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# 3$^{RD}$ ANNUAL REPORT ON THE AFEP-MEDEF CODE

*Application of the consolidated corporate governance code for listed corporations by SBF 120 index companies*

## financial year 2010

AFEP
Association Française des Entreprises Privées

MEDEF

# Contents

# Preface

For the third year in a row, AFEP and MEDEF are publishing their annual report on the application of the corporate governance code by SBF 120 index companies. This joint AFEP-MEDEF approach is part of the two organisations' ongoing commitment to transparent and stringent corporate governance.

The recommendations of the AFEP-MEDEF code, which were updated in April 2010, make up one of the highest standard corporate governance benchmarks when it comes to European and international standards. This code provides a stringent framework concerning the various aspects of governance which the companies undertake to apply. Otherwise, they must provide explanations when they deviate from one or more provisions of the code. Through these recommendations, the companies undertake to apply standards which go beyond legal and regulatory requirements.

In the space of a few years, SBF 120 companies have made considerable progress in applying the AFEP-MEDEF code, as demonstrated in this report and in the annual report produced by the AMF. This continuous improvement covers both compliance with the recommendations and the quality of the information provided in annual reports.

Consequently, in terms of compensation, the information provided has really improved across a number of points, for instance the mention of performance conditions for exercising options and acquiring shares, the dilutive impact of awards of options and performance shares, the mention of the fact that awards are made at the same calendar periods and the absence of risk hedging transactions.

Furthermore, progress is also being seen in the appropriateness of the justifications given for companies not complying with certain provisions of the code.

This report shows that companies and their managers are keen to comply with these recommendations or give appropriate justifications on a voluntary basis. While some might fear otherwise, professional regulation (soft law) has proved effective.

However, we would remind company managers of the need to keep up this high level of compliance and continue their efforts concerning those recommendations which are followed less well.

We would like to point out, in particular, that the corporate governance code for listed corporations states that executive directors' compensation must be appropriate, balanced, fair and strengthen the sense of solidarity and motivation within the company.

Indeed, this should not become a *"box ticking"*, exercise but should rather demonstrate in the long term that applying the "comply or explain" principle as part of an honest approach is an appropriate corporate governance tool. In a statement published in February 2006, which is as relevant today as it was then, the European Corporate Governance Forum pointed out that three conditions are necessary in order to apply this principle effectively:

- a real requirement to "comply or explain",
- a high level of transparency applied to consistent and targeted information,
- answerability of boards to shareholders for their "comply or explain" decisions as well as for the quality of their information.

We are convinced that the French companies which comply with the AFEP-MEDEF code will keep up their commitment to this process of ongoing improvement.

Maurice LEVY
Chair of AFEP

Laurence PARISOT
Chair of MEDEF

# Methodology

In accordance with the law, most companies have referred the AFEP-MEDEF corporate governance code for listed corporations as their code of reference[1]. The group of companies selected by AFEP and MEDEF is made up of all of the SBF 120 companies, excluding:

- companies which have a non-calendar financial year and whose annual report and/or reference document had not been published by the date of the study,
- foreign companies,
- one French company not referring to the AFEP-MEDEF corporate governance code.

**In total, 104 SBF 120 companies, including 36 CAC 40 companies listed in Annex I, have been taken into consideration. Throughout this report, we shall use SBF 120 to refer to these 104 companies and CAC 40 companies to refer to the 36 companies concerned.**

The statistics have been prepared by AFEP and MEDEF on the basis of the information submitted in the annual reports and/or reference documents, enabling standardised forms to be completed and then submitted to the companies concerned to get their approval regarding the accuracy of the data collected. 56.7% of the companies responded to this consultation.

The document analyses the implementation of the various recommendations of the AFEP-MEDEF code and the French version gives examples of justifications provided by the companies when they stated that they were not implementing certain recommendations.

[1] Since the law of 3 July 2008 transposing Directive 2006/46/EC of 14 June 2006, listed corporations are required to publish a corporate governance statement in the report by the chairman of the board of directors or of the supervisory board. Unless the company does not refer to any corporate governance code, this statement must mention the code to which it refers voluntarily and indicate, where applicable, the provisions which have been deviated from and the reasons for this.

## 1. Management method

It is up to the board of directors to choose the form of organisation of management and supervisory powers.

The AFEP-MEDEF code states that "*it is essential for the shareholders and third parties to be fully informed of the choice made between separation of the offices of chairman and chief executive officer and maintenance of these positions as a single office*" (§ 3.2).

**Distribution of companies according to the corporate forms and management methods adopted**

| | SBF 120 | | CAC 40 | |
|---|---|---|---|---|
| | **Financial year 2009** | **Financial year 2010** | **Financial year 2009** | **Financial year 2010** |
| Public limited company having a board of directors with combination of the offices | 47% | 50% | 40% | 50% |
| Public limited company having a board of directors with dissociation of the offices | 30% | 27% | 37% | 30% |
| Public limited company having a management board and a supervisory board | 19% | 18% | 17% | 17% |
| Limited stock partnership | 4% | 5% | 6% | 3% |
| TOTAL | 100% | 100% | 100% | 100% |

The distribution of SBF 120 companies according to the corporate forms and management organisations adopted changed slightly between 2009 and 2010, returning to a distribution close to the way it was in 2008. For the CAC 40, the number of companies having a board of directors with separation of offices fell in favour of companies having a board of directors with a single office, as in 2008. In the space of two years, CAC 40 companies having a board of directors with combination of the offices rose from 34% to 50%.

We are seeing a rise in the number of companies explaining the option either to separate the offices of chairman and chief executive officer or maintain the combination of these positions, since 81% of the CAC 40 companies and 64% of the SBF 120 companies complied with this recommendation in 2010, compared with 62% and 50% in 2009

## 2. Board of directors or supervisory board

### 2.1 Number of directors[2]

During the financial year 2010, the number of directors on boards was between 4 and 21. All the SBF 120 and CAC 40 companies specified this information in their annual report/reference document.

The average number of directors in the SBF 120 companies reviewed was up at 12.7.

For CAC 40 companies alone, the average number of directors was 14.5 for the financial year 2010, compared with 14.1 for the financial year 2009, i.e. a slight rise.

| | SBF 120 | | CAC 40 | |
|---|---|---|---|---|
| | **Financial year 2009** | **Financial year 2010** | **Financial year 2009** | **Financial year 2010** |
| Average number of directors | 12.2 | 12.7 | 14.1 | 14.5 |

### 2.2 Independent directors

**Number of independent directors**

103 SBF 120 companies (i.e. 99% of the sample) disclosed the number of independent directors on their boards of directors or supervisory boards, compared with 102 companies in the financial year 2009. All 36 CAC 40 companies provided this information.

102 SBF 120 companies (i.e. 98% of the sample), including the 36 CAC 40 companies, published a list of the names of their independent directors. 100 did so in 2009, and 91 in 2008.

**Criteria for independence**

The AFEP-MEDEF code points out that "*characterisation as an independent director should be discussed by the appointments committee and reviewed every year by the Board of Directors prior to publication of the annual report".* It also specifies that "*the Board of Directors must, upon the motion of the appointments committee, review individually the position of each of its members on the basis of the criteria mentioned below, then notify its conclusions to the shareholders in the annual report and to the shareholders' meeting at the time of the particular director's appointment […]"* (§ 8.3).

93% of the SBF 120 companies published the results of the individual review of the position of each of their directors (with regard to criteria for independence). This proportion was down slightly on the previous financial year, since it stood at 96% in 2009. Nevertheless, this proportion was much higher than in the financial years 2007 and 2008, when it was only 27% and 84% respectively. All of the CAC 40 companies reported on the individual review of directors' independence in their reference document, just as they did in 2009.

The criteria for independence of the AFEP-MEDEF code were mentioned by 97% of the companies reviewed. However, as the AFEP-MEDEF code states, "*the board may consider that a director who does not meet the […] criteria is nevertheless an independent director*". Consequently, some companies considered that the criterion of seniority did not prevent certain directors from being independent.
Conversely, other companies considered that certain directors, despite complying with the criteria laid down by the AFEP-MEDEF code, could not be characterised as independent: in some companies, former employees or senior executives of the company were not characterised as independent directors even though their employment had ended more than five years previously.

2 Here, "directors" is given to mean both members of boards of directors and members of supervisory boards.

**Compliance with the proportion of independent directors**

The AFEP-MEDEF code points out that *"the independent directors should account for half the members of the board in widely-held corporations and without controlling shareholders. In controlled*[3] *companies, independent directors should account at least for a third"* (§ 8.2).

**Proportion of controlled and non-controlled companies within the SBF 120 index**

| SBF 120 | Financial year 2009 | | Financial year 2010 | |
|---|---|---|---|---|
| | Number | % | Number | % |
| Controlled companies | 43 | 42% | 45 | 43% |
| Non-controlled companies | 60 | 58% | 59 | 57% |

**Proportion of controlled and non-controlled companies within the CAC 40**

| CAC 40 | Financial year 2009 | | Financial year 2010 | |
|---|---|---|---|---|
| | Number | % | Number | % |
| Controlled companies | 7 | 20% | 8 | 22% |
| Non-controlled companies | 28 | 80% | 28 | 78% |

**Companies complying with the proportion of independent directors in controlled companies**

| SBF 120 | | CAC 40 | |
|---|---|---|---|
| Financial year 2009 | Financial year 2010 | Financial year 2009 | Financial year 2010 |
| 63% | 71% | 71% | 63% |

The proportion of controlled companies complying with the recommendation that *"in controlled companies, independent directors should account at least for a third"* had risen for the SBF 120 compared with the previous financial year, but this proportion had returned to its 2008 level for the CAC 40.

With regard to CAC 40 companies, three controlled companies did not comply with the proportion of independent directors.

**Companies complying with the proportion of independent directors in non-controlled companies**

| SBF 120 | | CAC 40 | |
|---|---|---|---|
| Financial year 2009 | Financial year 2010 | Financial year 2009 | Financial year 2010 |
| 76% | 75% | 82% | 86% |

75% of the SBF 120 companies applied the recommendation whereby "*independent directors should account for half the members of the board in widely-held corporations and without controlling shareholders"*.

86% of the CAC 40 companies applied this recommendation in 2010. This proportion has continued to rise since 2004. The other CAC 40 index companies explained why they had not complied with this recommendation.

The presence of directors representing the State makes it more difficult for both controlled and non-controlled companies to comply with the proportion of independent directors.

[3] Within the meaning of Art. L.233-3 of the Commercial Code.

## 2.3 Information about directors

The AFEP-MEDEF code lays down that *"the annual report should detail the dates of the beginning and expiry of each director's term of office […]. It should also mention, for each director, in addition to the list of offices and positions held in other corporations, his or her age and principal position, and a list by name of members of each board committee".* The code also states that "*a biographical notice outlining his or her curriculum vitae*" should appear in the event of a director being appointed or their term of office being extended and that "*the number of shares in the corporation concerned held personally by each director should appear in the annual report*" (§ 12).

The tables below indicate the proportion of companies which included this information about the members of the board of directors or supervisory board in their annual report and/or reference document.

**Information about directors**

| Companies specifying in their reference document: | SBF 120 | | | CAC 40 | | |
|---|---|---|---|---|---|---|
| | **Financial year 2008** | **Financial year 2009** | **Financial year 2010** | **Financial year 2008** | **Financial year 2009** | **Financial year 2010** |
| The start date of the term of office | 97% | 99% | 100% | 100% | 100% | 100% |
| The expiry date of the term of office | 98% | 100% | 99% | 100% | 100% | 100% |
| Directors' ages | 93% | 97% | 98% | 100% | 100% | 100% |
| The main position held | 100% | 100% | 100% | 100% | 100% | 100% |
| The offices and other positions held in other companies | 100% | 100% | 100% | 100% | 100% | 100% |
| The number of shares held by each director | 88% | 94% | 97% | 97% | 97% | 100% |
| A biographical notice about the directors | 90% | 96% | 92% | 94% | 97% | 94% |

The companies reviewed displayed a very high level of compliance in relation to this recommendation.

Of the CAC 40 companies, two companies did not publish a biographical notice in the event of a director being appointed or his or her term of office being extended.

Of the SBF 120 companies, only a few companies did not mention certain aspects such as the expiry date of the term of office, age, the number of shares held by each director and a biographical notice in the event of a director being appointed or his or her term of office being extended.

## 2.4 Proportion of women on boards

The AFEP-MEDEF code states that, from April 2010, "*each board should consider what would be the desirable balance within its membership and within that of the committees of Board members which it has established, in particular as regards the representation of men and women and the diversity of competencies, and take appropriate action to assure the shareholders and market that its duties will be performed with the necessary independence and objectivity".*

Consequently, *"in order to reach such balance, the objective is that each board shall reach and maintain a percentage of at least 20% of women within a period of three years and at least 40% of women within a period of six years [from April 2010] or from the date of the listing of the company's shares on a regulated market, whichever is later"* (§ 6.3).

**Proportion of women on boards**
**(excluding directors elected by employees)**

| SBF 120 | | | CAC 40 | | |
|---|---|---|---|---|---|
| **2009 AGM** | **2010 AGM** | **2011 AGM** | **2009 AGM** | **2010 AGM** | **2011 AGM** |
| 9.1% | 12.5% | 17.2% | 11.3% | 16.3% | 21.1% |

The proportion of women on boards of directors and supervisory boards has risen since 2009.

## 2.5 Board members' compensation

The AFEP-MEDEF code recommends indicating *"the aggregate and individual amount of directors' fees paid to directors"* (§ 21.2).

**Information about the amount of directors' fees**

| Companies: | SBF 120 | | CAC 40 | |
|---|---|---|---|---|
| | **Financial year 2009** | **Financial year 2010** | **Financial year 2009** | **Financial year 2010** |
| - indicating the aggregate amount | 100% | 100% | 100% | 100% |
| - indicating the individual amounts | 100% | 99% | 100% | 100% |

This recommendation was followed by all of the CAC 40 companies. Only one SBF 120 company did not indicate the individual amounts paid.

The AFEP-MEDEF code also recommends that "*the rules for allocation of the directors' fees […] should be set out*" (§ 18.3). Furthermore, it mentions that "*the method of allocation of directors' compensation […] should take account, in such ways as it shall determine, of the directors' attendance at meetings of the Board and committees, and therefore include a variable portion ".* It states that "*directors' attendance at meetings of specialised committees should be rewarded with an additional amount of directors' fees"* (§ 18.1).

**Information about the rules for allocation of directors' fees**

| Companies which have put in place: | SBF 120 | | CAC 40 | |
|---|---|---|---|---|
| | **Financial year 2009** | **Financial year 2010** | **Financial year 2009** | **Financial year 2010** |
| - rules for the allocation of directors' fees | 98% | 99% | 100% | 100% |
| - a variable component linked to attendance | 89% | 88% | 94% | 94% |
| - a variable component linked to attendance of a specialised committee | 92 % | 94% | 94% | 97% |

99% of the SBF 120 companies set out rules for allocating the directors' fees among the directors. This proportion was up slightly on the financial year 2008.

88% of the SBF 120 companies and 94% of the CAC 40 companies allocated a variable component depending on attendance of meetings. 94% of the SBF 120 companies and 97% of the CAC 40 companies varied the amount of directors' fees of their directors depending on their attendance of specialised committees.

The AFEP-MEDEF code recommends setting out "*rules governing the collection of the directors' fees awarded where applicable to the general management team in respect of corporate offices held in affiliates of the group"* (§ 21.2). 91% of the SBF 120 companies applied this recommendation for the financial year 2010 (compared with 92% in 2009 and 75% in 2008) and 86% of the CAC 40 companies (compared with 95% in 2009 and 83% in 2008), i.e. a slight drop in the number of companies complying with this recommendation.

In the annexes of the AFEP-MEDEF code, a recommendation indicates that "*in order to improve the clarity and comparability of executive directors' compensation information, AFEP and MEDEF recommend that companies whose securities are admitted to trading on a regulated market adopt the following disclosure format*". With regard to directors' fees, this is Table 3 of the AFEP-MEDEF code.

89% of the CAC 40 companies and 88% of the SBF 120 companies adopted this presentation during the financial year 2010, compared with 100% and 98% in 2009.

## 2.6 Duration and staggering of directorships

The AFEP-MEDEF code states that "*without affecting the duration of current terms, the duration of directors' terms of office, set by the by-laws, should not exceed a maximum of four years, so that the shareholders are called to express themselves through elections with sufficient frequency*". Furthermore, "*terms should be staggered so as to avoid replacement of the entire body and to favour a smooth replacement of directors*" (§ 12).

**Information about the duration and staggering of directorships**

| | SBF 120 | | CAC 40 | |
|---|---|---|---|---|
| | Financial year 2009 | Financial year 2010 | Financial year 2009 | Financial year 2010 |
| Companies indicating the duration of the term of office in the reference document | 100% | 100% | 100% | 100% |
| Average duration of the term of office | 4 | 4 | 3.8 | 4 |
| Companies where the duration of the term of office is less than or equal to 4 years | 77% | 81% | 93% | 88.9% |
| Companies which have put in place a staggering system | 78% | 78% | 97% | 94% |

All of the CAC 40 companies and all of the SBF 120 companies set out the duration of their directors' terms of office.

The AFEP-MEDEF code recommends that the duration of directors' terms of office should not exceed four years. The average duration for the SBF 120 companies and for the CAC 40 companies was four years.

81% of the SBF 120 companies complied with the duration recommended by the AFEP-MEDEF code, i.e. four years. As regards the CAC 40 index, 88.9% complied with this recommendation. This proportion was up on the previous financial year for the SBF 120.

Furthermore, 78% of the SBF 120 companies and 94% of the CAC 40 companies had put in place a process staggering their directors' terms of office in order, as recommended by the AFEP-MEDEF code, to favour "*a smooth replacement of directors*" (§ 12). This proportion remained stable for the SBF 120. It was down slightly for the CAC 40, but still higher than in the financial year 2008 (91%).

## *2.7 Information about board meetings*

The AFEP-MEDEF code states that the number of meetings of the board of directors held during the previous financial year should be mentioned in the annual report, which must also provide shareholders with any relevant information relating to the directors' attendance at such meetings (§ 10).

**Information about board meetings**

| | SBF 120 | | CAC 40 | |
|---|---|---|---|---|
| | **Financial year 2009** | **Financial year 2010** | **Financial year 2009** | **Financial year 2010** |
| Companies indicating the number of board meetings in their reference document | 100% | 100% | 100% | 100% |
| Average number of meetings during the financial year | 8.3 | 7.9 | 8.7 | 8.4 |
| Companies indicating members' rate of attendance in their reference document | 99% | 99% | 100% | 100% |
| Average rate of attendance | 86% | 89% | 89% | 92% |

As in 2009, almost all of the SBF 120 companies followed these two recommendations.

The average number of meetings during the financial year 2010 was 7.9 for the SBF 120 companies. This was down slightly on the financial year 2009.

Although down slightly on 2009, the average number of meetings held by the CAC 40 companies was higher than in 2008 (8.3).

Finally, the average rate of attendance of board meetings continued to rise for the SBF 120 and the CAC 40 to 89% and 92%.

## *2.8 Evaluation of the board*

The AFEP-MEDEF code states that "*for sound corporate governance, the Board of Directors should evaluate its ability to meet the expectations of the shareholders having entrusted authority to it to direct the corporation, by reviewing from time to time its membership, organisation and operation*" (§ 9.1).

Furthermore, the AFEP-MEDEF code specifies that "*the evaluation, which should preferably be conducted on an annual basis, should be performed in the following manner:*

*Once a year, the Board should dedicate one of the points on its agenda to a debate concerning its operation.*

*There should be a formal evaluation at least once every three years. It could be implemented, possibly under the leadership of an independent director, with help from an external consultant.*

*The shareholders should be informed each year in the annual report of the evaluations carried out and, if applicable, of any steps taken as a result […]*" (§ 9.3).

**Evaluation of the board of directors or supervisory board**

| | SBF 120 | | CAC 40 | |
|---|---|---|---|---|
| | **Financial year 2009** | **Financial year 2010** | **Financial year 2009** | **Financial year 2010** |
| Companies evaluating the board: | 86% | 82% | 97% | 81% |
| - in the form of one of the points on the agenda | 35% | 19% | 20% | 14% |
| - in the form of a formal evaluation | 51% | 63% | 77% | 67% |

82% of the SBF 120 companies mentioned in their reference document that they had carried out an evaluation of their board of directors or supervisory board. This percentage was down slightly on the previous financial year. Of the CAC 40 companies, 81% of the companies mentioned in their reference document that they had carried out this evaluation of their board.

The methods of evaluating the board have changed over the past three years. The proportion of evaluations in the form of one of the points on the agenda has fallen significantly. Formal evaluations are now carried out by most SBF 120 companies and by 67% of the CAC 40 companies, compared with 31% in 2007.

**Publication of the steps taken as a result of the evaluation of the board**

| SBF 120 | | CAC 40 | |
|---|---|---|---|
| **Financial year 2009** | **Financial year 2010** | **Financial year 2009** | **Financial year 2010** |
| 79% | 86% | 94% | 97% |

86% of the SBF 120 companies which mentioned that they had carried out an evaluation of their board of directors or supervisory board published the steps taken as a result of the evaluation in their reference document. This percentage was up on the previous financial year (79% in 2009).

97% of the CAC 40 companies which mentioned that they had carried out an evaluation of their board of directors or supervisory board published the steps taken as a result of the evaluation in their reference document, compared with 70% in 2007.

### *2.9 Internal rules*

In order to consider and decide upon transactions of genuine strategic importance, the board must be provided with internal rules (§ 4).

**Companies which have provided internal rules for their board**

| SBF 120 | | CAC 40 | |
|---|---|---|---|
| **Financial year 2009** | **Financial year 2010** | **Financial year 2009** | **Financial year 2010** |
| 98% | 98% | 100% | 100% |

98% of the SBF 120 companies mentioned that their board of directors or supervisory board had been provided with internal rules. All of the CAC 40 companies had complied with this recommendation and provided their board with internal rules.

**Method of publishing the board's internal rules in the reference documents**

| | SBF 120 | | CAC 40 | |
|---|---|---|---|---|
| | **Financial year 2009** | **Financial year 2010** | **Financial year 2009** | **Financial year 2010** |
| Published in their entirety | 9% | 12% | 14% | 19% |
| Summary published | 59% | 66% | 57% | 61% |
| Extracts published | 15.5% | 12% | 26% | 17% |
| Internal rules mentioned | 14.5% | 11% | 3% | 3% |

Growing numbers of companies (66% of the SBF 120 and 61% of the CAC 40) published a summary of the internal rules in their reference document (compared with 59% and 57% respectively in 2009). 12% of the SBF 120 companies and 19% of the CAC 40 companies published the internal rules in their entirety. 14% of the SBF 120 companies mentioned in their reference document that their internal rules were available in their entirety on the website.

**Content of the board's internal rules**

The AFEP-MEDEF code states that the internal rules should specify:

1) "*the cases in which prior approval by the Board of Directors is required, setting out the related principles, which may differ according to which division of the group is concerned.*"

2) "*the principle that any material transaction outside the scope of the firm's stated strategy is subject to prior approval by the Board of Directors.*"

3) "*the rules according to which the Board of Directors is informed of the corporation's financial situation, cash position and commitments.*" (§ 4).

| SBF 120 companies: | **Financial year 2009** | **Financial year 2010** |
|---|---|---|
| - mentioning in their internal rules the cases in which prior approval by the board is required | 93% | 86% |
| - mentioning in their internal rules the need for prior approval by the board for material transactions outside the scope of the strategy | 70% | 72% |
| - mentioning in their internal rules the rules according to which the board is informed | 89% | 78% |

86% of the companies mentioned in their internal rules the cases in which prior approval by the board was required.

71% of the companies mentioned in their internal rules the need for prior approval by the board for material transactions outside the scope of the strategy (compared with 42% in 2007).

78% of the companies mentioned in their internal rules the rules according to which the board is informed (compared with 34% in 2007).

| CAC 40 companies: | **Financial year 2009** | **Financial year 2010** |
|---|---|---|
| - mentioning in their internal rules the cases in which prior approval by the board is required | 100% | 94% |
| - mentioning in their internal rules the need for prior approval by the board for material transactions outside of the scope of the strategy | 89% | 83% |
| - mentioning in their internal rules the rules according to which the board is informed | 97% | 83% |

The proportion of companies mentioning in their internal rules the cases in which prior approval by the board is required matched its 2008 level. 83% of the companies mentioned in their internal rules the need for prior approval by the board for material transactions outside of the scope of the strategy. Finally, 83% of the companies mentioned in their internal rules the rules according to which the board is informed.

## *2.10 The board and the market*

The AFEP-MEDEF code recommends disclosing "*the company's ratings by financial rating agencies as well as any changes that occurred during the financial year*" (§ 2.2).

Due to the fact that a significant number of SBF 120 companies are not given financial ratings, examining compliance with this recommendation was therefore limited to CAC 40 companies.

| CAC 40 companies: | **Financial year 2009** | **Financial year 2010** |
|---|---|---|
| - which published their financial rating in their reference document | 89% | 92% |
| - which published the changes in their rating during the financial year | 77% | 81% |

In 2010, 92% of the companies published their financial rating in their reference document, compared with 89% in 2009 and 83% in 2008.

The AFEP-MEDEF code recommends specifying in the annual report *"the internal procedures set up to identify and monitor off-balance-sheet-commitments and to evaluate the corporation's material risks" (§ 2.2).*

For the financial year 2010, all of the SBF 120 and CAC 40 companies provided information about their off-balance sheet commitments and about the risks facing them.

## 3. Board committees

### *3.1 Audit committee*

The AFEP-MEDEF code recommends that "*each board should appoint an audit committee, the duties of which are inseparable from those of the Board of Directors, which is legally bound to approve the corporate accounts and to prepare the consolidated accounts. The committee does not act in the place of the Board, but rather as an extension of the Board, facilitating its work*".

98% of the SBF 120 companies and all of the CAC 40 companies complied with this recommendation (§ 14).

**Companies which indicated the existence of an audit committee in their reference document**

| SBF 120 | | CAC 40 | |
|---|---|---|---|
| **Financial year 2009** | **Financial year 2010** | **Financial year 2009** | **Financial year 2010** |
| 99% | 98% | 100% | 100% |

**Composition of the committee**

On average, audit committees were made up of 3.9 people in the SBF 120 companies in 2010, compared with 4.4 in the CAC 40 companies.

**Proportion of independent directors**

The AFEP-MEDEF code mentions that "*the proportion of independent directors on the audit committee should be at least equal to two-thirds"* (§ 14.1).

**Companies in which the proportion of independent directors on the audit committee is at least equal to two-thirds**

| SBF 120 | | CAC 40 | |
|---|---|---|---|
| **Financial year 2009** | **Financial year 2010** | **Financial year 2009** | **Financial year 2010** |
| 69% | 67% | 80% | 75% |

67% of the SBF 120 companies and 75% of the CAC 40 companies complied with the proportion of independent directors on the audit committee.

**Activity of the audit committee**

The AFEP-MEDEF code states that "*the number of meetings of the Board of Directors and of the committees held during the past financial year should be mentioned in the annual report, which must also provide the shareholders with any relevant information relating to the directors' attendance at such meetings"* (§ 10).

**Information about meetings of the audit committee**

| | SBF 120 | | CAC 40 | |
|---|---|---|---|---|
| | Financial year 2009 | Financial year 2010 | Financial year 2009 | Financial year 2010 |
| Companies which indicated the number of meetings in their reference document | 99% | 100% | 100% | 100% |
| Average number of meetings | 5.1 | 5.2 | 5.1 | 6.1 |
| Companies which indicated the rate of attendance in their reference document | 90% | 97% | 94% | 94% |
| Average rate of attendance at committee meetings for those companies which indicated this information in their reference document | 92% | 92% | 93% | 97% |

100% of the SBF 120 companies disclosed the number of meetings held in 2009. The average number of meetings was 5.2 in 2010. This figure has been going up very slightly for several years.

Similarly, all of the CAC 40 companies indicated the number of meetings in their reference document, and the average number of meetings in the elapsed financial year was 6.1.

97% of the SBF 120 companies with an audit committee specified members' rate of attendance at committee meetings. 94% of the CAC 40 companies applied this recommendation.

The average rate of attendance at audit committee meetings was 92% for the SBF 120 companies and 97% for the CAC 40 companies.

**Competency of members**

The AFEP-MEDEF code specifies that *"the audit committee members […] should be competent in finance or accounting*" (§ 14.3.1). 75% of the SBF 120 companies (compared with 66% in 2009 and 87% in 2008) and 81% of the CAC 40 companies (compared with 80% in 2009 and 91% in 2008) with an audit committee mentioned this competency in finance and accounting. This criterion has been assessed in a stricter manner since 2009, which explains the drop observed in the application of this recommendation between 2008 and 2009. In fact, when drafting the 2008 report, companies were considered to have met this criterion if they provided sufficient information about committee members' professional competencies from which competency in finance or accounting could be inferred. Since 2009, and particularly given the entry into force of the Government's Order on Audit Committees, which requires that at least one committee member should be competent specifically in finance or accounting, only those companies which expressly mentioned that said members were competent in finance or accounting have been considered to meet this criterion. Clear progress was seen in 2010 as regards compliance with this recommendation by SBF 120 index companies.

**Procedure for the replacement of statutory auditors**

The AFEP-MEDEF code specifies that "*in addition to regular interviews with the statutory auditors, including interviews without management present, the committee should steer the procedure for selection of the statutory auditors and submit the outcome of that selection to the Board of Directors"* (§ 14.2.2). In 2010, 92% of the SBF 120 companies and 97% of the CAC 40 companies mentioned in their reference document that they had put in place a procedure for selection. This proportion continued to raise among the SBF 120 companies (69% in 2008 and 86% in 2009) and remained stable for the CAC 40 companies.

**Working methods**

The AFEP-MEDEF code points out that "*the audit committee should interview the statutory auditors, but also the persons responsible for finance, accounting and treasury matters […] As regards internal audit and risk review, the committee should […] interview the person in charge of internal audit*" (§ 14.3.2).

**Information about the interviews carried out by the audit committee**

| | SBF 120 | | CAC 40 | |
|---|---|---|---|---|
| Companies mentioning in their reference document that they: | **Financial year 2009** | **Financial year 2010** | **Financial year 2009** | **Financial year 2010** |
| - interviewed the statutory auditors | 97% | 94% | 100% | 100% |
| - interviewed the chief financial officer | 91% | 83% | 100% | 94% |
| - interviewed the person in charge of internal audit | 90% | 87% | 100% | 97% |

While we considered in 2009 that all of the CAC 40 companies applied the recommendations of the AFEP-MEDEF code concerning interviewing statutory auditors, the chief financial officer and the person in charge of internal audit, these criteria were assessed in a stricter way in 2010. Being of the opinion that it was not sufficient simply to indicate that the committee had the right to carry out these interviews, the criteria were judged to have been fulfilled if the reference document specified that the committee had, in fact, interviewed the individuals concerned. Consequently, the proportion of SBF 120 companies complying with this recommendation was down on the previous financial year.

The AFEP-MEDEF code also states that "*the review of accounts by the audit committee should be accompanied by a presentation from the statutory auditors stressing the essential points not only of the results, but also of the accounting methods chosen, and a presentation from the chief financial officer describing the corporation's risk exposures and its material off-balance-sheet commitments*" (§ 14.2.1).

| | SBF 120 | | CAC 40 | |
|---|---|---|---|---|
| | **Financial year 2009** | **Financial year 2010** | **Financial year 2009** | **Financial year 2010** |
| Companies indicating the existence of a presentation from the statutory auditors | 96% | 88% | 100% | 100% |

88% of the SBF 120 companies and 100% of the CAC 40 companies indicated the existence of a presentation from the statutory auditors.

| | SBF 120 | | CAC 40 | |
|---|---|---|---|---|
| | **Financial year 2009** | **Financial year 2010** | **Financial year 2009** | **Financial year 2010** |
| Companies indicating the existence of a presentation from the chief financial officer | 89% | 84% | 100% | 89% |

Furthermore, 84% of the SBF 120 companies and 89% of the CAC 40 companies indicated the existence of a presentation from the chief financial officer.

The AFEP-MEDEF code also specifies that *"the committee should be able to call upon outside experts as needed"* (§ 14.3.2). 59% of the SBF 120 companies (compared with 47% in 2009) and 72% of the CAC 40 companies mentioned this option (compared with 57% in 2009).

Finally, the code mentions that "*the time available for reviewing the accounts should be sufficient (no less than two days before review by the Board)"* (§ 14.2.1). 21% of the SBF 120 companies and 22% of the CAC 40 companies specified in their document that they complied with this recommendation, compared with 26% and 26% in 2009.

## *3.2 Compensation committee*

The AFEP-MEDEF code recommends that listed corporations should have a compensation committee (§ 13).

**Companies indicating the existence of a compensation committee**

| SBF 120 | | CAC 40 | |
|---|---|---|---|
| **Financial year 2009** | **Financial year 2010** | **Financial year 2009** | **Financial year 2010** |
| 95% | 96% | 97% | 100% |

Almost all of the SBF 120 companies and all of the CAC 40 companies complied with this recommendation.

**Information about the composition of the compensation committee**

| | SBF 120 | | CAC 40 | |
|---|---|---|---|---|
| | **Financial year 2009** | **Financial year 2010** | **Financial year 2009** | **Financial year 2010** |
| Average number of members | 3.7 | 3.6 | 3.7 | 4.2 |
| Presence of executive directors | 5.8% | 1% | 0% | 0% |

In 2010, the average number of members on the compensation committee was almost stable for the SBF 120 companies and up for the CAC 40 companies.

The AFEP-MEDEF code points out that the compensation committee "*should not include any executive directors*". In 2009, the proportion of executive directors was 5.8% for the SBF 120. Now it is just 1%. None of the CAC 40 companies mentioned the presence of an executive director on the compensation committee (§ 16.1).

Furthermore, 100% of the SBF 120 companies which had a compensation committee published the list of directors on it.

**Proportion of independent directors**

According to the AFEP-MEDEF code, the compensation committee "*should have a majority of independent directors*" (§16.1).

**Companies with a majority of independent directors on their compensation committee**

| SBF 120 | | CAC 40 | |
|---|---|---|---|
| Financial year 2009 | Financial year 2010 | Financial year 2009 | Financial year 2010 |
| 78% | 84% | 91% | 97% |

The proportion of companies complying with this recommendation is constantly rising.

**Compensation committee's activity**

The AFEP-MEDEF code mentions that "*the annual report should include a statement on the compensation committee's activity during the elapsed financial year*" (§ 16.2).

**Information about the compensation committee's activity**

| | SBF 120 | | CAC 40 | |
|---|---|---|---|---|
| | Financial year 2009 | Financial year 2010 | Financial year 2009 | Financial year 2010 |
| Companies which published an activity report | 95% | 94% | 97% | 100% |
| Companies which indicated the number of committee meetings in their reference document | 100% | 100% | 100% | 100% |
| Average number of meetings | 4.5 | 3.9 | 4.5 | 4.7 |
| Companies which indicated members' rate of attendance at the committee meetings in their reference document | 94% | 95% | 94% | 94% |
| Average rate of attendance at the committee meetings for those companies which indicated this information in their reference document | 93% | 95% | 93% | 96% |

94% of the SBF 120 companies and 100% of the CAC 40 companies outlined the compensation committee's activity in the reference document. The average number of meetings was up for the CAC 40 companies, but down for the SBF 120 companies. The rate of attendance at compensation committee meetings rose in both the CAC 40 and the SBF 120 companies.

## *3.3 Appointments or nominations committee*

The AFEP-MEDEF code points out that "*each board should appoint, from among its members, a committee for the appointment or nomination of directors and executive directors, which may or may not be separate from the compensation committee"* (§ 15).

| | SBF 120 | | CAC 40 | |
|---|---|---|---|---|
| | Financial year 2009 | Financial year 2010 | Financial year 2009 | Financial year 2010 |
| Companies indicating the existence of an appointments committee | 91% | 91% | 97% | 100% |
| - of which companies with an appointments committee separate from the compensation committee | 27% | 26% | 47% | 50% |

The proportion of SBF 120 companies with an appointments committee remained stable in 2010.

26% of the SBF 120 companies had a nominations committee separate from the compensation committee.

All of the CAC 40 companies had a nominations committee. 50% of the companies had made the decision to make this committee separate from the compensation committee.

**Composition of the appointments committee**

99% of the SBF 120 companies and 97% of the CAC 40 companies with a nominations committee disclosed the number of members.

On average, the appointments committees of the SBF 120 companies included 3.5 members. The figure was 4.1 members for the CAC 40 companies.

The AFEP-MEDEF code recommends that "*the appointments committee should have a majority of independent directors"* (§ 15.1).

In 2010, 81% of the SBF 120 companies and 92% of the CAC 40 companies with a nominations committee complied with this recommendation, compared with 68% of the SBF 120 companies and 91% of the CAC 40 companies for the financial year 2009.

Furthermore, 98% of the SBF 120 companies and 97% of the CAC 40 companies with a nominations committee published the list of names of committee members in their 2010 reference document.

**Information about the activity of appointments committees**

| | SBF 120 | | CAC 40 | |
|---|---|---|---|---|
| | **Financial year 2009** | **Financial year 2010** | **Financial year 2009** | **Financial year 2010** |
| Companies which published an activity report | 98% | 98% | 100% | 100% |
| Companies which indicated the number of committee meetings in their reference document | 99% | 100% | 100% | 100% |
| Average number of meetings | 4 | 3.7 | 4.5 | 4.3 |
| Companies which indicated the rate of attendance at committee meetings in their reference document | 97% | 95% | 91% | 94% |
| Average rate of attendance at committee meetings for those companies which indicated this information in their reference document | 93% | 94% | 93% | 96% |

98% of the SBF 120 companies and all of the CAC 40 companies supplied a report on the activity of their appointments committee.

All of the SBF 120 companies indicated the number of meetings held by the nominations committee. On average, the SBF 120 companies met 3.7 times in the previous financial year and the CAC 40 companies met 4.3 times in 2010.

95% of the SBF 120 companies and 94% of the CAC 40 companies indicated the rate of attendance at committee meetings.

**Involvement of the current chairman**

The AFEP-MEDEF code points out that "*unlike the provisions governing the compensation committee, the current Board chairman shall be associated with the appointments or nominations committee's proceedings*" (§ 15.1).

38% of the SBF 120 companies and 53% of the CAC 40 companies indicated that they involved the current chairman in the meetings of the appointments committee.

## 4. Employment contract and corporate office

The AFEP-MEDEF code states that "*when a senior executive is appointed as executive director, it is recommended to terminate his or her employment contract with the company or with a company affiliated to the group, whether through contractual termination or resignation.*

*This recommendation applies to the chairman, to the chief executive officer of companies having a Board of Directors, to the chairman of the management board and to the sole managing director of companies having a management board and a supervisory board and to statutory managers of limited stock partnerships. […].*

*This recommendation applies to executive directors appointed after 6 October 2008, date on which the recommendation was made public, and upon the renewal of the appointment of executive directors appointed prior to that date, pursuant to a decision made by the board of directors or supervisory board*" (§ 19).

**Information about the future of the employment contracts of certain SBF 120 executive directors**

| | Chief executive officer | Chairman of the management board | Managing director | Chairman of the board of directors | Statutory Managers | TOTAL | |
|---|---|---|---|---|---|---|---|
| No employment contract | 36 | 13 | 14 | 25 | 3 | 91 | 69% |
| Employment contract terminated in 2010 | 4 | 0 | 4 | 0 | 1 | 9 | 7% |
| Employment contract will be terminated upon the renewal of the appointment | 1 | 0 | 3 | 0 | 0 | 4 | 3% |
| The future of the employment contract will be reviewed upon the renewal of the appointment | 2 | 2 | 0 | 0 | 0 | 4 | 3% |
| Employment contract retained | 6 | 4 | 6 | 1 | 1 | 18 | 14% |
| Information not disclosed | 3 | 0 | 1 | 2 | 0 | 6 | 4% |
| TOTAL | 52 | 19 | 28 | 28 | 5 | 133 | 100% |

76% of the executive directors of the SBF 120 companies had dispensed with their employment contract (or did not have one), which confirms the rise in compliance with this recommendation (70% in 2009 and 64% in 2008). 3% of them had decided to terminate it upon the renewal of the appointment (compared with 8% in 2009) and 3% would review the situation upon the renewal of the appointment (compared with 7% in 2009). 14% of the executive directors of the SBF 120 companies did not apply this recommendation (compared with 13% in 2009).

**Information about the future of the employment contracts of certain CAC 40 executive directors**

| | Chief executive officer | Chairman of the management board | Managing director | Chairman of the board of directors | Statutory Managers | TOTAL | |
|---|---|---|---|---|---|---|---|
| No employment contract | 12 | 5 | 5 | 9 | 1 | 32 | 68% |
| Employment contract terminated in 2010 | 3 | 0 | 1 | 0 | 0 | 4 | 9% |
| Employment contract will be terminated upon the renewal of the appointment | 1 | 0 | 1 | 0 | 0 | 2 | 4% |
| The future of the employment contract will be reviewed upon the renewal of the appointment | 1 | 1 | 0 | 0 | 0 | 2 | 4% |
| Employment contract retained | 1 | 0 | 4 | 1 | 0 | 6 | 13% |
| Information not disclosed | 0 | 0 | 0 | 1 | 0 | 1 | 2% |
| TOTAL | 18 | 6 | 11 | 11 | 1 | 47 | 100% |

Just one CAC 40 company did not specify whether one of its executive directors had an employment contract. 77% of the executive directors of the CAC 40 companies had dispensed with their employment contract (or did not have one) (compared with 64% in 2009). 4% of them had decided to terminate it upon the renewal of the appointment (compared with 17% in 2009) and 4% would review the situation upon then renewal of the appointment (compared with 2% in 2009). Finally, 13% of the executive directors of the CAC 40 companies did not apply this recommendation (compared with 17% in 2009).

Since 2009, the AMF has considered that an issuer is complying with the code when it justifies maintaining a senior executive's employment contract on account of his length of time as an employee of the company and his personal situation[4].

## 5. Number of directorships

The AFEP-MEDEF code specifies that "*if performing executive duties, [the director] should not, in principle, agree to hold more than four other directorships in listed corporations, including foreign corporations, not affiliated with his group"* (§ 17).

**Information about the number of directorships held in listed corporations not affiliated with the group by the managing director/chief executive officer/chairman of the management board**

| | SBF 120 | CAC 40 |
|---|---|---|
| | **Financial year 2010** | **Financial year 2010** |
| Companies indicating in the reference document the number of directorships in listed corporations not affiliated with the group. | 98% | 100% |

98% of the SBF 120 companies and 100% of the CAC 40 companies indicated in their reference document the number of directorships held in listed corporations not affiliated with the group by the managing director/chief executive officer/chairman of the management board. The average number of directorships not affiliated with the group was 0.87 for the SBF 120 companies and 0.97 for the CAC 40 companies. These figures were 1 and 1.28 respectively in 2009.

[4] AMF 2010 report on corporate governance and executive compensation, 12 July 2010.

**Number of directorships held in listed corporations not affiliated with the group by the managing director/chief executive officer/chairman of the management board of the SBF 120 companies**

| Financial year 2009 | | | | | | |
|---|---|---|---|---|---|---|
| Number of directorships | 0 | 1 | 2 | 3 | 4 | 5 |
| As a % of the SBF 120 | 47% | 25% | 9% | 11% | 5% | 1% |

| Financial year 2010 | | | | | | |
|---|---|---|---|---|---|---|
| Number of directorships | 0 | 1 | 2 | 3 | 4 | 5 |
| As a % of the SBF 120 | 48% | 29% | 12% | 7% | 3% | 1% |

99% of the SBF 120 companies complied with the provisions of the AFEP-MEDEF code. In almost half of the companies in the sample (48%), the managing director/chief executive officer/chairman of the management board did not hold directorships in listed corporations not affiliated with the group.

**Number of directorships held in listed corporations not affiliated with the group by the managing director/chief executive officer/chairman of the management board of the CAC 40 companies**

| Financial year 2009 | | | | | | |
|---|---|---|---|---|---|---|
| Number of directorships | 0 | 1 | 2 | 3 | 4 | 5 |
| As a % of the CAC 40 | 37% | 32% | 11% | 11% | 6% | 3% |

| Financial year 2010 | | | | | | |
|---|---|---|---|---|---|---|
| Number of directorships | 0 | 1 | 2 | 3 | 4 | 5 |
| As a % of the CAC 40 | 42% | 33% | 19% | 3% | 0% | 3% |

Only one CAC 40 company did not comply with the provisions of the AFEP-MEDEF code. In 42% of the companies in the sample, the managing director/chief executive officer/chairman of the management board did not hold any directorships in listed corporations not affiliated with the group.

## 6. Executive directors' compensation[5]

The AFEP-MEDEF code specifies that "*very complete information must be provided to shareholders so that they can have a clear view, not only of the individual compensation paid to executive directors, but also of the policy applied by the company in order to determine the compensation paid*" (§ 21).

Furthermore, the code recommends using a table summarising the compensation, options and performance shares awarded to each executive director (§ 21.2)[6].

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[5] According to the AFEP-MEDEF code, executive directors is given to mean the chairman, the chief executive officer, the deputy chief executive officers of companies having a board of directors; the chairman and members of the management board of companies having a management board and a supervisory board; and the statutory managers of limited stock partnerships. For the purposes of this study, executive directors in office on the last day of the financial year were taken into consideration.

[6] In its recommendation on the information to be provided about executive directors' compensation in the reference documents, which was put on line on 22 December 2008, the AMF reproduced the tables recommended by the AFEP-MEDEF, amending them marginally and in relation to format.

This recommendation, which was broadly implemented for the financial year 2009 (94% of the SBF 120 companies and 97% of the CAC 40 companies), was applied by 88.5% of the SBF 120 companies and 91.5% of the CAC 40 companies for the financial year 2010. Furthermore, two companies submitted a table for each of the executive directors, except for the chairman of the board of directors. It should be noted that the reason why no summary table was provided in two thirds of cases was because no options or performance shares were awarded to the executive director concerned.

## *6.1 Information about executive directors' compensation*

**Individual compensation**

The AFEP-MEDEF code recommends that the annual report should include a chapter devoted to informing shareholders, including *"a detailed presentation of each executive director's individual compensation, compared with that of the preceding financial year, and broken down between fixed components and variable components"* (§ 21.2).

Furthermore, it points out that: *"Although the French Commercial Code does not impose any such obligation, it appears that the information most relevant for shareholders consists in connecting the variable component to the financial year in respect of which it is calculated, even though the compensation is only paid during the following financial year. It is therefore recommended to disclose on a priority basis the compensation due in respect of the financial year and to show in a recapitulative table the amounts due and paid for the current and the preceding financial years".*

| | SBF 120 | | CAC 40 | |
|---|---|---|---|---|
| | **Financial year 2009** | **Financial year 2010** | **Financial year 2009** | **Financial year 2010** |
| Information about each executive director's individual compensation | 100% | 99% | 100% | 100% |
| Comparison with the previous financial year's compensation [7] | 100% | 99% | 100% | 100% |
| Fixed component/variable component breakdown | 100% | 99% | 100% | 100% |
| Table summarising the amounts due and paid for the current and preceding financial years | 95% | 96% | 97% | 100% |

- 99% of the SBF 120 companies and 100% of the CAC 40 companies provided the individual compensation for each executive director,
- 99% of the SBF 120 companies and 100% of the CAC 40 companies specified the compensation paid to each executive director during the previous financial year,
- 99% of the SBF 120 companies and 100% of the CAC 40 companies divided the individual compensation into fixed and variable components.

[7] Only includes those senior executives for whom a comparison can be made, i.e. who were in office during previous financial year.

One SBF 120 company provided this information for the managing director, but omitted it for the chairman of the board of directors.

For the financial year 2009, the percentage of companies submitting the table summarising each executive director's compensation (standardised table 2) was 95% for the SBF 120 and 97% for the CAC 40. For the financial year 2010, 100% of the CAC 40 companies submitted this table. This rate achieved a high level (96%) for the SBF 120, and was slightly up. Furthermore, one SBF 120 company submitted this table for the managing director but omitted it for the chairman of the board of directors.

## Variable component of the compensation

For the financial year 2010, all of the CAC 40 companies and 99 SBF 120 companies (i.e. 95%) planned to pay a variable component to at least one of their executive directors. Ultimately, one company did not allocate this variable component to the executive director in question[8].

### Criteria

The AFEP-MEDEF code specifies that the chapter of the annual report devoted to executive compensation should outline the rules for awarding the variable component and, in particular, "*indicate the criteria on the basis of which this variable part is determined, the manner in which these criteria have been applied during the financial year, as compared with initial expectations, and whether the individual director's personal targets have been attained*" (§ 21.2).

| | SBF 120 | | CAC 40 | |
|---|---|---|---|---|
| | **Financial year 2009** | **Financial year 2010** | **Financial year 2009** | **Financial year 2010** |
| Indication of the criteria for determining the variable component | 92% | 90% | 91.5% | 100% |
| Information about how the criteria are applied | 50% | 49.5% | 73.5% | 72% |

90% of the SBF 120 companies planning a variable component indicated the criteria applicable (compared with 92% in the previous financial year), and this proportion was 100% for the CAC 40 (91.5% for 2009). These rates therefore reached a high level, with the level for the CAC 40 being up.

Excluding those cases where the variable component was not ultimately awarded or where the variable component was not determined by the date on which the annual report and/or reference document was published, 49.5% of the SBF 120 companies provided information about how these criteria were applied, and this proportion was 72% for the CAC 40 companies (compared with 50% and 73.5% respectively for the financial year 2009).

[8] On account of the executive director waiving it. Nevertheless, unless indicated otherwise, this company has been taken into account in the following calculations.

**Connection between the variable component and the financial year in respect of which it is calculated**

The AFEP-MEDEF code recommends "*connecting the variable component to the financial year in respect of which it is calculated, even though the compensation is only paid during the following financial year*" (§ 21.2).

| | SBF 120 | | CAC 40 | |
|---|---|---|---|---|
| | **Financial year 2009** | **Financial year 2010** | **Financial year 2009** | **Financial year 2010** |
| Connection between the variable component and the financial year in respect of which it is calculated | 99% | 99% | 100% | 100% |

For the financial year 2010, 99% of the SBF 120 companies which planned to award a variable component to at least one of their executive directors indicated that the variable component was connected to the financial year in respect of which it was calculated. As for the previous financial year, 100% of the CAC 40 companies implemented this recommendation.

**Relationship between the variable component and the fixed component and measure of the qualitative part of the variable component**

The AFEP-MEDEF code states that the relationship between the variable component and the fixed component should be clear and consist of "*a maximum percentage of the fixed part, […] suited to the business conducted by the enterprise"*. The code further specifies that "*within the variable part, the qualitative part must be appropriate and where applicable make it possible to account for exceptional circumstances*" (§ 20.2.2).

| | SBF 120 | | CAC 40 | |
|---|---|---|---|---|
| | **Financial year 2009** | **Financial year 2010** | **Financial year 2009** | **Financial year 2010** |
| Indication of the maximum percentage of the fixed component which the variable component can represent | 70.5% | 72.5% | 85.5% | 83.5% |
| Indication of the measure of the qualitative part | 60.5% | 65% | 65.5% | 72.5% |

72.5% of the SBF 120 companies which planned to award a variable component and a fixed component indicated the relationship between the two, expressed as a maximum percentage of the fixed component (83.5% of the CAC 40 companies), compared with 70.5% for the previous financial year (85.5% of the CAC 40 companies). However, it should be pointed out that, of these, one company indicated the maximum percentage for 2010 in its 2009 reference document and the maximum percentage for 2011 in its 2010 reference document, and that five companies indicated the maximum percentage applicable to the chief executive officer (managing director in the case of separation of the offices) or to the chairman of the management board without indicating the percentage applicable to the other executive directors.

Of the companies which did not provide the required information, 6% of the SBF 120 companies nevertheless indicated the maximum amount of the variable component without expressing it as a percentage of the fixed component, and one company indicated that there was an upper limit, without specifying what this was.

65% of the SBF 120 companies and 72.5% of the CAC 40 companies planning a variable component partly subject to qualitative criteria indicated the measure of the qualitative part, compared with 60.5% of the SBF 120 companies and 65.5% of the CAC 40 companies for the previous financial year. These rates were therefore up significantly.

## 6.2 Subscription or purchase options

| | SBF 120 | | CAC 40 | |
|---|---|---|---|---|
| | Financial year 2009 | Financial year 2010 | Financial year 2009 | Financial year 2010 |
| Options awarded | 51.5% | 53% | 74.5% | 66.5% |
| of which options awarded to the executive directors | 66% | 74.5% | 69% | 71% |

53% SBF 120 companies awarded subscription or purchase options in 2010. 74.5% of these companies awarded options to at least one of their executive directors.

66.5% of the CAC 40 companies awarded subscription or purchase options in 2010. 71% of these companies awarded options to at least one of their executive directors.

**Award of subscription or purchase options**

**Employees' involvement in corporate performance**

A recommendation published in October 2008 and included in the AFEP-MEDEF code specifies that if options and shares are not awarded to all employees, then it is necessary to make provisions for another mechanism involving them in corporate performance (incentive scheme, profit-sharing scheme departing from the mandatory scheme, grant of bonus shares, etc.) (§ 20.2.3).

This recommendation was mentioned by Law no. 2008-1258 of 3 December 2008 on earned income. According to the terms of Articles L. 225-186-1 and L. 225-197-6 of the Commercial Code, stock options or bonus shares can only be awarded to executive directors if the company awards options or grants bonus shares to all of its employees and to at least 90% of the employees of its subsidiaries, or if an incentive scheme, profit-sharing scheme departing from the mandatory scheme or a voluntary profit-sharing scheme is in place in the company and benefits at least 90% of the total employees of its subsidiaries. In the latter case, if schemes were in place in respect of the previous financial year, the first award authorised by a general meeting following the publication of the law of 3 December 2008 can only take place if the company amends the way the schemes are calculated or pays an additional collective incentive or special profit-sharing reserve. However, certain companies were not yet affected by these provisions, since they only apply to the awards authorised by a general meeting after the date of publication of the law.

Several companies which awarded options or performance shares to at least one of their executive directors during the financial year 2010 made specific reference in their reference document to the implementation of the law of 3 December 2008. Consequently, for example:

- One company stated that in 2010, in accordance with the law, the awarding of the option plan went hand in hand with a scheme involving all French staff in corporate performance, mainly in the form of an additional incentive payment.

- One company specified that the supervisory board recognised the company's compliance with the terms laid down by Article L. 225-197-6 of the Commercial Code for grating bonus shares to executive directors.

- One company indicated that, for the financial year 2011, in accordance with Article L. 225-186-1 of the Commercial Code introduced by the French law of 3 December 2008 on earned income, the board of directors decided at its meeting on 15 February 2011, at the suggestion of the nominations and compensation committee, that, subject to the general meeting on 28 April 2011 extending the authorisation given to the board to grant subscription or purchase options in the company to the employees and representatives of the company and of its affiliates, or to certain categories thereof, the award of such options to the executive directors would be dependent on the payment of an additional collective incentive within the meaning of Article L. 3314-10 of the Employment Code, distributed in accordance with the terms laid down by the incentive schemes in place, unless agreed otherwise, to all of the company's employees and to at least 90% of the total employees of its French affiliates.

- One company indicated that a group incentive scheme had been signed in 2010, and specified that it had not been possible for the 2010 performance share plan to be authorised at the usual calendar period due to the delay in implementing the provisions of the law of 3 December 2008 on schemes involving employees in corporate performance.

- One company indicated that the setting up of a new incentive scheme for the 2009-2013 period for group employees made it possible to grant stock options to the members of the management board in accordance with Article L. 225-186-1 of the Commercial Code.

- One company stated that in accordance with the law of 3 December 2008 on earned income, the board of directors put in place Share 2010, its first global plan for granting bonus shares to all employees. This plan awards 20 shares to all group employees who have been with the company for 3 months on the date of the board meeting, subject to regular attendance.

- At its 2011 general meeting, one company proposed voting for a resolution authorising a plan to grant bonus shares to all of its employees, specifying that consequently, this authorisation comes within the framework of the provisions of Article 22 of Law no. 2008-1258 of 3 December 2008 on earned income, the purpose of which is, in particular, to broaden the scope of the beneficiaries of bonus shares or stock options.

Furthermore, we can point out that:

- One company stated that since 2009, in accordance with the recommendations of AFEP and MEDEF and the law of 3 December 2008 on earned income, the executive directors are no longer the beneficiaries of options or performance shares.

- One company indicated that given the provisions of Article L.225-186-1 of the Commercial Code, the company's executive directors will not benefit from the awards made for the accounting period 2010/2011.

Finally, several companies which awarded options or performance shares to at least one of their executive directors during the financial year mentioned the existence of schemes involving all employees in corporate performance:

- One company indicated that in France, mandatory profit-sharing comes under a group scheme departing from the mandatory scheme negotiated with labour representatives and management including the company and its French subsidiaries in which it has a stake of 50% or more, regardless of the workforce of the company concerned. This scheme enables employees who have been with the company for more than three months to benefit from the profit-sharing calculated based on the results of all of these subsidiaries and that given the group's organisation and compensation policy, there are a number of incentive schemes negotiated at parent company level and at subsidiary or establishment level.

- One company specified that on top of the profit-sharing scheme which is mandatory in France, the group's French companies have set up an incentive scheme involving all staff in the group's results and in the achievement of the progress targets favouring its growth.

- One company mentioned a profit-sharing scheme departing from the mandatory scheme extended in 2010.The employees of the companies referred to in the group profit-sharing scheme start to benefit from it after they have been with the company for three months. It departs from the mandatory scheme in the sense that it is more favourable than the rules of ordinary law, both in terms of the scope and in terms of the calculation formula, and that in terms of incentive, each group entity has its own scheme, which may be at company or establishment level.

- One company indicated that the company's employees benefit from a three-year incentive plan extended in 2009, and that the French subsidiaries have set up profit-sharing and/or incentive contracts for their employees based on their own results. All of the incentive schemes covering all of the group's French subsidiaries were renegotiated in order to distribute more incentive for an equivalent result. These improvements were made in 2009 and 2010.

- One company, to which the provisions of the 2008 law were not yet applicable, specified that in 2010, a new incentive scheme was signed for a further three-year period relating to the tax years 2010, 2011 and 2012. The amounts to be distributed, as well as the collective and individual upper limits, are exactly the same as under the previous scheme. In order to improve the incentive bonus for employees on the lowest salaries, the fixed component and the proportional component for the employee have been reconfigured to 50%-50% (instead of 40%-60% respectively under the previous scheme).

- One company indicated that to mark the centenary of the company, an additional incentive representing a 5% rise in the total incentive was paid in April 2010 and that the profit-sharing scheme was extended in June 2009, the company made favourable departures from the mandatory system: it is a group agreement: all of the employees of the companies which signed up to this scheme receive the same profit-sharing, regardless of their business sector and its result; it makes provision to add the fees from licensing patents, inventions and technical processes developed in France to the taxable income, which creates a direct relationship with the group's international development; provisions limit the consequences of extraordinary events on how the profit-sharing is determined.

- One company indicated that the group has a group profit-sharing scheme departing from the mandatory scheme which involves all employees jointly in the results, and where the departures from the mandatory system are particularly favourable. Depending on the years, the component departing from the mandatory scheme represents between 2 and 4 times the amount of the mandatory profit-sharing, and a group incentive scheme where the mechanism is laid down by the law but is optional. This scheme at group level enables the sums from the incentive scheme to be distributed fairly between the employees of the various companies, regardless of their business sector and its result.

- One company indicated that the board of directors of 10 November 2010 adopted a plan to award bonus shares to key employees (including senior executives and key employees in France) and a plan to award bonus shares for all employees in France.

- One company specified that on top of the incentive schemes renegotiated in 2008 a new plan to grant bonus shares was set up in 2010 and granted 2 additional shares to more than 14,000 employees.

- One company indicated that the management board of the company decided to grant 5,950 bonus shares to all of the company's employees and executive directors.

- One company indicated that an incentive scheme in place for group staff since 2007 was extended in January 2010 for a period of 3 years and that the company had decided to call on the next general meeting to give the authorisation needed for the establishment of a plan to grant bonus shares to all group employees.

- One company indicated that at the proposal of the compensation committee of 9 February 2010, the board of directors decided to grant 210 bonus shares on 2 March 2010 to each non-partner employee of group companies, on the basis of the authorisation which had been granted by the general meeting on 15 April 2009.

- One company indicated that the board of directors decided, on 21 May 2010, to implement a global plan to grant bonus shares to all group employees, i.e. more than 100,000 employees. On 30 June 2010, each employee received rights to 25 bonus shares.

**Valuation of options**

The AFEP-MEDEF code recommends mentioning the valuation of the subscription and purchase options awarded to executive directors at the time of the award and in accordance with the method used for consolidated financial statements (§ 21.2).

| | **SBF 120** | | **CAC 40** | |
|---|---|---|---|---|
| | **Financial year 2009** | **Financial year 2010** | **Financial year 2009** | **Financial year 2010** |
| Mention made of the valuation of the options | 97% | 100% | 100% | 100% |

All of the companies which granted subscription or purchase options to at least one of their executive directors mentioned the valuation of the options at the time of the award. For the financial year 2009, this rate was 97% for the SBF 120 companies (100% of the CAC 40 companies).

**Dilutive impact**

The AFEP-MEDEF code recommends mentioning the dilutive impact of the option awards (§ 21.2)

| | SBF 120 | | CAC 40 | |
|---|---|---|---|---|
| | Financial year 2009 | Financial year 2010 | Financial year 2009 | Financial year 2010 |
| Indication of the dilutive impact | 57% | 75.5% | 66.5% | 88% |

75.5% of the SBF 120 companies and 88% of the CAC 40 companies which granted stock options to at least one of their executive directors indicated the dilutive impact of the awards. This percentage is up significantly on the previous financial year. Furthermore, 40% of the companies which did not indicate it awarded purchase options, which do not have a dilutive impact.

**Awards at the same calendar periods**

The AFEP-MEDEF code recommends making "*awards […] at the same calendar periods*" (§ 20.2.3).

| | SBF 120 | | CAC 40 | |
|---|---|---|---|---|
| | Financial year 2009 | Financial year 2010 | Financial year 2009 | Financial year 2010 |
| Awards at the same calendar periods (unless the first plan was set up in 2010) | 71.5% | 71% | 83.5% | 94% |

71% of the SBF 120 companies and 94% of the CAC 40 companies which awarded stock options to at least one of their executive directors made awards at the same calendar periods. Consequently, the rate of SBF 120 companies following this recommendation matched the rate for the previous financial year, which was itself up significantly on 2008 (52%), whereas this practice was more broadly implemented in the CAC 40. The three companies which set up their first option plan during the financial year were not taken into account.

**Fraction awarded to each executive director**

The AFEP-MEDEF code recommends indicating in the annual report or the reference document *"the fraction of the capital so awarded to each executive director*" (§ 21.2).

| | SBF 120 | | CAC 40 | |
|---|---|---|---|---|
| | Financial year 2009 | Financial year 2010 | Financial year 2009 | Financial year 2010 |
| Indication of the fraction awarded to each executive director | 26% | 46.5% | 44.5% | 59% |

Of the companies which awarded subscription or purchase options to at least one of their executive directors, 46.5% of the SBF 120 companies and 59% of the CAC 40 companies specified the fraction of the capital awarded to each executive director. This percentage was up significantly on the financial year 2009.

## Price

### Discount

The AFEP-MEDEF code recommends not applying any discount when awarding stock options (§ 20.2.3).

| | SBF 120 | | CAC 40 | |
|---|---|---|---|---|
| | **Financial year 2009** | **Financial year 2010** | **Financial year 2009** | **Financial year 2010** |
| No discount (options) | 97% | 95% | 100% | 100% |

95% of the SBF 120 companies and 100% of the CAC 40 companies did not apply any discount in practice, but the information did not always appear specifically in the part of the reference documents devoted to subscription and purchase options.

### Risk hedging transactions

The AFEP-MEDEF code states that "*those executive directors who are in office and who are beneficiaries of stock options and/or performance shares may not engage in any risk hedging transactions in respect of their own interests"* (§ 20.2.3).

| | SBF 120 | | CAC 40 | |
|---|---|---|---|---|
| | **Financial year 2009** | **Financial year 2010** | **Financial year 2009** | **Financial year 2010** |
| Prohibition on risk hedging transactions | 54.5% | 73% | 66.5% | 82.5% |

73% of the SBF 120 companies and 82.5% of the CAC 40 companies which awarded options to at least one of their executive directors specifically mentioned in their annual report or in their reference document that no risk he

## Exercise of options by executive directors

### Performance conditions

The AFEP-MEDEF code recommends that, during awards, performance conditions should be laid down for exercising options (§ 20.2.3 - "Award").

| | SBF 120 | | CAC 40 | |
|---|---|---|---|---|
| | Financial year 2009 | Financial year 2010 | Financial year 2009 | Financial year 2010 |
| Mention made of the performance conditions laid down for exercising options | 68.5% | 80.5% | 78% | 88% |

Of the companies which awarded subscription or purchase options to at least one of their executive directors in 2010, 80.5% of the SBF 120 companies and 88% of the CAC 40 companies specified the performance conditions to which exercising all of the options related, compared with 68.5% and 78% respectively for the financial year 2009. Furthermore, 10% of the SBF 120 companies related only some of the options to a performance condition.

### Periods during which options cannot be exercised

The AFEP-MEDEF code recommends determining periods preceding the disclosure of the accounting statements during which options cannot be exercised (§ 20.2.3 - "Exercise").

70.5% of the SBF 120 companies (of which 82.5% of the CAC 40 companies) stated that they applied this rule. However, some of these companies ruled out implementing this recommendation for straightforward exercise transactions.

## Custody of shares resulting from the exercise of options

The Commercial Code provides that boards must either decide that options cannot be exercised before the end of the term of office, or determine the quantity of shares resulting from the exercise of options which must be kept until the end of the term of office (Art. L. 225-185).

The AFEP-MEDEF code lays down a similar recommendation whereby the board of directors or the supervisory board periodically determines the number of shares resulting from the exercise of options which the executive directors are required to keep as registered shares until the end of their term of office (§ 20.2.3 - "Custody of the acquired shares").

| | SBF 120 | | CAC 40 | |
|---|---|---|---|---|
| | **Financial year 2009** | **Financial year 2010** | **Financial year 2009** | **Financial year 2010** |
| Requirement to keep shares resulting from the exercise of options | 85.5% | 90% | 89% | 94% |

90% of the SBF 120 companies and 94% of the CAC 40 companies (compared with 85.5% and 89% for the previous financial year) mentioned in their reference document and/or annual report a requirement to keep shares resulting from the exercise of options.

**<u>Use of standardised tables</u>**

The AFEP-MEDEF code recommends using standardised tables relating to the award and exercise of options by the executive directors during the financial year (§ 21.2).

| | SBF 120 | | CAC 40 | |
|---|---|---|---|---|
| | **Financial year 2009** | **Financial year 2010** | **Financial year 2009** | **Financial year 2010** |
| *Table 4*<br><br>Subscription or purchase options awarded during the financial year to each executive director | 91.5% | 93% | 94.5% | 100% |

93% of the SBF 120 companies and 100% of the CAC 40 companies which awarded options to at least one of their executive directors submitted the standardised table.

| | SBF 120 | | CAC 40 | |
|---|---|---|---|---|
| | **Financial year 2009** | **Financial year 2010** | **Financial year 2009** | **Financial year 2010** |
| *Table 5*<br>Subscription or purchase options exercised during the financial year by each executive director (excluding cases where no options were exercised) | 84.5% | 83.5% | 77% | 86% |

Of the companies where at least one of the executive directors exercised options in 2010, 83.5% of the SBF 120 companies and 86% of the CAC 40 companies submitted the standardised table.

## 6.3. *Performance shares*

| | SBF 120 | | CAC 40 | |
|---|---|---|---|---|
| | **Financial year 2009** | **Financial year 2010** | **Financial year 2009** | **Financial year 2010** |
| Award of performance shares | 62.5% | 64.5% | 71.5% | 69.5% |
| of which shares awarded to executive directors | 63% | 64% | 60% | 56% |

64.5% of the SBF 120 companies awarded performance shares in 2010. 64% of them awarded them to at least one of their executive directors.

69.5% of the CAC 40 companies awarded performance shares in 2010. 56% of them awarded them to at least one of their executive directors.

**<u>Award of performance shares</u>**

**Involving employees in corporate performance**

**See *above*, subscription or purchase options**

**Valuation of shares**

The AFEP-MEDEF code recommends specifying the valuation of the performance shares awarded to executive directors at the time of the award and in accordance with the method used for consolidated financial statements (§ 21.2).

| | SBF 120 | | CAC 40 | |
|---|---|---|---|---|
| | **Financial year 2009** | **Financial year 2010** | **Financial year 2009** | **Financial year 2010** |
| Mention made of the valuation of shares | 100% | 100% | 100% | 100% |

As for the previous financial year, all of the companies which awarded performance shares to at least one of their executive directors specified the valuation of the shares at the time of the award.

**Dilutive impact**

The AFEP-MEDEF code recommends mentioning the dilutive impact of the option awards (§ 21.2).

| | SBF 120 | | CAC 40 | |
|---|---|---|---|---|
| | **Financial year 2009** | **Financial year 2010** | **Financial year 2009** | **Financial year 2010** |
| Indication of the dilutive impact | 27% | 56% | 40% | 64.5% |

Of the companies which awarded performance shares to at least one of their executive directors, 56% of the SBF 120 companies and 64.5% of the CAC 40 companies indicated the dilutive impact of the awards. These rates were up significantly on the previous financial year (27% and 40% respectively).

**Awards at the same calendar periods**

The AFEP-MEDEF code recommends making "*awards […] at the same calendar periods*" (§ 20.2.3).

| | SBF 120 | | CAC 40 | |
|---|---|---|---|---|
| | **Financial year 2009** | **Financial year 2010** | **Financial year 2009** | **Financial year 2010** |
| Awards at the same calendar periods (unless the first plan was set up in 2010) | 50% | 59% | 58.5% | 69% |

59% of the SBF 120 companies and 69% of the CAC 40 companies awarded performance shares at the same calendar periods (compared with 50% and 58.5% respectively for the financial year 2009).
These rates confirm and add to the increase already observed in the previous financial year (31% and 42% for the financial year 2008). The four companies which implemented their first performance share plan during the financial year were not taken into account.

**Fraction awarded to each executive director**

The AFEP-MEDEF code recommends indicating in the annual report or the reference document *"the fraction of the capital so awarded to each executive director*" (§ 21.2).

| | SBF 120 | | CAC 40 | |
|---|---|---|---|---|
| | **Financial year 2009** | **Financial year 2010** | **Financial year 2009** | **Financial year 2010** |
| Fraction of the capital awarded to each executive director | 17% | 35.5% | 40% | 43% |

Of the companies which awarded performance shares to at least one of their executive directors, 35.5% of the SBF 120 companies and 43% of the CAC 40 companies specified the fraction of the capital awarded to each executive director (compared with 17% and 40% respectively for the previous financial year).

## Price

### Risk hedging transactions

The AFEP-MEDEF code states that "*those executive directors who are in office and who are beneficiaries of stock options and/or performance shares may not engage in any risk hedging transactions in respect of their own interests*" (§ 20.2.3).

| | SBF 120 | | CAC 40 | |
|---|---|---|---|---|
| | **Financial year 2009** | **Financial year 2010** | **Financial year 2009** | **Financial year 2010** |
| Prohibition on risk hedging transactions | 39% | 46.5% | 46.5% | 50% |

46.5% of the SBF 120 companies and 50% of the CAC 40 companies which awarded performance shares to at least one of their executive directors specifically mentioned in their annual report or in their reference document that there had been no risk hedging transactions, compared with 39% and 46.5% respectively for the financial year 2009.

## Definitive acquisition of shares by executive directors

### Performance conditions

The AFEP-MEDEF code recommends that performance conditions should be laid down for the definitive acquisition of shares at the time of the award (§ 20.2.3).

| | SBF 120 | | CAC 40 | |
|---|---|---|---|---|
| | **Financial year 2009** | **Financial year 2010** | **Financial year 2009** | **Financial year 2010** |
| Mention made of the performance conditions laid down for the definitive acquisition of shares | 88% | 93% | 100% | 100% |

Of the companies which awarded performance shares to at least one of their executive directors in 2010, 93% of the SBF 120 companies and 100% of the CAC 40 companies specified the performance conditions to which the definitive acquisition of shares related.

**Acquisition of shares**

The AFEP-MEDEF code recommends *"in accordance with terms determined by the board and announced upon the award, the performance shares awarded to executive directors are conditional upon the acquisition of a defined quantity of shares upon the availability of the awarded shares"* (§ 20.2.3).

| | **SBF 120** | | **CAC 40** | |
|---|---|---|---|---|
| | **Financial year 2009** | **Financial year 2010** | **Financial year 2009** | **Financial year 2010** |
| Requirement to purchase a defined quantity of shares | 19.5% | 18.5% | 20% | 28.5% |

18.5% of the SBF 120 companies and 28.5% of the CAC 40 companies indicated that they applied this requirement for the awards made in 2010 (compared with 19.5% and 20% respectively for the awards made during the previous financial year).

**<u>Custody of acquired shares</u>**

The Commercial Code provides that boards must either decide that bonus shares cannot be exercised before the end of the term of office, or determine the quantity of these shares which must be kept as registered shares until the end of the term of office (Art. L. 225-197-1).

The AFEP-MEDEF code recommends that the board of directors or the supervisory board should periodically determine the number of shares resulting from the exercise of options or performance shares which the executive directors are required to hold as registered shares until the end of their term of office (§ 20.2.3).

| | **SBF 120** | | **CAC 40** | |
|---|---|---|---|---|
| | **Financial year 2009** | **Financial year 2010** | **Financial year 2009** | **Financial year 2010** |
| Requirement to keep performance shares | 90% | 88.5% | 86.5% | 85.5% |

88.5% of the SBF 120 companies and 85.5% of the CAC 40 companies mentioned a requirement to hold performance shares (compared with 90% and 86.5% respectively for the previous financial year).

**<u>Use of standardised tables</u>**

The AFEP-MEDEF code recommends using standardised tables relating to the shares granted to executive directors during the financial year and to the shares that have become available (§ 21.2).

| | **SBF 120** | | **CAC 40** | |
|---|---|---|---|---|
| | **Financial year 2009** | **Financial year 2010** | **Financial year 2009** | **Financial year 2010** |
| Table 6<br>Performance shares granted to each executive director | 92.5% | 95.5% | 100% | 100% |

95.5% of the SBF 120 companies and 100% of the CAC 40 companies which granted performance shares to at least one of their executive directors submitted the standardised table.

| | SBF 120 | | CAC 40 | |
|---|---|---|---|---|
| | **Financial year 2009** | **Financial year 2010** | **Financial year 2009** | **Financial year 2010** |
| Table 7<br>Performance shares that have become available during the financial year for each executive director | 89.5% | 82.5% | 100% | 87.5 % |

Of the companies which granted performance shares which became available in 2010, 82.5% of the SBF 120 companies and 87.5% of the CAC 40 companies submitted the standardised table. Furthermore, two companies submitted tables relating to the shares definitively acquired, and not to the shares which became available, during the financial year.

## 6.4 Termination payments

For the financial year 2010, 56.5% of the SBF 120 companies and 53% of the CAC 40 companies stated that they provided a termination payment to at least one of their executive directors. Two companies whose executive directors waived the termination payment stipulated in their favour during the financial year 2010 were not taken into account.

**Imposed departure linked to a change in control or strategy**

The AFEP-MEDEF code recommends that the performance conditions whose existence is imposed by the Commercial Code must be such that they do not allow for "*indemnification of an executive director, unless his or her departure is imposed […] and linked to a change in control or strategy*" (§ 20.2.4).

The same recommendations advise that the termination payment should not exceed two years' compensation (fixed and variable).

| | SBF 120 | | CAC 40 | |
|---|---|---|---|---|
| | **Financial year 2009** | **Financial year 2010** | **Financial year 2009** | **Financial year 2010** |
| Payment only in the event of imposed departure linked to a change in control or strategy | 32% | 30.5% | 44.5% | 42% |
| Upper limit of 2 years' compensation | 98% | 96.5% | 100% | 100% |

Of the companies which provided for awarding a termination payment to at least one of their executive directors, 30.5% of the SBF 120 companies and 42% of the CAC 40 companies stated that the payment could only be made in the event of imposed departure linked to a change in control or strategy for all beneficiary senior executives (compared with 32% and 44.5% respectively for the previous financial year). One of these companies featured this information in its 2009 reference document, to which the 2010 reference document referred. These percentages were therefore close to the previous financial year's percentages, which were themselves up significantly on the financial year 2008 (20% for the SBF 120 and 24% for the CAC 40).

Of the companies which made provision to grant a termination payment to at least one of their executive directors, 96.5% of the SBF 120 companies and 100% of the CAC 40 companies stated that they applied an upper limit of 2 years' compensation for all beneficiary senior directives (compared with 98% and 100% respectively for the financial year 2009). One of these companies featured this information in its 2009 reference document, to which the 2010 reference document referred. Furthermore, one company stated that it would revise the amount of the payment stipulated in favour of one of its executive directors after his or her term of office was extended in order to apply the recommendations of the AFEP-MEDEF code.

**Performance conditions**

| | SBF 120 | | CAC 40 | |
|---|---|---|---|---|
| | **Financial year 2009** | **Financial year 2010** | **Financial year 2009** | **Financial year 2010** |
| Performance conditions | 100% | 98.5% | 100% | 100% |

98.5% of the SBF 120 companies (100% of the CAC 40 companies) which made provision to grant a termination payment to at least one of their executive directors stated that this payment was subject to one or more performance conditions, in accordance with the relevant legal provisions (Art. L.225-42-1 and L. 225-90-1 of the Commercial Code); of these, one company outlined the relevant performance condition in its reference document for the financial year 2009.

**Non-competition clause**

The AFEP-MEDEF code states that if there is a non-competition clause, any indemnification it provides for must be included in the upper limit of two years (§ 20.2.4).

For the financial year 2010, 29% of the SBF 120 companies and 30.5% of the CAC 40 companies provided for indemnification pursuant to a non-competition clause in favour of at least one of their executive directors.

| | SBF 120 | | CAC 40 | |
|---|---|---|---|---|
| | **Financial year 2009** | **Financial year 2010** | **Financial year 2009** | **Financial year 2010** |
| Indemnification amount included in the upper limit of 2 years' compensation | 73.5% | 90% | 100% | 100% |

Of the SBF 120 companies which provided for indemnification pursuant to a non-competition clause in favour of at least one of their executive directors, 90% stated that the indemnity was included in the upper limit of 2 years' compensation, compared with 73.5% for the financial year 2009. For the third year in a row, 100% of the CAC 40 companies concerned stated that the indemnity was included in the two year upper limit.

## 6.5 Pensions

**Information about pension schemes**

The AFEP-MEDEF code states that the chapter on compensation must contain "*information concerning the pension systems or commitments provisioned by the company*" (§ 21.2).

| | SBF 120 | | CAC 40 | |
|---|---|---|---|---|
| | **Financial year 2009** | **Financial year 2010** | **Financial year 2009** | **Financial year 2010** |
| Information about pension schemes | 100% | 100% | 100% | 100% |

As for the financial year 2009, all of the SBF 120 companies provided information about the pension schemes or commitments provisioned for the financial year 2010.

**Additional pensions schemes**

Furthermore, the AFEP-MEDEF code provides for certain additional rules for additional pension schemes with defined benefits, i.e. the group of potential beneficiaries must be materially broader than the sole executive directors ; the beneficiaries must meet reasonable requirements of seniority within the enterprise; each year, the increase in potential rights may only account for a limited percentage of the beneficiary's compensation; and the benchmark period taken into account for calculating the benefits must cover several years (§ 20.2.5).

62.5% of the SBF 120 companies and 89% of the CAC companies provided for a pension scheme with defined benefits for at least one of their executive directors. It should be noted that eight of these companies stated that the scheme was closed.

| | SBF 120 | | CAC 40 | |
|---|---|---|---|---|
| | **Financial year 2009** | **Financial year 2010** | **Financial year 2009** | **Financial year 2010** |
| Category of beneficiaries broader than the executive directors alone | 85.5% | 91% | 97% | 94% |
| Seniority requirements | 38% | 54% | 37.5% | 53% |
| Increase in potential rights | 43% | 47.5% | 44% | 47% |
| Benchmark period greater than one year | 66.5% | 71% | 75% | 75% |

Of these companies which provided for a pension scheme with defined benefits for at least one of their executive directors:

- 91% of the SBF 120 companies and 94% of the CAC 40 companies indicated a category of beneficiaries broader than the executive directors alone, compared with 85.5% and 97% respectively for the financial year 2009,

- 54% of the SBF 120 companies and 53% of the CAC 40 companies mentioned requirements of seniority, compared with 38% and 37.5% respectively for the financial year 2009, these percentages therefore being up significantly,

- 47.5% of the SBF 120 companies and 47% of the CAC 40 companies stated that potential rights increased each year, compared with 43% and 44% respectively for the financial year 2009,

- 71% of the SBF 120 companies and 75% of the CAC 40 companies indicated that they applied a benchmark period greater than one year, compared with 66.5% and 75% respectively for the financial year 2009.

## Annex 1 – List of SBF 120 and CAC 40 companies

| | |
|---|---|
| 1 | ACCOR* |
| 2 | ADP |
| 3 | AIR France – KLM |
| 4 | AIR LIQUIDE* |
| 5 | ALCATEL LUCENT* |
| 6 | ALSTOM* |
| 7 | ALTRAN TECHNOLOGIES |
| 8 | AREVA CI |
| 9 | ARKEMA |
| 10 | ATOS ORIGIN |
| 11 | AXA* |
| 12 | BIC |
| 13 | BIOMERIEUX |
| 14 | BNP PARIBAS* |
| 15 | BOLLORE |
| 16 | BOURBON |
| 17 | BOUYGUES* |
| 18 | BUREAU VERITAS |
| 19 | CAP GEMINI* |
| 20 | CARREFOUR* |
| 21 | CASINO GUICHARD-PERRACHON |
| 22 | CFAO |
| 23 | CGG VERITAS |
| 24 | CIMENTS FRANÇAIS |
| 25 | CLUB MEDITERRANEE |
| 26 | CNP ASSURANCES |
| 27 | CREDIT AGRICOLE* |
| 28 | DASSAULT SYSTEMES |
| 29 | EDENRED |
| 30 | EDF ENERGIES NOUVELLES |
| 31 | EIFFAGE |
| 32 | ELECTRICITE DE FRANCE* |
| 33 | ERAMET |
| 34 | ESSILOR INTERNATIONAL* |
| 35 | EULER HERMES |
| 36 | EURAZEO |
| 37 | FAURECIA |
| 38 | FONCIERE DES REGIONS GFR |
| 39 | FRANCE TELECOM* |
| 40 | GDF SUEZ* |
| 41 | GECINA |
| 42 | GROUPE DANONE* |
| 43 | GROUPE EUROTUNNEL |
| 44 | GROUPE STERIA SCA |
| 45 | HAVAS |
| 46 | HERMES INTERNATIONAL |
| 47 | ICADE |
| 48 | ILIAD |
| 49 | IMERYS |
| 50 | INGENICO |
| 51 | IPSEN |
| 52 | IPSOS |
| 53 | JC DECAUX S.A. |
| 54 | KLEPIERRE |
| 55 | LAFARGE* |
| 56 | LAGARDERE |
| 57 | LEGRAND |
| 58 | L'OREAL* |
| 59 | LVMH * |
| 60 | M6 - METROPOLE TELEVISION |
| 61 | MAUREL ET PROM |
| 62 | MERCIALYS |
| 63 | MICHELIN* |
| 64 | NATIXIS* |
| 65 | NEOPOST |
| 66 | NEXANS |
| 67 | NEXITY |
| 68 | ORPEA |
| 69 | PAGESJAUNES |
| 70 | PEUGEOT S.A.* |
| 71 | PLASTIC OMNIUM |
| 72 | PPR* |
| 73 | PUBLICIS GROUPE SA* |
| 74 | REMY COINTREAU |
| 75 | RENAULT* |
| 76 | REXEL |
| 77 | RHODIA |
| 78 | RUBIS |
| 79 | SAFRAN |
| 80 | SAFT |
| 81 | SAINT-GOBAIN* |
| 82 | SANOFI-AVENTIS* |
| 83 | SCHNEIDER ELECTRIC* |
| 84 | SCOR REGROUPE |
| 85 | SEB |
| 86 | SILIC |
| 87 | SOCIETE GENERALE* |
| 88 | SOITEC SILICON |
| 89 | STALLERGENES |
| 90 | SUEZ ENVIRONNEMENT* |
| 91 | TECHNICOLOR |
| 92 | TECHNIP* |
| 93 | TELEPERFORMANCE (EX SR) |
| 94 | TF1 - TELEVISION FRANÇAISE 1 |
| 95 | THALES |
| 96 | TOTAL* |
| 97 | UNIBAIL-RODAMCO |
| 98 | VALEO |
| 99 | VALLOUREC* |
| 100 | VEOLIA ENVIRONNEMENT* |
| 101 | VICAT |
| 102 | VINCI* |
| 103 | VIVENDI* |
| 104 | WENDEL |

* CAC 40 companies

## Annex 2 – List of companies not included in the study

ALTEN ***
APERAM*
ARCELORMITTAL*
BENETEAU**
DERICHEBOURG**
DEXIA*
EADS*
EUTELSAT COMMUNICATIONS**
FAIVELEY TRANSPORT**
GEMALTO*
PERNOD RICARD**
SES*
SODEXO**
STMICROELECTRONICS*
UBISOFT**
ZODIAC**

* Foreign company
** Company with a non-calendar financial year
*** French company not referring to the AFEP-MEDEF code