

# Report

## of the High Committee for Corporate Governance

NOVEMBER 2023





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# Preface

This tenth annual report of the High Committee for Corporate Governance covers the period from September 2022 to September 2023, during which the AFEP-MEDEF Code (hereinafter referred to as "the Code") was revised to strengthen the Board's role as guarantor for the implementation of the corporate social responsibility (CSR) strategy and, in particular, the climate strategy.

The High Committee monitors the implementation of the Code and ensures that it is applied rigorously. It verifies that companies referring to the Code comply with its letter and spirit, paying particular attention to the quality of the explanations provided under the "comply or explain" rule.

Year after year, an improvement in the application of the recommendations of the Code is noted, as well as in the quality of the explanations provided in the event of deviation, as demonstrated by the statistical information provided in the second part of the report.

In general, the companies are committed to following the recommendations of the High Committee and improving the content of the information contained in their report on corporate governance.

With the transposition of the CSRD (Corporate Sustainability Reporting Directive), 2024 will be a pivotal year for listed companies, which will have to follow the recently adopted European *reporting* standards, to publish a sustainability report in 2025. This report will include detailed information on many social and environmental matters that go beyond corporate governance matters, such as the role of the administrative, management and supervisory bodies in relation to sustainability and the incentive systems used for executive compensation. It is important to ensure that this potentially burdensome process does not get out of hand: it represents a genuine challenge for European companies, even though they have had little time to prepare for it.

The climate issue is at the heart of the concerns of companies, which are striving to adapt their tasks, or in some cases even their economic model, and it is essential to support their efforts. The High Committee will ensure that these matters are taken into account and integrated into the corporate governance framework, in line with the recommendations of the CSR Code. The specific skills of the Board members may represent an opportunity in this regard.

In 2024, the High Committee will pursue its dialogue with companies, public authorities and other players in the marketplace, and will participate in discussions to advance practices in a context of maturing governance and ever-increasing changes in the environment.

**Thierry de La Tour d'Artaise**

Chair of the High Committee for  
Corporate Governance









# Part 1

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2023 ACTIVITIES  
OF THE  
HIGH COMMITTEE  
FOR CORPORATE GOVERNANCE

# 1. Missions

According to Article 28.2 of the AFEP-MEDEF Code, the High Committee is *"responsible for monitoring the application of the corporate governance Code for listed companies that refer to it and for ensuring the effective application of the fundamental rule of corporate governance that is the "comply or explain" principle"*<sup>\*1</sup>.

The mission conferred by this article to the High Committee by the Code is twofold: to monitor its application and to propose to Afep and Medef any changes that it deems necessary. The monitoring mission appeared to be essential to ensure the proper application of the "apply or explain" principle. This is the particularity of the flexible law promoted by the High Committee in application of the Afep-Medef code. The idea is to encourage so that companies adopt virtuous practices that correspond to their needs and specificities. In this respect, good practices must be generalized beyond the mandatory standards that the law must enact for the protection of shareholders and other stakeholders. However, the diversity of companies' situations makes it impossible to consider that *"one size fits all"* in terms of governance. If the precepts of the Code are not respected, the quality of the explanations must fully justify the choices made by the companies. Without this, the behaviors of companies could not be understood and accepted by all those concerned by their activities.

In this respect, the High Committee makes the interpretations and recommendations required for the implementation of the Code. It can be referred to by the boards of directors or supervisory boards of companies referring to it, and it can also refer to itself in order to draw the attention of companies to points of the Code that they do not apply without detailed explanation. It does so whenever a compliance deviation is brought to its attention, either by contacting management directly, or more formally by sending written and detailed requests to the Boards. More systematically, at the end of the "season" of publication of the universal registration documents and the holding of general meetings, the High Committee examines these documents and issues requests for explanation.

In addition, the publication of its annual report contributes to the achievement of the High Committee's missions. The statistics contained in the report provide a measure of the progress of good practices by large companies.

Similarly, the practice of *"name and shame"*, which remains measured, has an incentive effect. In accordance with the High Committee's now established policy, it applies to companies that, despite its invitations, have persisted in deviating from the significant recommendations of the

\* *"The explanation to be provided when a recommendation has not been applied must be comprehensible, relevant and detailed. It must be substantiated and adapted to the company's particular situation and must convincingly indicate why this specific aspect justifies an exemption. It must state the alternative measures that have been taken, if applicable, and must describe the actions that allow the company to comply with the aims of the relevant provision of the code"* §28.1 of the Code.



Code. In addition to companies that have not responded to a letter of self-referral from the High Committee, these are companies that, upon referral or self-referral by the High Committee, have neither followed the opinion of the High Committee rejecting the justifications provided by the company, nor indicated in their corporate governance report the opinion received from the High Committee and the reasons why they decided not to comply with it, nor made a commitment to rectify this situation. Depending on the situation, the High Committee makes its opinions public on its website or in its annual report.

Finally, the thematic comments contribute to the consideration of the evolution of the normative framework in a constantly changing environment.

## 2. Activities of the High Committee

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### 2.1 Meetings and external contacts

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The High Committee held meetings between September 2022 and September 2023, following a planned schedule. In addition, an ad hoc meeting was held to deliberate on an urgent consultation from a company. The members' participation rate for the year was 88.89%.

The High Committee actively monitored the situation of certain companies and engaged in a close dialogue with their executives to ensure the proper application of the Code's recommendations.

While respecting the confidentiality obligations to which they are subject, the High Committee and the French Financial Market Authority have informally discussed subjects of common interest in the context of their respective interventions.

On the occasion of the publication of its 2022 report, the High Committee was able to meet representatives of the public authorities to present its tasks, as well as the due diligence carried out, and thereby defend the relevance of soft law in terms of governance.

The High Committee communicates regularly with other market players and participates in their discussions.

In particular, it held discussions with the *Haut Comité Juridique de la Place Financière de Paris* upon completion of its report on the scope of the obligation of discretion of a Director as a legal person (§3.3 below).

The High Committee was also able to discuss with investment companies the level of transparency in compensation of executives of SBF 120 companies and more generally their concerns relating to the governance of certain companies.

In addition, the Chair and the General Counsel have been asked by press specialised in matters of governance, as well as market players, to participate in seminars on subjects such as the new risks faced by Boards of Directors.

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### 2.2 Consultations and investigations

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The High Committee intervenes both on its own initiative, by investigation, and in response to consultations from companies.

#### Investigations

The interventions of the High Committee on its own initiative are primarily related to one-off events (mainly when executives leave or are nominated to Boards). As in previous years, several interventions took place for one-off events.

The High Committee systematically sent letters, following review of the universal registration documents and booklets notifying meetings issued by companies, to point out deviations from the Code or inadequate insufficient information. This year, 21 companies received notifications by post (compared to 17 in 2022, 31 in 2021, and 14 in 2020).

More informal contacts (telephone interviews, emails) also took place, when the observed deficiencies seemed more akin to a lack of information than to unexplained or incorrectly explained voluntary deviations. In most cases, the companies involved have committed to fuller disclosure next year. The High Committee will ensure compliance with the commitments made by these companies.

Although asked on several occasions, Essilor Luxottica did not wish to make a detailed response to the observations of the High Committee relating to the lack of any mention of diversity objectives, the absence of a employee director in the compensation committee and the lack of any communication on the criteria for assessing the materiality of any business relationships between the Directors and the company.

More generally, and despite the wide variety of universal registration documents for SBF 120 companies, the annual review of these documents once again reveals a steady improvement in corporate governance practices and disclosure.

For the 2022 financial year, compliance with the Code's recommendations is improving in major areas, although progress is still expected on certain recommendations (see §3.5).

### **Consultation by companies**

The High Committee has had the opportunity to deliberate on consultations submitted to it on behalf of the Boards (by Chairs, Committee Chairs, Lead Directors or Corporate Secretaries) to obtain interpretations or recommendations in a given context.

These deliberations concerned:

- The Board's explanations for maintaining long-term compensation in the event of the departure of the executive;
- Termination benefits to executives: compliance with the fixed and variable two-year ceiling; exclusion of this compensation in the event of retirement or taking other positions within the company or its group;
- the allocation of performance shares while the executive's departure was imminent;
- compliance with the principles defined in the compensation policy when they are applied;
- the completeness of the summary table of deviations from the Code to be included in the report on corporate governance.



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## 2.3 "Seven Chairs Group" European Dialogue

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The High Committee hosted the European dialogue with the chairs of the committees responsible for drafting or monitoring corporate governance Codes in seven European countries (Germany, Belgium, France, Italy, the Netherlands, the United Kingdom and Sweden). This informal forum allows views on developments in governance to be shared and conditions conducive to the improved effectiveness of the codes to be discussed.

The annual meeting was held in March 2023 (in the absence of the representative of the Netherlands, who had not yet been nominated).

### **The work focused on:**

#### **Updating national corporate governance codes on CSR matters and their implementation**

All members presented the updates that they had made or would be making to their respective national CSR Code, and its implementation. Further work could be done in 2024 on the development of common guidelines in this area.

The strengthening of internal control management, risk management and compliance systems in several countries was also discussed.

#### **Dialogue with shareholders**

The members of Seven Chairs discussed the practices encountered in their respective countries in terms of dialogue between companies and their shareholders.

#### **Company relations with voting advisory agencies**

The members of Seven Chairs shared their concerns regarding the implementation of the voting policy of a proxy advisor firm, which will apply in Europe from 2024 in terms of multiple voting rights (including double voting rights provided for in French law), given the influence of the recommendations of this firm on the result of the votes of the general meetings of European listed companies.

The voting policy provides, in the case of meetings held from 1 February 2024 onwards, to recommend a vote generally against the renewal of Directors if the capital structure of the company includes shares with unequal voting rights. Voting recommendations will be directed against candidates deemed to be primarily responsible for, or beneficiaries of, the unequal voting structure. Exceptions are provided, such as for companies whose securities have been newly floated on the stock exchange.

This new voting policy comes in the context of the proposal for a Directive of the European Parliament and of the Council of 7 December 2022 on multiple-vote share structures in companies, which is part of a package of measures aimed at making capital markets more attractive to EU companies and facilitating access to capital for small and medium-sized enterprises.

The High Committee organised a meeting in October 2023 between the members of Seven Chairs and the proxy advisor firm to understand the reasons for this new voting policy applicable only in Europe and to defend the interests of European companies.

### **Scope of the obligation of discretion of a Director**

The High Committee asked the members of Seven Chairs to confirm their position on the scope of the obligation of discretion/confidentiality of a Director as a legal person or a natural person representing a shareholder. Discussions with the members of Seven Chairs highlighted that, in most countries, there are no – or very few – exceptions to the Directors' confidentiality obligation, particularly with regard to the regulation of market abuse and the risk of conflicts of interest. This discussion reinforced the position of the High Committee (see §1.7 below).

Discussions with the members of Seven Chairs took place throughout the year to strengthen cooperation and address differences of views on current topics.

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## **2.4 Reminder of the recommendations of the Code that are insufficiently applied**

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The High Committee notes that some of the Code's recommendations remain insufficiently implemented. These are:

- inclusion in the report on corporate governance of the criteria that led the Board to assess whether the relationship between a Director and the company or its group was significant;
- the effective staggering of the terms of Board members (§15.2);
- in the case of SBF 120 companies excluding CAC 40, inclusion in the report on corporate governance of the reasons why a Director's candidacy or the renewal of their directorship has been proposed to the general meeting (§15.4);
- the recommended proportion of independent Directors in the Nominations Committee (§18.1);
- the presence of a Director representing employees on the Compensation committee (§19.1);
- for stock options and performance shares, an indication of the share allocated to each company officer (§26.2 and §27.2).

The interventions of the High Committee and the letters sent to the companies concerned have been followed up since the implementation of these recommendations has progressed and continues to progress in 2023, which is not, or only partially, reflected in the statistics in Part 2 of the report, as they relate to the 2022 financial year.

## 3. Main topics addressed by the High Committee

The investigations and consultations have provided the High Committee the opportunity to delve deeper into several issues for which it was necessary to resolve difficulties of interpretation or application of the AFEP-MEDEF Code.

Furthermore, as in previous years, the High Committee opted to devote its deliberations to certain topics outside of any consultation or investigation. The results of these analyses are reported below.

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### **3.1 Sustainable governance and corporate & environmental responsibility**

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According to the Code, the Board of Directors endeavours to promote long-term value creation by the company by considering the social and environmental aspects of its activities (Code §1).

With regard to sustainable governance, soft law becomes fully apparent. The Code, as revised in December 2022, reinforced the role of the Board to make it the guardian of the company's CSR strategy implementation.

The new recommendations of the Code were applicable to general meetings ruling on financial years beginning on or after 1 January 2023. However, with regard to the presentation of the climate strategy to the General Meeting and the criteria for variable compensation, companies have been invited to apply them, without delay, as from the 2022 financial year.

#### **The Board of Directors and social & environmental responsibility**

Article 5 of the Code provides that:

- At the proposal of the executive management, the Board of Directors shall establish multi-annual strategic guidelines on social and environmental responsibility.
- The executive management shall submit to the Board of Directors the measures implementing this strategy, with an action plan and the time frames within which these actions will be carried out. The executive management shall inform the Board of the results that were reached on a yearly basis.
- On climate-related issues, this strategy is accompanied by precise objectives defined for different time frames. The Board shall review annually the results achieved and the relevance, if any, of adapting the action plan or changing the objectives in the light of, inter alia, the evolution of the company's strategy, technologies, shareholder expectations and the economic capacity to implement them.
- The climate strategy referred to in § 5.3 and the main actions undertaken to this end shall be presented to the general shareholders' meeting at least every three years, or in the event of



a significant change in the strategy. At the end of the 2023 general meetings, 85 companies presented their climate strategy, i.e. 81.7% of SBF 120 companies (including 34 CAC 40 companies). It should be noted that one CAC 40 company will hold its general meeting in November 2023 and that 9 companies have indicated that they plan to make such a presentation at their 2024 general meeting to be held in respect of the 2023 financial year.

The AFEP-MEDEF Code does not require a climate resolution to be submitted to shareholders (Say on Climate). It provides for a presentation to shareholders of the climate strategy as well as the main actions undertaken.

However, companies are free to include an item (without a vote) on the agenda of the general meeting regarding their climate strategy, or even to submit a climate resolution to an advisory vote of their shareholders.

The decision on the procedures for the presentation to shareholders recommended by the Code must be up to each company according to its own situation and how it intends to address its shareholders' expectations given the dialogue maintained with them, particularly prior to the general meeting.

### ► The CSR Committee

According to the AFEP-MEDEF Code, it is recommended that CSR-related matters be prepared by a specialised committee of the Board of Directors. This may be a dedicated committee or a committee that is also in charge of tasks other than CSR.

In 2022, 86.53% of SBF 120 companies (i.e. 90 companies out of 104) set up a dedicated or combined CSR committee on their Board. Almost all CAC 40 companies stated in their report on corporate governance that they had a specialised CSR committee (33 companies out of 35).

The High Committee calls on companies that do not yet have a CSR committee to ensure that these topics are prepared by a specialised committee of the Board in view of the upcoming entry into force of European and international standardisation, which increases the role of the Board in these matters.

The CSRD (Corporate Sustainability Reporting Directive) on corporate sustainability reporting provides that the Audit Committee or another Board committee must ensure the relevance and integrity of the sustainability information. In particular, it must inform the Board of the sustainability information assurance process results.

Companies must clearly define the roles of the CSR committee and link them with those of the Audit Committee if the latter is a separate entity.

## ► Role of the Audit Committee in terms of CSR risks

According to the Code, review of the accounts by the audit committee *"must be accompanied by a management presentation describing the company's exposure to risks, including those of a social and environmental nature [...]"* (§17.2).

The High Committee paid particular attention to the application of this recommendation, resulting in an increase of the application of this recommendation from 67.96% in 2021 to 93.27% in 2022 for the SBF 120 companies and from 74.29% to 97.14% for the CAC 40.

## CSR training and competence

### ► Training of Directors

The impact of CSR risks varies according to the company's sectors, geography and activity, and its ability to integrate this risk.

Article 14.1 of the Code, as revised in December 2022, provides that each Director should be provided, if he or she considers it to be necessary, with supplementary training relating to the corporation's specific features, its businesses, its business sector and its social and environmental responsibility aspects, in particular on climate-related issues.

This requires Directors to be able to address a company's key issues, understand the CSR strategy and challenge the choices made by the general management.

It is their responsibility to ensure they get the training they need to understand these complex matters.

To support the Directors in these matters, some companies organise external or internal training common to the entire Board on major CSR matters specific to the company, which is good practice.

### ► CSR expertise

Each company must set out its own strategy regarding the CSR skills expected of its Directors in the light of the materiality matrix.

The Board of Directors may require a minimum common base of CSR skills. These minimum skills, which may or may not be made public, may serve as a reference when selecting Board members and/or selecting training plans.

## **The presence of CSR criteria, including climate criteria, in the variable compensation of executives**

The Code provides for linking the compensation of executive company officers to several CSR criteria, including at least one criterion related to the objectives defined in the climate strategy.

Article 26.1.1 of the Code, as revised in December 2022, recommends that the compensation of these executive company officers *"must be competitive, adapted to the company's strategy*

and context and must aim, in particular, to improve its performance and competitiveness over the medium and long term, notably by incorporating one or more criteria related to social and environmental responsibility, of which at least one criterion related to the climate objectives of the company. These criteria, which are clearly defined, must reflect the most significant social and environmental matters for the company. Quantifiable criteria should be given priority."

The criteria must be both social and environmental and reflect the most important social and environmental matters for the company.

The 2022 report of the High Committee referred to good practices in determining and assessing CSR criteria (2022 report, §3.1).

To date, all SBF 120 companies have integrated one or more CSR criteria into the annual variable compensation of their executive company officers (except one company that has recently joined the index). 87.3% of SBF 120 companies include a climate criterion in the compensation of their executives (annual or long-term). This figure amounts to 98.14% for CAC 40 companies.

### **The gender diversity policy**

The introduction of diversity objectives by the AFEP-MEDEF Code in 2020 enabled significant changes to be made to the executive committees (Part 2, §5.3 below). 97% of SBF 120 companies have implemented diversity objectives. The share of women on executive committees is increasing every year.

In 2023, the High Committee paid particular attention to gender diversity on the management boards of companies with a management board and a supervisory board, and ensured that companies with no women on their management board or executive committee had set gender diversity targets.

The High Committee will pursue its work to monitor companies' implementation of the recommendations of the Code in this area.

### **Presence of employees on the Compensation Committee**

The proportion of companies with an employee Director on the Compensation Committee continued to increase, from 70.59% in 2021 for CAC 40 companies to 79.41% in 2022. The High Committee is continuing its dialogue with companies that have not yet implemented this recommendation.

If some Directors representing employees do not wish to sit on the compensation committee, the High Committee considers that they should be reminded that the role of the committees is preparatory to the decisions taken by the Board and that they are not decision-makers.

The High Committee recalls the importance of this recommendation, the implementation of which contributes to the proper functioning of the Board (2022 Report, Part 1, §3.1). Feedback from the companies on this practice is positive.



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## 3.2 Independence of Board members

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The Board of Directors determines strategic policy and ensures that it is effectively deployed by senior management over the long term. As such, the High Committee attaches great importance to compliance with the Code's recommendations regarding the independence of Board members.

The AFEP-MEDEF Code emphasises that *"Qualification as an independent Director should be discussed by the nominations committee in the light of the criteria set out in §10.5 and decided on by the Board"* (§10.4). In addition, it provides that *"The shareholders must be made aware of the conclusions of this review"* (§10.4).

All SBF 120 companies, except for one that has recently joined the index, publish the results of the review of the independence of each of their Directors (regarding the independence criteria) on a case-by-case basis.

While all companies explicitly refer to the Code's definition of an Independent Director, some have chosen to exclude one or more of the eight criteria, and almost all provide an explanation.

The Code provides that the Board of Directors may consider that a Director, although meeting the criteria set out in §10.5, should not be qualified as independent given their particular situation or that of the company, regarding their shareholding or for any other reason. Conversely, it provides that a Board of Directors may consider that a Director who does not meet the criteria outlined in §10.5 is nevertheless independent.

In 2023, the High Committee reminded companies that set aside a criterion of independence in the Code regarding the need to provide a relevant and detailed explanation in the light of the specific situation of the company and the Director concerned, and to bring this explanation to the attention of shareholders.

### **Director in office for more than twelve years**

According to the Code, a Director loses their independent status if they have been on the board for more than twelve years (§10.5.6).

Almost all SBF 120 companies complied with this recommendation in 2022. Only five companies, including three from the CAC 40, rule out this independence criterion, which represents 4.81% of SBF 120 companies in 2022, compared with 29% in 2013.

The High Committee points out that the purpose of the rule is not only to prevent Directors from becoming less critical of executive management over time but also to take account of the greater difficulty that individuals naturally have in questioning positions taken by the Board itself over the years. Competence and independence are two different things (HCGE Report 2014).

This rule may also contribute to renewing the composition of the Board when the loss of the independent status of a member forces the company to seek a new Director. This rule thus contributes to the good governance of the company.

The High Committee has written to the companies concerned to remind them of the relevance of the rule. Challenging the rule is even more problematic when the Directors concerned are members of committees and sometimes chair them.

### **Employee Director and company officer during the previous five years**

According to the Code (§10.5.1), to be qualified as independent, a Director must not be or have been any of the following in the previous five years:

- an employee or executive officer of the company;
- an employee, executive officer or Director of a company consolidated within the corporation;
- an employee, executive officer or Director of the company's parent company or of a company consolidated within this parent company.

The High Committee recalls that the exclusion of this criterion is difficult to justify, due to a "structural" risk of conflicts of interest between companies within the same group, except in special circumstances.

### **Compliance with the required proportion of independent Directors**

The AFEP-MEDEF Code emphasises that "*The independent Directors should account for half the members of the Board in widely held corporations without controlling shareholders. In controlled companies<sup>1</sup>, the share of independent Directors must be at least a third*" (§10.3).

The High Committee notes that certain controlled companies of the CAC 40 seem to encounter more difficulties in complying with the percentages of independent Directors provided for by the Code, even though these are lower than those of non-controlled companies.

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## **3.3 Scope of the legal Director's duty of discretion**

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In response to a consultation from a company, the High Committee has clarified its earlier position on the scope of the duty of discretion of the Director as a legal person (page 15 of the June 2022 application guide). This position clarified the conditions for the transmission of information by the permanent representative to the legal entity and aimed to ensure the preservation of the confidentiality obligation of the Directors provided for by the AFEP-MEDEF Code.

On 17 January 2023, the Haut Comité Juridique de la Place Financière de Paris (HCJP) published a report on the scope of the duty of discretion of a Director as a legal person.

Although the objective of protecting confidential information and allowing access to legitimate people is shared by the HCJP and the HCGE, the method used to achieve this aim differs.

The working group set up by the HCJP, based on the status of the permanent representative as

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<sup>1</sup> Within the meaning of Article L. 233-3 of the French Commercial Code.

a company officer, considers that the transmission of information is a matter of right and that it is solely the responsibility of the legal entity shareholder to ensure that confidentiality is preserved within the company, without the internal rules of the issuer's Board of Directors being able to regulate the transmission of information. The HCJP seems to consider that the same regime should apply to information transmitted by a Director as a natural person closely linked to a shareholder, while noting that, except in the case of a specific regime (State representative, for example), this extension would require a legislative amendment. The HCJP has clarified that matters of conflict of interest and market abuse were not considered in the development of this position.

Conversely, the HCGE considers that the duty of discretion applies to all Directors without distinction. It is therefore up to the issuer, via the internal rules of its Board of Directors, in compliance with the rules governing the communication and use of inside information, to regulate the transmission of confidential information communicated by the permanent representative to the legal entity that nominated him or her. The same applies to the transmission of information by an individual Director closely linked to a shareholder.

Thus, in compliance with the rules governing the communication and use of inside information, it is up to each Board of Directors to specify the terms of the obligation of confidentiality expected from its members, in the Board's internal rules, as provided for in Article 12.1 of the AFEP-MEDEF Code.

In this regard, the High Committee reiterates the position presented in its Application Guide.

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### **3.4 Terms and conditions of departure of company officers**

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The High Committee also acted on its own initiative in response to one-off events, mainly when senior executives left the company.

#### **Termination benefits if the employment contract is maintained**

The AFEP-MEDEF Code recommends terminating an employee's employment contract with the company or a group company when he/she becomes a company officer of the company (§23.1).

When companies have justified exceptional circumstances to maintain the officer's employment contract, the High Committee recalls that the rules of the Code relating to termination benefit (principles relating to the ceiling of two years of compensation (fixed and variable), exclusion in the event of retirement, or taking other positions within the company or the group, etc.) apply to any compensation negotiated in the context of termination of a maintained employment contract.

In particular, the High Committee recalls that the compensation resulting from the termination of the employment contract of a company officer must not exceed an amount corresponding to two years of fixed and variable compensation<sup>2</sup>.

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<sup>2</sup> 2014 Report, p. 17.



### **Performance conditions of the termination benefit**

The AFEP-MEDEF Code recommends that *"The performance conditions set out by the Board for these benefits must be assessed over at least two financial years"* (§26.5.1 paragraph 3).

The High Committee considers that the assessment must at least relate to the two financial years preceding the departure of the executive.

As provided for in the Code, It is not acceptable that Directors whose company has failed or who have personally failed may receive benefits upon departure. (§26.5.1 paragraph 1).

### **Exclusion of termination benefits in the event of retirement**

The AFEP-MEDEF Code recommends that *"the payment of any termination benefits to a company officer must be excluded if he or she elects to leave the company to hold another position or is assigned to another position within the same group or is entitled to benefit from his or her pension rights."*

To avoid the payment of termination benefits even though the company officer asserts his pension rights at the same time as the forced departure, the High Committee invites companies to specify in their compensation policy that they will not pay termination benefits in the event of retirement. It also invites them to specify that the payment of termination benefits is excluded in the event of new functions or a change of functions within the group.

### **Maintenance of long-term compensation in the event of the company officer's departure**

With regard to long-term compensation plans for executive company officers, the AFEP-MEDEF Code provides that:

- *"When awarding them, the Board may include a provision authorising it to rule on the maintenance or otherwise of long-term compensation plans not yet acquired, options not yet exercised or shares not yet vested at the time of departure of the beneficiary."* (§26.3.3);
- *In the event that a company officer leaves before the completion of the term envisaged for the assessment of the performance criteria for the long-term compensation mechanisms, continued entitlement to all or part of the long-term compensation benefit and its payment must be evaluated by the Board and the reasons for its decision must be indicated"* (§26.5.1);
- the financial terms and conditions of a company officer's departure are set out in detail at the time of his departure. In particular, the company must state what happens to *"ongoing multi-annual or deferred variable compensation plans;"* and *"stock options that have not yet been exercised and performance shares not yet vested"* (§26.5.2).

In its 2020 report, the AMF (the French Financial Markets Authority) issued an opinion on the maintenance of long-term compensation plans in the event of the company officer's departure: *"When executives leave, most of the companies in the sample decided, in 2019, to maintain the*

*unvested performance shares. While it is understandable that the departure of an executive corporate officer in case of retirement should not systematically entail the loss of all the multi-annual variable compensation, the AMF recommends, as it had specified before in 2014 and 2018, establishing a mechanism for vesting on a prorated basis. However, in the case of removal from office, non-reappointment or resignation (unless the reason for the non-reappointment or resignation is retirement or disability), it recommends eliminating any payment of multi-annual variable compensation".*

For the High Committee, the decision on long-term compensations falls within the discretion of the Board as provided for in the Code. When the company officer leaves, the High Committee recalls the requirement for the Board to justify the maintenance of all or part of his/her benefits.

Here again, the High Committee reiterates that it would not be acceptable for company officers, whose company is failing or who are themselves failing, to leave it with compensation (§26.5.1) or benefits of this nature.

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### **3.5 Relationships between companies and proxy advisors**

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In 2023, the High Committee carried out work within the Seven Chairs on the relationship between companies and proxy advisors, and any conflicts of interest resulting therefrom.

The high concentration of proxy advisor firms is increasing the potential for conflicts of interest, particularly when they provide consultancy services in parallel with voting recommendations.

The general management is the main point of contact for proxy advisors. The latter should initiate a dialogue with the issuer prior to the shareholders' general meeting before any recommendation of a negative vote. The company's comments should be communicated to the shareholders concerned at the same time as the voting recommendation.

Some issuers have informed the High Committee of their concerns that a voting recommendation is not directly related to the subject of the resolution submitted to the shareholders' vote.

With regard to this last subject, at the 2023 general meeting of an SBF 120 company, a proxy advisor called for a vote against the re-election of two Directors, one Vice-Chair of the Board, the other Chair of the Compensation Committee, due to disagreement over compensation practices and the succession process for the Chief Executive Officer.

The High Committee considers that this call to vote against the renewal of directorships without any direct link to the purpose of the resolution is questionable.

In 2024, the High Committee will pay attention to the implementation of the voting policies of proxy advisors as regards double voting rights.

## 4. Topics for discussion by the High Committee in the coming year

In 2024, the High Committee will pursue and develop its work on the following themes:

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### 4.1 Presentation of the climate strategy to the general meeting

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At the end of the 2023 general meetings, 85 companies presented their climate strategy, i.e. 81.7% of SBF 120 companies (including 34 CAC 40 companies). It should be noted that one CAC 40 company will hold its general meeting in November 2023 and that nine companies have indicated that they plan to make such a presentation at their 2024 general meeting to be held in respect of the 2023 financial year.

The High Committee will ensure the effective implementation of this new recommendation of the Code.

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### 4.2 The presence of CSR criteria, including climate criteria, in variable compensation

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Integrating CSR criteria, including on climate change, into the compensation of executive Directors will have to improve in 2023. The High Committee will pay attention to the accuracy of the criteria adopted in relation to the strategy.

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### 4.3 Cybersecurity

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We are witnessing an increase in high-impact cyberattacks, which could even jeopardise the companies' survival. Companies can find themselves targeted not just by cybercriminals, but also by nation-state actors. Cybersecurity is becoming increasingly important in risk mapping.

Against this backdrop of increased risk, Boards of Directors must be kept informed of the measures implemented to prevent cyberattacks, so that they can react appropriately when an incident occurs.

Board committees may call on external cybersecurity experts to assist them in their tasks.

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### 4.4 Shareholder dialogue

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For the High Committee, shareholder dialogue is essential.

Article 4.4 of the Code provides that "*Shareholder relations with the Board of Directors, particularly with regard to corporate governance matters, may be entrusted to the Chairman of the Board of Directors or, where applicable, to the Lead Director. He or she shall report on this task to the Board of Directors.*"

The High Committee recalls that according to the Application Guide, it is recommended that:

- *"the terms and scope of the tasks of the Director responsible for participating directly in the company's dialog with its shareholders and/or potential investors be specified in the internal rules and that the annual report should mention this;*
- *if the company's mode of governance is a form of separated presidency (or Supervisory Board), the task naturally fall to the Chairman of the Board: in this case, it is part of the "tasks entrusted in addition to those conferred by law" which must be described in accordance with § 3.2 of the AFEP-MEDEF Code; failing that, it may be entrusted to a Lead Director. It is indeed desirable not to disperse responsibilities by multiplying the interlocutors representing the Board;*
- *the person so chosen should preferably have experience in institutional communication and should receive appropriate training, if necessary;*
- *the mission consist first in explaining the positions taken by the Board in its areas of competence (in particular in the areas of strategy, governance and executive compensation), which have been previously communicated;*
- *this mission entail close coordination with the CEO or his staff in charge of relations with shareholders, and that meetings or telephone contacts, unless explicitly required by the parties, be conducted in their presence;*
- *the Director report on the execution of his mission to the Board."*

In 2024, the High Committee will pursue the discussions it initiated in its 2017 report and will take part in the working group on shareholder dialogue set up by Paris Europlace under the chairmanship of Michel Prada.

The High Committee reiterates that the general meeting should be a special occasion for the company to communicate with its shareholders (§6 of the AFEP-MEDEF Code). Dialogue must be strengthened if a resolution is rejected. If this vote is the result of a deviation from the Code's recommendations, the company's governance practices should be reviewed. The company may communicate the action it intends to take in such a case.

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## **4.5 Relations between companies and CSR data providers**

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In 2024, the High Committee will carry out work on relations between companies and CSR data providers, as well as any conflicts of interest resulting therefrom.

In particular, it will follow the discussions relating to the preparation of the proposal for a Regulation on the transparency and integrity of ESG ratings <sup>3</sup>.

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<sup>3</sup> Proposal for a Regulation of the European Parliament and of the Council on the transparency and integrity of Environmental, Social and Governance (ESG) rating activities, 13 June 2023.





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*November 2023*