les pays étrangers.

D'une manière générale, les administrateurs ont confiance dans la qualité de la supervision de l'information financière. Néanmoins, ils sont nettement moins satisfaits en matière de supervision des risques.

Certaines particularités dans les réponses font honneur à l'esprit français, en particularité le désir d'indépendance vis-à-vis des sources et du besoin de se faire son opinion (voir les réponses à la question 4, page 11). D'autres particularités sont moins exemplaires. En particulier sur les pistes d'amélioration de l'efficacité du comité d'audit (question 29 page 36), il est peu proposé en comparaisons avec les pays étrangers, de faire venir de nouveaux administrateurs ni de s'impliquer d'avantage. Cela ne peut que qu'alimenter les

critiques sur la monoculture et sur un certain dilettantisme parfois prêtées aux administrateurs français.
L'ensemble du rapport est très riche. Il peut être consulté sur le site de l'Audit Comitee Institute. Il donne en particulier des éclairages sur les risques significatifs des entreprises et sur leur préparation à la gestion des crises.
Le rapport conclut sur la nécessité de clarifier le rôle du comité d'audit et de se pencher sur son efficacité. La bonne gouvernance a tout à y gagner.

Norbert TANGY
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La Fédération Nationale des Cadres Supérieurs de l'Énergie (FNCS) est une fédération de huit syndicats régionaux de cadres supérieurs de l'énergie. Elle défend les intérêts individuels et collectifs de ses adhérents ; elle soutient les activités des entreprises auxquelles ils appartiennent, dans un secteur industriel dont l'enjeu concerne aussi l'intérêt général.

POINT DE VUE INVESTISSEUR

ISS Releases 2014 Proxy Voting Policies

Institutional Shareholder Services Inc. (ISS), a leading provider of corporate governance solutions to the global financial community, today released 2014 updates to its benchmark proxy voting policies for the Americas, EMEA, and Asia-Pacific region.

These global updates are the culmination of a consultation process that included institutional investors and corporate issuers worldwide. The updated policies will be effective for analyses of all publicly traded companies with shareholder meetings as of Feb. 1, 2014. To learn more about the policy updates, please visit the ISS Policy Gateway.
To ensure its voting policies take into consideration the perspectives of the corporate governance community and the views of its institutional clients, ISS gathers broad input each year from institutional investors, issuers, and other market constituents through a variety of channels and mediums.
"Our 2014 benchmark voting policy updates reflect wide-ranging feedback solicited through our annual policy survey, regional roundtables, and direct engagements with groups of investors, issuers, and corporate directors," said Martha Carter, ISS' Head of Global Research. "We firmly believe that our commitment to this approach enhances the value of the research we deliver to clients and informs our vote recommendations." To aid market participants in understanding the nature and scope of the 2014 policy updates as well as other developments shaping the governance landscape. These webcasts also will provide valuable insight about the key corporate governance issues investors are likely to grapple with in 2014.
Separate from its 2014 voting policy updates, ISS is requesting feedback from governance stakeholders globally on potential longer term changes to seven discrete voting policies as part of a new, ongoing consultation period running until February. Comments will be taken into consideration as ISS formulates updates to its policies beyond the 2014 annual meeting season. Items under consideration include auditor rotation and independent chairs in the U.S., stock issues without preemptive rights in Europe and Asia, and equity plan scoring in both Canada and U.S.
"Our aim is to shift from a seasonal to year-round focus on policy development, keeping us ahead of the myriad changes now altering the governance landscape," explained Carter. "And as with our existing policy process, we will continue to be inclusive in our efforts to seek diverse feedback."

Rockville, MD; November 21, 2013

www.issgovernance.com About ISS: founded in 1985 as Institutional Shareholder Services Inc., ISS is the world's leading provider of proxy advisory and corporate governance solutions to financial market participants. ISS' services include objective proxy research and analysis, end-to-end proxy voting and distribution solutions, turnkey securities class-action claims management, and reliable governance data and modeling tools. Clients rely on ISS' expertise to help them make informed corporate governance decisions. ISS is located in financial centers worldwide and is a subsidiary of MSCI Inc., a leading provider of investment decision support tools to investors globally. ISS Contacts:
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AVIS D'EXPERT

ADVANCING ANNUAL ELECTIONS IN THE 2014 PROXY SEASON: TOWARDS DECLASSIFICATION AT 100 S&P 500 AND FORTUNE 500 COMPANIES

The Shareholder Rights Project (SRP) is pleased to announce the work that SRP-represented investors and the SRP are undertaking for the 2014 proxy season, and the significant contribution that this work is expected to make in moving 100 S&P 500 and Fortune 500 companies towards annual elections.
• **31 Proposals Submitted for 2014 Meetings:** Shareholder declassification proposals by SRP-represented investors have been submitted for a vote at the 2014 annual meetings of 31 S&P 500 and Fortune 500 companies. The proposals urge repeal of the companies's staggered boards and a move to annual elections. The names of the companies and the SRP-represented investor submitting to each company are listed here. The SRP-represented investors submitting proposals are the Illinois State Board of Investment (ISBI), the Nathan Cummings Foundation (NCF), the North Carolina State Treasurer (NCDST), the Ohio Public Employees Retirement System (OPERS) and the State Board of Administration of Florida (SBA).
• **About One Quarter of Recipients Have Already Agreed to Declassify:** The SRP and SRP-represented investors have been engaging with companies receiving shareholder declassification proposals. Although the 2014 proxy season is still in its early stages, seven of these companies—about one quarter of the companies receiving shareholder proposals—have already entered into agreements to bring management declassification proposals to a shareholder vote for approval. It is expected that, as

occurred during the 2012 and 2013 proxy seasons, ongoing engagement by the SRP and SRP-represented investors will result in similar negotiated outcomes at a significant number of additional companies among those receiving proposals for their 2014 meetings.

• **Eight Additional Agreed-Upon Management Proposals:** In addition to the seven companies that have entered into agreements to move towards board declassification as a result of 2014 proposals, eight additional companies are expected to bring agreed-upon management proposals to a vote at future annual meetings pursuant to agreements entered into following proposals submitted to those companies by SRP-represented investors for annual meetings in previous proxy seasons.

• **Towards Declassification at 100 S&P 500 and Fortune 500 Companies:** Together with the 80 companies that have already declassified during 2012 and 2013 as a result of the work by the SRP and SRP-represented investors, the fifteen agreed-upon management proposals can be expected to make a significant contribution to the large-scale declassification of boards of directors.

Furthermore, based on the above results and ongoing engagement by the SRP and SRP-represented investors with additional companies receiving 2014 proposals, the SRP expects that, by the end of 2014, the work of the SRP and SRP-represented investors will have contributed to movements towards board declassification by close to 100 S&P 500 and Fortune 500 companies.

• **Benefits of Declassification:** Annual elections are widely viewed as corporate governance best practice. Board declassification and annual elections could make directors more accountable, and thereby contribute to improving performance and increasing firm value. The substantial shareholder support for board declassification, and the significant empirical evidence consistent with this support, are described in two pieces by the SRP's director, entitled Giving Shareholders a Voice and Why Wachtell Lipton was Wrong about the SRP, as well as in the SRP's preliminary 2013 Report.

• **SRP Work:** The SRP provides SRP-represented investors with a range of services, including assistance in connection with selecting companies for proposal submission, designing proposals, submitting proposals on behalf of represented investors, engaging with companies, negotiating and executing agreements by companies to bring management declassification proposals, and presenting proposals at annual meetings**.**

SRP News Alert December 4,2013

Inquiries should be directed to **Emily LEWIS**, Administrative Director of the SRP, emlewis@law.harvard.edu

The Shareholder Rights Project (SRP) is a clinical program operating at Harvard Law School and directed by **Professor Lucian BEBCHUK**. **The SRP works on behalf of public pension funds and charitable organizations** seeking to improve corporate governance at publicly traded companies, as well as on research and policy projects related to corporate governance. Any views expressed and positions taken by the SRP and its representatives should be attributed solely to the SRP and not to Harvard Law School or Harvard University

POINT DE VUE INSTITUTIONNEL

LES ENTRETIENS DU TRESOR : Quel financement pour l'économie mondiale de demain ?

Le nouvel environnement réglementaire a-t-il rendu le système financier plus sûr ?

En 2005, le symposium de Jackson Hole a été l'occasion de passer en revue les développements les plus significatifs intervenus au cours des 19 années d'Alan Greenspan à la tête de la Federal Reserve. S'interrogeant sans a priori sur l'impact des innovations qu'avait connues le secteur financier, Ragurham Rajan est arrivé à la conclusion, assez critiquée à l'époque que « le monde n'est pas devenu plus sûr », contrairement à l'opinion communément admise.

Depuis le début de la crise, un effort global de renforcement de la régulation et de la supervision du secteur financier a été entrepris, dans le cadre du G20 de Washington (octobre 2008) et Londres (avril 2009). Cet effort est probablement sans précédent par le nombre des chantiers engagés simultanément. Ces chantiers ont permis de traiter l'essentiel, si ce n'est l'ensemble, des sujets identifiés comme problématiques à l'occasion de la crise financière. La qualité du capital des banques, la résilience de leur structure de refinancement, leur « résolvabilité » ou encore l'appréciation des risques de leurs actifs ont été examinées. Parallèlement, l'organisation d'un certain nombre de marchés a été revue de manière significative tandis que la régulation et la supervision d'acteurs non bancaires (notamment, assurances, fonds) ont aussi été renforcées.

Ces réformes ont été conduites au niveau global, déclinées et approfondies dans le cadre européen et parfois complétées (comme récemment en France avec la loi de séparation et de régulation des activités bancaires) par des mesures nationales.

Certains de ces chantiers sont encore en cours. Pour d'autres, l'enjeu est désormais celui de la traduction législative et règlementaire effective et cohérente de ces grandes orientations dans l'ensemble des juridictions concernées. Pour d'autres enfin, le processus de consolidation est désormais bien engagé.

Au-delà du lobbying du secteur financier, le débat s'est porté sur les éventuels impacts (macro)économiques de ces réformes. Cette question légitime n'a pas de réponse totalement satisfaisante. Selon toute vraisemblance, l'impact macroéconomique n'est pas considérable mais les pouvoirs publics ont la responsabilité de surveiller attentivement la mise en œuvre des réformes pour repérer d'éventuelles conséquences non anticipées et ajuster, si nécessaire, le calibrage des différentes réformes.

Plus fondamentalement, après 5 ans de travaux qui ont conduit la communauté des régulateurs et des superviseurs à traduire de manière concrète les quelques intuitions qui ont guidé ces réformes, l'exercice consistant à prendre du recul pour reconsidérer tous ces différents chantiers dans leur globalité reste encore largement à mener. Chaque réforme a répondu à sa propre logique mais la question de savoir si, ou plutôt dans quelle mesure, ces travaux ont permis de « rendre le monde plus sûr » reste encore en suspens.

Cette table-ronde pourrait donc aborder les questions suivantes :

L'ensemble des réformes constitue-t-il un tout cohérent qui renforce de manière significative la stabilité financière ?

Le cas échéant, quels sont les points d' d'attention qui méritent d'être surveillé lés pour assurer qu'elles délivrent effectivement leurs effets bénéfiques ? Comment peut-on en limiter les éventuels effets indésirables (en termes d'effets macroéconomiques comme financiers) ? Dans le cas contraire, quels devraient être les chantiers prioritaires ? D'une manière générale, quelles vont être les conséquences « systémiques » de ces réformes : est-ce un changement de modèle de financement des économies les plus intermédiées, et quelles sont alors ses conséquences structurelles ? Quels sont les enjeux macrofinanciers internationaux ? Quelles conséquences pour le financement de nos économies ?)

Vers une « déglobalisation » financière ?

La crise financière de 2007 est intervenue après un très profond mouvement de globalisation financière dont certains des aspects (déséquilibres mondiaux, mondialisation d'une recherche de rendement, etc.) en ont été, en partie, responsables. Elle s'est aussi traduite par une très brutale fragmentation avec dans un premier temps une re-régionalisation des marchés puis une re- domestication. La fragmentation de la zone euro est peut être le dernier exemple en date et le plus criant de cette évolution.

La crise a aussi été l'occasion de comprendre que les interactions entre secteurs et systèmes financiers étaient significativement plus complexes et déterminantes que l'opinion commune ne l'envisageait avant la crise. La signification macroéconomique et les déterminants microéconomiques des flux financiers bruts ou encore la nature précise des interactions (« spill-over ») ont été mis en évidence par la crise et appellent à un renouvellement de notre compréhension du système financier international.

Alors que la sortie de crise et ce qui semble être le nouvel état normal (« new normal ») se dessinent progressivement, la question de savoir quel sera le système financier international qui en émergera devient plus pressant.

La table ronde pourrait décliner trois thèmes autour de cette question :

Le paradigme d'une globalisation financière uniforme est-il soutenable ? Quel sera le degré d'intégration des marchés au niveau régional et/ou autour des différentes monnaies de réserve ?

Comment sera assurée la connexion entre ces régions ?

Comment l'environnement prudentiel global (qui peut être à la fois un frein et un catalyseur d'une réorganisation du système financier international - c'est d'ailleurs dans ce contexte qu'est née la coopération entre régulateurs et superviseurs des principales économies) contribuera-t-il à déterminer un nouvel équilibre ?

Qu'est-ce que ces dernières années de crise nous ont appris sur le fonctionnement de la zone euro (notamment en terme d'intégration financière approfondie et soutenable) ? Au-delà de l'union bancaire, étape élémentaire et indispensable au renforcement de la zone euro, que faudrait-il faire pour permettre l'émergence ou la réémergence d'un marché des capitaux européen ? Dans quelle mesure cela serait-il bénéfique ou que faudrait-il faire pour assurer que le renouveau d'un marché des capitaux européen intervienne au bénéfice des ménages et des entreprises ?

Quelles évolutions pour le financement des entreprises ?

Les entreprises ont connu une évolution considérable de leur environnement financier depuis le début de la crise.

En France, la baisse des taux directeurs a généralement permis aux entreprises de voir le coût de leur dette diminuer très significativement (même si, en parallèle du mouvement de baisse des taux moyens, on a assisté à un repricing du risque assez général) et leur endettement est resté assez dynamique pendant la crise.

La composition de cet endettement a cependant connu des évolutions très marquées : face à l'augmentation du coût de refinancement de marché des banques (relativement aux corporates), les plus grandes entreprises et un nombre croissant d'entreprises de taille intermédiaire ont réduit leur recours au financement bancaire et accru leur recours aux financements de marchés ; parallèlement, les PME, structurellement dépendantes des banques pour leur financement ont vu leurs encours de crédit progresser.

Si le financement en dette est resté assez dynamique, la crise a marqué une pause dans la dynamique, observée dans les années 2000, de renforcement progressif des fonds propres. Le premier facteur de renforcement, la mise en réserve de résultat, a été arrêté dans un contexte d'activité dégradé. Les sources de financement externes (l'appel au marché, capital investissement) ont connu des évolutions très heurtées et restent encore en deçà des niveaux atteints avant crise.

Depuis quelques années, on observe, d'une part, des difficultés localisées dont certaines ont potentiellement des conséquences macroéconomiques à terme (financement de l'innovation, des créations d'entreprises ou des entreprises en croissance) et, d'autre part, des changements dans les pratiques (recours plus fréquent au financement de marché, développement d'instruments de type crowdfunding, etc.).

La recomposition en cours ne permet pas encore de distinguer, nettement, parmi ces innovations, celles qui sont pérennes de celles qui resteront des modes sans lendemain. Dans ce contexte, la table ronde peut permettre d'apporter quelques éléments de réponse :

Quels sont les besoins actuels et futurs de financement des entreprises et notamment des PME ?

Au-de là de la problématique quantitative du financement, comment les acteurs du financement peuvent- ils contribuer au renforcement de la compétitivité des entreprises ?

Quelles sont les transformations en cours dans le rôle respectif des différents acteurs du financement ?

Par exemple, que devrait être demain le rôle des investisseurs institutionnels ? Quelles sont les conditions d'une implication réussie ? A contrario, quel sera demain le rôle des banques (arrangeur plutôt que financeur) ? Ces évolutions semblent-elles structurelles ou conjoncturelles ?

Quelles sont les conséquences plus larges de ces évolutions ? Comment interagissent-elles avec la structure de nos économies (sur le fonctionnement du marché du travail, sur celui du marché des biens) ? Qu'impliquent-elles pour les ménages qui assurent in fine le financement de l'économie ?

Avec l'aimable autorisation de la DG du Trésor, nous reprenons les thèmes des 3 panels (chacun composé de 5 imminentes personnalités européennes).
Le programme et les biographies des orateurs sont accessibles sur le lien suivant : **https://www.tresor.economie.gouv.fr/File/394581**
L'AFGE était presente à cette 4ème édition des Entretiens du Trésor, qui a réuni des experts internationaux et un auditoire qualifié.

AVIS D'EXPERT

THE ECB'S BIG MOMENT - and the gradually apparent risks and opportunities of bank supervision

Europe's banking union project has had many doubters since it started to be widely discussed in the spring of 2012. What is not in doubt, however, is its transformative nature. In June 2012, EU leaders chose – in a galloping hurry, as usual – to move towards the centralization of bank supervision across eurozone countries, with this authority entrusted to the ECB. The consequences have only gradually become apparent to most and they represent both an opportunity and a risk.

The opportunity is to re-establish trust in European banks, reboot the pan-European interbank market, end dysfunctional credit allocation and start reversing the vicious circle between bank and sovereign credit. In an optimistic scenario, the ECB's 12-month process of "comprehensive assessment," including an asset quality review (AQR) and stress tests of around 130 credit institutions covering 85 per cent of the eurozone's banking assets, will trigger triage, recapitalization and restructuring that financial history suggests is a prerequisite for systemic crisis resolution.

The risk is that, if the assessment fails to be consistent and rigorous, the ECB may find its reputation so damaged that the credibility of its monetary policy – and the perception of Europe's ability to get anything done – could be affected. After all, this exercise is unprecedented in scale and scope, which means the ECB has little prior experience. At the same time, the political fallout is potentially poisonous in most of the states concerned.

Thus, much is at stake in next year's balance sheet review, and the scene is set for an escalating confrontation between the ECB and member states in the months ahead. The ECB has pointedly made clear that it will form an independent judgment on the capital strength of the banks examined, without necessarily following the views of national supervisors.

It has also noted that the AQR can be expected to reveal significant new information – which, after all, is the whole point of it. A number of banks that, until now, had been deemed sound by national watchdogs may be found by the ECB to be undercapitalized, or even insolvent. In such cases, restructuring will inevitably be painful for the corresponding national governments, both politically and financially, leading them to plead for forbearance. The tension can be expected to generate more market volatility in Europe in 2014 than was seen in 2013.

A successful AQR and establishment of the Single Supervisory Mechanism (SSM) – EU jargon for the handover of supervisory authority to the ECB – would have structural consequences. Europe's national and local governments often use their leverage over the publicly-regulated banking industry for industrial policy purposes, or to facilitate their own financing, a dynamic known to economists as financial repression.

Furthermore, the combination of national banking policy frameworks with the EU's integrated single market has created powerful incentives for banking nationalism. It has led to the protection or promotion of domestic banking champions on the pan-European competitive field, both against competing foreign banks and potential new entrants and non-banks. This has often been detrimental to financial stability. The shift of supervisory authority to the ECB can be expected to gradually weaken these links and to hamper the ability of eurozone member states to engage in financial repression and banking nationalism. In particular, the "moral suasion" wielded by national authorities to persuade local banks to buy domestic sovereign bonds and ringfence funding across borders may become considerably less effective under the new regime of ECB supervision.

More generally, and even without rapid completion of a European resolution and deposit insurance framework, one can expect the centralization of bank supervision to foster market integration, cross-border bank consolidation and the emergence of a more diverse financial sector with a greater variety of banking and non-bank intermediation business models. If the transition is successful, then non-euro countries such as Denmark, Poland and even Sweden can be expected to join the SSM over a three-year horizon. This will not make the UK's relationship with the rest of the EU simpler.

All this, of course, rests on the assumption that a credible AQR and well-handled bank restructuring will allow the ECB to establish itself as a sound, single eurozone banking supervisor. This cannot be taken for granted but appears more likely than not. Numerous and powerful interests may work against it, but an even stronger interest will probably prompt the eurozone's leaders, starting with those of Germany, to do whatever it takes to help the ECB pass its make-or-break test.

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Avec l'aimable autorisation de l'auteur, nous reprenons cet article publié dans le **Financial World** on december 2013.
http://fw.ifslearning.ac.uk/Archive/2013/DecemberJanuary/Comment/ECBsbigmoment.aspx

POINT DE VUE REGULATEUR

Philippe MAYSTADT, conseiller spécial du Commissaire Michel BARNIER, présente ses recommandations afin de renforcer le rôle moteur de l'Union dans la normalisation comptable internationale

Les choix de politiques comptables revêtent des enjeux d'intérêt public tels que le lien avec les exigences prudentielles pour les banques ou les assurances, les règles applicables au système bancaire parallèle, l'impact sur l'investissement à long terme ou l'accès au financement des PME.

Conscient de ces enjeux, le commissaire européen chargé du marché intérieur et des services, Michel Barnier, a confié en mars 2013 à Philippe Maystadt la mission d'examiner les moyens de renforcer la contribution de l'Union européenne aux normes internationales d'information financière (IFRS) et d'améliorer la gouvernance des organes européens qui

participent à leur élaboration (IP/13/242). Le rapport de M. Maystadt s'inscrit dans le cadre d'une réflexion plus globale sur les normes comptables, prenant compte également des développements au niveau international dans ce domaine et la revue duRèglement sur l'application des IFRS, prévue pour la fin de l'année 2014. M. Maystadt a organisé une série d'entretiens et de consultations avant d'élaborer son rapport, qu'il présentera aux Ministres des Finances lors du Conseil ECOFIN du 15 novembre 2013.

M. Barnier a déclaré à ce propos: «L'expérience des dernières années a montré que les normes comptables représentaient plus qu'une simple convention de langage. Elles peuvent avoir un impact sur la stabilité des marchés financiers en influençant le comportement des acteurs sur ces marchés. J'ai chargé M. Maystadt d'évaluer si le dispositif d'adoption des normes IFRS mis en place par l'Union européenne était efficace et permettait à l'UE de faire entendre pleinement sa voix. J'ai pris connaissance de son excellent rapport. J'ai prévu d'en discuter avec les Ministres des Finances de l'UE lors du Conseil ECOFIN du 15 novembre et très bientôt avec le parlement européen. J'attache une importance particulière à la mise en œuvre rapide des recommandations de M. Maystadt afin que nos entreprises et les utilisateurs de leurs états financiers aient la garantie, dès que possible, de bénéficier des meilleures normes comptables internationales. Ce travail permettra à l'UE de mieux s'organiser pour s'assurer que les besoins de ses marchés soient pleinement pris en compte dans le débat comptable international, excessivement focalisé ces dernières années sur l'objectif de convergence avec les normes comptables américaines (les US GAAP)."»

M. Maystadt a déclaré : « La crise financière a fait prendre conscience à un grand nombre d'acteurs économiques et de responsables politiques de l'impact potentiel des normes comptables sur les performances affichées des entreprises et sur l'économie dans son ensemble. J'ai constaté que l'objectif d'un référentiel comptable international unique, à savoir les IFRS, était largement confirmé. Cependant, l'influence de l'Union européenne dans la normalisation comptable internationale est réduite parce qu'elle s'avance en ordre dispersé. Je recommande de créer une structure capable de mener une analyse stratégique de l'incidence économique des normes et de mieux coordonner les positions européennes en la matière ».

M. Maystadt propose d'agir sur trois leviers :

1) Il suggère de maintenir une procédure d'adoption « norme par norme », incluant la possibilité d'accepter ou de refuser une norme produite par l'IASB (International Accounting Standards Board). L'introduction de davantage de flexibilité (modifier ou adapter une norme) doit se faire de manière très encadrée (critères et conditions précis) afin de ne pas entraver l'objectif d'utiliser des normes globales. M. Maystadt propose l'ajout de critères d'adoption au règlement sur l'application des IFRS (ne pas porter atteinte à la stabilité financière et ne pas entraver le développement économique de la zone). A défaut, la Commission pourrait clarifier l'interprétation du critère de contribution d'une norme à l'intérêt public.

2) **M. Maystadt a envisagé trois options susceptibles de renforcer l'influence de l'Union européenne dans la normalisation comptable internationale :**

(a) **réorganiser l'EFRAG** (le Groupe consultatif pour l'information financière en Europe) actuel afin d'accroître sa légitimité et sa représentativité.

(b) **transférer à l'ESMA** (European Securities and Markets Authority**) les tâches assumées par l'EFRAG**.

(c**) créer une agence de l'Union Européenne**.

Pour diverses raisons explicitées dans le rapport, notamment de rapidité de mise en œuvre, il recommande l'option (a).

3) M. Maystadt propose enfin **que l'ARC** (Comité de réglementation comptable) **renforce son dialogue avec l'EFRAG** plus tôt dans le processus, afin d'influencer plus efficacement les activités de l'EFRAG et de l'IASB.

Contexte

Philippe Maystadt a occupé au sein du gouvernement belge les postes de ministre des Affaires économiques, de ministre des Finances et de vice-Premier ministre. Il a également été président de la Banque européenne d'investissement de 2000 à 2011. Depuis le 1er janvier 2005, les normes internationales d'information financière (IFRS) (élaborées par l'International Accounting Standards Board) s'appliquent aux comptes consolidés des sociétés cotées dans l'UE. Le règlement sur l'application des IFRS a établi une procédure d'adoption sous la responsabilité de la Commission européenne avec la participation d'organisations consultatives, le Groupe consultatif pour l'information financière en Europe (EFRAG) – une organisation indépendante fournissant des avis d'experts – et le Comité de réglementation comptable (ARC), composé de représentants des États membres et présidé par la Commission européenne. En 2012, un examen restreint de la gouvernance de l'EFRAG a été entamé afin d'évaluer l'efficacité avec laquelle les dispositifs en place permettaient d'assurer la coopération entre l'EFRAG et les organismes nationaux de normalisation comptable en Europe. Les discussions ont montré qu'un examen plus approfondi de la gouvernance de l'EFRAG était nécessaire.

Outre la mission confiée à M. Maystadt, la Commission prévoit d'évaluer le règlement sur l'application des IFRS. Cette évaluation s'appuiera sur les recommandations de M. Maystadt, qui seront complétées par des données factuelles sur la mise en œuvre jusqu'à ce jour des normes IFRS en Europe.

Communiqué de presse Bruxelles, le 12/11/2013

Pour en savoir plus : http://ec.europa.eu/internal_market/accounting/governance/reform/index_fr.htm

AGENDA

- **Innovations in Retirement Plan Management: Investment Strategies and Behavioral Finance**: Executive Education at Harvard Business School, 26-29 janvier 2014 (http://www.exed.hbs.edu/programs/irpm). Email: executive_education@hbs.edu (Pr. L.H. COHEN).
- **Friends of Europe: Cross-border crime and corruption in Europe: What next after the Stockholm Programme?'** 20 January 2014 in Berlin. http://www.friendsofeurope.org
- **IBL: 6th Annual Hedge Fund Research Conference:** January 23-24, 2014 (NYSE Euronexet). 39 Rue Cambon. Contact : traore@ensae.fr
- **RB : Le nouvel environnement réglementaire des banques européennes CRR/CRD 4 :** Mardi 21 janvier 2014, de 18h00 à 20h00 et **Réglementation EMIR : Quelles libertés et quelles contraintes ?** Mardi 25 mars 2014, de 18h00 à 20h00. http://www.revue-banque.fr/

POUR VOTRE INFORMATION

LANCEMENT DE L'UNIVERSITE DELOITTE EMEA

Deloitte investit à l'échelle européenne dans le développement et la formation de ses talents et leaders Neuilly-sur-Seine, mardi 17 décembre 2013 - Deloitte inaugure aujourd'hui la Deloitte University pour l'Europe, le Moyen-Orient et l'Afrique (Deloitte University EMEA) à Bruxelles, en Belgique. Cette université s'appuie sur le succès de la première université de Deloitte, située à Westlake, Texas, aux États-Unis. Lancée il y a deux ans, cette dernière a déjà accueilli plus de 50 000 participants en provenance de plus de 70 pays. Pour EMEA, un partenariat avec Dolce Hotels and Resorts a été noué pour l'organisation de formations centralisées (Dolce La Hulpe Brussels et Dolce Chantilly en France). 4 000 participants sont attendus en 2014.

Le programme de Deloitte University EMEA, dont la France est l'un des contributeurs actifs, a été spécialement conçu pour proposer un enseignement innovant et de pointe destiné aux dirigeants et talents de Deloitte.

Connaissance comme outil professionnel proactif

« Nous devons être à même d'anticiper les changements de l'environnement économique mondial et d'assurer l'excellence de nos services au-delà des frontières, tout en tenant compte des spécificités de chaque pays. C'est notamment grâce à la formation continue et à la constante recherche d'innovation que nous pourrons anticiper ces changements. Le succès de la première université de Deloitte aux Etats-Unis prouve qu'il existe un réel besoin de formation de très haut niveau, tant pour nos clients que pour les collaborateurs de Deloitte », explique B**arry Salzberg, CEO de Deloitte Touche Tohmatsu Limited (DTTL)**. Il ajoute : *« La force de notre organisation repose sur nos collaborateurs et nos clients, c'est pourquoi nous investissons pour leur proposer des structures d'apprentissage telles que la Deloitte University EMEA. »*.

Investir dans les talents

« Deloitte University EMEA est un outil formidable pour rester en pointe sur nos marchés, pour attirer, développer et fidéliser nos talents » précise **Alain Pons, Président de la Direction Générale Deloitte France**. *« Notre objectif est de développer des solutions complètes, innovantes et efficaces pour faire face aux enjeux complexes de nos clients et de notre environnement, à commencer par l'Europe. »*

Des cours au plus haut niveau basés sur la pratique

Les programmes pédagogiques de Deloitte University EMEA ont été conçus de manière à ce que l'apprentissage fasse partie intégrante du cursus et qu'il soit utilisé le plus efficacement possible. Ceux-ci ont été développés pour valoriser l'entreprise. Ils englobent le leadership, les connaissances fonctionnelles et sectorielles. A l'instar de Deloitte University Westlake, les cours de Deloitte University EMEA seront notamment dispensés par des dirigeants de Deloitte, qui partageront leurs connaissances et leurs expériences concrètes.

« Ce nouveau campus, particulièrement innovant dans nos secteurs, nous permettra de proposer des formations de haut niveau à nos meilleurs talents et de leur faire bénéficier d'enseignements uniques au contact d'experts internationaux. » annonce **Jean-Marc Mickeler, Associé et Directeur des Ressources Humaines Deloitte France.**

Programme d'apprentissage international

« Le cursus international proposé par la Deloitte University EMEA est né de la collaboration entre les firmes membres Deloitte sur la zone EMAEA et reflète l'environnement mondial dans lequel nous travaillons et nous vivons » explique **Jorrit Volkers, Doyen de la Deloitte University EMEA**, *« c'est au sein de la Deloitte University EMEA que les dirigeants actuels de Deloitte inspireront et développeront la future génération de leaders».*

www.deloitte.com

POUR VOTRE INFORMATION

- L'université de Strasbourg, DRES, a organisé le 19/11/2013 un colloque sur « l'actionnariat salarié » J.A. Massie intervenait dans le 2 éme panel « Gouvernance d'entreprise, particpiataion des actionnaires salariés » ; pour information contacter le professeur Fleur Laronze, fleurlaronze@yahoo.fr .
- En partenarait avec l'universié de Lyon 2 Lumière, Master 2 Droit des affaires comparé, l'AFGE reprsentée par son président, a partcipié au jury et remis le prix du gouvernement d'entreprise 2013 ; pour information contacter le professeur Jean L. Navarro, jean-louis.navarro@univ-lyon2.fr .
- Rendez-vous APIA 2013, Paris 03/12/2013, thème « Croissance et pérennité des ETI familiales, rôle de l'admistrateur indépendant », www.apia.asso.fr .
- L'APE a publié le rapport de l'Etat actionnaire 2013, que vous consulterez sur le site : http://www.economie.gouv.fr/agence-participations-etat .
- AFG Gestion Info de novembre 2013 (4p.), dont l'édito de PH de La Porte du Theil et Pierre Bollon à consulter sur le site www.afg.asso.fr .
- Lettre trim.de l'Af2i (20p), Institutionnels 34, octobre 2013, présente les résultats des Entretiens de l'Af2i et du Club de Prospective ; www.af2i.org.

BULLETIN D'ADHESION A L'AFGE POUR L'ANNEE 2014

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FOCUS

GOVERNANCE FOR OWNERS

GO Stewardship Services (GOSS) *provides independent engagement services both on policy issues with regulators and authorities and on Environmental, Social and Governance (ESG) engagement with companies.*

We help institutional investors to fulfill their fiduciary responsibilities to act as responsible stewards of their assets by engage with companies on ESG matters material to their portfolios. We believe that environmental and social concerns frequently stem from poor governance and transparency. A lack of appropriate governance and risk management structures can exacerbate the impact of such issues on the environment, on communities and on the bottom line. Our team is well-connected to professional networks, which we leverage to facilitate our engagements. In addition, we are a member of various investor networks and work collaboratively with other members on engagement.

We also help investor exercise their rights as share owners. We develop and renew the overarching and market-specific voting policies for clients' global holdings and exercise votes on their behalf. We also help investment managers' exercise voting rights in conflict of interest situations. As we do not offer a service to issuers, only to institutional investors, GOSS is never in a position where it recommends voting in favor of the management of issuers that might have engaged GO to provide corporate services.

We believe that one of its key responsibilities is to understand the regulatory and political environments in which investors and companies work. We also look to advocate policies that foster global economic growth, promote financial stability and serve the interests of communities and wider society. This is why over the years GOSS has undertaken policy-level activities providing responses to public policy consultations on behalf of clients and has engaged with regulators, stakeholders and industry bodies to promote strong regulatory frameworks, a sound investment environment and high levels of transparency.

Coverage.GOSS coverage is global with significant strong expertise in Europe (all markets), Japan, Australia and USA. **Examples of our involvement include: - UK:** 2020 Investor Stewardship Working Party in the UK and implementing the recommendations in its March 2012 report. This includes the March 2013 guidance prepared by ICSA 'Enhancing stewardship dialogue' and the October 2013 announcement by the NAPF of a Stewardship Disclosure Framework. GO's response to the FRC Consultation on the UK Corporate Governance Code and Guidance on Audit Committees. GO's response to Stewardship Code - **EUROPE (ex-UK): The Netherlands,** committee that developed the Eumedion Best Practices For Engaged Share-Ownership guidelines in the Netherlands. **France,** leading an engagement with the French Government on its latest law on safeguarding employment on behalf of 7 other leading investors; response to the AMF on major holdings and declaration of intent. **EU,** European Commission Green Paper on EU Corporate Governance Framework. GO response to EC consultation on Transparency Directive. **Switzerland,** response to the Finma consultation on remuneration systems. **Germany,** accelerating the corporate governance reform. - **Japan,** council of Experts responsible for producing the Japanese version of the Stewardship Code. Expert Group considering "Competitiveness and Incentives for Sustainable Growth: building favorable relationships between Companies and Investors". GO's Senior Adviser involvement with the Japanese Government Panel for Vitalizing Financial and Capital Markets. - **USA,** letter to the SEC on Shareholder Proposals Relating to the Election of Directors.

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AFGE's Greetings for your family and your colleagues; we would like to send you our best wishes for the Holliday Season and for a happy, healthy and peaceful year 2014.