



## Banking & Finance

# Newsflash

New communications from the CBFA

10 June 2009

*This newsletter is sent by NautaDutilh*



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### 1 New communication from the CBFA regarding audit committees in groups of regulated financial institutions

#### General rule

Pursuant to the Act of 17 December 2008, published in the *Belgian State Gazette* on 29 December 2008 (the "**Act**"), companies listed on a regulated market in Belgium (Euronext Brussels) and regulated financial institutions (*i.e.*, credit institutions, insurance companies, investment companies and collective investment undertakings) have been required to set up an audit committee since 8 January 2009.

The rules with respect to the tasks and responsibilities of the audit committee are applicable as from the first financial year after publication of the Act in the *Belgian State Gazette* (*i.e.* in most cases, the financial year starting on 1 January 2009).

#### Exclusions and exemptions

For listed companies and regulated financial institutions that meet at least two of the following three criteria, the establishment of an audit committee is not mandatory:

- less than 250 employees on average during the financial year;
- balance sheet total not exceeding EUR 43,000,000; and
- net annual turnover not exceeding EUR 50,000,000.

In addition, pursuant to the Act, the Banking, Finance and Insurance Commission (*Commission Bancaire, Financière et des Assurances/Commissie voor het Bank-, Financie- en Assurantiewezen*) ("CBFA") may, in certain circumstances, exempt from the requirement to establish an audit committee regulated financial institutions that are subsidiaries of other regulated financial institutions. The CBFA must ensure the publication of its exemption policy.

#### CBFA Communication 2009\_22 of 25 May 2009

On 26 May 2009, the CBFA issued a communication regarding its exemption policy with respect to the creation and composition of audit committees in groups of regulated financial institutions.

Exemptions are available for subsidiaries and sub-subsidiaries of regulated financial institutions if an audit committee exists at the group level which meets the Belgian or equivalent EU statutory requirements.

Exemptions may be granted with respect to the (i) creation and (ii) composition of an audit committee further to a duly justified and documented request filed with the CBFA.

#### *Establishment of an audit committee*

Exemptions from the audit-committee requirement are the exception rather than the rule. Financial institutions must prove that, in light of their managerial, organisational and risk structure and the structure of the group, the establishment of an audit committee at the level of the institution would not substantially create added value in terms of corporate governance. The CBFA will review various criteria, described in the communication, before granting an exemption.

*Composition of the audit committee*

The CBFA may, depending on the circumstances, allow the audit committee to be composed of a majority of non-executive directors (rather than solely of non-executive directors) provided the other committee members are "not linked" with the institution concerned (*i.e.*, not executive directors, employees, etc. of the institution), do not perform any supervisory activities with respect to the institution and have appropriate knowledge of and experience in auditing and/or accountancy. In addition, the same independent directors may sit on the audit committee at the level of both the institution and the group, provided there is no significant business relationship between the various undertakings of the group.

For more information regarding this communication, please click on the link of your choice: [Dutch](#) / [French](#)

**2 New communication from the CBFA regarding questionnaires related to the management structure and professional integrity and experience of directors****General rule**

In the context of its supervisory role, the CBFA controls whether the directors and executive managers of so-called regulated institutions, namely credit institutions, investment firms, insurance companies, managers of undertakings for collective investment, public investment companies, settlement institutions and institutions treated as such, financial companies, insurance holding companies, and mixed financial holding companies, demonstrate professional integrity and experience and ensure an adequate management structure. To this end, the CBFA issues a (binding or non-binding) opinion on the proposed appointment and renewal of directors and executive managers of regulated institutions.

**CBFA communication 2009\_20 of 8 May 2009**

On 18 May 2009, the CBFA published three new questionnaires applicable to all regulated institutions, specifying the information to be provided respectively by (i) candidates for the position of executive manager, (ii) candidates for the position of non-executive director and (iii) re-appointed or re-elected executive managers or directors.

To consult these new questionnaires, please click on the link of your choice: [Dutch](#) / [French](#)

**Contact**

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