2009

CBFA Annual Report 2008-2009

Belgium: Banking, Finance, and Insurance Comission (CBFA)

ANNUAL REPORT 2008-2009

Pursuant to Article 48, § 1, 4°, of the Law of 2 August 2002, the annual report of the Banking, Finance and Insurance Commission is drawn up by the Management Committee and approved by the Supervisory Board. In accordance with this provision of law, the Board ensures general supervision of the CBFA's operations. In respect of this task, the Supervisory Board does not take cognizance of the individual supervision dossiers. Unless otherwise stated, the period under review extends from 1 January 2008 to 30 June 2009.

The present annual report may be referred to as: "CBFA Annual Report 2008-2009".

In addition to the present annual report, the Management Committee has drawn up a report ("CBFA MC Report 2008-2009") which sets out the legal and regulatory changes as well as the activities of the Committee and the decisions it has made in individual cases during the period under review. The report of the Management Committee - which a number of footnotes refer to - is available in Dutch and French; it is not available in English.

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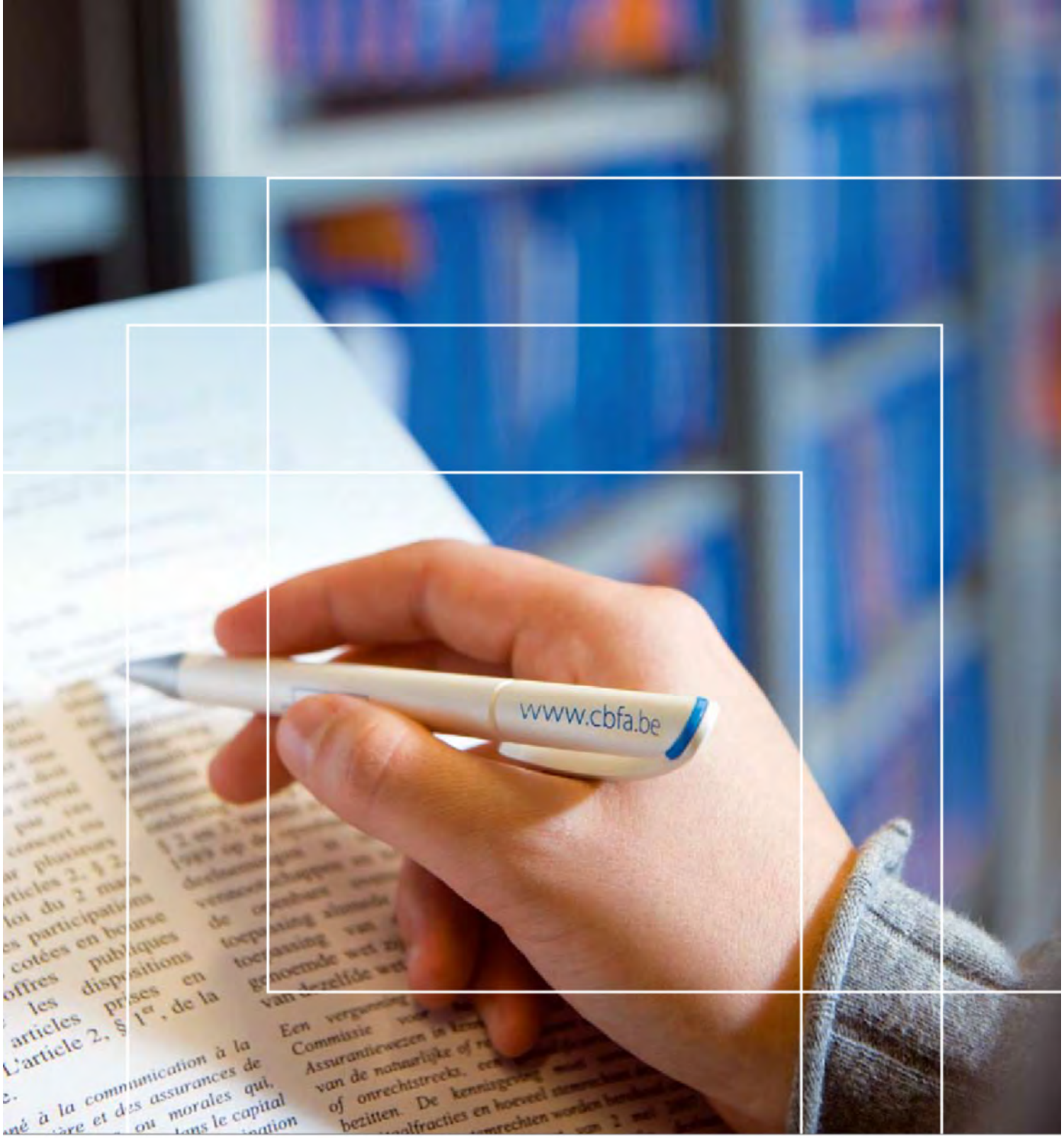


FOREWORD

Jean-Paul Servais, Chairman

Dear readers,

History will record the year 2008 as the one in which the international financial order was called into question as a result of the general loss of confidence that took hold among financial intermediaries, particularly after the failure of a major financial institution in the United States. The consequence was the near paralysis of the interbank market and the drying up of liquidity.

In its annual report for the preceding financial year, the CBFA had already analysed certain excesses in the American real estate market, and more particularly, the sub-prime crisis. No one had anticipated, however - either in scale or in speed - the chain reaction that would be set off by an uninterrupted series of events that were as varied as they were systemic in significance. These included, during the months of September and October 2008, the failure of major problems encountered by systemic institutions in a matter of mere weeks or even days, as well as, during this same crucial period, negative signals affecting the investment climate as a result of the significant uncertainties surrounding the adoption of the "Paulson" plan by the American authorities. In light of these events, several States were compelled to take action, in just a few days, to commit vast amounts of public funds to prevent the failure of other financial institutions and the collapse of the international financial system.

In the face of this financial crisis, unprecedented not only in its scale but also as regards the number of jurisdictions concerned, the governments and supervisory authorities focused, in an initial phase, on managing the situation in the best way possible. It should be noted in this regard that no financial institution went bankrupt in Belgium. It is nevertheless the case that the CBFA, like numerous other supervisory authorities and central banks, had to address and to contribute to handling the largest crisis it has known since its creation in 1935.

In a second phase, the CBFA proceeded to evaluate the action carried out by the public authorities and to concentrate, in particular, on the performance of the authorities tasked with supervising the financial sector.

In Belgium, the first important evaluation exercise was carried out by a special parliamentary committee set up by the Senate and the Chamber of Representatives to examine the banking and financial crisis. Based notably on the preliminary report by the college of experts appointed by this committee, the latter's final report gave a positive evaluation of the CBFA's actions ("the CBFA may be considered a well-informed and proactive regulator as regards the performance of its tasks") but deemed that the tasks entrusted to the CBFA are in some cases too closely circumscribed. Thus, the important strategic choices made by financial institutions do not as such require the approval of the CBFA. The report therefore calls for an amendment to the legislation, as well as for a closer alignment of macro-prudential and micro-prudential supervision.

Another evaluation was conducted, at the request of the Belgian government, by the High Level Committee on a New Financial Architecture, chaired by Baron Lamfalussy. The report published by that committee emphasized the need to improve the conduct of financial supervision by refining and strengthening the various supervisory instruments using an appropriate, risk-based approach. The same report also proposes setting up a "Systemic Risk Committee" that would make possible greater harmonization of macro- and micro-prudential supervision. The report also recommends giving the CBFA clearly defined legal powers in the area of consumer protection.

Finally, in 2009 both the CBFA's Supervisory Board and its internal audit drew up recommendations, each in its respective sphere of competence, aimed at ensuring that the CBFA can continue to carry out its tasks with the requisite professionalism, while taking into account the fact that the financial sector and its actors are undergoing striking changes.

The time has now come to undertake the third phase of the response to the crisis, which consists of analysing and implementing appropriately the various conclusions drawn notably by these evaluation reports. It was for this reason that the government announced, in its general policy statement of October 2009, its intention to put in place a supervisory architecture based on the "twin peaks" model.

As regards this year's annual report, which covers a period of 18 months, it was decided to cover not only the CBFA's activities in its various areas of competence, but also to give a factual description of the series of events, measures and interventions concerning the financial institutions in this country that were particularly affected by the crisis.

The report also devotes particular attention to measures announced at the international, European and national levels that will undoubtedly reshape the financial landscape. For there can no longer be any doubt: the financial world has changed. The globalization of financial markets and capital, as well as the speed at which information circulates in real time on the markets, requires more uniform and better harmonized rules governing risk management, transparency and corporate governance, whether at the international, European or national level. The financial landscape and its supervision must adapt to this new reality.

The broad outlines of the reform of the financial system

This report comments extensively on the work of the G20 and of the Basel Committee with regard to banking supervision.

The broad outlines drawn up by the G20 were implemented in European legislation and will soon be transposed into national law.

On an international level, it is chiefly the initiatives of the Basel Committee that serve as the basis for future regulation. These initiatives are aimed essentially at strengthening micro-prudential supervision by adopting stricter rules governing the requirements to be met with regard to own funds and liquidity. In this context, particular attention is paid to the various types of securitization and off-balance sheet transactions, the massive development of which indisputably contributed to the financial crisis. Financial institutions will, moreover, be subjected to stricter transparency obligations. Finally, as regards corporate governance, new recommendations were issued in view largely of improving the functioning of the governing bodies of credit institutions and to encourage them to take responsibility for their role in risk management. This aspect will also include rules on remuneration policy to be drawn up by the institutions.

The Basel Committee is, moreover, interested in the possible macro-economic effects of these measures. To counter this "procyclicality", mechanisms are needed for building up countercyclical capital buffers. The aim of these mechanisms is to constitute, during times of economic upswing, a cushion of additional own funds that could be drawn down in times of economic downturn. The same reasoning applies to the creation of countercyclical reserves. Finally, the Basel Committee is working on limiting the leverage used by credit institutions and intends to set a maximum leverage level in the banking sector.

Financial regulation before and after the crisis

Quite a few of the measures advocated by the Basel Committee have yet to undergo in-depth analysis and a calculation of their precise impact before being introduced. Their purpose is to safeguard the future stability of financial institutions and of the entire sector. It is clear that they will, in the coming years, give rise to a complete overhaul and fundamental reinforcement of the prudential regulatory framework of the banking sector. The structure of banks' balance sheets will soon take on an entirely new appearance, and the adoption of appropriate own funds requirements should make it much easier to detect risks than was the case in the past.

At the national level, the CBFA took certain steps in anticipation of certain developments expected at the international level. Thus, it adopted a circular on guidelines for policies on variable remuneration in financial institutions subject to prudential supervision. The CBFA also urged the further development of instruments for monitoring liquidity, taking account of all the recent developments in this regard at the international level. Similarly, the CBFA drew up (non-exhaustive) recommendations of an operational nature, regarding the implementation of a new regulatory framework mandating the establishment of audit committees at all financial institutions under prudential supervision.

The crisis has shown, however, that in the event of a major financial crisis, the public authorities must also have the necessary instruments allowing them to intervene rapidly when institutions of systemic importance are in difficulty.

In this context, representatives of the executive and legislative powers worked together on a draft bill intended to supplement the existing exceptional measures applicable to entities in the banking and financial sector in times of crisis.

■ ■ ■

Any crisis of such magnitude necessarily gives rise to major changes and even to regulatory adjustments. The goal should be to be gain an understanding of the mechanisms that facilitated the occurrence of such a crisis, in order to put in place the instruments that can help prevent similar events in the future. The crisis has thus accelerated the process of revising a number of aspects of European regulation concerning the financial sector.

This is the case, for instance, with the MiFID rules, which are intended to contribute to creating, within the European Union, transparent and competitive markets in financial instruments while providing a standard set of rules governing the information and protection of consumer of financial services. Since 2007, significant progress has been made. But new challenges have since appeared, and these constitute the core of the efforts of the European expert group that I have the privilege of chairing. In the short term, it is a matter of establishing greater transparency in the off-exchange markets, notably as regards derivatives, which, during the financial crisis, had a significant impact on the stability of financial institutions. It is advisable, moreover, to aim at achieving greater balance between regulated markets and other platforms for executing market orders.

Protection of consumers of financial services

In addition to the prudential rules and those concerning governance, a consistent regulatory framework is necessary in order to protect consumers of financial services. If we may learn at least one lesson from the current crisis, it is that the future belongs to those providers of financial services who place their clients at the centre, offering them transparent products and high-quality service.

The CBFA thus calls for the adoption in Belgium of uniform legal rules governing advertising relating to financial products and services. At European level, the CBFA supports the initiative taken by the European Commission regarding Packaged Retail Investment Products, the objective of which is to set up a standard European framework for all complex investment products such as UCIs and life insurance policies linked to an investment fund (class 21 or 23 life insurance products). The underlying principle of the European proposal is to align the consumer protection rules applicable to various products, taking as a basis the strictest current standard.

In the context of the review of the Prospectus Directive, the CBFA urged the European Commission to raise the threshold above which an offer of financial instruments is no longer considered public and can therefore be made without any supervision. In the current European directive, this threshold is set at EUR 50 000. Experience has shown that many issuers address themselves to retail investors and offer products at a price that is just above this threshold, thereby avoiding the need for supervision. By raising the threshold to EUR 250 000, it should be possible to increase significantly the protection offered to investors.

Changing the quantitative thresholds that apply to public offers is not, however, the only way to intervene in this area. It would be advisable to go further still and reflect on the possibility that a supervisory authority might forbid the sale of certain products which, by virtue of their complexity and attendant risks, appear not to be suited to the general public.

Finally, it is important, following the example of certain neighbouring countries, to be attentive to financial education. In 2009, the CBFA submitted to the public authorities a proposal for the creation of an institute for financial education, an area in which the CBFA could play a significant role as catalyst. It ought to be emphasized that the objective of this initiative is not to turn each saver into a sophisticated investor. It ought, however, to provide financial consumers with the skills necessary to understand the basic services and products offered by a financial institution. What is important in this regard is that consumers be able to take a more critical and healthy attitude in their relationships with financial institutions, albeit without diminishing the due diligence that is incumbent upon all financial intermediaries.

Market surveillance and sanctioning insider dealing

The CBFA's competence in the area of supervising compliance with market rules were, in the past year, once again at the top of the agenda. In terms of market surveillance, 2008 and the first months of 2009 were a particularly sensitive period marked by a growing number of cases submitted to the Sanctions Committee. Administrative inquiries intended to detect possible market abuses revealed the particular complexity of the cases under investigation. The CBFA therefore opened a significant number of dossiers requiring a more detailed analysis.

A positive development during the period under review was the constructive collaboration between the CBFA and the judicial authorities. The CBFA decided to notify the public prosecutor's office systematically of all market abuse cases that were the subject of administrative sanction proceedings. The CBFA is pleased with the fruitful collaboration that has come about between the judicial and the administrative authorities. The procedure for administrative sanctions and for criminal sanctions each has its own purpose, methods and modalities as regards the burden of proof. Generally speaking, it is essential that the various market actors and persons with access to inside information be duly aware of and at all times vigilant as to the problem of market abuse. Proposals for improving administrative procedures were also put forward in order to render proceedings even more effective. As things currently stand, a preliminary inquiry is conducted by the CBFA staff. If, based on this preliminary inquiry, the Management Committee determines that there is sufficient evidence of an infringement, the dossier is referred to the investigations officer, who is tasked with investigating both the charges and the defence and submitting his conclusions, independently, to the sanctions committee set up within the CBFA Supervisory Board. The proposals submitted to the political decision-makers recommend a single inquiry conducted entirely by the CBFA staff. If the conclusion of this inquiry is that there are serious indications of an infringement, the dossier is referred by the Management Committee to an independent administrative entity.

The CBFA as a link in the chain of cooperation among European supervisors

The European Commission recently drew up proposals which, drawing upon the recommendations made by the expert group chaired by Mr Jacques de Larosière, are intended to set up a new supervisory architecture in Europe. In addition to creating a European Systemic Risk Board (ESRB), the task of which will be to detect and assess risks threatening the stability of the financial system as a whole ("macro-prudential supervision"), the existing committees of supervisors will be transformed into a European System of Financial Supervisors (ESFS), responsible for supervising individual financial institutions ("micro-prudential supervision"). The ESFS will rest on a network of national supervisory authorities working in cooperation with the new European supervisory authorities. These authorities will succeed to the three existing committees entrusted respectively with the banking sector, the financial markets and the insurance and occupational pension sector; they will be transformed into full-fledged authorities in their own right, that is, the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA) and the European Securities and Markets Authority (ESMA). the CBFA has always aligned its own action with the dynamics of European-wide activities, and will, in future, continue to do all it can to contribute to shaping European supervision. The financial crisis has undoubtedly brought to light the imperfections, inadequacies and at times the absence of adequate mechanisms for European supervisory cooperation in times of acute crisis. Recent events have also shown, should it be necessary, that only by introducing a more structured and binding collaboration at European level among supervisory authorities can there be an adequate response to the need for a more effective and consistent financial supervision in Europe.

Neither the texts of the European Commission nor the de Larosière report made any statement as to the supervisory model that ought to be considered the most appropriate, for the very good reason that the crisis clearly demonstrated that no single model is intrinsically superior. They do, however, call for close cooperation between micro-prudential and macro-prudential supervision.

Since June 2009, significant changes have been made to the financial supervisory architecture in France and in Germany, whereas the debate in the United Kingdom continues.

Towards a new supervisory structure

Over the past few decades, the institution now known as the CBFA has undergone repeated changes to its spheres of supervisory competence. Created in 1935, the Banking Commission, which itself has undergone several modifications since that time, became in 1991 the Banking and Finance Commission (CBF). Over and above its competence in the area of prudential supervision, the latter body was entrusted with the task of supervising listed companies and with supervising compliance with the rules aimed at preventing market abuse. In 1995, its powers with regard to market surveillance were partially returned to the regulated markets, with the CBF remaining responsible for second-line supervision of these markets. At the same time, the "Caisse d'intervention des sociétés de bourse/Interventiefonds van de beursvennootschappen" was integrated into the CBF, making the latter the prudential supervisor for all investment firms. In 2002, the CBF was thus competent for all market surveillance, and in addition was given the power of imposing administrative sanctions. Finally, the year 2004 saw the merger of the CBF with the Insurance Supervisory Authority, thereby elevating the CBFA to the rank of an integrated supervisor. The latter model had been adopted by nearly two-thirds of the Member States of the European Union. The CBFA adapted to each of these stages in its evolution. In each instance, it was able to rely upon the high quality of its staff members to ensure the continuity of its activities and to accomplish new tasks in a professional, proactive manner.

Today, the CBFA once again finds itself on the threshold of an important reform.

Indeed, in the wake of the developments at European level, the contours of a new Belgian supervisory structure have begun to emerge, one that integrates both micro and macro components of prudential supervision. The rapprochement between micro-prudential and macro-prudential supervision was already inscribed in the Law of 2 August 2002, and was given concrete form though the creation of a Financial Stability Committee. In line with the Lamfalussy report and following the significant changes made in the architecture of financial supervision in France and Germany the Belgian government decided to go a step further in Belgium as well, by moving to a full integration of micro-prudential and macro-prudential supervision.

Specifically, it was decided to set up in short order a Committee on Risks and Systemic Financial Institutions (CREFS). This committee, consisting of the members of the Management Committees of the CBFA and of the National Bank of Belgium (NBB), would have as its main task to contribute to safeguarding the stability of the financial system. The body will have an exclusive decision-making power as regards the prudential supervision of systemic institutions - a move that should guarantee their solidity - such as major banks and large insurance companies. The committee will also be endowed with a new competence, that of approving the strategic decisions of the latter institutions.

This solution represents a transitional phase that will be followed, as soon as reasonably possible, by an integration under the aegis of the NBB of all prudential supervisory competences in accordance with the "twin peaks" model.

At the same time, the competence of the new CBFA in the area of consumer protection will be specified. Both the Lamfalussy Committee and the special parliamentary committee insisted on the latter aspect. Following on their recommendations, and in keeping with the logic of the "twin peaks" model, the CBFA, like its counterparts in the Netherlands (the *Autoriteit voor de Financiële Markten*) and in France (the *Autorité des marchés financiers*), will supervise compliance with conduct of business rules. The CBFA will also develop its competence with regard to surveillance of the financial markets, the supervision of information disseminated by listed companies, the supervision of public offers and takeover bids, as well as the supervision of investment products and distributors, notably by introducing new supervisory instruments.

I would like to conclude, paraphrasing Churchill, that supervisory authorities which have no past will have no future. In 2010, the CBFA will celebrate its 75th anniversary. It is proud of its past. Over all these years, it has kept watch over the stability and solidity of the financial sector in Belgium. 2010 will be a year of new challenges for the institution and its staff. Thanks to the tradition on which it can draw, the CBFA will see to it that, as in the past, the upcoming reforms will also be a success.

EXTERNAL ACCOUNTABILITY AND COMMUNICATION POLICY

The responsibility of the CBFA to account for and justify its actions is closely linked to the independence it enjoys as a supervisory authority. The task of providing explanations applies to the entire scope of its supervisory activity. The CBFA uses various channels in order to meet this obligation, the most important of which are its web site and the annual report.

As regards 2008, the communications policy implemented during the crisis period deserves to be mentioned.

The financial crisis and the handling of the various dossiers affected by it demonstrated the crucial importance of communication in times of crisis. The stakeholders, be that the depositors, investors or market participants, need appropriate and correct information.

For several reasons, this communication must also be conducted with requisite circumspection. First and foremost, the strict obligation of professional secrecy to which the CBFA and its staff are bound ensures that confidential information which has come to the institution's attention in the course of performing its tasks is not disclosed. Moreover, during a banking crisis it is essential to see to it that information given to clients and investors does not arouse reactions that are liable to aggravate the situation of the institutions concerned. Finally, discussions and contacts undertaken with a view to devising a rescue operation must be kept as confidential as possible in order that the parties involved might be free to negotiate in complete serenity.

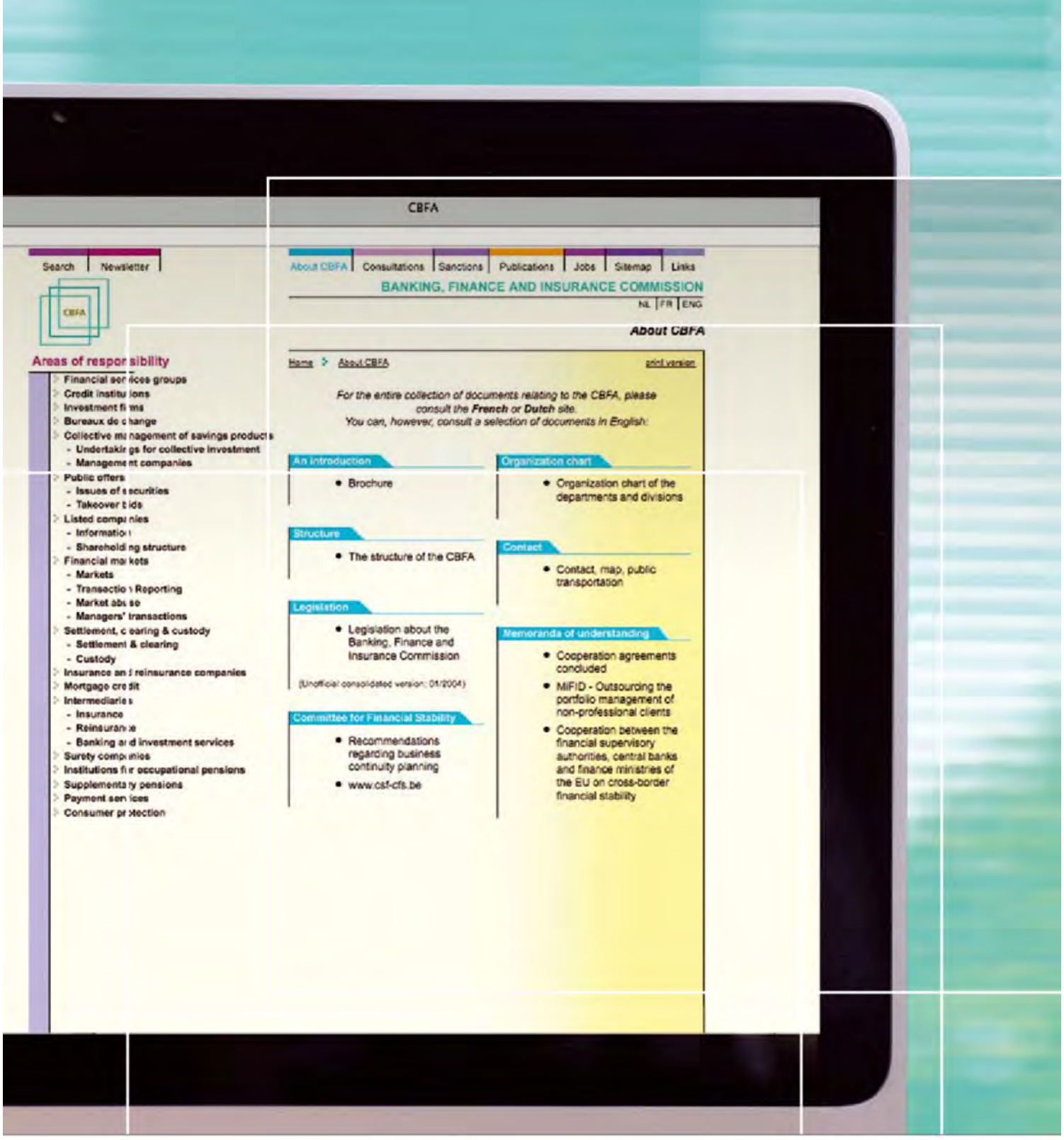
For all these reasons, the CBFA adjusted its communications policy during the period of crisis.

As far as the crisis dossiers are concerned, it was agreed with the government that communication regarding the measures taken in respect of these cases would be handled by the competent ministers themselves.

Moreover, it was decided to provide as much information as possible, proactively and on an individual basis, to clients of financial institutions who, in light of the nature and scale of the crisis, had numerous questions about their assets held with the institutions in question, about the rights which they could invoke, if necessary, and in particular about the guarantees to which they were entitled. During the months of October, November and December 2008, a 'crisis communications unit' was set up, staffed permanently by highly qualified employees. The staff members in question were updated on a daily basis as to developments in the various dossiers, to ensure they were well informed and thus in a position to assist the public. Bearing in mind the most frequently asked questions, the unit also saw to it that the CBFA web site was continuously updated with useful information on the crisis.

In the light of the work carried out first by the parliamentary finance committee, then by the special parliamentary committee set up to investigate the financial and banking crisis and, finally, by the Lamfalussy committee, the CBFA decided to reserve communication about the its supervisory activities before and during the crisis to the Members of Parliament and the experts charged by the special parliamentary committee with conducting the analysis. The CBFA cooperated fully with the work of the respective committees and experts. In order not to interfere with these activities, the CBFA did not make any statements to the press on the subject until the work of the various committees was completed and their conclusions had been made public.

Via its press officers, the CBFA nevertheless continued to assist the media whenever possible with information about the financial sector as a whole.



CHAPTER 1
ORGANIZATIONAL STRUCTURE

A. MANAGEMENT COMMITTEE

Chairman

1 Jean-Paul **Servais**

Management Committee

1 Jean-Paul **Servais, Chairman**
8 Henk **Becquaert**
2 Rudi **Bonte**
5 Marcia **De Wachter**[1]
7 Michel **Flamée, Vice-Chairman**
3 Françoise **Masai**[1]
4 Peter **Praet**[1]

Secretary General

6 Albert **Niesten**

In 2008 the Management Committee met 98 times, of which 46 were by means of a written procedure[2].

7 8
4 5 6
2 3
1

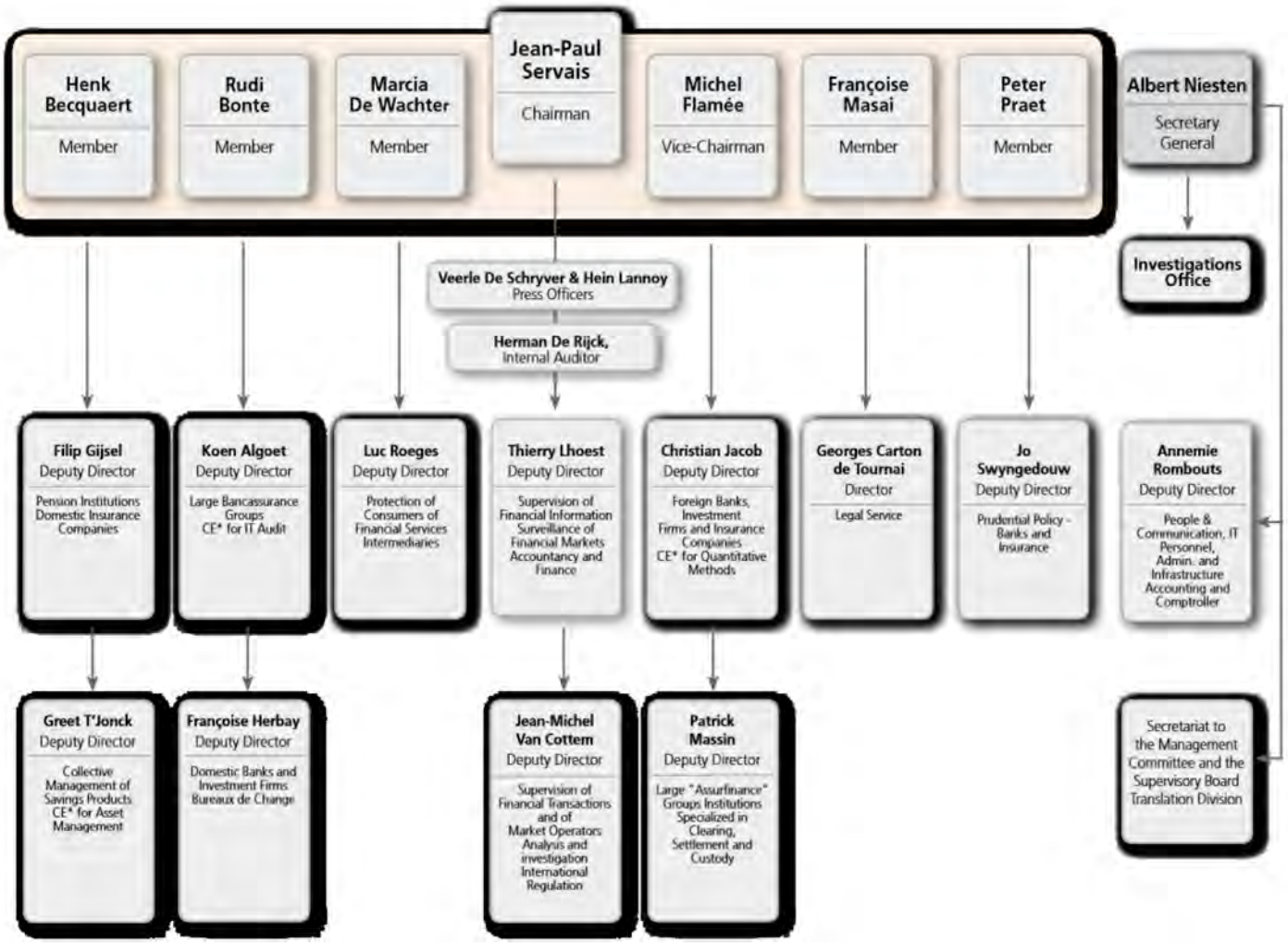
1 Also a member of the Board of Directors of the National Bank of Belgium.
2 The Management Committee, together with the Board of Directors of the National Bank of Belgium, participated in 12 meetings of the Financial Stability Committee.

B. ORGANIZATION CHART OF THE DEPARTMENTS AND SERVICES[3]

Organization chart

In accordance with Article 54 of the Law of 2 August 2002, the organization chart of the CBFA was approved by the Supervisory Board upon the proposal of the Management Committee.

For detailed notes on the organization chart approved by the Supervisory Board on 31 May 2007, see last year's annual report[4].



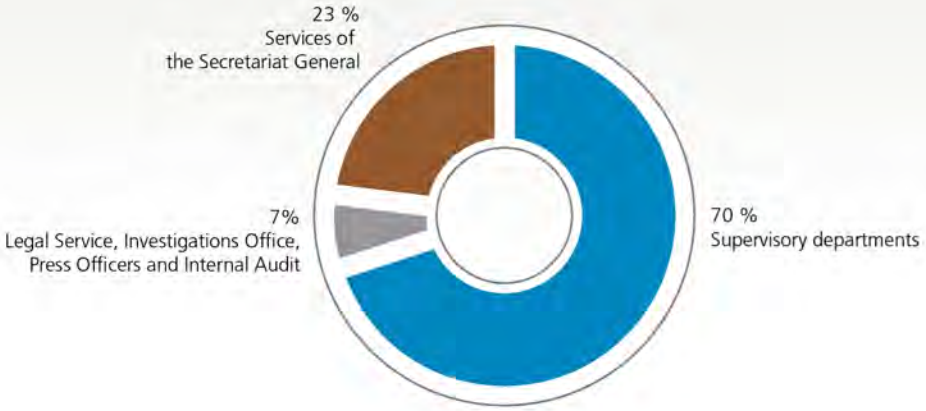
* CE = Centre of Expertise

3 Status as at 1 January 2009.

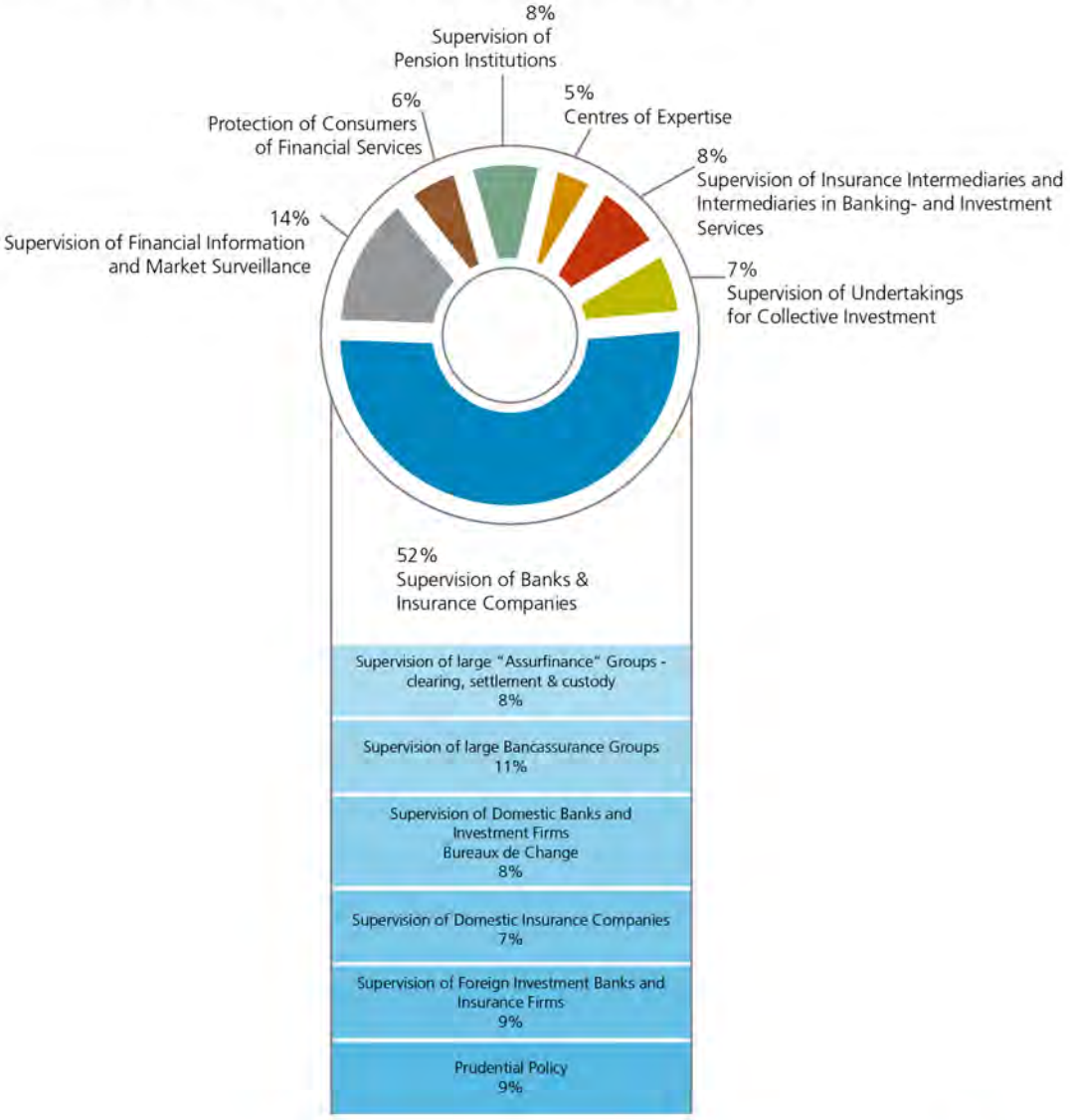
4 CBFA Annual Report 2007, pp. 19-22.

Breakdown of the staff across the various departments and services

Breakdown of the entire staff complement



Breakdown of the supervisory departments according to supervisory tasks



C. SUPERVISORY BOARD[5]

2 Eddy **Wymeersch, Chairman**
8 Jean-François **Cats**
7 Herman **Cousy**
6 Eric **De Keuleneer**
11 Christian **Dumolin**
3 Martine **Durez**[6]
5 Jean **Eylenbosch**
1 Hilde **Laga**
14 Didier **Matray**[6]
12 Pierre **Nicaise**
9 Jean-Paul **Pruvot**
13 Michel **Rozie**
10 Marnix **Van Damme**
4 Dirk **Van Gerven**

Auditor

André **Kilesse**[7]

14
11 12 13
8 9 10
4 5 6 7
1 2 3

5 Status as at 31 December 2008.
6 Appointed in their capacity as members of the Council of Regency of the National Bank of Belgium.
7 Appointed in accordance with Article 57, second paragraph, of the Law of 2 August 2002 on the supervision of the financial sector and on financial services.

On 26 May 2008, Mr Pierre Nicaise was appointed to the Board replacing Mr Guy Keutgen, who was authorized to continue holding the honorary title of member of the Supervisory Board[8]. The Board expresses its gratitude for the expertise and dedication with which Mr Keutgen fulfilled his functions.

In application of Article 48, § 1, 4°, of the Law of 2 August 2002 and within the scope of its competences as set out in the said Law, the Supervisory Board of the CBFA, on the proposal of the Management Committee, approved the present annual report at its meeting of 18 September 2009.

Report of the Supervisory Board

At each of its meetings, the Supervisory Board devoted attention to the financial crisis and its various aspects. As the crisis unfolded, concerns for the socio-economic future of both Belgium and Europe as a whole came more and more urgently to the fore, and not only as regards the financial sector, but for the national economy in general.

The progression of the financial crisis itself was the key topic of the Board's activities in the year under review. General themes such as the status of subprime credits and their effects on Belgian credit institutions, the role of credit rating agencies, the impact of the application of international accounting standards (IFRS), rules governing short selling, practices with respect to securities lending, the risks related to credit default swaps and the intra-group risks, received special attention. The Board took cognizance of numerous international efforts by bodies such as the FSF, the Basel Committee, IOSCO, CESR and most recently the G20 - to strengthen financial supervision and to adapt the applicable regulatory framework.

The Board requested, among other things, careful monitoring of the risks within the largest, systemically relevant financial groups, cross-border coordination of supervision of individual institutions in the light of their multinational character, as well as timely communication on the most important developments within the credit institutions concerned. It also urged close monitoring of liquidity positions.

Matters relating to accountancy were repeatedly discussed, in the light of the application of the IFRSs and of the principle of "fair value". The Board stressed the importance of a uniform application, and took note of the difficulties of valuation when there is no representative market. Changes in the principle of fair value are not on the agenda, but its application to certain types of assets needs perhaps to be worked out in greater detail.

The Board noted in this regard that the services of the CBFA carried out supervisory actions in respect of the developments in the risk positions of credit institutions and, where necessary, prompted adjustments to be made. The Board also noted that the CBFA had repeatedly urged that credit institutions proceed to make the necessary disclosures in light of developments on the market.

The Supervisory Board further called for systematic monitoring of the various sectors subject to supervision. Moreover, it expressed the desirability of gaining clearer insight into the methods used by the CBFA to monitor risks within the institutions, and of situating these within the context of a strategic vision.

Prompted by the events of September - October 2008, the Board decided, using the statutory powers granted it pursuant to Article 48, § 1, 4° and 8°, of the Law of 2 August 2002, to conduct an enquiry into the "good functioning" of the CBFA over the past year and a half.

The investigation was entrusted to a committee consisting of the chairman and two members of the Supervisory Board. The aim of the enquiry was to analyse and assess the work of the CBFA in the light of the applicable legislation, including in view of the measures - regulatory or otherwise - that can contribute to the good functioning of the CBFA. The committee continued its work in 2009.

8 Royal Decree of 21 April 2008 appointing a member of the Supervisory Board of the Banking, Finance and Insurance Commission, Belgian Official Gazette, 26 May 2008.

Although the attention of the Board was directed chiefly to the financial crisis and its consequences for Belgium, ample consideration was also given to other topics that fall within the Board's purview. To this end, internal committees were set up tasked with preparing the Board's deliberations. The budgets for 2009 were thus discussed and evaluated by a special committee set up for the purpose. A committee charged with assessing the draft annual report was also established.

Discussion was reopened, partly in light of the aforementioned enquiry by the Board, regarding the relationship of the Supervisory Board to the internal audit set up by the Management Committee. At the Board's request, the first steps were taken towards developing a CBFA action plan over the medium term, while the foundations were laid for harmonizing the procedures for prudential supervision across the various sectors. The Board welcomes these initiatives.

Extensive discussions were held on the proposals made in view of advancing the financial knowledge of users of financial services. The Board welcomes these proposals, which are in line with its desire to devote more attention to the protection of financial consumers, whether or not via statutory initiatives.

The Board also examined a wide range of specific topics, including initial experiences with implementing recent legislation such as aspects of the Takeover Law, the Markets in Financial Instruments Directive (MiFID) and the measures to prevent market abuse.

The Board is aware that in 2008 the CBFA was put to the test. The institution was faced with a financial crisis unparalleled in recent history. The exceptional efforts made by the management and the staff were much appreciated by the Board.

Pursuant to the legal provisions, on 16 April 2008 the Supervisory Board approved the financial statements for 2007 and on 17 December 2008 the budget for 2009. On 16 April 2008, the annual report for 2007 was approved.

During the year under review, the Supervisory Board met eight times and used the written procedure three times.

D. SANCTIONS COMMITTEE

Organization of the Sanctions Committee

The Sanctions Committee created within the CBFA[9] takes decisions, pursuant to Article 48 of the Law of 2 August 2002, on the imposition of administrative fines or penalties in accordance with the procedure set out in Article 72 of the same Law. As stipulated by Article 48, § 6, of the same Law, the Committee is composed of the chairman and six members of the Supervisory Board designated by the Board.

For the fulfilment of its tasks, the Sanctions Committee draws on the support of two experienced staff members whom the Management Committee has designated to work part-time for the Sanctions Committee. The staff members who provide support to the Sanctions Committee are, for the purpose of those tasks, no longer under the line management of the Management Committee.

In order to ensure its smooth operation, the Sanctions Committee has made the necessary arrangements regarding its internal organization. It has also worked out a procedure to follow in the hearings it conducts with parties under investigation. In each case, the Sanctions Committee informs the parties of this procedure in advance.

Decisions of the Sanctions Committee

The Sanctions Committee handed down four decisions in the course of 2008, in each case after deliberation on the findings of the investigations officer[10] and after the parties concerned had been heard. The four decisions date from 17 December 2008. They are discussed in detail later in this report[11].

9 For information on the establishment of the Sanctions Committee, see the CBFA Annual Report 2007, p. 15 and 26, and the 2007 report of the CBFA Management Committee, p. 41.

10 The findings of the investigations officer are set out in a report which, at the end of the investigation, is made available to both the Sanctions Committee and to the perpetrator of the practice in question (Article 71, § 2, of the Law of 2 August 2002).

11 See the present report, p. 84.

CHAPTER 2

REPORT ON THE FULFILMENT BY THE CBFA OF ITS STATUTORY SUPERVISORY TASKS

A. SUPERVISION

1. Overview of the institutions subject to supervision

Number of institutions and undertakings subject to supervision by the CBFA * ** ***

	governed by Belgian law	branches governed by the law of a non-EEA country	branches governed by the law of an EEA country	Free provision of services	
				EEA	non-EEA
Institutions subject to supervision of a "prudential" type					
Credit institutions	51	9	47	564	
Investment firms	49		21	2 025	74
Insurance companies	100		51	878	
Management companies of undertakings for collective investment (UCI)	7		3	23	
Institutions for occupational retirement provision	270			3	
Specialised firms (clearing, settlement & custody)	2				
Financial holding companies	9				
Electronic money institutions	4				
Institutions subject to a type of supervision other than "prudential"					
UCI *(number of UCI sub-funds)*	171 *(1 902)*			250 *(2 530)*	11 *(102)*
Listed companies	174				
Market operators	2				
Regulated markets and MTFs	11				
Derivatives specialists governed by Belgian law	1				
Bureaux de change	20				
Investment advice companies	0				
Mortgage companies	195		5	14	
Insurance intermediaries	22 892			6 201	
Intermediaries in banking and financial services	4 417				
Reinsurance intermediaries	9				
Supplementary pensions (IORPs + Insurance)	301				

* Situation as at 31/12/2008.

** In addition to the institutions and companies in the financial sector that are subject to ongoing supervision by the CBFA, the latter also supervises procedures and/or information provision with regard to transactions on the financial markets.

*** A single institution subject to several types of supervisory status is counted more than once in this table.

2. Prudential supervision

2.1. Evolution of the number of institutions under prudential supervision

Credit institutions

	Number as at 31/12/2000	Number as at 31/12/2007	Number as at 31/12/2008
A. Credit institutions authorized in Belgium	**85**	**61**	**60**
1. Credit institutions governed by Belgian law	72	52	51
Credit institutions	43	34	32
(among which the Federation of credit institutions)	(1)	(1)	(1)
Savings banks	25	15	14
(among which the credit associations belonging to the "Crédit professionnel/Beroepskrediet" network)	(10)	(9)	(8)
Securities banks	3	2	2
Municipal savings banks	1	1	1
Electronic money institutions	-	-	2
2. Branches in Belgium of credit institutions governed by the law of a State that is not a member of the EEA	13	9	9
B. Branches established in Belgium of credit institutions governed by the law of another Member State of the EEA	**34**	**49**	**47**
Total number of credit institutions established in Belgium	**119**	**110**	**107**
Financial holding companies governed by Belgian law	**10**	**7**	**7**
Credit institutions governed by the law of another Member State of the EEA and operating in Belgium under the free provision of services	**342 (235)***	**522 (342)***	**564 (374)* (10)****

* Numbers between brackets refer to the credit institutions that accept cash deposits and other repayable monies from the public in Belgium.
** Numbers between brackets refer to the electronic money institutions.

Investment firms

	Number as at 31/12/2000	Number as at 31/12/2007	Number as at 31/12/2008
A. Investment firms authorized in Belgium	**83**	**49**	**49**
1. Stockbroking firms	44	26	23
2. Portfolio management companies*	32	-	-
3. Financial instrument broking firms*	4	-	-
4. Financial instrument placing firms*	3	-	-
5. Portfolio management and investment advice companies	-	23	26
6. Branches established in Belgium of investment firms governed by the law of a State that is not a member of the EEA	0	0	0
B. Branches established in Belgium of investment firms governed by the law of another Member State of the EEA	**9**	**17**	**21**
C. Investment firms governed by the law of another Member State of the EEA and operating in Belgium under the free provision of services	**843****	**1 560**	**2 025**
D. Investment firms governed by the law of a State that is not a member of the EEA, which have notified their intention to provide investment services in Belgium under the free provision of services	**52**	**72**	**74**
E. Investment advice companies governed by Belgian law that are temporarily authorized until 31 March 2008	**4**	**2**	**0**
F. Derivatives specialists governed by Belgian law	**-**	**2**	**1**

* These legal statuses no longer exist under the Law of 6 April 1995 as amended following the transposition of MiFID.
** Data as at 30 June 2000.

UCI management companies

	Number as at 31/12/2005	Number as at 31/12/2007	Number as at 31/12/2008
A. UCI management companies authorized in Belgium	**5**	**7**	**7**
1. UCI management companies governed by Belgian law	5	7	7
2. Branches established in Belgium of UCI management companies governed by the law of a State that is not a member of the EEA	0	0	0
B. Branches established in Belgium of UCI management companies governed by the law of another Member State of the EEA	**0**	**2**	**3**
Total number of UCI management companies established in Belgium	**5**	**9**	**10**
UCI management companies governed by the law of another Member State of the EEA and operating in Belgium under the free provision of services	**4**	**18**	**23**

Clearing institutions and institutions assimilated to clearing institutions

	Number as at 31/12/2000	Number as at 31/12/2007	Number as at 31/12/2008
A. Clearing institutions governed by Belgian law	**1**	**1**	**1**
B. Institutions assimilated to clearing institutions	**0**	**1**	**1**
1. Institutions assimilated to clearing institutions and governed by Belgian law	0	1	1
2. Institutions assimilated to clearing institutions and operating as branches in Belgium of foreign institutions	0	0	0

Insurance companies

	Number as at 31/12/2000	Number as at 31/12/2007	Number as at 31/12/2008
A. Insurance companies authorized in Belgium	**136**	**106**	**100**
1. Insurance companies governed by Belgian law	130	106	100
Limited companies (*sociétés anonymes/ naamloze vennootschappen*)	98	75	71
Cooperative companies	7	7	7
Mutual insurance associations	21	18	16
Various	4	6	5
2. Branches established in Belgium of insurance companies governed by the law of a State that is not a member of the EEA	6	0	0
B. Branches established in Belgium of insurance companies governed by the law of another Member State of the EEA	**73**	**50**	**51**
Total number of insurance companies established in Belgium	**209**	**156**	**151**
Insurance companies governed by the law of another Member State of the EEA and operating in Belgium under the free provision of services	**598**	**791**	**878**

Institutions for occupational retirement provision

	Number as at 31/12/2006	Number as at 31/12/2007	Number as at 31/12/2008
A. Authorized and registered institutions for occupational retirement provision governed by Belgian law	**281**	**277**	**270**
Authorized institutions for occupational retirement provision	**244**	**251**	**244**
1. Institutions for occupational retirement provision with solely Belgian activities	244	247	240
2. Institutions for occupational retirement provision with Belgian and/or cross-border activities	0	4	4
Registered institutions for occupational retirement provision**	**37 (20)***	**26 (20)***	**26 (20)***
B. Institutions for occupational retirement provision engaged in cross-border activities in Belgium	**0**	**3**	**3**

* Amounts between brackets refer to the number of internal funds.
** Article 19, § 1, of the Royal Decree of 14 May 1985 on the application to welfare institutions of the Law of 9 July 1975 on the supervision of insurance companies, in conjunction with Article 156 of the Law of 27 October 2006 on the supervision of institutions for occupational retirement provision.

2.2. The impact on prudential supervision of the turmoil in the financial market

The summer of 2007[12] marked the end of a long period of international economic growth accompanied by a generally favourable climate on the international finance scene. The gradual loss of confidence in financial institutions caused serious turbulences on the financial markets[13]. In the first half of 2008, and also subsequently, the crisis of confidence worsened following a series of incidents at US financial institutions. Among the most significant were the Bear Stearns bailout operation, the authorities' interventions in Freddy Mac and Fannie Mae and in insurer AIG, Lehman Brothers' default, and finally the failed Paulson Plan.

The turmoil in the financial markets led to a worldwide financial crisis. Its origin and developments are described in detail in the National Bank of Belgium's Annual Report 2008[14].

In 2008, the supervision of credit institutions, insurance companies, pension institutions and investment firms, both nationally and internationally - including at the European level - has taken place almost entirely in the context of these developments.

2.2.1. Measures and proposals at the international level

Just about every relevant international forum took initiatives to restore confidence in the financial markets and financial institutions, and to increase the resilience of those markets and undertakings to the factors that had led to the crisis.

2.2.1.1. The Financial Stability Board

As early as 7 April 2008, the Financial Stability Board[15] (FSB) - at the time the "Financial Stability Forum" (FSF) - published a report for the G7 ministers and governors on "Enhancing Market and Institutional Resilience". The report identified the various causes of the turbulence and presented proposals to reinforce the financial system. The causes identified by the report were many: weak credit granting standards, risk management failings, weaknesses in investors' due diligence, shortcomings in credit rating agencies, wrong remuneration structures, weaknesses in reporting and transparency, shortcomings in the supervision of US business banks and certain financial markets (such as the OTC markets), and deficiencies in the international regulatory environments.

The FSF's proposals concern five fields of action:

- reinforcing prudential supervision of capital, liquidity and risk management. This refers to the Basel II capital agreement for internationally active banks and to the Basel Committee's principles on sound liquidity management and supervision;
- extending banks' financial information and management information on their risks, stepping up transparency in securitization transactions and off-balance-sheet vehicles, and reinforcing international standards on valuation of financial instruments as well as the related audit and disclosure;
- modifying the role and use of credit ratings: the quality of the rating process must be improved, at least as regards structured products. In addition, the use of ratings by investors and within the regulatory environment must be reviewed;
- reinforcing the authorities' response to risks: financial authorities must be more efficient in translating their risk analyses into concrete actions, and they must improve their information exchange and collaboration;
- facing up to the issue of stress in the financial system: central banks must work out a more flexible operational approach, and financial authorities must review and reinforce their approach to weak (credit) institutions and improve their cross-border arrangements on crisis management.

12 See also the CBFA Annual Report 2007.
13 See the CBFA Annual Report 2007, p. 49.
14 National Bank of Belgium's Annual Report 2008 - Economic and financial developments, p. 187ff.
15 The Financial Stability Forum, whose task is to take policy initiatives in the interest of financial stability, gathers national financial authorities (central banks, supervisors, ministries of finance) from 24 countries as well as the international financial institutions and consultation forums.

The FSF's recommendations were integrated into the G20's action plan of November 2008 and were further developed by the various international supervisors' forums such as the Basel Committee on Banking Supervision (BCBS), the International Organization of Securities Commissions (IOSCO), the International Association of Insurance Supervisors (IAIS), and the Joint Forum, the umbrella organization which facilitates consultation among the supervisors of the three sectors.

2.2.1.2. The G20

The heads of government of the 20 economically most important countries agreed in November 2008 on an action plan to face the credit crisis and reform the financial system. The G20's action plan advocated:

- improving financial institutions' management of their counterparty risk, and reinforcing prudential requirements for that risk;
- developing appropriate standards and requirements for an adequate capital basis to cover the risks incurred by financial institutions;
- confronting the issue of procyclicality in the capital requirements;
- developing a simple, supplemental measure within the Basel II regulatory framework (such as a leverage ratio);
- devising a more robust referential framework to assess liquidity risk management and supervision.

This action plan was followed in April 2009 by an important summit of the G20 in London, where it presented its "Declaration on Strengthening the Financial System"[16] and extended the mandate of the FSF, whose name was also changed to the Financial Stability Board.

2.2.1.3. The Basel Committee

In the course of 2008 and early 2009, the Basel Committee on Banking Supervision contributed to the work of the FSF through a series of initiatives to adjust regulation, supervision and management of the risks of internationally active credit institutions. The priorities of the Committee are as follows:

Capital

- more stringent own funds requirements
- a review of the quality and composition of own funds
- measures to confront the issue of procyclicality (own funds buffer, supplemental calculation formulas)

Liquidity

- implementation of the *Sound Principles* (see note 17 below)
- standards for more consistent supervision

Risk management

- more adequate guidelines as regards governance, risk management, off-balance-sheet risks and securitization
- principles on assessment and stress tests

Disclosure: increased communication on off-balance-sheet risks and securitization

Cross-border bank resolution: seeking solutions to solve cross-border issues

Macro-prudential supervision: integration of supervision into the objectives of financial stability

These points for action must be translated into concrete rules or proposals. In September 2008, the Basel Committee issued a set of sound principles for liquidity management and supervision[17], followed in January 2009 by a consultative package aiming at strengthening the Basel II capital framework.

Liquidity management

The *Principles for Sound Liquidity Risk Management and Supervision* issued in September 2008 are, on a number of important liquidity management aspects, more detailed and stringent than the qualitative principles on liquidity management published in 2000[18].

16 See www.g20.org/Documents/g20_summit_declaration.pdf
17 *Principles for Sound Liquidity Risk Management and Supervision*, Basel Committee on Banking Supervision, September 2008.
18 *Sound Practices for Managing Liquidity in Banking Organisations*, Basel Committee on Banking Supervision, February 2000.

The new qualitative principles emphasize the points for action proposed by the G20: the need for credit institutions to have robust operational plans for liquidity contingencies, the necessity of regular analyses of their liquidity status under extreme market circumstances, and the importance of maintaining adequate reserves of high-grade liquid financial assets. The recommendations also insist on managing the potential liquidity risks related to off-balance-sheet products. Finally, the document commands care in adequately allocating liquidity costs, risks and rewards to the credit institution's various activities, and vigilance in managing intraday liquidity positions.

Adaptation of the Basel II capital framework[19]

Since 1 January 2008, the minimum amount of own funds to be held by credit institutions to compensate for market, credit and operational risk (solvency requirements) is calculated on the basis of either the new standard approach or an internal model approved by the CBFA (Pillar 1 of the Basel II Capital Accord). Additionally, institutions are required to permanently assess, on their own, whether they have enough own funds as compared with their comprehensive exposure (Internal Capital Adequacy Assessment Process or ICAAP) and to develop a strategy for managing the risks in a way that maintains their capital buffer (Pillar 2). Finally, institutions must duly disclose their capital structure, risk management and solvency (Pillar 3).

Basel II's three pillars thus provide a strict framework in which the financial institution is required to carry out a self-assessment of its capital buffer.

In January 2009, the Basel Committee published a consultation paper entitled *Proposed Enhancements to the Basel II Framework*. The proposals made in the document aim to reinforce Basel II's international provisions on the own funds to be held by credit institutions[20]. They provide for a more stringent environment for certain situations that contributed to the financial crisis:

- a large part of the losses incurred by credit institutions were a result of impairments on their positions in the trading book, mainly in the illiquid structured products for which there no longer was any market value. The own funds requirements for the trading portfolio took insufficient account of the type of market volatility which materialized in 2007 and 2008: the losses incurred by financial institutions were therefore higher than planned for by the own funds regulation and more severe than what they had calculated using their internal (Value at Risk) models;
- the risks inherent in securitization transactions, and mainly in the so-called re-securitization transactions, turned out to be much larger than provided for by the Basel II framework. Certain risks were underestimated and there was too much confidence in the rating agencies for the assessment of counterparties' creditworthiness;
- management was excessively focused on short-term profitability. For instance, it clearly appeared that governance provisions on risk management had to be improved;
- finally, it was found that transparency requirements were not enough to guarantee real market discipline.

In its consultation paper, the Basel Committee makes a series of practical proposals to adapt the regulatory framework to these situations:

1. Trading Book:

For credit institutions that calculate their own funds requirements using an internal (Value at Risk or VaR) model, the Committee proposes to add as a supplement to the own funds requirement calculated by said model:

- a requirement corresponding to the potential loss (VaR) which the credit institution would have incurred in a stress period. The stress parameters are to be calibrated on the basis of the volatilities of the market factors as encountered in 2007/2008, i.e. the period which, up to now, has led to the most significant losses;

19 See the CBFA Annual Report 2007, p. 49.
20 See the present report, p. 49.

- a requirement for the default and rating migration risks (Incremental Risk Charge or IRC) for all positions of the trading book, with the exception of securitizations and re-securitizations.

For credit institutions that use the standard approach for positions on shares, the Committee proposes an increase in the requirements for specific risk of positions on shares in the trading book by imposing a minimum of 8% instead of 4% for liquid portfolios.

For all credit institutions (both standard approach and internal model), the Committee proposes to reinforce requirements for securitization and re-securitization positions of the trading book by applying the same requirements as for the banking book positions, which are also reinforced (see point 2 below).

The Committee also proposes additional provisions aiming at a prudent valuation of illiquid positions, both for the trading book and the banking book.

2. Securitization transactions:

The Committee mainly proposes to increase the requirements on liquidity lines granted as part of Asset-Backed Commercial Paper (hereafter "ABS") (including specific provisions for commercial paper buybacks) and on re-securitization positions. The latter are defined as any securitization position of which at least one underlying exposure is itself a securitization position (e.g. a CDO the assets of which are constituted by ABS).

In addition, the Committee proposes to request from credit institutions that they no longer satisfy themselves with external ratings but that they make their own analysis of the risks related to securitization exposures, based on adequate documentation. In the absence of a sufficient analysis of the inherent risk, these exposures might have to be covered 100% by own funds.

3. Risk governance:

The Committee specifies the requirements according to which the top management and the effective management of credit institutions must understand the risks related to their activities, must have relevant information to appreciate the various aspects of the risks, and must define a risk policy - as well as a remuneration policy - that takes into account a long-term vision of profitability and constitutes an adequate incentive for risk control, *inter alia* within such limits as will have been defined by the top management.

Provisions are also proposed as regards the valuation of risks related to securitization transactions, including the risks of sectoral and geographic concentration, legal risks (*inter alia* those related to contracts), reputational risks and the risks resulting from buying back exposures previously securitized by the initiating institutions with a potential impact on their liquidity and solvency.

The Committee also insists on the importance of stress testing and valuation rules. As regards stress testing, the Committee also published a specific consultative paper in January 2009: *Principles for Sound Stress Testing Practices and Supervision*. In that document, the Basel Committee defines the guidelines to be applied by credit institutions as regards stress testing practices, and by supervisors in assessing them. The Committee also emphasizes the importance of stress testing in the field of risk management as a tool to complement the risk measurement indicators produced by internal models based on historical data, which makes it possible to have a prospective view on risks. The Committee insists that the stress testing results should be taken into account in determining tolerance limits for risks, and that they should also serve in defining contingency measures to be taken by credit institutions should a stress situation occur.

4. Market transparency (public disclosures)

The Committee defines new requirements regarding both qualitative and quantitative transparency as regards risks related to securitization exposures and activities.

The consultation period on these various measures came to a close in mid-April 2009. Since then, the Basel Committee has published a set of measures and an implementation schedule to reinforce the Basel II scheme[21].

21 See *Enhancements to the Basel II Framework*, Basel Committee on Banking Supervision, 13 July 2009.

2.2.1.4. International Association of Insurance Supervisors (IAIS)

Whereas the financial turmoil that took place before September 2008 had had a rather indirect negative impact on the insurance sector[22], few insurance companies were spared by the general downward spiral that overtook the financial markets from September on. The IAIS promulgated a large set of additional standards and guidelines on regulatory requirements relating to own funds, risk management and the use of internal models in determining regulatory own funds.

Independently of the crisis, measures have already been taken to develop standards and guidelines on group supervision, the functioning of colleges of supervisors, and the role of the group supervisor. Given the importance of these elements in managing the crisis and the recommendations made by the FSF, the IAIS focused more specifically on developing a prudential framework for supervision of internationally active insurance groups, taking into account in this respect the macro-economic elements of prudential supervision, including spillover effects on the other financial sectors, the supervision of unregulated entities in insurance groups, and regulatory consistency between the various financial sectors in order to avoid any regulatory arbitrage.

2.2.1.5. International Organization of Securities Commissions

In 2008, IOSCO carried out numerous assignments related to the objective, as established by the G20, of reinforcing transparency and promoting integrity in the financial markets.

Particular attention was devoted to following up developments in international accounting standards, formulating recommendations on unregulated markets and products, and adjusting and following up on the *IOSCO Code of Conduct for Credit Rating Agencies*[23]. In addition, IOSCO also worked to develop principles for regulating hedge funds and short selling, as well as principles on required disclosure when publicly issuing asset-backed securities.

IOSCO also supervises effective application of international standards on supervision of financial markets, in particular through its strategy of prompting its members to bring their legislation into line with the benchmark set by IOSCO's multilateral MoU, but also through initiatives aiming to lead uncooperative jurisdictions to improve their collaboration.

2.2.2. European measures in the wake of the crisis

At *European* level, the *Roadmap on financial supervision* that has been developed since December 2007 by the ministers of finance (Ecofin) constitutes the financial authorities' reference framework for action[24].

As regards implementation of supervision, Ecofin's action plan proposes to improve the working of European supervisory committees (better decision-making procedures, accountability, collaboration and alarm signals for financial stability), to reinforce the supervision of cross-border credit institutions by so-called colleges of supervisors, and to increase convergence and consistency in day-to-day supervision[25].

As far as regulation is concerned, Europe's reply to the financial crisis rests on four pillars:

1. increased transparency on risk positions and losses in the field of securitization;
2. improved assessment standards;
3. reinforced prudential framework (mainly through a revision of the Capital Requirements Directive);
4. improved functioning of the markets through some sort of European regulation on rating agencies.

The European supervisory committees included these points for action in their working programme for 2008. Against the background of the Ecofin action plan, CEBS and the Banking Supervision Committee (BSC) of the European Central Bank also examined liquidity management and supervision within credit institutions.

22 The insurance sector did suffer a direct consequence of the financial crisis with regard to the so-called monoliner insurers, which suffered losses in insuring structured products whose underlying was made up of mortgage credits.
23 See: IOSCO, Technical Committee, *Code of Conduct Fundamentals for Credit Rating Agencies*, May 2008.
24 See *inter alia*: Council of the European Union, *Financial Markets Stability Roadmaps*, 15 May 2008, 9056/1/08 Rev 1.
25 See the present report, p.89.

Finally, the Commission had an assessment made of the current supervisory structure within the European Union.

2.2.2.1. Increased transparency on securitization-related exposures and losses

Of import in this respect were the work and analyses carried out by CEBS on the transparency required of credit institutions in their periodic financial reporting, in particular as regards their risk policy and their exposure to activities and products affected by the financial crisis. CEBS published its findings on the subject and took them as a basis to formulate a set of sound practices on public information[26]. These sound practices were in line with the FSF's recommendations in this respect (see above).

2.2.2.2. Improved valuation standards

The valuation of financial instruments at their fair value was an important discussion point. CEBS as well as CEIOPS and CESR each published a report in which they examine the items for attention relating to IFRS-compliant valuation of complex and/or illiquid financial instruments for their respective sectors. Above all, these reports expressed the wish for enhanced guidelines from the International Accounting Standards Board (IASB) on various aspects of the valuation issue. In addition, they confirmed the importance of reinforcing disclosure on the use and valuation of financial instruments.

The IASB, for its part, also took a series of measures as a result of the crisis. In October 2008, it published guidelines on fair value assessment in the context of inactive markets. In the same period, the IASB also adapted IAS 39 "Financial Instruments: Recognition and Measurement" so as to allow accounting reclassification of certain financial instruments, thereby making it possible to assess them at their real value rather than their market value.

These changes were ratified in Europe and declared applicable as from the half-yearly results of 2008. As a result of this change, the IASB also started working on a review of IFRS 7 "Financial Instruments: Disclosures". In the meantime, the IASB published in July 2009 new proposals to simplify IFRS 39 and 7[27].

2.2.2.3. Adaptation of the Capital Requirements Directive (CRD)

Taking as a basis the work of the Basel Committee (see above), the European Commission formulated various proposals to amend the Capital Requirements Directive[28]. These proposals were transposed recently (July 2009) in a new directive (2009/83/EC) and in a proposal presented for consultation.

Definition of own funds

According to the Commission's proposals, the directive will from now on specify the criteria and limits for hybrid financial instruments to be considered as own funds *sensu stricto*. This change aims to harmonize the current practices of European banking supervisors, who, in the absence of precise provisions in the directives, used to resort to differing criteria and limits.

The criteria proposed by the directive will define the fundamental features of so-called perpetual hybrid instruments that can be considered as own funds *sensu stricto*, namely permanence, flexibility of payments, and the ability to cover the losses in going concern and in the prospect of liquidation.

The maximum proportion which these instruments can represent in relation to the total own funds and to the own funds *sensu stricto* (eligibility limits) will be as follows:

26 CEBS, *Report on banks' transparency on activities and products affected by the recent market turmoil*, 18 June 2008, available on CEBS's website: www.c-ebs.org.

27 *IASB Exposure Draft Derecognition - Proposed amendments to IAS 39 and IFRS 7.*

28 Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (recast) and Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions (recast).

- 15% of own funds *sensu stricto* (so-called "Tier 1" own funds) for instruments that include an incentive to reimburse;

- 35% of own funds for the total of instruments, whether or not they include an incentive to reimburse (so-called "Tier 2" own funds); the latter proportion can be increased to 50% for instruments that are convertible, if the need arises, into ordinary shares upon the initiative of the issuer or supervisor.

Instruments that were included in the own funds *sensu stricto* before the directive's new provisions came into force without completely meeting these provisions will, within certain limits, continue to be recognizable as items of own funds *sensu stricto* for a transitional period as provided by the directive.

Minimum requirements on securitization exposures

As proposed by the Basel Committee, the requirements on liquidity lines granted as part of Asset-Backed Commercial Paper transactions will be increased. Additionally, credit institutions will from now on have to carry out an internal documented analysis of the risks related to their securitization exposures. If they fail to do so, they will be liable to penalties.

The new CRD will also require credit institutions that have securitized credit exposures to keep a minimum economic interest in the securitized exposures and to adopt the same credit-granting criteria for credits they wish to securitize and for those they wish to keep in their accounts. These proposals aim at restoring a balance between investors' interests and the interests of those who grant the credits with a view to securitizing them.

Provisions on large exposures

The directive will require credit institutions to limit their risks on a single counterparty to 25% of own funds. The aim of this requirement is to ensure that default on the part of one debtor does not lead to default on the part of the credit institution. However, the current directive includes numerous options that prejudice the efficiency of limits on large exposures: it makes it possible to exclude outstanding amounts at less than a year or take into account only 20% of all exposures.

By contrast, the new directive will largely reduce the number of such options and will have an important impact on the manner in which exposures on other credit institutions will be taken into account in determining own funds requirements.

Supervision of cross-border groups

As regards supervision of cross-border groups, the directive will be amended to ensure better coordination between the supervisory authorities involved in the supervision of cross-border groups. The directive will impose that a college of supervisors be constituted for each group. It will be chaired by the supervisor in charge of the group's consolidated supervision and will be composed of the supervisors of the subsidiaries and significant branches established in other countries of the European Union.

The role of the college is to ensure not only information exchange between supervisors but also better coordination of prudential activities and actions. One aim of the college is to make a joint assessment of the risks and adequate solvency of the group and its European subsidiaries, and to jointly decide on any own funds margins to be imposed.

2.2.2.4. Regulation of credit rating agencies

Given the important role that credit rating agencies played in the proliferation of structured products, the European Commission worked out a proposal for a regulation[29] to introduce a legally binding register for credit rating agencies; the proposed system introduces an external supervision that would enable the European supervisory authorities to monitor the management and procedures of credit rating agencies.

29 Regulation COM 2008 (704) of the European Parliament and of the Council of 12 November 2008, on Credit Rating Agencies, approved by the European Parliament on 23 April 2009.

2.2.2.5. Liquidity management

Against the background of the Ecofin action plan, CEBS finalized in September 2008 its work on liquidity management with the publication of 30 qualitative recommendations on liquidity management and supervision in credit institutions[30]. These recommendations are in line with the qualitative principles issued simultaneously by the Basel Committee. The European Commission took this advice into account in the above-mentioned proposals for a review of the CRD, and included some of its points in annex V of the future directive.

The European Central Bank (ECB) also took initiatives as regards liquidity management. In November 2008, the ECB's Banking Supervision Committee published an inventory of the so-called stress tests used by credit institutions to assess the evolution of their liquidity under extreme circumstances, and of the liquidity contingency plans. This inventory revealed a great diversity in the stress tests used by the institutions. The scenarios and assumptions used by credit institutions showed significant differences, and the manner in which these scenarios and assumptions were translated into figures varied from one institution to another, as did the time horizon and consolidation scope for which the test results were calculated. In addition, it turned out that the liquidity contingency plans of the 85 European credit institutions included in the survey differed considerably in terms of content and level of detail. The report emphasizes the usefulness of stress tests organized in consultation with the banking supervisors and central banks.

The Banking Supervision Committee's report analyzed in greater detail the recent experiences of credit institutions as regards stress tests and liquidity contingency planning during the crisis. It turned out that the scenarios simulated by credit institutions did not always assume a long-lasting market crisis with a gradual loss of confidence in individual credit institutions. The scenarios often overestimated the medium- and long-term availability of liquidity, and only a limited number of credit institutions seemed to have correctly appreciated the true interactions between credit, market and liquidity risks. Finally, it turned out that certain sources of financing which were part of the liquidity contingency planning had run dry as a result of reputational issues or operational or other problems.

In developing the new qualitative principles, the Basel Committee and CEBS usefully resorted to the findings of the Banking Supervision Committee.

2.2.2.6. Supervisory architecture

The European Commission decided to mandate a group of experts under the leadership of Jacques de Larosière to evaluate and review the current supervisory structure within the European Union[31]. The aim of the group of experts was to reinforce the current European supervisory structure by developing a more efficient, integrated and durable supervisory system within Europe, with stronger cooperation with other international supervisors.

In Belgium, the *Haut Comité pour une nouvelle architecture financière / Hoog Comité voor een Nieuwe Financiële Architectuur*, chaired by Baron Alexandre Lamfalussy, was mandated to formulate proposals for a more efficient supervisory architecture[32].

2.2.3. Managing the financial crisis in Belgium

In its previous annual report, the CBFA reported on its supervisory actions relating to subprime risks and the liquidity of credit institutions in the context of the turmoil that was beginning to surface on the financial markets[33]. As the turmoil kept spreading in 2008, shaking the financial system the world over, authorities worldwide had to take the necessary measures to safeguard financial stability and maintain credit institutions on the right track. The autumn 2008 period of crisis was unprecedented and, in many respects, unusual. Distrust of the functioning of the financial system, and of individual credit institutions, was evidenced *inter alia* in the extreme volatility of former blue-chip stock, plummeting share prices, soaring CDS premiums (spreads) on large banking groups, and in the very speed at which the liquidity crisis proliferated.

In response to these phenomena, the CBFA extended and intensified its supervisory actions.

30 *CEBS's Technical Advice on Liquidity Risk Management (Second Part)*, CEBS, September 2008.
31 See: www.ec.europa.eu/internal_market/finances/docs/de_larosiere_report_en.pdf.
32 http://www.docufin.fgov.be/intersalgen/wegwijs/siteoverzicht/Pdf/High_level_committee_on_a_new_financial_architecture_final_report_20090616.pdf.
33 See also the CBFA Annual Report 2007, p. 48-49.

2.2.3.1. Monitoring liquidity in systemic-risk banks

The measures taken by the CBFA in 2007 for the supervision of liquidity in individual banking groups were reinforced in 2008. The evolution of the liquidity buffers and liquidity contingency plans of systemic banks was monitored daily, on the basis of day-to-day reporting and constant consultation with the banks' management and their liquidity managers. At the peak of the liquidity crisis, the CBFA was in constant contact with the crisis centres set up by credit institutions, and was also present on the spot in the trading rooms. Starting in mid-2008, daily reporting obligations for systemic banks had to include the evolution of their clients' deposits.

As from April 2008, the CBFA and the National Bank of Belgium (NBB) continued to collaborate closely to share their respective views on the situation: a joint working group confronted the NBB's macro-economic analyses of liquidity on the financial markets with the CBFA's own micro-economic views on liquidity in systemic banks; the working group subsequently assessed the sector's financial stability and adapted the prudential supervision accordingly. This work was reported to both institutions' management committees, and bilateral consultation took place as part of the activities of the Financial Stability Committee.

Although, in the critical weeks of September and October 2008, there was no run on Belgium's systemic banks, a number of Belgian credit institutions did experience serious liquidity problems because inter-banking liquidity dried up and professional depositors operated massive withdrawals.

2.2.3.2. Monitoring portfolios of structured products

The CBFA required systemic banks to clearly identify the risks on their positions in structured products, also taking into account any credit protection obtained. The valuation of portfolios was examined in close collaboration with the credit institutions' statutory auditors. In addition, the process of governance and supervision of the accounting validation of structured products portfolios and of the approval of the figures within large bancassurance groups was the subject of very careful attention, *inter alia* through on-site supervision. The CBFA examined in particular the interactions between the various players, the processes involved in reporting, analysis and decision-making, and the consistency of methods and inputs over time.

The aim of this work was to be able to assess and compare the various credit institutions examined on the basis of common criteria and objectives in order to obtain a picture of both good practices and the fields requiring increased attention and revised action plans. The points that were examined now have to be put into perspective in relation to good practices and recommendations as issued by the Basel Committee[34], CEBS[35] and CESR[36]. On the basis of the criteria chosen, the CBFA has formulated recommendations to the credit institutions it had examined.

These activities continued during the first half of 2009.

2.2.3.3. Monitoring credit institutions' and insurance companies' solvency

The unique situation of the financial markets was not without effects on the solvency and covering assets of certain credit institutions and insurance companies. As a result, the issue of impaired assets, and their impact on the constituted solvency margin and covering assets of insurance companies, became a specific item for prudential attention in the financial analysis.

Within the large banking groups, the exceptional losses were the main cause of the sector's aggregate negative results – totalling EUR 21.2 billion[37]. Yet in 2008 the risk-weighted solvency ratio rose from 11.2 to 16.2%, and the Tier 1 ratio stabilized above 11%. These positive figures were mainly the result of the various recapitalizations

34 See: BCBS, *Fair value measurement and modelling: an assessment of challenges and lessons learned from the market stress*, 12 June 2008.
35 See: CEBS, *Report on issues regarding the valuation of complex and illiquid financial instruments*, 18 June 2008.
36 See: CESR, *Fair Value measurement and related disclosures of financial instruments in illiquid markets*, 10 July 2008.
37 See *Financial Stability Review 2009*, p. 36.

financed by the political authorities. In addition, following the implementation of the Basel II agreement, the modified rules had a beneficial impact on the calculation of weighted assets[38].

Despite the crisis, all Belgian banks complied with the regulatory ratios in 2008.

Insurance companies' aggregate solvency ratio lost some ground, dropping between December 2007 and the end of September 2008 from 225.3% to 207.9%. In calculating this ratio, the asset is considered at acquisition cost, but, for companies that so request, and subject to the CBFA's approval, it also includes unrealized gains. The amount of unrealized gains thus included diminished in the same period from EUR 2.8 to 0.6 billion.

Additionally, unrealized losses kept building up in the course of the first nine months of 2008, mainly in bonds (EUR 5.8 billion), though also, to a lesser extent, in shares (EUR 1.6 billion). As a result, when recalculated at market level on the basis of assets valued entirely at market value (which, however, is not mandatory), the solvency ratio is 135.4%, down from 257.4%.

Therefore, 25 undertakings were submitted to reinforced supervision, and 7 of them had to take measures to safeguard their solvency.

This decision was based on Circular CBFA_2008_06 of 11 March 2008[39], which provides that where an undertaking's total unrealized losses exceed its total unrealized gains, the CBFA reserves the right to take any appropriate measure, in particular if the market value of the assets has considerably changed since the close of the previous financial period.

As a result of that provision, general principles were defined that had to be taken into account by analysts in valuing such losses.

The method retained was communicated to undertakings on 15 December 2008.

In a nutshell, undertakings are required to consider, in their quarterly reporting, that an asset is durably impaired if the following conditions are met:

- decreases in the value of shares and units of undertakings for collective investment are durable if the market value of the share (or of the units) remains lower than its carrying value for an uninterrupted period of 12 months and is worth at least 20% less than its carrying value at the closure of that financial period;

- as regards unlisted shares, the undertaking's valuation rules remain a reference, and no other approach is proposed, given that there is no generally accepted reference;

- decreases on bonds other than government bonds and assimilated securities with an A-rating and other than bonds issued by international organizations of which Belgium is a member shall, on the grounds of the relative quality of the issuer, be deducted from the constituted margin if they are durable.

A decrease in the value of a bond is durable if the market value of the bond remains, for an uninterrupted period of 12 months, lower than its value as recalculated at the OLO rate augmented with the initial profitability spread, and if that difference reaches at least 20% at the closure of that financial period;

For listed bonds, the market value is the listed price, and for unlisted bonds, it is the value as determined in accordance with the valuation rules.

Additionally, decreases in value for the above-mentioned categories of securities shall, in accordance with the above-mentioned circular, be recognized as durable when the loss is final, i.e. when it has become completely impossible that the security will regain its market value.

However, in assessing an undertaking's solvency, the CBFA will not use the result of the reporting based on

38 See Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (recast) and Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions (recast), transposed into Belgian law by the CBFA Decree of 17 October 2006 in respect of the regulation on own funds of credit institutions and investment firms.

39 See in particular point 29 of the circular.

these rules in an automatic and mechanical manner. The reporting is but one element in the global assessment of the undertaking: the approach is also more general, relying on such items as risk management, ALM, and, where applicable, the distribution of the profits and any exemption from the obligation to constitute an additional provision for life and industrial accident insurance.

2.2.3.4. Monitoring pension institutions' covering assets

In order to gain a better insight into the precise impact of the credit crisis on the financial situation of institutions for occupational retirement provision (IORPs), a specific questionnaire was sent in the autumn of 2008 to the largest IORPs. The data sent in reply show that the global degree of cover seems to have fallen sharply. One could therefore expect that certain pension institutions might close the financial year 2008 on a deficit.

However, this deficit must be compared with the commitment horizon of each IORP: the longer an IORP can wait before effectively having to sell assets in order to pay out pensions, the higher the probability that stock exchange prices will pick up again, thereby mitigating or erasing the deficit.

It is clear that the economic crisis has also impacted organizers of pension arrangements. The crisis may have an impact on the solvency of sponsors, and the restructuring of an undertaking can have consequences on the rights of affiliates.

It cannot be excluded that if this occurs, an IORP may have to face demands by early retirees for early payout of pension benefits or for transfer to another institution.

Although pension rights may generally not be exercised before the age of retirement, there are still, in certain sectors, important exceptions which allow early surrender (and therefore early payment of the capital). If a great number of beneficiaries request a payment of the capital at a moment when the IORP suffers a deficit in its covering assets, they may seriously jeopardize the position of future beneficiaries.

The law allows the CBFA to temporarily oppose such requests if this is to the prejudice of the rights of other affiliates. The CBFA has not so far resorted to this possibility. The CBFA will contact an IORP without delay if it learns that an important restructuring with a possible impact on the long-term solidity of the IORP is announced in one of the affiliated undertakings.

On 9 December 2008, the CBFA sent IORP officials a communication[40] requesting them to closely monitor their institution's situation and to attract their attention to the need to react in a timely and proactive manner by immediately taking any necessary measures to straighten out the situation.

Institutions were also requested to immediately inform the CBFA of any deficit and to submit to the CBFA by 28 February 2009 a recovery plan for approval. This is a departure from normal economic circumstances, in which a recovery plan must only be submitted at the time of the annual reporting.

In addition, the circular on reporting for the year 2008[41] requested actuaries to also hand over by 28 February 2009 a provisional actuarial report in which they were to assess, for each IORP, the prudently forecast commitments.

2.2.3.5. Supervision of the financial information provided by financial institutions whose securities are admitted on a Belgian regulated market

Besides its functions as a prudential supervisor, the CBFA is also in charge of the supervision of financial information in accordance with the Law of 2 August 2002 and the Royal Decree of 14 November 2007[42]. The supervision relates to issuers the securities of which are admitted to trading on a regulated market; its main objects are periodic information and inside information. This ex-post supervision aims *inter alia* at ensuring that all the information that is necessary for the transparency, integrity and smooth functioning of the markets is duly provided by issuers. This information has to give a fair view and be accurate and honest; also, it has to enable holders of securities and the public in general to appreciate the influence of the information on the position, activity and results of the issuer. First-line responsibility for such obligations lies with the issuers; the CBFA generally intervenes only at the latest stage, after any disclosure has been decided on by the

40 Communication CBFA_2008_23 of 9 December 2008 on the financial situations of institutions for occupational pensions following the impact of the financial crisis.

41 Circular CBFA_2008_27 of 18 December 2008 on communication of annual accounts and related statistics and inventories for the financial period closing in 2008.

42 See the present report, p. 60.

company's board of directors and statutory auditor. In certain cases, however, and particularly in times of crisis, the CBFA carries out a closer supervision of compliance with these obligations by the companies concerned.

Its status as integrated supervisor of financial institutions and markets enables the CBFA to continuously and adequately take into account public information requirements. As regards more particularly Belgian credit institutions whose securities are admitted to trading on a regulated market or are held by a company whose securities are admitted to a regulated market, the CBFA took, as the crisis gradually developed, a more specific look at the issues of the valuation of assets based on market prices or on models, the recognition of impairments in conformity with the expected cash flows, and the accuracy of the notes on the accounts, as regarding *inter alia* the nature of financial instruments, adequacy of the valuation methods, and stress testing.

It also ensured that the information provided by Belgian credit institutions in their financial statements was equivalent to the European market's standards.

In examining the financial institutions, the CBFA did not find any elements indicating that the Belgian issuers within the financial sector failed to comply with IFRSs or that their information departed from the level of their European competitors.

Finally, it ensured close interaction between its task as a prudential supervisor and its task of monitoring information. Among others, it requested the publication of specific information on issues such as the exposure to structured products within each of these issuers and the consequences of Lehman Brothers' default. In the extremely urgent conditions which prevailed when the State decided to intervene, it ensured in particular that such information was sufficiently clear and precise for the market to be able to correctly grasp the stakes in a highly technical and sensitive domain. It also repeatedly suspended trading in shares of credit institutions so as to enable the market not only to take cognizance of the information but also to assess its significance.

2.3. Specific measures towards institutions affected by the crisis

As from the second half of 2008, exceptional emergency measures had to be taken towards six Belgian institutions: the four systemic credit institutions Fortis, Dexia, KBC and ING, bancassurer Ethias and the Belgian subsidiary of the Luxembourg credit institution Kaupthing Bank.

These Belgian institutions were not the first or the only ones to experience difficulties as a result of the systemic banking crisis; however, given the importance of the large banking groups in the Belgian banking system, the latter was hard hit. All over the world, and more specifically in Europe, the national political authorities undertook rescue actions by granting State guarantees on issuances of financial instruments or on risk positions, by reinforcing capital or even by taking over ailing financial institutions, and by extending the guarantees on deposits. Simultaneously, central banks massively granted liquidities to the financial system.

The measures taken by the Belgian political authorities to guarantee deposits, inject extra capital or grant the State's guarantee largely succeeded in stabilizing market confidence in the financial institutions, and made it possible to avoid a run on Belgian banks. The authorities' interventions were subject to conditions in terms of compensation and governance of the bank. Granting of credit to the economy was also a point under scrutiny in this respect.

The CBFA did not directly intervene as prudential supervisor in preparing and implementing these public measures, but it did, upon the political authorities' request, issue advice on a number of occasions as to the application of the Belgian regulations with regard to these interventions. Among others, the CBFA examined, in the context of these operations, the prudential qualifications of these contributions in capital as regards the implementation of the regulations on solvency and in view of better quality and better composition of the capital, and a sufficient capital buffer.

In addition, the European Commission must, on the basis of the existing regulations on State aid as provided for by the EC Treaty, approve public interventions in favour of the institutions concerned. As part of its examination of these public interventions, the European Commission requested from the CBFA an assessment of the appropriateness of the method used to value the impaired assets that are the object of the guarantee scheme. The CBFA assessed, for each of the institutions concerned, the methods and findings of the external experts who had been appointed.

The institutions concerned are now implementing structural measures in order to adapt to a profoundly modified market environment. In the process, they are adapting their balance sheets and activities and reviewing their strategy. They are striving to deleverage and to limit their risks, but the process will undoubtedly take some time yet, as a result among other things of the general economic situation. The CBFA is following these developments with utmost attention and questions bank leaders on this matter. It sees to it that these institutions' governance and risk management are adequately reinforced. This is amply justified, as the crisis has shown more than ever the need for management to act jointly and with determination. In this respect, the CBFA is adamant that management committees should firmly fulfil their supervisory function, particularly - though not exclusively - through their various consultative committees. These committees often treat matters related to audit, compliance, risk management, strategy, nominations and remuneration.

2.3.1. Fortis

2.3.1.1. Antecedents

The case of ABN AMRO

In its previous annual report[43], the CBFA commented on the takeover, in October 2007, of the ABN Amro group through a takeover bid initiated by a consortium composed of Royal Bank of Scotland, Banco Santander and Fortis.

With a view to this acquisition, the consortium had constituted a company, RFS Holdings, in which Fortis had a €24 billion participating interest. That participating interest was held by Fortis Bank Nederland Holding, a subsidiary credit institution of Fortis Bank. The plan was that Fortis would take over ABN Amro's retail banking and commercial banking in the Netherlands as well as its global private banking and portfolio management activities. The European Commission approved these acquisitions on the condition that, given the market concentration, Fortis would cede some 10% of ABN Amro's commercial banking activities in the Netherlands by early October 2008. In the meantime, Fortis was not allowed to exercise any control over other entities of ABN Amro except portfolio management. In early July 2008, Deutsche Bank agreed to take over part of ABN Amro's commercial banking activities. When the Fortis group restructured in early October 2008, the Nederlandsche Bank had not yet approved the takeover.

Following the acquisition offer, the consortium drew up a detailed transition plan for ABN Amro's split-up. In March 2008, the Nederlandsche Bank formally approved the plan after an analysis in consultation with the other supervisors concerned (FSA, Banco de España and the CBFA).

In early April 2008, ABN Amro's global portfolio management activities were sold to Fortis (more precisely to Fortis Investment Management). As a result, the CBFA was now in charge of following the integration of Fortis' activities. Particular intention was devoted to the governance structure, risk control, solvency and operational integration. In addition, Fortis had announced that it would set up a joint venture between the Chinese insurer Ping An and Fortis Investment Management; however, in the end this operation did not go through.

The integration of the activities which Fortis had taken over from ABN Amro was the subject of a global integration plan. This plan was closely examined by the CBFA in consultation with the Nederlandsche Bank for the Dutch activities, with specific attention for *inter alia* the project's organization, the impact on the organization and operation of the services concerned, potential risks and any actions taken to mitigate the risks, cross-border aspects and timing. In this respect, the plan was that, subject to the necessary authorizations, ABN Amro's activities would gradually be taken over between October 2008 and October 2009.

43 See the CBFA Annual Report 2007, p. 49, and the 2007 report of the CBFA Management Committee, p. 29-30.

As a result of the sale of Fortis Bank Nederland Holding (including the participating interest in RFS Holdings) to the Dutch State on 3 October 2008, these takeovers never happened.

Solvency

In the context described above, the CBFA paid particular attention to compliance by Fortis Bank with its obligations with respect to regulatory own funds.

Taking into account *inter alia* the group's structure, the CBFA had obtained from Fortis Bank that it would at all times maintain its CAD ratio[44] above 10%, i.e. higher than the regulatory requirement of 8%.

These increased requirements had served as the basis in assessing *inter alia* the financing plan which Fortis had worked out (capital increase, issuance of capital in the form of hybrid instruments, securitizations, sales of non-strategic assets) with a view to purchasing ABN Amro, and it had been found that if carried out, the plan made it possible to comply with prospective requirements in terms of solvency.

Close monitoring of the solvency of the group and its main operational entities was set up on the basis of monthly reporting requested from the group as a complement to the quarterly prudential reporting. The Nederlandsche Bank was associated in this supervisory work, and it carried out a first-line examination of the situation of Fortis Bank Nederland Holding, which housed the participating interest in RFS Holdings.

Subsequently, various elements impacted Fortis' solvency, among others successive impairments in the structured credits portfolio, the expected losses following the implementation of the European Commission's requirements regarding the sale of certain activities in the Netherlands (see above), and impairments on the shares portfolio at the level of both the banking and insurance pools. These problems were compounded by a drop in the profitability of the activities affected by the world crisis and difficulties in carrying out certain transactions aimed at improving solvency (issuance of capital in the form of hybrid instruments, securitizations, and sales of assets).

The solvency projections presented by Fortis were submitted to a critical analysis; taking into account the negative impact of market developments, it gradually appeared that there was an increasing risk that the group's objectives in terms of solvency might not be reached after the integration of ABN Amro's activities. The CBFA therefore requested from the group that it should present measures to reinforce its solvency so as to reach its objectives. On 26 June 2008, Fortis announced a faster implementation of its solvency plan for a total amount of €8.3 billion (including an increase in capital totalling €1.5 billion, no interim dividend, a proposed payment in shares for the 2008 dividend, the sale of non-strategic assets, a sale and leaseback operation, etc.). Because of the crisis that hit it, the group was not able to implement all of these measures.

2.3.1.2. Acquisition of Fortis Bank by the Belgian State and BNP Paribas

In the context of the general deterioration of liquidity on the interbank market following the announcement on 15 September 2008 by the US authorities of their decision not to bail out investment banker Lehman Brothers, Fortis Bank was suddenly faced, in the following days, with an increasingly problematic liquidity position which eventually required exceptional contingency measures in the weekend of 27-28 September 2008.

For the past several months, the market had been entertaining increasing doubts as to Fortis' ability to carry through the integration of ABN Amro. This was evidenced by the deterioration of its rating as established by the main specialized credit rating agencies, and the evolution of the price of the Fortis group share on the stock markets. The July 2008 capital increase aimed at consolidating the group's solidity had not succeeded in reversing this feeling of growing distrust towards the group on the part of the market.

Thus the group was fragile when it entered the period of extreme turbulence which immediately followed the announcement that Lehman Brothers could no longer meet its commitments.

44 Capital Adequacy Directive ratio: solvency ratio of own funds to risk-weighted assets.

On 28 September 2008, before the financial markets reopened, the Belgian, Dutch and Luxembourg governments disclosed the terms of an agreement under which each of the three States took a participating interest in the capital of the Fortis group's banking company situated on its own territory (respectively Fortis Bank, Fortis Bank Nederland Holding and Fortis Banque Luxembourg), each taking a share of around 49%. The Belgian State's participating interest in Fortis Bank was acquired through the Federal Holding and Investment Company (*Société fédérale de participations et d'investissement/Federale Participatie- en Investeringsmaatschappij* - SFPI/FPIM).

Fortis Bank simultaneously resorted to emergency liquidity assistance (ELA) from the NBB for extremely significant amounts, and to support from the Dutch central bank (DNB: De Nederlandsche Bank) for more limited amounts as from 2 October 2008 in favour of Fortis Bank Nederland.

On 3 October 2008, the Dutch State acquired all of Fortis group's banking and insurance activities in the Netherlands (including the 33.8% participating interest which Fortis held in RFS Holdings, the 100% owner of ABN Amro). Following this takeover, the Belgian and Dutch activities of the group were split and the Dutch part of the 28 September 2008 operation was cancelled.

Because the situation of Fortis Bank remained extremely vulnerable, the Belgian State acquired on 6 October 2008, through SFPI/FPIM, the shares previously held by the Fortis group in Fortis Bank, thus becoming owner of 99.93% of the bank's capital.

Simultaneously, the Belgian State, Fortis group's holding companies, Fortis Bank and BNP Paribas concluded an agreement (the draft of which was signed on 10 October 2008) under which close to 75% of the capital of Fortis Bank and all of Fortis Insurance Belgium were sold to the French group. Additionally, the three parties were to become shareholders of a vehicle into which part of Fortis Bank's problematic structured credits portfolio was to be transferred.

This two-stage entry of the Belgian State into the capital of Fortis Bank, and subsequently the agreement with BNP Paribas, made it possible to reassure savers as well as professional counterparties and contributed positively to the urgent need to stabilize the bank's situation.

As part of proceedings initiated by several shareholders of the Fortis group, the Brussels Court of Appeal pronounced a summary judgment reversing the 18 November 2008 summary ruling of the president of the Brussels Commercial Court and ordered on 12 December 2008 the suspension of the decisions taken by Fortis Holding's board of directors on 3, 5 and 6 October 2008 in order to submit these decisions to the approval of the shareholders. The judgment also ordered the SFPI/FPIM, under a pecuniary penalty, to refrain from selling its share in Fortis Bank to a third party. It also provided that during this standstill, which extended to 16 February 2009, BNP Paribas' interbank relations with Fortis Bank on the basis of market conditions and normal competition were to remain unchanged.

On 11 February 2009, the general meeting of shareholders of Fortis SA/nv refused by a very narrow majority to approve the above-mentioned decisions of the board of directors. The provisions of the draft agreement of 10 October 2008, renegotiated a first time by the Belgian State, Fortis Holding and BNP Paribas, was then the object of new adaptations which were formalized on 7 March 2009, under the condition precedent of approval by the shareholders of the top holding companies of the Fortis group.

These new agreements provided *inter alia* that BNP Paribas would become a 74.93% shareholder of Fortis Bank, with SFPI/FPIM keeping 25% of the capital plus one share. Fortis Bank for its part would take a participating interest of 25% plus one share in the capital of Fortis Insurance Belgium. Provisions were taken to ensure that the agreements on distribution of insurance products of Fortis Insurance Belgium by Fortis Bank are maintained until 2020.

The shareholders of both top holding companies of the Fortis group approved this draft agreement at the general meetings of Fortis SA/nv on 28 April and of Fortis nv on 29 April 2009. The agreements thus concluded were implemented on 12 and 13 May 2009.

Thus Fortis Bank is now a subsidiary of BNP Paribas, in which the latter is the majority shareholder.

Fortis Holding, for its part, became an insurance holding company, subject as such to supervision by the CBFA, with *inter alia* a majority participating interest in Fortis Insurance Belgium (the new name of which is AG Insurance).

The State aids granted to Fortis Bank and the holding companies of the Fortis group were authorized by the European Commission on 3 December 2008 and 12 May 2009.

2.3.1.3. Structured credits

The situation on the financial markets greatly impacted the value of Fortis' structured credits portfolio (total exposure at end June 2008: €41.7 billion for an aggregate credit figure of over €350 billion and a total group-wide balance sheet nearing €1,000 billion).

The CBFA has regularly reviewed the valuation by the internal auditors, by the people in charge of the bank's risk management, and by the statutory auditors, of the risks related to securitization activities in general.

Since September 2007, Fortis Bank's structured credits portfolio has been the subject of closer CBFA monitoring on the basis of reporting and meetings with the bank's officials and its statutory auditors. DNB was associated in these discussions until the crisis of late September 2008. The size of recognized impairments on these positions and the valuation methods adopted by the bank have been the subject not only of periodic reporting but also of numerous discussions with the bank's statutory auditors. The issue of the methods applied in valuing the structured credits has also been the subject of analysis by the CBFA as part of surveys at international level (Basel Committee and CEBS).

In the context of the negotiation on the takeover of Fortis Bank, the most problematic structured credits were taken out of the balance sheet and housed in a specific vehicle. That is how Royal Park Investments SA/nv was set up, its shareholders being Fortis SA/nv (44.7%), the Belgian State through SFPI/FPIM (43.5%), and BNP Paribas (11.8%).

An important part (nominal amount €20.5 billion) of Fortis Bank's structured credits portfolio was transferred in May 2009 into this vehicle at a price of €11.7 billion. Royal Park Investments SA/nv's financing, partly guaranteed by the Belgian State, is composed of €1.7 billion in capital and €10 billion in liabilities.

2.3.2. Dexia

At the end of September 2008, the Dexia group deemed it necessary to reinforce its solvency and liquidity in order to be able to face the consequences on its financial position of the spreading financial crisis. On 30 September 2008, the reference shareholders (Holding communal/Gemeentelijke Holding, Arcofin, Ethias and the Caisse des dépôts et consignations/Deposito- en Consignatiekas) and the Belgian and French States decided to reinforce the capital of the financial holding company Dexia SA/nv by €6 billion. In Belgium, the Belgian federal State invested €1 billion, the Flemish Community €500 million, the Walloon region €350 million and the Brussels Capital–Region €150 million. The French State invested €1 billion. The reference shareholders contributed €3 billion. The capital increase was carried out on 3 October 2008. The plan also provided that the Luxembourg State would contribute €376 million through a subscription to convertible bonds of Dexia Banque internationale à Luxembourg.

As the interbank market dried up, and massive deposits were withdrawn by professionals in the following days, Dexia started facing some very serious liquidity problems, as a considerable part of its financing was generated through interbank transactions.

On 9 October 2008, in order to ensure Dexia's access to the financial markets, the Belgian, French and Luxembourg States granted Dexia, upon the latter's request, a public guarantee up to €150 billion. The guarantee is shared, on a several but not joint basis, as follows: 60.5% for Belgium, 36.5% for France and 3% for Luxembourg. The three States guaranteed until 31 October 2009, against compensation for the guarantee, all of the new bonds subscribed by institutional investors, new interbank deposits and new institutional investments of a duration of up to three years accruing to Dexia SA/nv and its subsidiaries Dexia Banque Belgique SA / Dexia Bank België nv, Dexia Banque internationale à Luxembourg SA and Dexia Crédit local SA. The aim of this guarantee is to allow Dexia to continue to obtain capital on the financial markets. It can be renewed for another year.

On 19 November 2008, the European Commission approved a support package granted to Dexia, for a period of six months.

The measures taken to inject capital and for the public guarantee were meant to restore market confidence in Dexia.

In addition, Dexia's new management announced an extensive reform plan that was to refocus Dexia around its core business of banking services to public sector clients (public and wholesale banking), and retail customers (retail and commercial banking, including private banking and insurance). Simultaneously, the group began to reduce its investment portfolio – which was financed by short-term capital – in order to favourably impact its liquidity. As consolidating supervisor of Dexia, the CBFA is keeping a close watch on the implementation of this reform plan; to this end, it is working jointly with the relevant host supervisors, the French Commission bancaire and the Luxembourg CSSF[45].

In order to improve the group's risk profile, Dexia concluded on 14 November 2008 with bonds insurer Assured Guaranty Ltd a draft agreement to sell the insurance activity to Financial Security Assurance Holdings Ltd (FSA), a US subsidiary of Dexia Crédit local SA, itself a French subsidiary of Dexia SA/nv.

FSA is a US bonds insurer whose main activity consists in protecting investors in bonds against the risk of default by offering a credit insurance that covers the payment of coupons and capital. This credit insurance technique was also used to ensure structured products. Additionally, FSA also operates in financial products, including the sale of investment contracts with guaranteed return.

As a US credit insurer, FSA is subject to first-line solo supervision by the Superintendent of Insurance of the State of New York. The second-line supervision is FSA's follow-up by the French supervisor, the Commission bancaire, as supervisor of the sub-consolidation of Dexia Crédit local SA, to which FSA belongs. The third-line supervision is the CBFA, which, as consolidating supervisor[46], follows up Dexia's financial position.

In the light of FSA's deteriorating financial position, the CBFA requested Dexia to take measures in the fields of governance, risk management and management information. Dexia was also requested to draw up a contingency plan so as to better be able to face a possible downgrading of its rating and/or the need to recapitalize.

FSA's financial products activity is not part of the sale concluded with Assured Guaranty Ltd. Since FSA stands surety for the assets and liabilities of the financial products activity, its exclusion from the sale implies that Dexia must necessarily guarantee the financial products activities (up to USD 17 billion). In order to preserve Assured Guaranty Ltd from a counterparty risk on Dexia, the Belgian and French States agreed to guarantee, against compensation, Dexia's commitments up to USD 17 billion. The scheme provides that Dexia takes for own account a first loss of USD 4.5 billion, and that for any losses beyond that amount, Dexia can invoke the guarantees of the States, which can, in exchange therefor, receive shares or profit-sharing notes. On 13 March 2009, the European Commission approved this State guarantee, the aim of which was to preserve Assured Guaranty Ltd from the risks related to the financial products portfolio. However, it announced that it was initiating an examination of the restructuring plan presented by the Belgian, French and Luxembourg States for Dexia, and of the measures related thereto.

The sale of FSA's insurance activity to Assured Guaranty Ltd was concluded on 1 July 2009.

2.3.3. KBC group

Although the KBC group was hit less hard by the drying up of the interbank lending market, the price of its share did suffer a serious drop starting in the autumn of 2008. Because financial markets had upped their own funds benchmark as a result of large financial institutions being recapitalized in a number of neighbouring countries, and with a view to regaining market confidence, the KBC group felt compelled to appeal to the Belgian public authorities to reinforce its capital buffer. Thus, on 27 October 2008, it was agreed that the federal State would inject €3.5 billion in securities without voting rights and without dilutive effect on the capital. The plan was carried out in a similar way as the intervention of the Dutch State in favour of ING during the previous week.

Taking into account the features of the transaction, the CBFA recognized these instruments as Tier 1 items of

45 Commission de surveillance du secteur financier.

46 The supervision on a consolidated basis of a financial holding company such as Dexia SA/nv, which does not as such carry out any banking activities, does not include any supervision on a non-consolidated basis. It is a complementary supervision to see to it that the structure and operation of the group (policy, organization, internal control, influence of entities of the group on other entities) allows a sound and prudent management, that the risks at group level are adequately followed up, and that the consolidated financial position of the group as a whole remains solid.

own funds. A few months later, a new wave of speculation on the bank's own funds and the valuation of its structured bonds appeared, leading the share price to drop again. KBC was once more compelled to reinforce its capital; it obtained the additional funds from the Flemish political authorities on 22 January 2009 in the form of €2 billion non-dilutive securities, similar to those of the October 2008 operation. Once again, the CBFA decided, after an examination of the case, and taking into account the features of the operation, to recognize these funds as Tier 1. The Flemish public authorities also committed themselves to subscribe, should KBC so request, €1.5 billion of additional capital.

Furthermore, developments in the financial markets forced KBC to record important impairments in the second half of 2008 and first quarter of 2009.

Because positions in an important part of this portfolio are taken through derivatives, and market value fluctuations were therefore recognized in the income statements in accordance with IAS 39, this had a large impact on the financial institution's profitability. Given the mechanical link between the income statement and the accounting and regulatory own funds, KBC's solvency came under pressure as a result.

An important part of the KBC group's positions in structured products was covered by US (monoliner) credit insurer MBIA. In February 2009, MBIA was profoundly restructured and the company was split in two in the process: one entity was devoted to bonds issued by local US political authorities, while the other would manage structured products issued by - mainly foreign - financial institutions. The latter was at once attributed a lower score by the rating agencies: the quality of the cover was hard-hit. The accounting impact of this event on KBC's financial situation was difficult to assess at the time. Only in the second week of May 2009 did it appear that the valuation method set up with the auditors would lead to important new impairments in the first quarter of 2009. A recapitalization was again negotiated with the public authorities. On 14 May 2009, an agreement was concluded for an amount of €20 billion, namely €14.4 billion in derivatives covered by MBIA and €5.5 billion in CDO risks the lower tranches of which had already been entirely written off by KBC. According to the terms of the restructuring plan, KBC takes a first loss of €3.2 billion for own account, and the Belgian State commits itself to covering up to 90% of a following effectively incurred loss of €2 billion through a subscription to ordinary shares or, under certain conditions, hybrid instruments. Any further losses are also covered up to 90% by the Belgian State. KBC simultaneously appealed to the Flemish public authorities to inject an additional €1.5 billion of capital. At the time of closing the period under review, the CBFA was still in talks with KBC for the solvency treatment of the various chapters of this financial aid package. The European Commission, for its part, gave a provisional authorization on 30 June 2009 for the support package granted in 2009 by the Belgian and Flemish public authorities.

In monitoring KBC, the group's exposure to Central and Eastern Europe has always been a matter for particular attention, as KBC has in the course of time acquired a substantial market share in a number of countries of the region. In recent months, some of these countries have voiced growing concern over the economic crisis. This has also negatively impacted the price of the KBC share as well as market confidence in the results of the KBC group.

The CBFA supervises the KBC group on a consolidated basis[47]. Supervision on a consolidated basis does not entail individual supervision by the CBFA of each undertaking included in the consolidation scope. As regards regulated undertakings of KBC that are not included in KBC Bank's consolidation scope, this means that each supervisor remains competent for the solo and sub-consolidated supervision of the regulated undertaking.

In the light of the supervisory model explained above, the collaboration with the relevant foreign supervisors - notably from Central and Eastern Europe - has further intensified, *inter alia* with the organization by the CBFA of a so-called college of supervisors in September 2008 and June 2009. Among other matters for discussion was

47 The aim of this type of supervision is to see to it that the structure and operation of the group (policy, organization, internal control, influence of entities of the group on other entities) allows a sound and prudent management, that the risks at group level are adequately followed up, and that the consolidated financial position of the group as a whole remains solid.

the impact of the financial crisis and the related risks for the KBC group; the meeting was also an opportunity to present the results of certain recent inspection assignments. Additionally, a series of bilateral contacts with the relevant supervisors took place in 2008 and 2009.

2.3.4. ING

In the Netherlands as well, the Dutch public authorities had to take measures to reinforce financial institutions' capital. A €20 billion State aid facility was made available in October 2008 with this objective in mind. The ING group, among others, applied for it. On 19 October 2008, the Dutch State injected €10 billion into the bancassurance group against compensation in the form of non-dilutive securities. At the end of January 2009, the Dutch State had to intervene again, granting a back-up facility under which it stood surety up to 80% of a portfolio of over €27 billion of structured mortgage credits of the group. In the context of this intervention, the ING group simultaneously implemented a restructuring plan focused on a reduction of its balance sheet and a withdrawal from a number of segments that are no longer part of its core businesses.

As host supervisor of ING Belgique SA / ING België nv, a subsidiary of the ING group, the CBFA led talks on the above-mentioned points with the Nederlandsche Bank, the ING group's home supervisor.

Taking into account the important deposits base of the ING group in Belgium, the CBFA closely followed the management by ING Belgium of its liquidity risk and the appropriateness of its liquidity buffer and contingency plan, as well as the evolution of its deposits base. These actions led ING Belgium to take measures to reinforce its liquidity.

2.3.5. Ethias

In the insurance sector, the Ethias group was particularly affected by the financial crisis.

The group to which Ethias belongs consisted of several mutual insurance companies - known as "caisses" - involved in various segments of the insurance business in Belgium (life assurance, non-life insurance, industrial accidents). The fact that Ethias was set up as a mutual distinguished this group from the majority of the other companies in the sector, inasmuch as it did not rely on returns on capital invested. It further differed from the others by the absence of a principal shareholder, namely, one that might be counted on to provide financial support in case of necessity.

The day-to-day management of the companies within the group was delegated to a joint Management Committee, while oversight by the boards of directors of the various entities was fragmented and distributed among quite a number of members drawn mainly from the public sector.

The expansion of Ethias' traditional client base - that is, public sector employees - was achieved largely by selling universal life insurance ("First"); this product saw considerable growth (from €100 million at the end of 2000 to more than €8 billion by the end of 2007), bringing significant change to the company's profile as regards risk and the relative weight of its various activities.

Moreover, Ethias has for historical reasons been one of the stable shareholders of Dexia, and at the end of 2007 held a 6.3% share in the latter's capital[48].

During the 2008 financial year, in continuity with previous initiatives, the CBFA intensified its prudential activity in relation to Ethias. This activity took the form of various on-site inspections and other meetings with the management bodies, following which several important recommendations were made, both as regards the group's governance and concerning its financial situation and in particular its solvency.

As a first step, in July 2008 Ethias raised the level of its subordinated loans to €325 million. In light of developments on the financial markets, however, this measure soon appeared insufficient, and Ethias was invited to

48 Article 10 of the Royal Decree of 22 February 1991 containing general regulations relating to the supervision of insurance companies: "the company may not invest more than a total of 5% of the covering assets for its technical provisions and debts in shares or in bonds that are equivalent to shares, in bonds or in other money and capital market instruments by a single issuer or in loans made to a single borrower....This limit is increased to 10% for the covering assets of EU companies subject to supervision by the CBFA or by a public body whose role is analogous to that of the CBFA...".

shore up its financial capacity to ensure that it would be able in all circumstances to meet the regulatory requirements. The group also conveyed that discussions were under way with a group of foreign insurers in view of integrating Ethias, which would, among other things, allow it easier access to financing.

At the end of July, the Fitch rating agency downgraded the financial solidity scores of the Ethias group, emphasizing the deterioration of the group's own funds and its sizeable stake in Dexia.

After Lehman Brothers (LB) was found to be in default, the ratings for the group's financial solidity were lowered a second time as a result of the group's exposure to LB[49], Ethias was exposed both directly and indirectly to the American bank, since in addition to investments in or guaranteed by LB, the group had been selling class 23 insurance contracts that included securities issued by LB, for which the listing and withdrawals were suspended following the freezing of the assets in those funds.

In light of this information, the CBFA devoted particular attention to developments with regard to a growing volume of withdrawals from "First" insurance contracts by subscribers. Indeed, the risk of having to dispose of assets in a depressed market, and therefore make real the hitherto unrealized losses, became a serious one, as did the chance that if withdrawals were to increase massively, Ethias would be exposed to a liquidity risk comparable to the one experienced by the banks that faced difficulties during the same period.

The CBFA consequently re-evaluated Ethias' solvency margin and, in application of Article 26, § 2, of the insurance supervision law, required the company to develop a short-term financing plan, among other measures.

In the interim, Ethias had seen the breakdown of the negotiations that had been undertaken with the group of foreign insurers.

The public statements of an Ethias official concerning its difficulties gave rise to an explosion of withdrawal requests by holders of "First" contracts. Ethias was therefore obliged to request emergency intervention by the federal, Flemish and Walloon governments, and obtained their formal undertaking to provide €1.5 billion in refinancing. Ethias also provided the CBFA with an in-depth restructuring plan for the group. Moreover, to meet the liquidity needs resulting from the difficulties faced by the insurer, Ethias secured access to a significant line of repos[50]. Finally, it requested and was granted membership in the Special Protection Fund for deposits and life insurance (created by the Royal Decree of 14 November 2008) to guarantee its commitments in class 21 products.

The capital increase took place on 13 February 2009, after the European Commission had approved the operation under the European rules on State aid.

As a result of the reorganization of its structure, the core of the Ethias group's operational activities is now concentrated in a multi-branch limited company, Ethias SA/nv. The shares in Ethias SA/nv are held by a holding company, the shareholders of which consist of, on the one hand, the federal State, the Flemish Region and the Walloon Region, each of which holds 25% plus one share in the capital of Ethias Holding, and, on the other hand, Ethias Droit Commun / Ethias Gemeen Recht, the group's only surviving mutual insurance company, which holds 25% less three shares in the capital. The latter entity has, moreover, retained the Ethias group's industrial accident business (Law of 1969). Nateus SA/nv, Nateus Life and Ethias Bank are subsidiaries of Ethias SA/nv.

2.3.6. Kaupthing Bank Luxembourg SA

Following the notification to this effect by the Luxembourg supervisor CSSF in application of the European directives, Kaupthing Bank Luxembourg SA, a subsidiary of Icelandic bank Kaupthing, was included on 18 December 2007 by

49 The ratings would be lowered a third time, on 28 October 2009, in spite of the intervention of the public authorities on 21 October 2008.

50 Repo is short for "Sale and Repurchase Agreement". It designates a transaction between two parties: a cash sale of securities, followed by a repurchase at a date and price agreed in advance.

the CBFA on the list of credit institutions governed by the law of another Member State of the European Economic Area with a registered branch in Belgium. It took over the bulk of the activities and client base of the Belgian branch of Robeco (Netherlands) and constituted a deposits base of around €550 million at the beginning of October 2008.

In accordance with the European regulations on home country control, supervision of Kaupthing Bank Luxembourg SA is carried out by CSSF, in charge of supervising the organization, activity and risk position of the bank, including its Belgian branch. Similarly, the deposit guarantee scheme in the case of a branch is that of the home country, namely the Grand Duchy of Luxembourg.

On Thursday 9 October 2008, the board of directors of Kaupthing Bank Luxembourg SA found that the bank was unable to access the group's liquidities, and therefore requested and obtained from the Luxembourg District Court, Commercial Section, a stay of payment, subject to supervision of the bank's management by officers appointed by the court. This arrangement is different from a bankruptcy or liquidation. Under a stay of payment, all payments by the bank are temporarily suspended, and the credit institution must refrain from any act or decision that has not been authorized by the court's officers. It also means that depositors' claims against the bank are suspended.

The Crédit agricole group signed a convention with Kaupthing Bank Luxembourg SA with a view to a two-stage takeover of the complete client base of the Belgian branch of Kaupthing Bank Luxembourg SA by Crédit agricole SA / Landbouwkrediet nv and Keytrade Bank SA/nv. The first stage of the transaction consisted in Crédit agricole SA / Landbouwkrediet nv taking over the securities accounts belonging to the private banking customers of the Belgian branch of Kaupthing Bank Luxembourg SA; the investment portfolios were made available to customers on securities accounts opened with Crédit agricole SA / Landbouwkrediet nv. The second stage, which came after a series of conditions were met, consisted in Keytrade Bank SA/nv and Crédit agricole SA / Landbouwkrediet nv taking over the cash accounts of the "Edge" clients and private banking clients respectively of the Belgian branch of Kaupthing Bank Luxembourg SA.

The restructuring plan finalized in July 2009 enabled the clients of the Belgian branch of Kaupthing Bank Luxembourg SA to have access to their assets once again.

2.4. Other developments in prudential supervision, and points for attention in operational supervision

In 2008, prudential supervision underwent a number of developments that had begun before the financial crisis and were not consequences thereof; as a result, CBFA supervision also focused, at least around the beginning of the year, on themes other than those related to the crisis.

2.4.1. Solvency II

The Solvency II framework, which constitutes since its inception the main focus for CEIOPS, introduces a completely new prudential framework for the supervision of insurance undertakings[51].

The Solvency II Directive was voted in the European Parliament on 22 April 2009 and was adopted on 5 May 2009 by the European Council[52]. It comes into force on 1 November 2012.

In the course of 2008, the draft Solvency II Directive was discussed both at the European Council and in the European Parliament.

The main lines of the initial text have remained unchanged. The prudential scheme proposed is still one that focuses on risks, and aims to harmonize the calculation

51 See the CBFA Annual Report 2007, p. 40.

52 Legislative resolution of the European Parliament of 22 April 2009 on the amended proposal for a Directive of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (recast) (COM(2008)0119 2007/0143(COD))

of the technical provisions and own funds requirements according to the risks incurred by the undertaking. The level of requirements can be calculated either on the basis of the standard formula presented in the directive or on the basis of an internal model. Besides the requirements on individual undertakings, the directive also pays careful attention to the supervision of insurance groups.

In the spring of 2008, the fourth quantitative impact study (QIS4) was conducted by the European Commission as part of the Solvency II project. Whereas QIS3 was still a test of the architecture of the prudential scheme proposed[53], QIS4 was meant as a first-calibration exercise, with a further specification of a limited number of items, but also certain innovations. The innovations relate to aspects that had not been tested before. This is the case in particular for group aspects and the use of internal models.

The results of the exercise for the European participating undertakings were processed in the national reports which were transmitted to CEIOPS. The summary report drawn up by CEIOPS was made public on 19 November 2008. The Belgian national report was published in early 2009.

2.4.2. Development in prudential reporting

As regards prudential standardized periodic reporting by credit institutions and insurance undertakings, important progress has been made at the level of both CEBS and CEIOPS.

CEBS has worked in 2008 on a review, and extensive simplification, of financial reporting (FINREP). The aim of this is to achieve, by 2011, a harmonized European framework of IFRS-based financial reporting to banking supervisors. The same exercise will be initiated in 2009 for reporting on own funds requirements (COREP), which was developed on the basis of the prudential rules as derived from the CRD.

CEIOPS' work on valuation of assets and liabilities and on development of prudential reporting fell principally within the scope of the implementation of the Solvency II Directive. CEIOPS is to present to the European Commission a set of technical proposals for the implementation of the directive. These proposals relate firstly to the methods and assumptions to be used in valuing assets and liabilities for the purposes of Solvency II, and secondly to the information to be communicated by insurance undertakings to their supervisors and to the public as regards their solvency, financial situation and result.

Following the recommendations of the FSF and G7, the CBFA invited Belgian financial groups in May 2008 to publish, together with their half-yearly results at mid-June, extensive information on their exposure to the risks related to the financial crisis.

2.4.3. Implementation of the Basel II framework

The main weight of the Basel II supervisory activities was concentrated – independently of the proposals for adaptation following the crisis – on 2007, 2008, and 2009, with a priority for following up on Pillar 1 requests in 2008 and the assessment of the other pillars in 2009.

The supervision of the implementation of the Basel II framework, in force since 1 January 2007[54], centred in 2008 on the following keynotes:

- *A regulatory transition period of three years:* the possible lessening of the regulatory and own funds requirement that resulted from the Basel I framework is carried out gradually over the financial periods 2007, 2008, and 2009[55].

- *Burden of proof on the financial institution:* minimum quantitative and qualitative requirements must be complied with in order to be authorized to use internal models. It is for the financial institution to demonstrate the appropriateness of its models and

53 See the CBFA Annual Report 2007, p. 40-41.
54 See the CBFA Annual Report 2007, p. 49.
55 The Basel II own funds requirement cannot be lower than 95, 90, and 80% respectively of the Basel I requirement for the financial periods 2007, 2008, and 2009.

of its ICAAP. The reliability of that self-assessment is monitored in first line by the financial institution's own decision-making bodies and control teams - *inter alia* its internal audit - and in second line by the CBFA, which must give prior approval of these models and make a general assessment of the financial institution's exposure. Thus the allocation by the CBFA of the necessary means for action depends on the quality of the documentation on management and the methods that have been used, and on the explanation given by the financial institution to support the appropriateness thereof.

- *Strict annual review:* the CBFA will not grant a permanent approval for the use of internal models: instead, it will ensure, at least once a year, that the minimal requirements are still based on the same periodic self-assessment by the financial institution. Thus the Basel II framework is a constant in the CBFA's supervisory activities.

- *Phased introduction:* a majority of financial institutions have opted for a phased introduction (*roll-out*) of the Basel II framework: at the end of a reasonable period of approximately 3 years, they must have ensured that the total exposure within the group is covered according to the standard approach. For several financial institutions, the CBFA has adjusted the initial roll-out plans. For instance, it imposed the use of internal models where this led to a more prudent assessment of the required level of own funds than did the standard approach. And in the cases where the internal models had not yet reached the requested level of maturity, their implementation was postponed.

- *Prudent prudential decision-making:* with just one exception, the approvals were subject to conditions and deadlines and were followed up strictly by the CBFA, which devoted a large part of its supervisory means to this work in 2008. This strict policy was dictated by the following findings:

  - shortcomings in methodological approaches, which did not sufficiently cover the uncertainties arising from the models, mainly as a result of structural limitations inherent in the models (e.g. lack of historical data);

  - insufficient maturity in the process for managing operational risk; and

  - specific shortcomings in the qualitative requirements.

  Among other things, temporary prudence margins were introduced which led to an additional requirement in regulatory own funds, aimed mainly at further refining the Pillar 1 models.

  At the end of February 2008, the CBFA had communicated to each of the four systemic banks its conditional approval for the use of internal models for credit risk and, to two of them, for the use of an internal model for operational risk (the other two had opted for the standard calculation).

More generally, the introduction of the Pillar 1 requirements led in the Belgian financial institutions to notable improvements in their management of credit risk, an objectification of the definition of default, and furthered awareness of operational risk through the development of an adequate environment for operational risk management.

Apart from granting approval for the use of internal models, and following up related conditions, the means of the CBFA were also devoted, in 2008, in the context of Basel II, to a first assessment of Belgian systemic banks' ICAAPs, including an assessment of economic capital models. In following up implementation of the Pillar 2 process on the spot, the CBFA takes into account a proportional application according to the nature, size, and complexity of each financial institution. The findings of the CBFA were processed in the ICAAP "risk cards" developed by the CBFA as part of its ICAAP assessment exercise. In addition, upon the initiative of CEBS' Subgroup on Operational Networks (SON), a benchmark was established of the ICAAP assessment between different groups within the European Union, among which a large Belgian bank. The examination carried out by the CBFA showed that in 2009, financial institutions still have to make the necessary efforts to comply with the Pillar 2 requirements.

In a nutshell, the Basel II process has not yet reached its end, and 2009 is a pivotal year in this respect, not only because it is expected that the further implementation by Belgian financial institutions will reach its cruising speed, but also because in addition to the above-mentioned changes[56],

56 See the present report, p. 29.

further progress is awaited in the following areas which will be decisive for the CBFA's supervisory activities:

- the impact of the shortcomings in the financial institution's ICAAP approach on the CBFA's decision whether or not to authorize the use of internal models for Pillar 1, and the possibility to jointly assess both pillars within the decision-making process;
- the importance of efficient starting points in the stress tests;
- the methodology for determining own funds requirements of entities of an international group: application by the financial institution of the diversification effect which it includes in its ICAAP can lead to a situation in which the part of the group's own funds which is allocated to the entities turns out to be lower than the requirements that would apply to the entity as such. In addition, the national supervisors may show a tendency to impose higher requirements for the subsidiary entities under their supervision (ringfencing);
- the application of the Basel II principles on forward-looking approach, prudence, and through-the-cycle evaluation in the development of internal models and when faced with limited historical data and unforeseen payment defaults following the crisis;
- the appropriateness of the current reporting statements and regulatory ratios as prudential indicators, and the role of the statutory auditor in this supervisory process;
- the effectiveness of the current model for collaboration between national supervisors, in particular in times of crisis.

2.4.4. Adaptation of risk analysis instruments

In its 1996-1997 annual report[57], the CBFA commented on the concept and practice of supervising credit institutions. The CBFA explained in particular the approach to risk analysis whereby a so-called risk table is developed for each credit institution and is completed with indicative scores for its risk profile (financial risks, fields of activity, logistics and infrastructure) and its risk management.

The CBFA also explained that the risk table constituted an essential instrument in the decision-making process for selecting credit institutions to be inspected in priority order and, more generally, for choosing and deploying the available prudential means and methods.

The evolution of the regulatory prudential framework, and more specifically the implementation of the Basel II agreements and their second pillar were a good opportunity to review and modernize these risk tables.

For reasons of continuity, the existing risk tables were taken as a starting point, all the more so as the aims have remained unchanged. The integration and formalization of the existing analysis and supervision work within the CBFA have however been reinforced in the new risk tables. They thus constitute the basis for a structured dialogue both with the financial institutions concerned and their statutory auditors and with the other supervisors in charge.

In the new instrument for risk analysis, the risk profile of a financial institution is determined on the basis of four building blocks: (1) the financial institution's general situation (e.g. its governance and financial position); (2) the transversal supervision and support functions, such as the internal audit, compliance and risk management functions; (3) the risks inherent in the financial institution's activities[58]; and (4) the financial institution's internal assessment process as regards its necessary own funds[59].

The aggregation of the scores given for the different building blocks leads to a single score for each individual financial institution. In addition, a score is also established for the financial institution's systemic risk and for the quality of its shareholder structure. The result of the process is part of the final assessment of the financial institution's risk profile.

At this stage, the project has been developed only for credit institutions and investment undertakings. However, the aim is gradually to expand the scope to the other financial institutions under supervision, albeit taking into account the specific features of each sector.

57 See the annual report 1996–1997 of the CBF (available only in French or Dutch), p. 26ff.
58 The analysis relates to both quantitative (perception of the materiality of the financial institution's risks) and qualitative risks (the manner in which risk management is implemented within the financial institution).
59 The analysis of this theme also examines the composition of the own funds within the financial institution.

2.4.5. MiFID work

On 1 November 2007, the MiFID[60] regulations came into force. These European regulations impose upon financial institutions specific rules of conduct and organizational requirements with a view to improving investor protection.

The Intermediaries working group within CESR

In the context of the transposition of the MiFID directives, two important initiatives taken by the Intermediaries working group within CESR deserve attention[61]. The work of this group aims at a consistent and uniform application of the European rules by the various supervisory authorities.

The first project relates to a standardized survey to be conducted on remunerations and inducements that investment undertakings and credit institutions are allowed to pay to, or receive from, third parties when offering investment services to their clients. Insofar as such remunerations and inducements can have a significant impact on the income garnered by the financial institutions concerned, the applicable rules play an important role in the protection of customers' interests. It is therefore appropriate that they should be applied in a uniform manner all over the European Economic Area.

The survey was conducted simultaneously by the various EEA supervisors on a number of representative financial institutions.

The analyses and conclusions of the questionnaire will be assembled into a report to be published by CESR in the last quarter of 2009.

In addition, CESR published on 6 October 2008 three supervisory briefings[62] aiming at convergence of supervisors' practices on some essential elements of the MiFID regulations. These are conflicts of interest[63], certain forms of remuneration[64], and best execution[65].

The briefings, which are meant in the first place for the supervisory authorities, sum up the relevant rules and explain their point. They also include a questionnaire for information purposes which can help supervisors in analyzing and assessing how the financial institutions concerned comply.

The application of the MiFID operational action plan

In accordance with the MiFID action plan as determined in 2007[66], the CBFA carried out a number of assignments in 2008 to see how the sector had implemented the MiFID provisions.

In this respect, particular attention was devoted to progress in the implementation by Belgian credit institutions with a large retail network. The CBFA wished in particular to examine what management choices and organizational measures the institutions concerned had implemented, and whether it was already possible to draw lessons as regards best practices. The aim was also to gain an insight into the remaining problems in implementing the MiFID provisions.

In carrying out this assessment, the CBFA essentially took as starting point the activities of financial institutions' compliance and internal audit functions. In addition, various working meetings were organized with the organizational officials of the institutions concerned in order to take cognizance of how the MiFID provisions were put into practice. Further targeted in-depth inspection assignments will be carried out where necessary.

Simultaneously with the above-mentioned horizontal survey, various on-site supervisory checks took place at other Belgian and foreign credit institutions and investments undertakings.

The treatment of complaints

The MiFID regulations, in particular Article 16 of the CBFA Regulation of 5 June 2007, provide a number of qualitative requirements for the treatment of complaints within financial institutions which offer investment services. Considering the central role of the treatment of complaints in consumer protection, a specific survey was carried out at four systemic banks on the manner in which

60 Markets in Financial Instruments Directive (MiFID), or Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments.
61 See CESR's web site (www.cesr-eu.org) and the CBFA Annual Report 2007, p. 43.
62 See CESR's web site (www.cesr-eu.org).
63 *MiFID Supervisory Briefings - Conflicts of Interest.*
64 *MiFID Supervisory Briefings - Inducements.*
65 *MiFID Supervisory Briefings - Best Execution.*
66 See the CBFA Annual Report 2007, p. 51.

such treatment was organized. The survey examined services related to investment not only in financial instruments, but also in insurance products. It showed that credit institutions themselves attach great importance to a performing management of the treatment of complaints. This is because the way complaints are treated significantly impacts their operational and reputational risk.

2.4.6. Internal governance

Adaptation of the sectoral legislation at the Belgian level

In accordance with international developments[67], a clearer definition has been established of the liability that lies with the effective management, the legal decision-making body and the statutory auditors in the institutions under supervision. To that end, the banking law and similar provisions within the other supervisory laws and regulations[68] had been modified in 2007[69].

Following these changes, the supervised institutions must have an adequate independent internal audit function, a compliance function, and a risk management function. The effective management must inform at least annually the legal decision-making body (generally the board of directors), the CBFA and the statutory auditor of the efficiency of internal control, including the internal control over the reliability of the financial reporting process, and of the situation as regards integrity. The CBFA defines the practical rules governing this reporting. The new scheme does not however provide that information is to be made available to the public as is the case in certain other countries[70].

In addition, the effective management must now confirm that the periodic statements are correct and complete[71] and have been prepared pursuant to the CBFA's applicable guidelines and according to the accounting and valuation rules that had been used to prepare the reporting statements. This approach is in line with international developments, which place on the effective management the responsibility for correct periodic reporting to the supervisory authority. Finally, the statutory auditor confirms[72] that the periodic statements transmitted to the CBFA by the financial institution meet the legal requirements.

In a circular to the financial institutions concerned[73], the CBFA explained in greater detail the practical rules for reporting by the effective management on the assessment of the internal control system and for the statement by the effective management on periodic prudential reporting.

The report on the assessment of the internal control system must include the following:

- a description of the organization, activities and risk management;
- an assessment of the appropriateness and operation of the internal control systems;
- a list of the measures taken.

The internal control system proper must use a generally accepted method which is to be sufficiently documented and applied in a consistent manner.

A first report on internal control systems was communicated in late January 2009 by financial institutions which had closed their accounts on 31 December 2008. The statement on periodic prudential reporting had to be transmitted at the latest three months after the closure of the financial period concerned.

The statutory auditors are now in charge of the three following tasks:

- confirm that the periodic statements are complete and correct and have been prepared pursuant to the CBFA's guidelines and according to the accounting and valuation rules used by the financial institution;

67 See *inter alia*: Basel Committee on Banking Supervision, *Enhancing Corporate Governance for Banking Organisations*, February 2006.
68 Articles 20 and 20*bis* of the Law of 22 March 1993, Articles 62 and 62*bis* of the Law of 6 April 1995, Article 153 of the Law of 20 July 2004, Article 14*bis* of the Law of 9 July 1975, Article 18 of the Law of 16 February 2009, Articles 10, 10*bis* and 12 of the Royal Decree of 26 September 2005, Article 4 of the Royal Decree of 12 August 1994, and Article 13 of the Royal Decree of 21 November 2005.
69 See the 2007 report of the CBFA Management Committee, p. 43-44.
70 It is the case in the United States of America and also partly in France.
71 Article 44, paragraph 2, of the Law of 22 March 1993, Article 91, paragraph 2, of the Law of 6 April 1995, Article 185, paragraph 2, of the Law of 20 July 2004, Article 22, § 3, of the Law of 9 July 1975, Article 29, paragraph 2, of the Law of 16 February 2009, Article 38 of the Royal Decree of 26 September 2005, Article 6 of the Royal Decree of 12 August 1994, and Article 12 of the Royal Decree of 21 November 2005.
72 Article 55 of the Law of 22 March 1993, Article 101, paragraph 1, of the Law of 6 April 1995, Article 195, paragraph 1, of the Law of 20 July 2004, Article 40*quater* of the Law of 9 July 1975, Article 45 of the Law of 16 February 2009, and Article 16, § 2, of the Royal Decree of 21 November 2005.
73 Circular CBFA_2008_12 of 9 May 2008 "Report by the effective management on the assessment of the internal control system, and statement by the effective management on periodic prudential reporting".

- assess the internal control and communicate their findings in this respect;
- inform the CBFA without delay of any important elements that have come to their attention (so-called "signal" function).

The report by the effective management on the periodic statements and on the assessment of the internal control system, together with the statutory auditor's confirmation of the periodic statements and assessment of the internal control, provide the CBFA's operational staff with the assurance that the statements are reliable as a source of information for supervisory purposes, and that the internal control is organized in an adequate manner. The signal function enables the CBFA to be informed in a timely manner on matters that are important for the supervision.

In 2008, the CBFA prepared, in close consultation with the statutory auditors, a circular which explains their legal tasks for the various financial institutions under supervision[74].

Assessment of the governance memorandums

In March 2007, the CBFA clarified in a circular its policy on sound governance of financial institutions, based on ten principles[75]. The institutions were to confront their own policy with the principles presented in the circular, and describe the features of that policy in a governance memorandum to be transmitted to the CBFA in the course of 2008. Almost all financial institutions did so.

These memorandums then had to be assessed by the CBFA in the light of the principles defined in the circular.

An important element in the assessment of the memorandum is that non-application of a given principle may be justified and/or replaced by alternative measures. Additionally, each principle must be applied and assessed taking into account the proportionality principle. That is, in more modestly sized financial institutions, the governance principles cannot always be applied in the same manner.

It was therefore important for the CBFA to ensure that within its departments and among its staff, the memorandums were treated and approved in a coordinated and harmonized manner. To that end, a specific document was drawn up to assist the departments and staff in their analysis and thus ensure uniform assessment. In addition, a specific consultation structure was created by way of internal consultation, to discuss the mutual treatment of memorandums.

In the course of 2008, the first memorandums were treated in this way and received the CBFA's *nihil obstat*.

2.4.7. Integration of savings accounts in the interest-rate risk and the management of liquidity risks

During the period under review, the CBFA reminded credit institutions that "regulated" savings deposits must be integrated in a well-thought-out manner in their internal management of the interest-rate and liquidity risks. In particular, financial institutions must use prudent hypotheses for the expected stability of interest rates and of the amount of these deposits. The CBFA has acted in this way because it had found out that in numerous financial institutions, the so-called growth and/or loyalty premiums offered in addition to the basic interest rate was merely symbolic for part of the savings deposits.

The same concern subsequently motivated the CBFA's favourable advice to the Minister of Finance on the introduction of a minimum proportion between the loyalty premium offered and the basic rate offered, in the Royal Decree which defines *inter alia* the rules on remuneration to be complied with for deposits to benefit from a favourable tax treatment[76].

2.4.8. Internet services safety

In the past year, the initiatives and work begun in 2007 to improve the safety of electronic banking systems were continued.

74 In the meantime, Circular CBFA_2009_19 has been finalized; it was published on 8 May 2009.
75 See the CBFA Annual Report 2006, p. 28 and 29.
76 See the report of the Management Committee, p. 14.

On the basis of an analysis extended to the whole sector on safety of electronic banking services offered in Belgium, the CBFA invited the financial institutions which were lagging behind to submit a plan to reinforce safety. In the wake of this, the CBFA worked out a draft circular on provision of financial services via the Internet, in which it also included its prudential expectations on safety. The circular was submitted to the sector for consultation in mid-December and was communicated to financial institutions on 7 April 2009.

Additionally, the CBFA requested financial institutions to inform it of any e-banking fraud detected, so as to be able to adequately analyze the raiding techniques used and rapidly identify and possibly remedy any shortcomings in the systems' safety.

In order to improve the information flow and the collaboration within the sector on matters of safety, an emergency channel of communication was established in cooperation with the National Bank of Belgium and the financial institutions. The latter may thus - anonymously and of their own volition - exchange among themselves information on e-banking raids and frauds which they have detected, on the techniques used, etc.

Finally, the sectoral consultation on e-banking safety, in which the National Bank of Belgium, the Belgian Federal Computer Crime Unit and the CBFA also take part, has reached in 2008 its cruising speed, thus giving an important positive impulse to information exchange and collaboration within the sector.

3. Supervision of undertakings for collective investment

3.1. Outline in figures of the evolution of the UCI sector and of the activities in the area of supervision of collective asset management

Number of supervised undertakings

	31/12/2004	31/12/2005	31/12/2006	31/12/2007	31/12/2008
Belgian UCIs	160	158	185	179	171
Sub-funds	**1 372**	**1 481**	**1 652**	**1 844**	**1 902**
Foreign non-passported UCIs	39	18	17	15	11
Sub-funds	**112**	**99**	**104**	**108**	**102**
Foreign passported UCIs	206	198	209	216	250
Sub-funds	**1 918**	**2 023**	**2 068**	**2 258**	**2 530**
Total UCIs	**405**	**374**	**411**	**410**	**432**
Total Sub-funds	**3 402**	**3 603**	**3 824**	**4 210**	**4 534**

The tendencies noted in recent years as regards the number of Belgian and foreign investment undertakings under supervision at the end of the calendar year have continued to be in evidence. That is, the number of supervised entities continues to increase. As is explained below, the pace of this growth is considerably higher for foreign harmonized investment undertakings than for Belgian ones.

Although the number of *Belgian UCIs* fell by 4.5% in 2008 (-3.2% in 2007), steady increase in the total number of *Belgian sub-funds* was recorded for the fifth year running, by 3.1% (+11.6% in 2007).

2008 also saw the total number of *foreign UCIs marketed in Belgium* (both passported and non-passported) rise once again, this time by 13% (+2.2% in 2007, +4.6% in 2006 as compared to sharp decreases in 2004 and 2005). The number of foreign *sub-funds* saw a steep rise of 11.2% (compared to increases of 8.9%, 2.4% and 4.5% respectively in 2007, 2006 and 2005). As is evident from the breakdown of the figures below, this increase, however, is due exclusively to passported foreign UCIs traded in Belgium.

Indeed, for the third year in a row the number of *foreign UCIs* with a UCITS passported has increased, and at a heightened pace, rising this time by 15.7% (in 2007 +3.3%, in 2006 +5.6%, in 2005 -3.8% and in 2004 -6%). The number of *sub-funds of passported foreign UCIs* also saw considerable growth, increasing by 12% (in 2007 +9.2% and in 2006 +2.2%). This increase once again confirms the successful integration of UCITS III. Of foreign harmonized products, 86% originate from Luxembourg.

As in previous years, the number of *non-passported foreign UCIs* continued to fall, decreasing by 26.7% (-11.8% in 2007 and -5.6% in 2006). In contrast to the past two years, the number of their *sub-funds* fell by 5.6%, thus returning to the trend noted in the period between 2000 and 2005 (i.e. the rises of +3.9% in 2007 and +5% in 2006 followed considerable decreases in the preceding years).

The *UCIs for which the CBFA is the first-line supervisor* (namely, UCIs governed by Belgian law and foreign non-passported UCIs) accounted for 42.1% of all collective investment undertakings marketed in Belgium and 44.2% of all *sub-funds* marketed in Belgium, as at 31 December 2008 (compared to 47.3% and 46.3% respectively as at 31 December 2007).

3.2. Points of focus and key themes in the supervision of UCIs in 2008

In the particularly difficult context of the financial crisis, the CBFA's activities concentrated on monitoring the liquidity of open-ended UCIs. Information from other Member States has shown that lack of liquidity on the financial markets could in some cases induce a UCI to decide to suspend repurchase orders or even to transfer certain illiquid assets to a special purpose vehicle (the so-called "side-pocket" mechanism).

Open-ended UCIs governed by Belgian law, which come under the CBFA's supervision, have thus been asked to report monthly on the status of subscription and redemption orders. These reports, attached to the quarterly statistical information the UCIs submit to the CBFA, are used as a tool to detect any potential liquidity problems on the Belgian collective investment market.

Analysis of this information has not, to date, given the CBFA reason to take any particular action. Only a few Belgian UCIs have had to suspend, and for a very brief time only, their subscription and redemption orders following the turbulence observed at the end of 2008 on the Russian market.

Given the significant market share represented by UCIs with fixed maturity and capital protection, the CBFA asked promoters of such UCIs to submit an additional report with specifics that make it possible to verify that the value of the assets allocated to providing this protection is sufficient to meet commitments at maturity.

The aforesaid initiatives were reported to CESR, which coordinates similar national actions at European level.

Moreover, and in light of the first lessons to be learned from the Madoff fraud perpetrated in the United States, the CBFA conducted a survey among UCI managers established in Belgium as well as among the depositaries of Belgian UCIs, in order to ensure that the internal procedures of these entities with regard to the selection of investments and the choice of sub-depositors respectively have been duly followed. Ten UCI sub-funds reported a very slight indirect exposure to the Madoff funds, via an investment in another UCI or in a structured instrument. This information was conveyed to CESR. Moreover, no Belgian UCI depositary reported having been affected by the Madoff affair as regards activities conducted on behalf of these UCIs.

As regards the development of national regulations, it should be mentioned that the Royal Decree of 1 October 2008[77] transposes the Eligible Assets Directive[78]. Adopting this legislation provided the opportunity to refine the Belgian UCI regulations, including those concerning advertising standards[79], in close consultation with the sector. In implementation of the Law of 20 July 2004, a completely new framework was developed for public *pricafs/privaks*, imposing the IFRSs as the accounting standards for these investment undertakings.

On the international front, in addition to the above-mentioned contribution to the European coordination of information relating to the crisis, the CBFA participated, within the CESR Expert Group on Investment Management, in the activities of the Operational Task Force (OTF), the goal of which is to achieve operational convergence of European supervisory practices with regard to collective portfolio management. The OTF has, over the past year, focused its efforts particularly on drawing up principles of sound risk management, as well as on harmonizing the methods for calculating the risk arising from derivative instruments. The CBFA has also taken part in other activities relating to finalizing the form and contents of a document entitled *Key Investor Information*, which will replace the simplified prospectus once the UCITS IV Directive[80] has entered into force. Finally, the CBFA also lent its expertise to the negotiations concerning amendment of the UCITS Directive that were held at the Council during the fourth quarter of 2008.

4. Supervision of financial information and markets

4.1. Supervision of financial transactions

The supervision of financial transactions is intended to ensure the proper application of the Law of 16 June 2006[81] with regard to the public offering of investment instruments or their admission to trading on a regulated market, and of the Law of 1 April 2007[82], as regards takeover or squeeze-out bids. This is done via the approval of the prospectus and/or of advertisements relating to the bid. With regard to takeover and squeeze-out bids, supervision is also intended to ensure the correct use of the bidding procedure.

77 Royal Decree of 1 October 2008 modifying the Royal Decree of 4 March 2005 regarding certain public undertakings for collective investment, Belgian Official Gazette, 28 October 2008, p. 57258.
78 Commission Directive 2007/16/EC of 19 March 2007 implementing Council Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as regards the clarification of certain definitions.
79 See the report of the Management Committee, p. 34.
80 Directive *2009/65/EC* of the European Parliament and the Council on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (recast).
81 Law of 16 June 2006 on public offers of investment instruments and admission of investment instruments to trading on regulated markets, Belgian Official Gazette, 21 June 2006.
82 Law of 1 April 2007 on takeover bids, Belgian Official Gazette, 26 April 2007.

Operations on equity securities

	2006	2007	2008
IPOs	**20**	**19**	**11**
on Euronext Brussels	7	9	4
on Alternext	4	2	1
on the Free Market (Marché libre/Vrije Markt)	9	8	6
Admissions of new issues by companies listed on Euronext Brussels	**15**	**12**	**14**
Takeover bids in cash or securities, squeeze-out bids	**16**	**22**	**5**
Issues and/or admissions of warrants	**15**	**13**	**7**
Special reports on the basis of Article 583 of the Code on Companies	**25**	**35**	**34**
Other	**24**	**23**	**26**
Total	**115**	**124**	**98**

2008 was characterized by a significant decrease in IPOs as compared to the two preceding years. This tendency was evident above all on the regulated market. Eleven companies were admitted to the various markets organized by Euronext Brussels: four companies to the regulated market and seven to a "multilateral trading facility" (MTF). The duality already observed in earlier years between major operations and very small operations on the Free Market remains. IPO prospectuses for companies admitted to trading on Euronext Brussels or Alternext are prepared on the basis of schedules provided in annex to Commission Regulation (EC) No 809/2004. Certain provisions in these schedules have been the subject of recommendations by CESR for the consistent implementation throughout the Member States of the European Economic Area (EEA). Details may be found in the FAQ published on the CESR website under the heading "Prospectus level 3".

2008 was also marked by a sharp decrease in the number of takeover bids. There were three voluntary takeover bids (for ICOS Vision Systems Corporation, Innogenetics and West Vlaamse Bank) and two mandatory takeover bids (for Accentis and Air Energy).

Non-equity securities operations

	2006	2007	2008
Issues and/or admissions of investment instruments in which the capital is subject to market risk	**309**	**217**	**134**
issued from within Belgium	7	0	11
issued from within another EEA Member State or non-EEA State	302	217	123
Issues and/or admissions of investment instruments in which the capital is not subject to market risk	**166**	**194**	**199**
issued from within Belgium	33	39	45
issued from within another EEA Member State or non-EEA State	133	155	154
Bank savings certificates, subordinated liabilities and capitalization bonds	**5**	**6**	**4**
Total	**480**	**417**	**337**

The significant decline in the number of operations is the result of the decrease in the number of operations performed under the European passport and relating to debt securities without protection of capital at maturity. The number of operations performed under the European passport with capital protection remains stable. It should be remembered in this regard that the CBFA is not authorized to supervise the suitability of the products issued. However, where advertising materials are used, these must be submitted for approval to the CBFA, which verifies that the advertisements do not contain any incorrect or misleading information. The law does not require such documents to be complete, for that would amount to introducing the obligation of a mini-prospectus and could, in case of a passported operation, be considered an obstacle to the internal market. It is only if the information contained in advertising materials is likely to be misleading that the CBFA can ask that they be made clearer or more complete. In order to increase the predictability of its actions in this regard, the CBFA has drawn up recommendations in this area (see below).

European passports

Approval declarations per supervisory authority	Complete prospectus	Base prospectus	Supplement to the prospectus	Supplement to the base prospectus	Total
AFM (Netherlands)	4	16	3	62	**85**
AMF (France)	11	6	0	32	**49**
BAFIN (Germany)	2	18	1	41	**62**
CSSF (Luxembourg)	31	37	31	169	**268**
FSA (United Kingdom)	15	20	21	88	**144**
IFSRA (Ireland)	12	24	19	39	**94**
FMA (Austria)	0	1	0	1	**2**
Total	**75**	**122**	**75**	**432**	**704**

The above table shows the number of passports notified to the CBFA and their origin, and is indicative of the extent to which the Prospectus Directive[83] is functioning. It should be noted, however, that where the passport applies to a base prospectus, there are often several operations based on the same prospectus that are carried out within a single bid programme; this explains the difference between the number of passports received and the number of operations shown in the previous table. Twelve operations for which the prospectus was approved by the CBFA were passported, at the issuer's request, to 25 countries, among which the principal ones were the Netherlands (11), the United Kingdom (7), France (6) and Germany (6). Certain operations were passported to several countries.

■ ■ ■

83 Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC, OJ L 345, 31 December 2003, p. 63.

On 22 April 2008 the CBFA published its recommendations regarding advertising materials. They stipulate that all advertising, regardless of the medium used, must be submitted for approval to the CBFA, which verifies that it does not mislead the public. Such advertising is not intended, however, to replace the prospectus, which contains regulatory information. These recommendations are commented on in greater detail in the report of the Management Committee[84].

The CBFA updated the circular on the procedure for submitting and handling dossiers, with a view to promoting as far as possible the use of email and thereby alleviating the constraints on issuers.

Finally, the CBFA submitted its observations to the European Commission within the context of the consultation on the review of the Prospectus Directive. The CBFA called, especially in light of the experience of Lehman Brothers, for the minimum investment threshold below which no prospectus is required to be raised from EUR 50 000 to EUR 250 000, and for the Directive to put an end to organized forum shopping, which makes it possible for a prospectus to be approved in a State in which no public offer is made. The CBFA also conveyed its opinion that the system consisting of a base prospectus supplemented by operational notes and by final terms not subject to supervision is not appropriate for complex products and does not fulfil the Prospectus Directive's objective of investor protection. It therefore emphasized the need for a thorough rebalancing of this Directive in favour of protecting the public.

4.2. Supervision of financial information on a continuous basis

4.2.1. Activity reports

In the course of 2008, the CBFA's supervisory activities concerned 133 Belgian issuers, 4 foreign issuers, 26 real estate certificates and 16 UCITS whose securities were admitted to trading on a regulated market.

The financial crisis had a significant impact on the supervision of financial information during the last few months of 2008. In addition to its specific action with regard to listed financial institutions, described elsewhere in this report, the Supervision of Financial Information Department focused its attention, from the beginning of the crisis, particularly on the consequences of the crisis for listed companies. To this end, it adapted its action items for use in supervising the information provided by listed companies, targeting in particular their liquidity and solvency, credit risk, market risk, the evaluation of assets and particularly of financial assets, going concern value, etc. Finally, in early 2009 it launched an enquiry specifically into the impact of the crisis on all listed companies, the results of which are being used to guide the supervision carried out in 2009.

2008 saw the entry into force of the Royal Decree of 14 November 2007 on the obligations of issuers of financial instruments admitted to trading on a regulated market. This decree transposes into Belgian law the component of the Transparency Directive that relates to the obligations of issuers. As described in its 2007 Annual Report, the CBFA sought first of all to inform the market of the developments and the new obligations that this regime brought in its wake. One of its chief concerns was of course to provide the best possible support to companies affected by the new regulations, with particular attention to compliance with the new provisions such as the requirement of an intermediate report.

This was indeed the first time that issuers were required to publish either an interim management statement twice a year or quarterly financial reports. At the end of the first quarter of 2008, the CBFA investigated whether this new obligation had been met. The results of that study were published in the CBFA's "Studies & Documents" series and communicated to the companies concerned. The CBFA noted, in particular, that while the majority of companies opted to publish an interim statement rather than a full quarterly report with figures, the contents of these interim statements were generally more extensive than the legal minimum. The CBFA made use of this study to draw the attention of issuers to a series of points that could be improved in this area.

84 See the report of the Management Committee, p. 34 (available in French and Dutch only).

In addition, for companies listed on a regulated market, the decree introduced the obligation to publish a half-yearly financial report (replacing the much more limited half-yearly communiqué). Such half-yearly financial reports must include, among other things, brief financial overviews (prepared in accordance with IAS 34 Interim financial reporting[85]), an interim management report, a statement by the persons in charge and information about external control, and must be published within two months (instead of three months, as was the case with the former communiqué). The Accountancy and Finance unit has examined whether the listed companies complied with these new obligations. In so doing, they noted that more than half of the companies needed to make a number of adjustments in order for their half-yearly financial report to fulfil the new requirements. The results of this investigation were also published by the CBFA. The study was also sent to the companies concerned and used for the purposes of the CBFA's supervision of those companies.

The year under review also saw the entry into force on 1 September 2008 of the law implementing the second component of the Transparency Directive, namely, the notifications of major holdings. These provisions were transposed into Belgian law by the Law of 2 May 2007 and the Royal Decree of 14 February 2008. In order to enable shareholders and companies to implement the new provisions, the CBFA drew up a user's guide and an electronic form. This new regime, significantly different as it is from the previous one, provided for a transitional period of 2 months in the course of which all shareholders with holdings which, prior to the Law's entry into force, were above the threshold that triggers the notification obligation were required to make a transitional disclosure, in order to give a complete overview of the shareholding structure of listed companies under the new legal framework. 433 transitional disclosures were handled by the CBFA staff.

As in previous years, the CBFA organised its supervisory activities on the basis of its risk model. In the course of its supervision, it made use in one instance of its power to publish a notice. Moreover, the Supervision of Financial Information and the Accountancy and Finance units worked closely with Supervision of Financial Transactions on several cases involving securities issues or takeover bids.

During the year under review, the CBFA also developed an electronic model that allows for a structured and standardized reporting on the results of the checks conducted on a listed company. The purpose of this model is, on the one hand, to provide information on the scope and nature of the checks conducted and, on the other hand, to give a concise overview of the principal action items and problems that came to light, the solutions found or the follow-up that has been or has yet to be done.

In the international arena, the CBFA took part in the meetings of the European Enforcers' Coordination Sessions (EECS), at which the European regulators discussed, among other things, cases they encountered involving the application of IFRS norms as well as the decisions recorded in the EECS database. The purpose of these sessions is to ensure European-wide coordination and convergence in the application of the IFRSs and of their supervision by the various regulators.

In the area of supervision of financial information, the CBFA continued to participate in the CESR Credit Rating Agencies Task Force and is also represented on Standing Committee 1 (SC1), which reports to the Technical Committee of IOSCO[86]. SC1 is responsible in particular for monitoring the international accounting standards (IFRSs) and international standards in auditing (ISAs). The work done in 2008 focused in particular on the *Principles for Periodic Disclosure by Listed Entities, the Principles for Public Offerings and Listings of Asset-Backed Securities* and the implementation of a database containing the decisions taken by regulators regarding the application of IFRSs.

85 For issuers who must draw up consolidated annual financial statements or the simplified annual financial statements according to IAS/IFRS.
86 International Organisation of Securities Commissions.

The CBFA, via the CESR-Fin group, also took an active part in drafting the *CESR statement on fair value measurement and related disclosures of financial instruments in illiquid markets*[87] and the *CESR statement on the reclassification of financial instruments and other related issues*[88]. Contacts were also made regarding this matter with members of the IASB and of IFRIC.

4.2.2. Supervision in 2009

The CBFA has adjusted its risk model, which serves as the basis for its supervision, in order that in 2009 it may take into account the impact of the financial and economic crisis. Similarly, the CBFA adjusted its *IFRS check-list*[89] in light of the developments in IFRS norms and of the decisions taken in this regard by the European regulators[90].

In 2009, the CBFA will focus its supervision of securities issuers in particular on the effects of the economic and financial crisis and on the way issuers communicated with the public about the effects of the crisis. As regards the IFRS, the CBFA has selected a number of crisis-related topics that are to be investigated systematically in the course of supervision along with the correct application of a number of other norms relevant to the firm in question. Thus, for instance, particular attention will be paid to the accounting for special impairments of goodwill and intangible assets and the required explanations of the impairment tests (IAS 36), the valuation and classification of financial instruments (IAS 32 and 39), the disclosure of information on financial instruments (IFRS 7), the information on sources of estimating uncertainty and the implementation of restructuring.

4.3. Market supervision

4.3.1. Activity reports

During the period under review, interventions by the CBFA's market room were as follows:

	2005	2006	2007	2008
Treatment of information received, sought or analysed	409	234	302	280
Financial instrument monitoring	196	183	247	158
Request for information from issuers or market players	124	66	145	108
Request for suspension of trading	32	34	35	27
Pre-analysis of stock exchange offences	113	72	72	31
Replies to questions on market supervision	158	25	85	85

87 CESR ref. 08-713b, 3 October 2008.
88 CESR ref. 08-937, 7 January 2009.
89 See CBFA Annual Report 2006, p. 66 and 67.
90 These decisions are recorded in the *European Enforcers' Coordination Sessions (EECS)* database.

2008 was obviously marked by the financial crisis, which led in the second half of the year to numerous interventions by the market room, and notably to several suspensions of trading - often for relatively long periods of time - in order to allow for information to be provided to the market on important matters relating to the situation of the issuers in question. Similarly, the market surveillance service focused a large part of its activity in the second half of 2008 on research into and comparison of financial information in the Belgian and European financial sector. This enabled it to assess the developments among Belgian listed entities within this sector and to carry out its responsibilities more effectively.

At the end of September, Belgium, like many other countries, banned the short selling of financial securities in order to reduce speculation on these firms. Similar measures were taken simultaneously with France and the Netherlands, both members of the College of Euronext Regulators, in order to avoid any distortion in cases of dual listing. Under the terms of this provision, the CBFA has published the disclosures of short positions which it received.

In 2008, the market room also managed 28 postponed disclosures of inside information[91], as compared to 41 in 2007.

4.3.2. Objectives

The main objectives for 2009 are to optimize the department's market supervision in a constantly changing market, and to be particularly attentive to the effects of the crisis on the markets and on issuers.

4.4. The fight against market abuse

Since 1 June 2003, the CBFA has opened a total of 215 investigations into possible cases of market abuse or possible infringements of the laws governing financial service provision. The average length of an investigation is between 18 and 24 months, depending on its scale and more particularly on the number of requests for international cooperation.

Table of investigations

	2003	2004	2005	2006	2007	2008	evolution 2003-2008
Number of cases carried over	102	108	86	76	91	65	**102**
Investigations opened	32	50	40	33	26	27	**208**
Investigations closed	26	72	50	18	52	30	**248**
Ongoing investigations	108	86	76	91	65	62	**62**

91 Pursuant to Article 10 of the Law of 2 August 2002; see the 2005 report of the Management Committee, p. 81.

These investigations led to the determination, in 39 cases, that there were serious indications of an infringement of one or more laws. Upon the decision of the Management Committee, these cases were referred to the investigations officer.

These concerned indications of infringements against provisions on insider dealing[92], market manipulation[93], public offers of securities[94], the obligations of issuers of financial instruments and the obligation to disclose transactions[95] [96].

Notifications received

Since the entry into force of preventive measures (10 May 2006), financial intermediaries are obliged to inform the CBFA of any suspicious transactions that might be indications of market abuse. This is a regulatory obligation, and failure to comply with it may be sanctioned by the CBFA. There has been satisfactory progress in the number of notifications made.

Notifications received

Disclosure of transactions

This notification obligation, together with the disclosure of transactions by managers or by persons closely associated with them, constitutes the essence of this preventive measure. As regards this last point, the observation made last year remains valid, namely, that there is a satisfactory level of awareness of this obligation. Thus in 2008 there were 1117 notifications of transactions by senior managers of more than 93 listed companies. The majority of these notifications concerned share transactions (82%). Transfers of shares resulting from the exercise of options or warrants granted as part of a remuneration policy represented 14% of the notified transactions.

92 Article 25, § 1, 1°, of the Law of 2 August 2002.
93 Article 25, § 1, 2° to 4°, of the Law of 2 August 2002.
94 Law of 22 April 2003 on public offers of securities.
95 Royal Decree of 31 March 2003 on the obligations of issuers of financial instruments admitted to trading on a Belgian regulated market and Royal Decree of 31 March 2003 on the reporting of transactions in financial instruments and on the storage of data.
96 For a complete overview of the cases handled by the investigations office, broken down according to the nature of the indications of an infringement, see the present report, p. 81.

International coordination

CESR-Pol, in addition to serving as an operational consultation platform for market supervision and cooperation on cross-border investigations, contributed during the period under review to developing guidelines on certain aspects of the regulations intended to prevent market abuse[97]. In particular, attention was paid to the lists of persons privy to inside information, the obligation to report suspicious transactions, safe harbours for buy-back programmes and stabilization activities, and the notion of 'inside information'. In addition, a task force was set up to investigate whether a regulatory framework for short selling is needed.[98]

Review of the Market Abuse Directive

In 2008, the European Commission began its review of the Market Abuse Directive. To this end, the European Commission organised a public conference in Brussels, in which the CBFA actively participated. A public consultation was also held. In its response to this consultation, the CBFA supported the joint response by CESR, and in addition made a number of specific points such as the need for certainty as to the meaning of 'use of inside information', and a request to consider introducing an exemption to the notification obligation for company managers regarding all transactions arising from the remuneration policy of securities issuers (share option schemes, bonus shares, etc.). The CBFA also appealed for a consistent administrative sanctions procedure in the EU that includes mandatory immediate publication, by name, of administrative sanctions imposed.

Short selling

Belgium, like several other countries, introduced temporary measures regarding short selling in light of the extreme turbulence on the financial markets[99]. These measures were extended several times, given that the financial markets had not fully returned to normal and that similar temporary regulations were still in force in neighbouring countries as well.

The CBFA takes the view that an interim system will in due course need to be introduced, under which the prohibitions (and the CBFA's recommendation with regard to securities lending) are lifted, but the notification obligation for short positions remains in effect, while awaiting a definitive arrangement based on the outcome of international discussions. When the prohibitions are lifted, it will be important to ensure that infringements of the temporary trading bans remain punishable.

4.5. Supervision of market operators

The supervision of market operators covers the activities of Euronext Brussels SA/NV, the Belgian Securities Regulation Fund (*Rentenfonds/Fonds des rentes*) and the markets organized by these entities.

With regard to Euronext, the CBFA acts in conjunction with the British, French, Dutch and Portuguese supervisors. The core activity of the College of Euronext Regulators in 2008 consisted of the migration of the market to its new IT platform, known as UTP. The College granted the regulatory authorizations necessary for this transition and undertook a limited audit of the NYSE Euronext group's Risk and Audit Services in order to determine to what extent the supervisors could rely on the work of that department when conducting their supervision. The migration did not bring to light any particular problems.

5. Protection of consumers of financial services

Much of the legislation with which the CBFA supervises compliance contains rules intended to protect consumers of financial products and services.

These rules vary significantly in nature and will be discussed in various sections of this report. For instance, there are specific rules as regards information and publicity relating to the sale of financial products for which a

97 See www.cesr-eu.org, *Guidelines - Market Abuse Directive - Level 3 - Third set of CESR guidance and information on the common operation of the Directive to the market*, CESR/09-219, 15 May 2009.
98 See CESR's public statement of 20 January 2009 (CESR 09/069), available on www.cesr-eu.org.
99 See the present report, p. 63.

prospectus must be published[100], including information and publicity relating to undertakings for collective investment[101]. In addition, investment services concerning financial instruments are also subject to rules intended to protect clients[102].

In this chapter, we will take a closer look at the CBFA's efforts to promote financial literacy on the part of consumers of financial services, at the specific rules aimed at protecting savers, investors and insurance policyholders from illegal offers of financial products or services, at the handling of complaints and at work done on the protection of insurance consumers and mortgagors.

5.1. Consumer information and promoting financial knowledge

Report on the promotion of financial knowledge in Belgium

In last year's report, the CBFA announced that the federal government had asked it to draw up a detailed report on the financial education of the public, taking stock of the needs in this regard and inventorying what is already being done and what more could be done in this area[103].

In September 2008 the CBFA submitted its "Report on the promotion of financial knowledge in Belgium" to the federal government. The starting points for this report were the recommendations and principles drawn up by both the OECD and the European Commission, as well as the numerous discussions that the CBFA had conducted with institutions that are in contact with consumers of financial services as well as with experts in financial matters.

The report suggests that a great deal of information is available on financial matters, but that this information does not sufficiently reach its target audience. Furthermore, the report shows that there is room for considerable improvement in the financial knowledge on the part of the public. It also provides pathways to improving this knowledge. These are designed to meet the needs of individuals more closely, and to make financial information and education more readily accessible and comprehensible. The CBFA thus proposed creating a specialized institute, such as exist in neighbouring countries, tasked with, among other things, promoting consultation among the various players in this area as well as combining and coordinating efforts to promote financial knowledge.

At the end of October 2008, the CBFA launched a public consultation on this report, which wrapped up at the beginning of January 2009. Given that the approaches proposed in the report were generally well received, the CBFA considers that it would be useful to provide the federal government with a follow-up report on the priority steps that could be taken in the short term in the area of financial education, on the role of the institute that is to be established for the purpose and on the workings of the institute. The report will be drawn up with the help of an informal work group to be made up of persons who, by virtue of their knowledge and experience in this field, are particularly well placed to advise the Belgian government on this matter.

Activities of the OECD in the area of financial education

On 28 March 2008, the OECD Council approved two recommendations: one on good practices for enhanced risk awareness and education on insurance issues[104] and one on sound practices in financial education relating to private pensions[105].

Moreover, in early 2008 the OECD launched the *International Gateway for Financial Education (IGFE)*[106] web site to serve as a tool to exchange information, experiences and expertise in the field of financial education. In parallel with this initiative, the OECD also set up the *International Network on Financial Education (INFE)*, a network of government experts in the field of financial education from both OECD Member Countries and non-member economies. The members of this network discuss

100 See the present report, p. 58.
101 See the present report, p. 57.
102 See the present report, p. 71
103 See the CBFA Annual Report 2007, p. 82.
104 See: www.oecd.org/dataoecd/3/44/40537762.pdf
105 See: www.oecd.org/dataoecd/4/21/40537843.pdf
106 See: www.financial-education.org

new developments, experiences and programmes in the area of financial education, exchange information on good practices in this field and take part in drawing up OECD recommendations in this regard. The CBFA was invited to join this network.

Brochure on MiFID

In 2008, the CBFA published a brochure in French and Dutch based on the publication by the Committee of European Securities Regulators (CESR) entitled *A Consumer's guide to MiFID. Investing in financial products*[107]; the CBFA brochure is part of a series of publications on "Financial services: a closer look". The brochure informs consumers of financial services of the rights they enjoy under MiFID.

5.2. Protecting the public from illegal offers of financial services

In light of its mandate to protect the public from illegal offers of financial services (also known as "perimeter control"), the CBFA received a large number of written requests for information in 2008 (330 requests, as compared to 343 in 2007), as well as many telephone requests.

On the basis of third-party notifications or its own enquiries, the CBFA opened 130 dossiers for further investigation in 2008 (compared to 251 in 2007).

The CBFA published 17 warnings in the course of 2008 (compared to 12 in 2007)[108].

The CBFA also publishes on its web site the warnings from other European supervisors that are sent to it by the secretariat of CESR-Pol. In 2008, 122 such warnings were published (compared to 94 in 2007).

5.3. Complaints in the insurance and banking sectors

Survey of the first-line handling of complaints

Pursuant to Article 16 of the CBFA Regulation of 5 June 2007 on organizational requirements for institutions that provide investment services, these institutions must have effective and transparent procedures in place for handling complaints from non-professional clients; these procedures are expected to deal with complaints in a reasonable and rapid manner. After the entry into force of this provision, the CBFA paid particular attention to the problem of handling customer complaints, as regards both financial institutions and financial products as a whole.

During the reporting period, the CBFA sent out a questionnaire to a number of regulated institutions (credit institutions, investment firms and insurance companies) in order to gain an overview of the way in which they handle customer complaints.

The CBFA was able to ascertain that most institutions in the group surveyed had developed a suitable set of instruments for handling customer complaints. It also noted a few weaknesses, however. Thus a majority of the institutions consulted appear to provide their customers either with no information, or with information that is incomplete or difficult to access, concerning their customer complaint procedure and their contact persons or complaints department. Nearly half of the institutions have no service devoted specifically to handling customer complaints. In about a third of the institutions, the way complaints are handled could raise questions as to the independence and objectivity of their complaints procedure.

After receiving the results of the entire survey, and in response to the CBFA's suggestion, the professional association for the banking and investment sector indicated that they would update the sectoral code on consumer complaints[109].

107 See: www.cbfa.be/fr/cob/bro/pdf/cbfa_mifid.pdf
108 See: www.cbfa.be/eng/press/arch/f3.asp
109 The insurance sector updated its code of conduct in May 2008.

Complaints

In 2008, the CBFA received 149 complaints regarding the insurance sector and 159 complaints concerning the banking and investment sector. The CBFA referred the complainants to the appropriate ombudsmen, since it does not have the competence to handle individual complaints outside the area of mortgage credit and supplementary pensions[110].

5.4. Activities relating to insurance

Supervision of policy conditions and publicity

Enquiry into cases of *faute lourde* (gross fault)

In order to determine whether policy terms and conditions are compliant with the insurance legislation, the CBFA conducts non-systematic ex-post checks. In this context, it asked a number of representative non-life insurance companies for information on the conditions under which the insurer could be released from its obligations in certain cases of *faute lourde* (gross fault). Pursuant to Article 8 of the Law of 25 June 1992 on terrestrial insurance policies, the obligations of the insurer can be waived in cases of *faute lourde* that are specifically and explicitly defined in the policy. Article 88 of the same law gives insurers the right to recover from the insured in civil liability insurance. The CBFA examined how cases of *faute lourde* are described in certain insurance policies. In the context of this enquiry, the CBFA also looked into the sorts of cases where insurers levied the charge of *faute lourde* and those cases in which they sought recovery on grounds of *faute lourde*.

The CBFA's enquiry indicated that the terms and conditions of the policies in question were for the most part in compliance with the relevant legal provisions. As regards certain conditions, however, the CBFA was obliged to remark that they were not compliant with the aforementioned provisions, whether because the right to recovery was unlimited, because the concept of *faute lourde* was inadequately or not at all defined or because the burden of proof rested on the insured party.

The insurance companies in question have adapted their conditions based on these remarks. Furthermore, the CBFA asked the sector, via its professional association, to review its policy conditions regarding *faute lourde* and the insurer's recourse in case of *faute lourde* in the light of the observations that emerged from this enquiry.

Insurance of minor risks for the self-employed

Pursuant to the Law of 26 March 2007 laying down various provisions to include minor risks in mandatory health insurance for the self-employed, self-employed persons must take out insurance for minor risks from a mutual health insurance society. Insurance companies, for their part, had to stop providing a "minor risks" guarantee as from the entry into force of the Law, namely 1 January 2008.

The CBFA saw to it that the insurance companies repaid any excess premiums for the period after that date to the self-employed clients concerned.

Insurance against damages caused by terrorism

In implementation of the Law of 1 April 2007 on insurance coverage for damages resulting from terrorism, insurance and reinsurance companies that insure terrorism risk in Belgium have set up a non-profit association (*vzw/asbl*) with the aim of spreading amongst all its members the risk relating to the commitments that participating insurers need to honour should there be a terrorist attack. Pursuant to the same law and upon the request of the Minister of Finance, the CBFA gave its opinion on the articles of association of this non-profit association.

At the request of the said minister, the CBFA also provided an opinion on a draft royal decree implementing the aforementioned law on events that can be regarded as acts of terrorism as well as on the minimum insured amounts to be paid for each damage claim in accordance with the European motor vehicle liability directives.

110 See the brochure on "How to make a complaint", available (in Dutch and French only) on www.cbfa.be/fr/cob/kla/pdf/plaintes.pdf

European activities

Among the objectives that the Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS)[111] has set for itself is protecting the needs of the consumer of insurance and pension products. In order to support it in this regard, in 2008 CEIOPS set up the *CEIOPS CCP* work group.

This work group began by taking stock of the existing arrangements and market practices in the EU Member States in various domains of concern to the financial consumer, such as identification of the competent national authorities in the area of protection of financial consumers, the information that must be provided with regard to life insurance products, the definition of the concept of "general interest", the complaints procedure (the existence of a non-judicial complaints system, the possibility of introducing group claims), initiatives to improve the financial literacy of the financial consumer, and the functioning of the guarantee system for insurance products. With regard to insurance mediation, the work group is following up the implementation in the Member States of the European directive on insurance mediation and identifies the problems that arise in that regard, with a view to a future adjustment to the European regulatory framework.

Secretariat services for the Insurance Commission

In 2008, the CBFA provided secretariat services for eight meetings of the Insurance Commission and three meetings of the motor vehicle liability working group.

The Insurance Commission issued four opinions in 2008, which are published on the CBFA website (Dutch and French versions only) under the headings "CBFA - Adviesorganen / CBFA - Organes consultatifs".

5.5. Activities relating to mortgage credit

The table below indicates the movements in the list of mortgage companies.

	31/12/2007	31/12/2008	Difference
Insurance companies and pension funds	29	29	0
Credit institutions	39	38	- 1
Public institutions	5	5	0
Other institutions	121	123	+ 2
Total number of enrolled companies governed by Belgian law	**194**	**195**	**+1**
Registered companies established under the law of another Member State	**20**	**19**	**- 1**
Total number of registered and enrolled companies	**214**	**214**	**0**

In 2008, the CBFA enrolled or registered 8 companies, and the enrolment or registration of 8 other companies was deleted, chiefly as a result of mergers. At the end of 2008, the list of companies authorized to offer mortgage loans within the meaning of the Law of 4 August 1992 totalled 214 companies, of which 195 were enrolled and 19 registered companies.

Survey of interest rates on the mortgage credit market

In addition to its regular activities in the area of mortgage credit, namely, on the one hand the regular supervision of rates, documents and publicity that it is required to carry out pursuant to the Law of 4 August 1992 on mortgage credit, and on the other hand handling complaints, in 2008 the CBFA conducted a survey of interest rates on the mortgage credit market.

111 See www.ceiops.eu.
112 Directive 2002/92/EC of 9 December 2002 on insurance mediation.

Article 43, § 6, of the Law of 4 August 1992 lays down that mortgage loan companies must submit their rates to the CBFA for approval before publishing them. Article 47, § 2, third paragraph, of the same law provides that parties can agree on lower or higher rates than what is stated in the prospectus, provided the said rates are more advantageous to the borrower or have been negotiated on his initiative.

At the beginning of 2008, the CBFA conducted a survey in order to gain a better sense of the interest rates being charged on the mortgage credit market and of the discounts applied. Fourteen mortgage loan companies were selected for the purpose, together representing around 74% of the market; two reference periods were chosen[113].

The survey shows that most mortgage companies apply credit terms that differ from the ones they mention in the rate schedule they submit to the CBFA, provided certain conditions are met. It also suggests that during the two reference periods, companies that gave discounts granted 75.8% and 79.3% respectively of their loans on terms that were more favourable than the official rate.

The survey also indicated that the discounts offered are quite considerable. The average difference between the rate offered and the official rates was 0.63% in the first period and 0.77% in the second period.

In sum, the survey showed that there are sometimes major differences in the way different borrowers are treated, and that borrowers have no idea what conditions must be met in order to obtain an interest rate lower than the one mentioned in the official rate table, or what margin there is for negotiation.

The CBFA communicated the general results of the survey to the Minister of Finance and to the Minister for Economic Affairs and Administrative Streamlining, and to the mortgage lenders' professional association. In its report, it emphasized that greater effort could be made in terms of transparency and information provision to borrowers, and to ensure that all borrowers are treated equally.

Activities with a view to amending the law on mortgage loans

In last year's report, the CBFA reported that a draft bill had been prepared at the request of the federal government, intended to introduce the status of mortgage intermediary[114]. There were no further developments with regard to this matter in 2008.

During the period under review, the CBFA drew the attention of the government to another aspect, namely the need to create an appropriate prudential status for mortgage companies that are neither credit institutions nor insurance companies.

European activities

As announced in its White Paper on the integration of European mortgage credit markets[115], the European Commission has asked for various studies to be carried out in order to be better informed before taking any initiatives in the field of mortgage credit.

During the period under review, the CBFA thus contributed to studies on the responsibility of the lender, on new products, on credit intermediaries and on the role and the supervision of credit providers other than credit institutions.

5.6. Activities relating to payment services

In its 2007 report, the CBFA mentioned the approval of European Directive 2007/64/EC of 13 November 2007 on payment services[116] [117].

In 2008 the CBFA, at the request of the federal government, drew up a draft bill intended to transpose part of this directive into Belgian law, namely the provisions concerning access by payment services and payment systems to the market and the introduction of a prudential status for payment institutions. The draft bill was submitted to the government in early 2009 with the proposal that a public consultation be held on the matter.

113 March 2007 and September 2007.
114 See the CBFA Annual Report 2007, p. 80.
115 White Paper on the integration of EU mortgage credit markets COM(2007) 807 final of 18 December 2007. See the CBFA Annual Report 2007, p. 80.
116 Directive 2007/64/EC of the European Parliament and the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and repealing Directive 97/5/EC, OJ L 319 of 5 December 2007, pp. 1-36.
117 See the 2007 report of the CBFA Management Committee, p. 11-30.

6. Supervision of intermediaries

The supervision of intermediaries, as defined by the Law of 27 March 1995 and by the Law of 22 March 2006, consists of three aspects:

- maintaining registers of insurance and reinsurance intermediaries and of intermediaries in banking and investment services;
- supervising compliance with the legal conditions for retaining such registration;
- recognizing courses which satisfy the legally defined requirements as regards professional knowledge.

6.1. Maintaining registers

6.1.1. The register of insurance and reinsurance intermediaries

Registration movements in 2008

In 2008, 2 252 insurance intermediaries were entered in the register, including 1 557 collective registrations. This was 176 more registrations than in 2007. In addition, two reinsurance intermediaries were registered in 2008.

In the year under review, 2 001 insurance intermediaries were removed from the register. This was 1 844 fewer deregistrations than in 2007. The majority of these (1 190) were collective registrations of insurance intermediaries deleted *ipso jure* after the termination of their collaboration with the relevant central institutions (compared to 2 549 in 2007). 631 insurance intermediaries relinquished their registration (compared to 1 003 in 2007). The registration of 172 insurance intermediaries was deleted or expired *ipso jure* on the grounds that the registration conditions (professional liability insurance, financial capacity, fitness and probity, payment of the registration fee, bankruptcy) were no longer fulfilled (292 in 2007). The registration of 8 insurance intermediaries was suspended, which means a temporary ban on the exercise of insurance intermediation activity.

As at 31 December 2008, 22 892 insurance intermediaries and 9 reinsurance intermediaries were registered, spread across the following categories:

Insurance intermediaries	Natural person	Legal person	Total as at 31/12/2008	% Total	Total as at 31/12/2007
COLLECTIVELY REGISTERED	**7 790**	**2 815**	**10 605**	**46.3%**	**10 405**
Agent	3 191	837	4 028		4 315
Sub-agent	4 599	1 978	6 577		6 090
INDIVIDUALLY REGISTERED	**4 327**	**7 960**	**12 287**	**53.7%**	**12 479**
Broker	2 772	5 946	8 718		8 766
Agent	1 202	1 692	2 894		3 052
Sub-agent	353	322	675		661
Grand total	**12 117**	**10 775**	**22 892**	**100%**	**22 884**

Reinsurance intermediaries	Total as at 31/12/2008	Total as at 31/12/2007
INDIVIDUALLY REGISTERED	**9**	**7**
Broker	8	6
Agent	1	1
Grand total	**9**	**7**

The European passport

In accordance with the European Directive 2002/92/EC, intermediaries registered in the register of another Member State of the European Economic Area (EEA) can notify their home country supervisory authority that they also wish to carry on insurance and reinsurance intermediation activities in Belgium, either under the free provision of services or via a branch. In turn, Belgian registered intermediaries can notify the CBFA that they wish to operate in one or more other EEA Member States under the free provision of services or via a branch.

Under this provision, in 2008 the CBFA received notification from 143 Belgian insurance intermediaries that they wished to carry on insurance intermediation activities in one or more other EEA Member States.

In turn, 798 intermediaries registered in another EEA Member State notified their supervisory authority in 2008 that they wished to carry on insurance intermediation activities in the Belgian market.

6.1.2. The register of intermediaries in banking and investment services

Since the entry into force of the Law of 22 March 2006, all intermediaries in banking and investment services who wish to be active in Belgium must be entered in the register.

Registration movements in 2008

In 2008, 244 new agents in banking and investment services were entered in the register. 3 brokers in banking and investment services were also registered.

235 agents in banking and investment services were removed from the register after the termination of their collaboration with the relevant regulated undertaking. The registration of 3 intermediaries was deleted because they no longer fulfilled the registration conditions. The registration of 6 intermediaries was suspended, which means a temporary ban on the exercise of intermediation in banking and investment services.

As at 31 December 2008, 4 412 bank agents and 5 brokers in banking and investment services were registered.

Intermediaries in banking and investment services	Natural person	Legal person	Total as at 31/12/2008	% Total	Total as at 31/12/2007
COLLECTIVELY REGISTERED	**804**	**2 627**	**3 431**	**78.2%**	**3 434**
Agent	804	2 627	3 431		3 434
INDIVIDUALLY REGISTERED	**245**	**741**	**986**	**21.8%**	**953**
Broker		5	5		2
Agent	245	736	981		951
Grand total	**1 049**	**3 368**	**4 417**		**4 387**

6.2. Supervision of compliance with the legal registration requirements

6.2.1. Updating of insurance intermediaries' registration dossiers

Pursuant to the Law of 22 February 2006 amending the Law of 27 March 1995 on insurance and reinsurance intermediation, all insurance intermediaries already registered before the entry into force of the Law of 2006 need to bring their registration dossier into line with the changed legal provisions.

In 2007, the CBFA sent out a circular to 4 888 individually registered natural persons and 7 451 individually registered legal persons, with a view to updating their dossier.

During the period under review, the answers to these mailings were checked, additional information or documents were requested where necessary, and the information was entered into the database.

As at the end of 2008, 4 165 registered natural persons had completed their dossier in accordance with the changed legal provisions, 348 had still to provide additional information or documents, and 375 had not yet responded either to the circular or to reminders.

Of the 7 451 individually registered legal persons, 3 685 had completed their registration dossier by the end of 2008, while 1 691 had still to provide additional information or documents, and 2 075 intermediaries had not yet responded to the circular.

6.2.2. On-site inspections

During the period under review, 73 on-site inspections of intermediaries were carried out. Such inspections make it possible, among other things, to check on the registration conditions which are difficult to verify on the basis of the submitted registration dossier, such as: dealing only with companies which have the requisite authorization, refraining from participation in activities which infringe the law and compliance with information provision requirements.

6.2.3. Suspensions and deletions from the register

Where the CBFA determines that an intermediary no longer fulfils the registration conditions or where there are serious doubts in this regard, its observations are brought to the attention of the intermediary in question and a deadline is set by which time the situation must be regularized.

If the identified shortcomings have not been remedied by that time, the CBFA may take administrative measures such as suspension of registration or deletion from the register.

Unlike in the case of deletion of a registration, in cases of suspension the entry in the register is maintained. Suspension means a temporary ban on the exercise of intermediation activity.

During the period under review, the CBFA took more decisions to suspend a registration than in other years. This had to do mainly with cases in which the intermediary neglected to submit data which he is legally required to provide.

Thus, in 2008, the registration of five insurance intermediaries was suspended because they failed to cooperate with the Insurance Ombudsman Service with regard to complaints handled by the latter service. The registration of an insurance intermediary for "life assurance" activity was also suspended because of the latter's refusal to respond to questions put to him on several occasions by the Belgian Financial Intelligence Processing Unit (CTIF-CFI). The registration of three intermediaries was suspended in order to offer them the opportunity to refute the serious doubts that had arisen regarding their fitness and probity. Finally, the registration of six agents in banking and investment services was suspended because after the termination of their agency agreement, they were no longer trading in the name of and for the account of any principal.

In nearly all cases, remedy of the shortcoming in question resulted in the lifting of the suspension, as a result of which the intermediation activity could be resumed.

In order to increase the visibility of the decisions to suspend the registration of an intermediary, the CBFA decided henceforth to report its decisions to this effect on the list of intermediaries it publishes on its website. If it appears that a temporary ban on intermediation activity is not being respected, the CBFA may decide to delete the registration of the intermediary in question and/or to warn the public explicitly.

6.2.4. Insurance intermediaries' obligations regarding information provision

In its previous annual report[118], the CBFA described the new obligations incumbent on insurance intermediaries with regard to the information he is to gather and provide to his clients. The report also indicated that insurance intermediaries' professional associations and Assuralia had drawn up sectoral documents covering this information obligation, and that the CBFA had responded positively to this initiative.

Over the period under review, the CBFA took the initiative of conducting an electronic survey in order to learn more about the specific ways in which insurance intermediaries fulfil the information obligation.

To this end, the CBFA, in consultation with the aforementioned professional associations, drew up a form consisting of two parts. The first part was purely informational: it reminded insurance intermediaries of the information they are required to give their clients under the Law of 27 March 1995. The second part consisted of a series of questions about the practices of intermediaries in their relations with consumers.

At the beginning of 2009, the survey was sent out to nearly 500 insurance intermediaries chosen on the basis of various criteria such as the type of registration, the category, the legal form and number of staff responsible for distribution.

In order to enable all intermediaries other than those in the chosen sample to participate on a voluntary basis to this survey, the CBFA posted the questionnaire in the form of a public consultation.

6.2.5. Continuing education

The Law of 27 March 1995 and the Royal Decree of 1 July 2006 implementing the Law of 22 March 2006 provide that professional knowledge on the part of intermediaries should be regularly updated.

During the year under review, the professional associations of insurance intermediaries (Feprabel, FVF, UPCA) and Assuralia, on the one hand, and Febelfin, in consultation with the professional associations of banking intermediaries (BZB and FZBA), on the other, drew up a code of conduct with regard to the obligation of regular updating of the skills of intermediaries and of those responsible for distribution. The CBFA welcomed this initiative[119].

6.2.6. FAQs on intermediation in banking and investment products

In order to respond to numerous questions on the implementation of the Law of 22 March 2006, in particular as to the professional expertise of public-facing staff, the CBFA published a new set of FAQs on its web site[120].

6.2.7. Business introducers in the insurance sector

Insurance companies and reinsurance intermediaries often use the services of third-party business introducers. These are often persons who, in the course of another professional activity, refer or introduce clients to insurance companies and insurance intermediaries (e.g. auto dealers, funeral undertakers, real estate agencies). Certain business introducers engage in activities by virtue of which they may fall within the scope of the Law of 27 March 1995.

In order to inform insurance companies and insurance intermediaries of the CBFA's interpretation as to whether or not activities of third-party business introducers qualify as insurance intermediation, the CBFA drew up an information letter and circulated it for consultation among the professional associations concerned. The information letter was approved at the beginning of 2009 and placed on the CBFA's web site.

118 See the CBFA Annual Report 2007, pp. 85-86.
119 See the report of the Management Committee, p. 29.
120 See the report of the Management Committee, p. 30.

6.3. Activities with a view to the amendment of the Law of 27 March 1995 and the Law of 22 March 2006

At the request of the Minister of Finance, the CBFA provided him with a number of texts in view of amending the legislation on insurance and reinsurance intermediation, on the one hand, and on intermediation in banking and investment services, on the other.

The legal and regulatory amendments envisaged include the following:

- in the context of the requirements with respect to professional knowledge (amendments common to both sectors):
  - the replacement of the requirement to have successfully "taken" a specialised course approved by the CBFA by the requirement to "pass an exam";
  - the elimination, on certain conditions, of the requirement to demonstrate one's professional knowledge in the event of an application for re-registration after a career interruption;
- elimination of the obligation to furnish proof of one's financial capacity by means of a surety or a bank guarantee (amendment specific to insurance and reinsurance intermediaries);
- arrangements for the status of an agent in banking and investment services who no longer has a principal (amendment specific to intermediaries in banking and investment services).

In December 2008, the Council of Ministers approved a preliminary draft law containing the amendments suggested by the CBFA.

7. Supervision of supplementary pensions: social aspects

7.1. Complaints and questions of interpretation

As in previous years, the CBFA examined a large number of requests for information and a few complaints about a pension institution (i.e. an institution for occupational retirement provision [IORP] or an insurance company) or an employer. The majority of the questions had to do with the interpretation of the applicable legislation concerning *inter alia* the procedures to follow in the case of transfers of reserves or changes to a pension commitment, the calculation of the acquired rights in case of a redemption or exit, return to an employer or the provisions regarding the information to be provided to members. Because of the legislation on discrimination adopted in 2007, this issue continued to be the subject of numerous questions.

As well as queries and complaints relating to social legislation and regulations, a growing number of questions had to do with purely prudential aspects. The Law on the supervision of institutions for occupational retirement provision (LIRP/WIBP) and its implementing measures continued to be the subject of questions raised both by IORPs or sponsoring undertakings and by consultants.

In all, 311 requests for information or complaints were recorded in 2008, a figure that has remained virtually unchanged from 2007 (341 requests for information and complaints).

7.2. Supervision of social aspects

Information on the current level of financing

There was no fundamental change to social legislation in 2008. However, the Programme Law of 27 April 2007 amended the Law on supplementary pensions for employees (LPC/WAP) and the Law on supplementary pensions for self-employed persons (LPCI/WAPZ) as regards the information to be provided to members on the current level of financing of accrued reserves. A few problems of interpretation arose in connection with the calculation of this level of financing.

For this reason, the CBFA drew up a draft circular on the calculation of the current level of financing of accrued reserves and of the guarantee, as referred to in Article 26, § 1, 5°, of the LPC/WAP, and a similar draft circular for the LPCI/WAPZ. The rules for calculating the level of financing (that is, taking account of the assets and the liabilities) are described in these circulars with regard to both insurance companies and IORPs; they also provide that it should be possible to present the level of financing either on an aggregate basis or per individual member, according to the IORP's preference.

The two draft circulars were submitted respectively to the Supplementary Pensions Commission and to the Commission for Voluntary Supplementary Pensions for the Self-employed, which both issued an opinion on the subject in late 2008[121].

The LPC/WAP draft circular was finalised and published as circular CBFA_2008_25 of 10 December 2008.

The LPCI/WAPZ circular was finalised in early 2009.

Social pension agreements for self-employed workers

Self-employed workers who enter into a social pension agreement receive a tax advantage, provided the conditions relating to the social dimension are fulfilled. A social pension agreement thus represents an intricate blend of social aspects, whose supervision is entrusted to the CBFA, and tax aspects, whose supervision lies within the competence of the Federal Public Service (FPS) Finances. Under a cooperation protocol signed by these two bodies, it has been agreed that the CBFA should be responsible for issuing a formal opinion on the correctness of the social pension agreements which are submitted to it. The procedure for requesting an opinion was the subject of Circular LPCI-1/WAPZ-1[122].

In 2008, the CBFA issued a favourable opinion in two cases, whereas in 2007, the CBFA had issued 27 favourable opinions. The list of formal opinions has therefore been updated[123] and is available on the CBFA's web site.

Constitution of Supplementary Pensions database

The "Constitution of Supplementary Pensions" database, once it is operational, will store data on second pillar supplementary pension schemes.

This database is intended, among other things, to enable the CBFA and the FPS Finances to oversee more systematically the compliance of supplementary pension plans with the relevant social and fiscal legislation. Moreover, it will make it possible to follow specific trends in second pillar pensions more closely, making the database an important instrument in the development of this pillar.

The legal basis for this database may be found in Articles 305 to 308 of the Programme Law (I) of 27 December 2006[124], the details of which are worked out in the Royal Decree of 25 April 2007[125].

The task of elaborating the specifics of the database was entrusted to a "supplementary pensions" working group, which began its activities in January 2008. In addition to representatives of the CBFA, participants in the group's meetings also included representatives of pension institutions, the SIGeDIS non-profit organization, the FPS Finances and the Crossroads Bank for Social Security.

This working group is entrusted with, among other tasks, providing a precise description of the data that should be submitted to the database and determining the point in time, the frequency and the manner in which these data should be submitted and processed.

121 Opinion No. 28 of 3 November 2008 of the Supplementary Pensions Commission, and opinion No. 8 of 14 November 2008 of the Commission for Voluntary Supplementary Pensions for the Self-employed.
122 Circular LPCI-1/WAPZ-1 of 5 December 2006 on the procedure for requesting a formal opinion as to the social nature of a sample pension agreement. See the 2006 report of the CBFA Management Committee, p. 106 and the CBFA Annual Report 2006, p. 62.
123 See the CBFA Annual Report 2007, p. 87.
124 Belgian Official Gazette of 28 December 2006.
125 Royal Decree of 25 April 2007 implementing Article 306 of the Programme Law (I) of 27 December 2006 (Belgian Official Gazette of 16 May 2007).

7.3. The secretariat of the commissions and boards

The Supervision of Pension Institutions and of Domestic Insurance Companies Department provides secretariat services to the four advisory bodies created by the LPC/WAP and the LPCI/WAPZ as well as to the working groups set up by these bodies.

The Supplementary Pensions Commission issued five opinions in 2008[126]:

- Opinion No. 24 - Draft CBFA regulation determining the life tables for the conversion of capital into income
- Opinion No. 25 - Application of Article 515*quater*, § 1, of the Income Tax Code 1992, inserted by Articles 27 and 61 of the Law on supplementary pensions and their tax system, and relative to certain additional social security benefits
- Opinion No. 26 - Scope of the concept of "other social purpose" provided for in Article 14 4 of the Royal Decree implementing the LPC/WAP
- Opinion No. 27 - Draft note by the CBFA on Social pension schemes
- Opinion No. 28 - Draft CBFA circular on the calculation of the current level of financing of accrued reserves and of the guarantee

The Supplementary Pensions Board did not issue any opinions in 2008.

The Commission for Voluntary Supplementary Pensions for the Self-employed issued one opinion in 2008[127]:

- Opinion No. 8 - Draft LPCI/WAPZ Circular - No. 2 on the calculation of the current level of financing of accrued reserves and of the guarantee, as referred to in Article 48, § 1, 4°, of the WAPZ.

The Board for Voluntary Supplementary Pensions for the Self-employed did not issue any opinions in 2008.

126 These opinions are available on the CBFA's web site. http://www.cbfa.be/fr/aboutcbfa/advorg/apwn/html/cap_adv.asp (available in French and Dutch only).
127 This opinion is available on the CBFA's web site: http://www.cbfa.be/fr/aboutcbfa/advorg/apzs/html/capz_adv.asp (available in French and Dutch only).

B. SANCTION DECISIONS

1. Identification by the Management Committee of serious indications of an infringement

If the Management Committee, while carrying out its legal duties, determines that there are serious indications of a practice liable to give rise to an administrative fine or if such indications are brought to its attention in a complaint, it refers the matter to the Secretary General in his capacity as investigations officer, so that he can investigate the charges and the defence[128].

During the period under review[129] the investigations officer was charged by the Management Committee with investigating the charges and the defence in five new dossiers.

These dossiers related to a total of nine natural or legal persons in respect of which the Management Committee determined that there were serious indications of a practice liable to give rise to an administrative fine.

It should be noted that a "dossier" is understood to mean the decision by the Management Committee to charge the investigations officer with an investigation pursuant to Article 70, § 1, of the Law of 2 August 2002; this decision may concern serious indications of an infringement of one or more laws identified in respect of one or more persons.

128 Article 70, § 1, of the Law of 2 August 2002.
129 That is, between 1 March 2008 and 31 December 2008.

2. Investigations of the charges and the defence by the investigations officer in the case of serious indications of an infringement

2.1. Summary of dossiers handled

The Secretary General of the CBFA, in his capacity as investigations officer, is responsible for investigating the charges and the defence in procedures for imposing administrative fines initiated by the CBFA Management Committee[130].

The investigations officer continued his tasks of investigating the charges and the defence of the various dossiers referred to him.

Under the investigations officer's direction, the staff of the Investigations Office performed the investigative work considered necessary to investigate the charges and the defence in the dossiers assigned to them in their capacity as rapporteurs, and examined the evidence collected in the light of the relevant legal provisions, with a view to compiling a draft report setting out the investigations officer's findings.

The investigations officer also drew on the specific expertise available within the various departments of the CBFA. During the period under review, one staff member from a department other than the Investigations Office was designated to serve as a rapporteur jointly with an Investigations Office staff member.

In the course of 2008, the investigations officer submitted to the Management Committee for approval two proposed agreed settlements within the meaning of Article 71, § 3, paragraph 1, of the Law of 2 August 2002, in respect of two dossiers that had been referred to him[131]. The investigations officer also submitted his findings to the Sanctions Committee regarding five dossiers which had been referred to him and made them available to the persons concerned, in accordance with Article 71, § 2, of the Law of 2 August 2002[132].

Proposed agreed settlements

The proposed agreed settlements drawn up by the investigations officer, accepted in each instance by the perpetrator of the practice in question and submitted to the Management Committee for approval, concerned:

- A legal person in a dossier concerning serious indications of non-compliance with its obligation to publish forthwith any significant new facts in its sphere of activity which are not in the public domain and which, by reason of their impact on its assets, its financial situation or the general course of its business, are likely to have a significant effect on the price of its financial instruments (Art. 6, § 1, 1°, of the Royal Decree of 31 March 2003 on the obligations of issuers of financial instruments admitted to trading on a Belgian regulated market).
- A natural person in a dossier concerning serious indications of insider dealing. More specifically, serious indications in respect of this natural person concerned possible infringements of the prohibition against any person who possesses information that he is aware, or ought to be aware, is inside information[133], acquiring or disposing of, or trying to acquire or dispose of, for his own account or for the account of a third party, either directly or indirectly, financial instruments to which that information refers (Article 25, § 1, 1°, a), of the Law of 2 August 2002)[134].

130 See the CBFA Annual Report 2004, p. 95, for a presentation of the role of the investigations officer in the procedure for imposing administrative fines and a description of the course of an investigation; see the CBFA Annual Report 2007, pp. 92-94 for a description of the recent changes to the investigative powers of the investigations officer.

131 A "proposed agreed settlement" is understood to refer to a proposal made by the investigations officer to the perpetrator of the practice, whether or not already accepted by the latter but, in accordance with Article 71, § 3, of the Law of 2 August 2002, not yet by the Management Committee.

132 When submitting his findings to the Sanctions Committee, the investigations officer notifies the perpetrator(s) of the practice in question that he is doing so. The perpetrator(s) may, at the registered office of the CBFA and on the days and at the times indicated by the investigations officer, inspect the dossier that has been compiled (Art. 71, § 2, of the Law of 2 August 2002).

133 "Insider information is any information of a precise nature which has not been made public, relating, directly or indirectly, to one or more issuers of financial instruments or to one or more financial instruments and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments or on the price of related financial instruments (Article 2, 14°, paragraph 1 of the Law of 2 August 2002).

134 In this dossier, the perpetrator of the practice subsequently made statements in the course of a hearing before the Management Committee, that led that Committee to conclude that this person no longer accepted the proposed agreed settlement. The Management Committee therefore determined that it could not take the decision pursuant to Article 71, § 3, paragraph 2, of the Law of 2 August 2002, and referred the dossier back to the investigations officer in order that he may conclude the investigation. The investigations officer then proceeded to draw up his findings and submitted them to the Sanctions Committee. See the present report, p. 83.

Findings submitted to the Sanctions Committee

The findings submitted by the investigations officer to the Sanctions Committee concerned:

- A natural person in a dossier relating to serious indications of insider dealing within the meaning of the aforementioned Article 25, § 1, 1°, a) of the Law of 2 August 2002.

- A legal person and three natural persons in a dossier concerning serious indications of insider dealing. More specifically, the serious indications concerned possible infringements of the aforementioned Article 25, § 1, 1°, a) of the Law of 2 August 2002, as well as possible non-compliance with the prohibition against any person who possesses information that he is aware, or ought to be aware, is inside information, disclosing that information to any other person, unless such disclosure is made in the normal course of the exercise of his employment, profession or duties (Article 25, § 1, 1°, b), of the Law of 2 August 2002) or recommending that a third party, on the basis of that inside information, acquire or dispose of, or induce another person to acquire or dispose of, financial instruments to which that information refers (Article 25, § 1, 1°, c) of the Law of 2 August 2002). As regards natural persons, the serious indications concerned, moreover, possible non-compliance with Article 25, § 2, of the Law of 2 August 2002 which, in the case of a company or other legal person, provides that the prohibitions laid down in § 1 shall apply to the natural persons who take part in the decision to execute a transaction or issue an order to trade on behalf of the legal person concerned. Finally, in the case of one of the natural persons, the serious indications also concerned possible non-compliance with the prohibition against any person who possesses information that he is aware, or ought to be aware, is inside information, inciting one or more other persons to perpetrate acts that, were he himself to perpetrate them, would be prohibited under Article 25, § 1, 1° to 5°, of the Law of 2 August 2002 (Article 25, § 1, 7° of the Law of 2 August 2002).

- A natural person in a dossier relating to serious indications of insider dealing within the meaning of the aforementioned Article 25, § 1, 1°, a) of the Law of 2 August 2002.

- A natural person and two legal persons in a dossier relating to serious indications of insider dealing within the meaning of the aforementioned Article 25, § 1, 1°, a) of the Law of 2 August 2002.

- A natural person and a legal person in a dossier relating to serious indications of insider dealing within the meaning of Article 25, § 1, 1°, a) and - as regards the natural person - § 2, of the Law of 2 August 2002.

■ ■ ■

From the time when the provisions of the Law of 2 August 2002 concerning the procedural rules for the imposition of administrative fines entered into force (1 November 2002) until 31 December 2008, the investigations officer was charged with investigating 43 dossiers concerning serious indications of one or more practices, by one or more persons, liable to give rise to an administrative fine. The investigations officer submitted his findings in 25 of these dossiers. Thus at the time of writing, 18 dossiers, relating to 42 persons, remained under investigation.

The dossiers which the investigations officer was charged with investigating concerned serious indications of infringements of one or more of the following legislative provisions[135]:

135 Two of the dossiers which the investigations officer was charged with investigating concerned serious indications of infringements of several of the legal texts mentioned in this table. As a result, the cumulative total of legislative texts referred to is slightly higher than the number of dossiers referred to the investigations officer.

Legislation concerned in cases where serious indications of an infringement were referred to the investigations officer

Cumulative list *(1 November 2002 - 31 December 2008)*

Law of 11 January 1993 on preventing the use of the financial system for purposes of money-laundering and the financing of terrorism	**7**
Law of 27 March 1995 on insurance and reinsurance intermediation and on the distribution of insurance	**1**
Law of 6 April 1995 on the legal status and supervision of investment firms, on intermediaries and on investment advisers (including conduct of business rules)	**3**
Law of 2 August 2002 on the supervision of the financial sector and on financial services	
1. Insider dealing	**19**
2. Market manipulation	**6**
Law of 22 April 2003 on public offers of securities (prospectus)	**2**
Royal Decree of 31 March 2003 on the obligation of issuers of financial instruments admitted to trading on a Belgian regulated market	**2**
Royal Decree of 31 March 2003 on the reporting of transactions in financial instruments and on the storage of data	**6**

2.2. The investigation process

Identification of subscribers to telecommunication services and localization of telecommunications

The Transparency Law has made changes to the investigative powers of the CBFA's investigations officer[136]. These changes follow from the transposition of the Transparency Directive, MiFID and the Market Abuse Directive[137]. Independently of the investigative powers conferred upon both him and the CBFA, the investigations officer also holds, since 2007, certain investigative powers entrusted to him exclusively.

The following new powers are now the subject of Articles 80 through 85 of the amended Law of 2 August 2002[138]:

- freezing of assets[139];
- identification of subscribers to telecommunication services and location of telecommunications[140];
- temporary ban on professional activity[141].

For the exercise of some of these investigative powers, the investigations officer must obtain the prior consent of an examining magistrate.

In response to a specific request for cooperation coming from the competent authority of another country, during the period under review the investigations officer made use, for the first time, of his new powers in respect of telecommunications.

136 See Articles 50 through 56 of the Transparency Law (Belgian Official Gazette, 12 June 2007). This Law entered into force on 22 June 2007.
137 Statement of Reasons, Doc. parl./Parl. St., Ch./Kamer, 2006-2007, 2963/001, p. 63.
138 See the CBFA Annual Report 2007, pp. 92-94, for an explanation of the scope and application of the investigations officer's new investigative powers.
139 Articles 80 (in case of emergency) and 82, 1°, *jo* 83 (other than in cases of emergency) of the Law of 2 August 2002.
140 Articles 81 and 82, 2°, *jo* 84 of the Law of 2 August 2002.
141 Articles 82, 3°, *jo* 85 of the Law of 2 August 2002.

This power consists of two elements, namely, the identification of subscribers to telecommunication services and the localization of the telecommunication.

The investigations officer may, upon written and reasoned decision, require the operator of a telecommunication network or the provider of a telecommunication service to identify the subscriber or habitual user of a telecommunication service, and to pass on identification data relating to the telecommunication services to which a given person subscribes or which are habitually used by a given person[142].

Where he considers that circumstances require telecommunications to be traced or the originator or recipient of telecommunications to be located in order to uncover the facts of the case, the investigations officer may, with the prior authorization of an examining magistrate, also require data about telecommunications or the location of the originator or recipient of the calls to be passed on to him[143].

The investigations officer must in each decision describe the circumstances that justify the measure, and take account of the principles of proportionality and of subsidiarity when justifying his decision.

The above-mentioned request from a foreign competent authority received during the period under review concerned an investigation that the said authority was conducting into a case of suspected market abuse. After analysing the information provided by that authority, the investigations officer was of the opinion that there were circumstances that made it necessary to trace telecommunications or to localize the source or destination of that telecommunication in order to investigate the transactions in financial instruments in question.

In light of the evidence of infringement in the information provided by the authority in question and the seriousness of the alleged infringements, the investigations officer deemed that the request did not constitute a breach of the right to privacy. Considering that other investigative methods could not lead to the same result, he deemed that in the case in question, the exercise of his powers in respect of telecommunication was consistent with the principle of subsidiarity.

This first application of the new investigative powers gave rise to a number of questions, including the designation of the competent examining magistrate to whom the investigations officer should address himself in order to obtain the authorization stipulated in the Law of 2 August 2002. Given that the persons in question were all resident in the Brussels judicial district, the investigations officer addressed himself to the dean of the examining magistrates of that district, who then assigned the case to an examining magistrate.

Once the requisite consent had been obtained from the examining magistrate, the investigations officer, in application of Articles 81 and 82, 2°, *jo* 84 of the Law of 2 August 2002, contacted the five major Belgian telecommunication operators, i.e. Belgacom SA/NV, Telenet SA/NV, Base SA/NV, Belgacom Mobile SA/NV (Proximus) and Mobistar SA/NV, to request the necessary information. The data received in response to this request were then passed on to the foreign authority.

2.3. Agreed settlements

The Law of 2 August 2002 provides that where the factual evidence brought to light by an investigation is not disputed, the investigations officer may draw up a proposal for an agreed settlement with the perpetrator of the infringement[144]. If the perpetrator of the infringing practice accepts the proposed agreed settlement, the latter is submitted to the Management Committee[145].

The purpose of an agreed settlement is to permit a quick and definitive settlement of the case.

In the period under review, the investigations officer proposed an agreed settlement to the perpetrator of the practice in question in respect of two dossiers.

142 Article 81, § 1 of the Law of 2 August 2002.
143 Articles 82, 2°, *jo* 84 of the Law of 2 August 2002.
144 Article 71, § 3, of the Law of 2 August 2002.
145 See the CBFA Annual Report 2007, p. 95 for a description of the procedure for drawing up and accepting an agreed settlement.

Elements taken into account by the investigations officer in deciding whether or not to draw up a proposed agreed settlement

In accordance with Article 71, § 3, of the Law of 2 August 2002, it is up to the investigations officer to take the initiative to draw up a proposed agreed settlement.

He may do so only where the factual evidence brought to light by the investigation are not disputed. The statements made by the perpetrator of the practice in question in the course of the investigation are therefore decisive.

Moreover, the investigations officer assesses, in each case, the circumstances of the dossier before drawing up, if appropriate, a proposed agreed settlement. Thus, factors such as a previous sanction for similar infringements, attempts at dissimulation or the fact that the person under investigation participated in the management of listed companies or holds a position linked to the management of public savings are likely to lead the investigations officer to decide against drawing up a proposed agreed settlement.

Conditions for a proposed agreed settlement

The proposed agreed settlement drawn up by the investigations officer provides for certain conditions which the perpetrator of the practice is asked to accept. These conditions are not limited to the sum to be paid under the terms of the agreed settlement. They can also refer, for instance, to certain forms in which the agreed settlement must be published.

In this regard, Article 72, § 4, paragraph 2 of the Law of 2 August 2002 provides that "the agreed settlements referred to in Article 71, § 3, shall be published in the same manner" as those set out in paragraph 1 regarding the definitive decisions taken by the Sanctions Committee in application of Article 74, § 1, 1°, of the Law of 2 August 2002.

This provision refers to the technical modalities of the publication (that is, publication on the CBFA's web site) as well as to the principle that the publication should be by name and to the criteria that must be taken into account when determining whether, by way of exception, a publication ought to remain anonymous.

Before drawing up a proposed agreed settlement, the investigations officer assesses the circumstances of the dossier in light of these criteria. If, in his judgement, an anonymous publication is justified, the preservation of anonymity is included among the conditions of the proposed agreed settlement. The reasons invoked by the investigations officer are also included in the proposed agreed settlement.

The Management Committee of the CBFA has the power, ultimately, to carry out its own assessment of the legal criteria for an anonymous publication. If in their judgement, these criteria have not been met, the Management Committee will reject the proposed agreed settlement in its entirety.

Determination that there is no longer agreement to a proposed agreed settlement

If the perpetrator of the infringing practice accepts the proposed agreed settlement, the latter is submitted to the Management Committee. The person to whom the agreed settlement applies may ask to be heard by the Management Committee on the matter[146].

During the period under review, the investigations officer drew up a proposed agreed settlement with a natural person in a dossier relating to serious indications of insider dealing. The person in question signed, indicating his acceptance, the proposed agreed settlement drawn up by the investigations officer. In accordance with Article 71, § 3, paragraph 2, of the Law of 2 August 2002, the person then requested to be heard by the Management Committee.

The signed proposed agreed settlement provided for the publication by name of the agreed settlement on the CBFA's web site for a period of six months.

During the hearing before the Management Committee, the perpetrator of the practice in question made statements indicating that he no longer consented to the publication by name of the agreed settlement, although previously he had accepted that condition. He also asked the investigations officer to consider an amendment to the proposed agreed settlement as regards the conditions of the publication to be made on the CBFA's web site.

146 Article 71, § 3, paragraph 2, of the Law of 2 August 2002.

Considering that the publication by name was part of the terms of the proposed agreed settlement, the Management Committee determined that it no longer had before it a proposal for an agreed settlement that was accepted by the perpetrator of the practice, and that therefore it could not take the decision in application of Article 71, § 3, paragraph 2 of the Law of 2 August 2002. The Committee therefore referred the dossier back to the investigations officer in order that he may either draw up a modified proposal for an agreed settlement, or conclude the investigation in view of submitting the dossier to the Sanctions Committee.

In this dossier, the investigations officer considered that the conditions for a new proposed agreed settlement were not fulfilled and therefore drew up his findings and submitted them to the Sanctions Committee.

Contents of the publication on the CBFA's web site

Agreed settlements are published on the CBFA's web site[147].

In accordance with the legislation, the document that is published is the agreed settlement itself, and not a summary thereof. In cases where anonymity is preserved, the publication of the agreed settlement will take place but with the sole proviso that the names of the perpetrator(s) of the practice and of other persons who may be cited will be omitted.

The acceptance of a proposed agreed settlement thus enables the perpetrator of the practice to secure - subject to the Management Committee's decision - predictability, on the one hand, as regards the financial consequences of the procedure, and on the other hand, as to the terms of the publication that is to take place.

3. Decisions

Decisions of the Management Committee (agreed settlements)

The Management Committee was asked to give its decision on two proposed agreed settlements that had been accepted, in each case, by the perpetrator of the practice in question. In the first case, the Management Committee noted that the perpetrator of the practice in question no longer accepted the proposed agreed settlement and that it therefore could not take a decision in accordance with Article 71, § 3, paragraph 2 of the Law of 2 August 2002[148]. In the second case, the Management Committee accepted the proposed agreed settlement that was submitted to it.

Decisions of the Sanctions Committee

The investigations officer presents his findings to the Sanctions Committee, which deliberates on the dossiers. The Sanctions Commission ruled on four dossiers in 2008, imposing an administrative fine in two of these cases. No appeals have been made against these decisions[149].

In two of its decisions, the Committee imposed an administrative fine and opted to publish the decision.

Non-compliance with the obligation to disclose transactions in financial instruments

The first decision concerned a case of non-compliance with the obligation to disclose transactions in financial instruments admitted to trading on a regulated market. A fine of EUR 100 000 was imposed on a credit institution for late disclosure to the Belgian Securities Regulation Fund *(Rentenfonds/Fonds des rentes)* of over-the-counter transactions in linear bonds, split securities and treasury certificates. The Sanctions Committee specified in this regard that the failure to comply with the disclosure obligation threatens the supervision of and the smooth operation of the markets.

147 Article 72, § 4, paragraph 1 and paragraph 2, of the Law of 2 August 2002.
148 See the present report, p. 83.
149 For previous decisions, see the CBFA Annual Report 2007, p. 95.

Abuse of inside information - the principle of double jeopardy ('*non bis in idem*')

The second decision concerned the administrative provisions prohibiting abuse of inside information. Since the person concerned in this case had already been sentenced by a criminal court for the same offences, the Sanctions Committee looked into whether it could still take a decision in the matter, in light of the principle of double jeopardy (or *non bis in idem*). In accordance with the case law of the Constitutional Court[150], the Sanctions Committee decided that the *non bis in idem* principle would not be violated if the same person, after having been judged for a particular act, is again prosecuted on account of the same conduct for infringements whose key components are not absolutely identical. In this regard, the Sanctions Committee pointed out the difference between the administrative regime governing abuse of inside information provided for in Article 25 of the Law (prohibition against trading in financial instruments by any person who possesses information that he is aware, or ought to be aware, is inside information) and the criminal law regime (Article 40 of the same Law) that forbids the use of inside information to acquire or dispose of the financial instrument to which this inside information refers.

In the case in question, the Sanctions Committee decided that the fact that the person in question had already been given a suspended sentence and a monetary fine for the same offences by the criminal court did not stand in the way of imposing an administrative sanction as well.

Pursuant to Article 73 of the Law of 2 August 2002[151] the Sanctions Committee specified that it is possible for the criminal and the administrative proceedings to coexist.

The fact that the administrative fine was deducted from the criminal fine implies that the two are independent of each other. The Sanctions Committee deduced from this that a judgment in criminal court did not stand in the way of imposing an administrative fine as well.

Bearing in mind the seriousness of the infringements and the sanctions already imposed on the person in question, the Sanctions Committee imposed a fine of EUR 8 000 in this case.

■ ■ ■

In two other cases, the Sanctions Committee decided not to impose an administrative fine. In both decisions, it was deemed that the transactions under investigation did not constitute an infringement of the regulations.

The concept of inside information in the context of market abuse

In one of the cases, the Sanctions Committee took a closer look at the concept of inside information, which at the time of the actions under investigation was defined, pursuant to Article 2, paragraph 1, 14°, of the Law of 2 August 2002, as follows:

"any information of a precise nature which has not been made public, relating, directly or indirectly, to one or more issuers of financial instruments or to one or more financial instruments and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments or on the price of related financial instruments [...]."

The Sanctions Committee deemed that in this case there was no inside information within the meaning given above, insofar as the persons who were the subject of the investigation were aware only of the study of possible scenarios for a proposed restructuring, which had not yet been given the consent of the decision-making parties, all the more so since a possible restructuring had by that time long been the subject of public debate and was discussed in the press.

Impartiality of the Sanctions Committee - Role of the Management Committee and of the Investigations Officer

In another case, the Sanctions Committee examined a number of procedural arguments in particular that were presented by the parties in relation to the requirement, pursuant to Article 6 of the European Convention on Human Rights, that the Sanctions Committee be impartial.

This objective impartiality was said by these parties to be under pressure because the CBFA's Management Committee had decided that there were sufficiently serious indications of a practice liable to give rise to an administrative fine and, using the so-called "referral" process, had charged the Secretary General of the CBFA, in his capacity as investigations officer, with investigating the case.

150 Decision No. 91/2008 of 18 June 2008. It states: "The *non bis in idem* principle is not, however, infringed where the essential components of the two punishable actions are not the same. That principle applies wherever the ethical element of the two penalisations differ", referring to judgments by the European Court of Human Rights.

151 Any administrative fine that is imposed by the CBFA on a person before the criminal court has ruled definitively on the same or related actions shall be added to the amount of any penal fine that may be imposed for those actions in respect of that same person.

In this regard, the Sanctions Committee decided that the determination by the Management Committee that there were serious indications of a practice that may give rise to the imposition of an administrative fine in no way violated the requirement for objective impartiality.

The Sanctions Committee noted first of all that the decision by the CBFA's Management Committee regarding the referral, and the circumstances leading up to that decision, has a different objective and is fundamentally distinct from the decision that the Sanctions Committee must ultimately render as to whether or not to impose an administrative fine. The latter decision does not involve the participation of members of the Management Committee. The decision of the Sanctions Committee is, moreover, supported by the findings of the investigation conducted by the investigations officer and the evidence presented in the adversarial proceedings, information which the Management Committee would not have been able to take into account at the time when it determined whether or not there were serious indications of a punishable infringement.

For all these reasons, the Sanctions Committee deemed that the regulations on the referral of cases to the investigations officer, set out in Article 70, § 1, of the Law of 2 August 2002, do not provide any argument that would justify concluding that the decision of the Sanctions Committee would be in violation of the requirement of objective impartiality.

The requirement of objective impartiality was, alleged the parties in the same case, violated also by the fact that the investigations officer, who is charged with investigating the charges and the defence in a case, does not offer the requisite guarantees of independence and impartiality. The parties referred in this regard to the fact that the investigations officer, in his capacity as Secretary General of the CBFA, takes part - albeit in only an advisory role - in the deliberations of the Management Committee when the latter decides whether to refer a case to him, and on the reasons leading to that decision. The parties alleged as well that the participation of the Secretary General in the deliberations of the Management Committee on the matter stands in the way of the his independence as investigations officer, particularly since the Secretary General, in accordance with Article 51, § 1, of the Law of 2 August 2002, comes under the joint authority of the Management Committee.

In this regard, the Sanctions Committee noted that Article 51, § 2, of the Law of 2 August 2002 provides that the Secretary General attends meetings of the Management Committee in a consultative capacity. The Secretary General can hardly be accused of a lack of independence or of partiality solely because he acts in compliance with the legal provisions, without producing any other, concrete evidence showing that he acted in his capacity as investigations officer or as Secretary General in a way that lacked independence or impartiality. Furthermore, the Secretary General participates only in a consultative capacity in the deliberations of the Management Committee; the decision of that body as to the presence or absence of serious indications of a sanctionable practice has a completely different scope than the investigative power that the investigations officer may subsequently be called upon to exercise and that, pursuant to Article 70, § 2, paragraph 1, of the Law of 2 August 2002, concerns an investigation "of the charges and of the defence". In those proceedings, the investigations officer is indeed required to investigate practices that, according to the Management Committee, may give rise to the imposition of a sanction, but the investigations officer is in no way required to conclude that an infringement did indeed take place. The investigation by the investigations officer and the adversarial debate during that process can of course lead to a conclusion that differs from the initial decision of the Management Committee as to the existence of serious indications of sanctionable practices. It should also be emphasized that it is the responsibility of the Sanctions Committee to decide whether or not to impose administrative fines and penalties, and that Article 72, § 2, of the Law of 2 August 2002 explicitly stipulates that the investigations officer cannot take part in the deliberations of the Sanctions Committee or intervene in any other way in the decision-making process.

The legislators took it upon themselves, in other words, to build in guarantees with respect to an independent and impartial decision-making process, and to this end carefully delineated the role of the investigations officer with regard to the Sanctions Committee, bearing in mind that these are members of one and the same institution. Out of the same concern for an independent and impartial decision-making process, the legislators have conferred upon the Secretary General the title of investigations officer for the purposes of investigating cases involving possible sanctions, and have issued a series of guarantees surrounding his role in this regard. Thus Article 70, § 2,

of the Law of 2 August 2002 provides not only that the investigations officer shall investigate both "the charges and the defence" but also that he shall submit the findings of the investigation to the Sanctions Committee - rather than to the Management Committee; moreover, for purposes of the investigation he may exercise all the legal and regulatory powers of investigation vested in the CBFA and may designate a rapporteur from among the CBFA staff for each case. The aforementioned Article 70, § 2, of the Law of 2 August 2002 does not imply that the investigations officer comes, in that capacity, under the joint authority of the Management Committee or that the latter could interfere with the investigation once it has been decided that a case will be referred to the investigations officer in accordance with Article 70, § 1, of the same Law. Such an assumption would, moreover, run counter to the primary objective underlying the arrangements for internal proceedings delineated in Articles 70 and following of the Law of 2 August, intended chiefly to put in place an independent and impartial decision-making process.

For these reasons, the Sanctions Committee has determined that the complaint regarding the requirement of objective impartiality on the part of the investigations officer is unfounded.

Obligations with regard to financial information

With regard to the same matter, the Sanctions Committee addressed in greater detail the scope of the obligation to disclose financial information in application of the Royal Decree of 31 March 2003 on the obligations of issuers of financial instruments admitted to trading on a regulated market. The question thus arose as to who is obliged to meet the obligation to disclose occasional financial information following the bankruptcy of a listed company. In response to the question, the Sanctions Committee applied Article 16, paragraph 1, of the Bankruptcy Law of 8 August 1997 that reads as follows: "as from the date of the declaration of bankruptcy, the bankrupt is legally disqualified from managing the estate". This provision means that from that point onwards, solely the trustee can carry out legal actions or can act lawfully on behalf of the bankrupt company. In light of this provision, the Sanctions Committee takes the view that the governing bodies of a bankrupt company no longer have the competence to fulfil the regulatory obligations with regard to occasional financial information set out in the Royal Decree of 31 March 2003. These obligations rest, after the declaratory judgment, with the trustee, and the company can no longer be held liable in the event of the latter's negligence.

C. INVOLVEMENT IN NATIONAL AND INTERNATIONAL FORUMS OF SUPERVISORY AND REGULATORY BODIES

1. The Financial Stability Committee

Meetings of the Financial Stability Committee (FSC) in 2008 and the first half of 2009 were focused largely on the financial crisis. The Committee, made up of the members of the Management Committee of the CBFA and the Board of Directors of the National Bank of Belgium (NBB), and to which a representative of the Ministry of Finances is also invited, met 13 times in 2008. During the same year, the FSC was consulted via a written procedure on three occasions to give advice on draft regulations.

The FSC focuses on topics relevant to financial stability, with macro-economic and macrofinancial perspectives, as well as developments on the financial markets, thus featuring permanently on its agenda. In light of the crisis, emphasis was placed on monitoring the risk exposure, solvency, liquidity and profitability of large bancassurance groups and on the measures taken by the public authorities in order to reinforce financial stability in Belgium. The FSC also followed the situation abroad and the various measures taken to address the crisis. In September 2008, when the crisis burst forth with full force, the FSC held several extraordinary

meetings in order to discuss the situation and exchange information on the decisions taken by the management bodies of the NBB and the CBFA. Moreover, the FSC examined the adequacy of existing risk procedures and took an in-depth look at the handling of crisis dossiers at the major banking groups.

During the period under review, the FSC also considered a number of specific topics, such as the implementation of the international solvency rules applicable to credit institutions (Basel II and the CRD), developments in Eurosystem as regards payment systems (TARGET 2) and the settlement of securities transactions (TARGET 2 – Securities), developments in liquidity monitoring as well as the risks incurred in Central and Eastern Europe by credit institutions governed by Belgian law. Finally, the FSC took stock of the implementation, by the critical players in the Belgian financial sector, of its recommendatinos regarding business continuity.

2. Strengthening international cooperation

2.1. Colleges of supervisors

The internationalization of the activities of credit institutions demands a substantial strengthening of cooperation among supervisory authorities in the countries where institutions carry out their activities.

Operations such as the acquisition of ABN Amro by the consortium made up of the Royal Bank of Scotland, Fortis and Banco Santander, and the restructuring of the Dexia group, require the creation of a permanent form of cooperation among the various supervisory authorities concerned. The advances made at European level now make it possible for this type of concertation/cooperation to be enshrined in increasingly comparable legislative and prudential frameworks.

The liquidity crisis underlined the importance of involving the central banks, which have been called upon to intervene to ensure the stability of the banking and financial sector.

This cooperation is part of a worldwide movement and organization of international supervisory colleges, under the aegis of CEBS. It is the subject of several cooperation agreements that formalize the ongoing exchange of information between the CBFA and the supervisory authorities in question. Thus, a system for coordinating supervisory actions has been put in place, based on a shared evaluation of risks and relying, in particular, on joint meetings with the top management and persons in charge of transversal control at the groups in question, formal exchanges of information, the organization of joint on-site inspections, etc.

Alongside the cooperation between European supervisory authorities, there are also specific bilateral contacts with the authorities of third countries where institutions under the CBFA's supervision possess important entities.

Today we can see that the work of the supervisory authorities concerned by the supervision of the Fortis and Dexia groups has, for several years, been usefully taken into consideration in elaborating the new European framework for the supervision of cross-border financial groups by supervisory colleges.

The CBFA, as lead supervisor for Dexia and KBC groups, brought together all the institutions concerned and convened supervisory colleges comprising the authorities of all the countries in which these groups are active (extended colleges), as well as pursuing cooperation and information exchange with representatives of the supervisory authorities of the principal entities within the groups (core colleges).

2.2. Publication of the memoranda of agreement with foreign supervisors on the CBFA's web site

In order to increase the transparency of its international activity, the CBFA has decided to place on its website the texts of both past and future memoranda of agreement (MoUs) with foreign supervisors.

In the past, only general information was provided regarding the MoUs concluded, within the pages of the annual report. Following the example of various other foreign supervisors, the CBFA has deemed it appropriate to make the contents of the MoUs available to the public. In this way, the precise scope and possible special forms of cooperation concluded with other supervisors will also be made known.

By way of an exception (for instance, where the other foreign supervisor does not wish to publish the text of the agreement), the decision may be taken not to publish the full text of the MoU on the web site. In such cases, however, general information on the MoU will, as in the past, be included in the annual report.

3. International and European activities

The CBFA takes part in many international and European activities in which the future supervisory framework for financial activities is being defined.

Staff members of all departments are actively involved in the international and European working groups in which regulation is being fleshed out, the new supervisory framework is being created and ever more intensive consultation is taking place among European supervisors.

In 2008, a total of 44 staff members took part in 137 different international and European working groups[152].

Such participation enables the CBFA to take note from the outset of the work being planned, bring influence to bear on the course they take, and inform Belgian companies of impending developments. Moreover, these activities are useful in preparing the Belgian supervisory system in due time for the announced innovations; in a number of cases, the CBFA itself has served as a model for international regulations[153].

152 See the present report, pp. 28-36, 48-49, 52-69 and 108.
153 See the present report, pp. 28-32.

CHAPTER 3

PRINCIPAL ASPECTS OF OVERALL ORGANIZATION

A. THE INTERNAL AUDIT FUNCTION AT THE CBFA

The task of internal audit is to examine the entire field of auditing at the CBFA by means of operational, financial and compliance audits. In so doing, it supports the Management Committee in carrying out the CBFA's statutory tasks and in achieving the institution's objectives.

As provided for in the audit plan for 2008, internal audit concluded its in-depth analysis of the framework for a number of the important operational processes in the CBFA's organization. This analysis focused mainly on the measures put in place by the three departments concerned for the management of prudential risks, particularly those of credit institutions and investment firms, insurance companies and institutions for occupational retirement provision.

In each case, the same audit approach and the same methods were used to examine how the departments determine their strategy, how they identify the operational risks to be managed and how they prioritize those risks when organizing their activities. Special attention was paid to the way in which the departments coordinate their actions with each other in order to achieve the requisite consistency in their supervision.

In addition to these wide-ranging audits, internal audit also conducted two examinations at the request of the Management Committee. The service responsible for supervising insurance intermediaries and intermediaries in banking and investment services conducted an examination in order to evaluate the resources used in relation to the tasks at hand.

The Management Committee also charged internal audit with developing a procedure for evaluating internal control at the CBFA. That procedure is expected to result in the periodic issue of a report to the Management Committee on the status of internal control. Internal audit has begun to develop this procedure.

In the year under review, internal audit continued its work of strengthening its audit instruments. In 2009, an application will thus be launched that is intended to ensure quicker follow-up of audit recommendations.

The financial crisis of 2008 had a significant impact on the operations of the internal audit function during the final months of the year. Upon the request of the Management Committee, an examination was conducted of the prudential supervision of institutions that requested State support during and after the crisis. This examination, which concerned the period prior to the crisis, was undertaken primarily with a view to providing advice to help reinforce supervision of the prudential risks of large financial groups. Internal audit continued these wide-ranging activities in the first half of 2009.

B. CODE OF ETHICS

The CBFA code of ethics did not undergo any change in 2008.

By way of reminder, one of the main purposes of this code of ethics is to protect the institution, its leaders and its staff from any suspicion concerning the use of privileged information that they inevitably possess as a result of the institution's mandate. By applying this code, the leaders of the CBFA abstain from holding any securities in companies under the permanent supervision of the CBFA with the exception of units of undertakings for collective investment or securities under discretionary management.

Members of staff who held shares at the time the code of ethics came into force or who have joined the CBFA since then and already held shares are permitted to retain them. However, they may execute transactions in respect of them only with the prior formal authorization of the Secretary General, and provided those transactions are of a defensive character.

In 2007, members of staff submitted 13 requests to sell their shares or include them in an exchange or repurchase operation.

For each of these requests for authorization, the Secretary General verified whether the proposed transaction was of a defensive character, and whether the CBFA services had any relevant information that could be deemed privileged.

C. COOPERATION WITH THE NATIONAL BANK OF BELGIUM

Cooperation with the National Bank covers several areas. It consists first of all in continuous consultation between the directors and staff of the two institutions and in the provision, by the NBB, of four graduate staff members to the Prudential Policy Department of the CBFA. These employees help with the development of the prudential regulatory framework for credit institutions.

In addition, cooperation in a number of other areas was enshrined in 17 Service Level Agreements (SLAs), formalized on the basis of the Royal Decree of 17 September 2003, in application of Article 118 of the Law of 2 August 2002[154]. The areas of cooperation that are covered by these SLAs were described in detail in the previous annual reports[155].

In 2008, cooperation was further expanded by the creation of a joint service for security and protection in the workplace.

We can thus affirm that in nearly all the areas in which legislation provides for cooperation between the institutions, this has now been put into effect and is fully operational. The margin for introducing any further synergies within the existing framework is limited.

154 See the CBFA Annual Reports 2004, p. 104, 2005, p. 88 and 2006, p. 96.
155 See the CBFA Annual Reports 2006, p. 96 and 2007, pp. 100-101.

D. EVOLUTION OF IT

In 2008, the transfer of the CBFA's IT infrastructure management to the NBB, along with the related adjustments to the system, was completed[156].

In addition to the further pursuit or delivery of projects commenced in 2007[157] and the ongoing adaptation of existing applications to the changes in the reporting obligations of the institutions under supervision[158], attention was also focused on developing a medium-term view of the CBFA's IT systems. This includes the evolution towards fully electronic supervision dossiers that can be made accessible both internally and externally via a portal.

Strategic projects launched in 2008 in implementation of this action plan included eCorporate and the development of a scorecarding tool for risk analysis.

eCorporate went into production in April 2008 for the insurance sector. The application offers a rapid and secure communication platform for information exchange between the CBFA and the institutions under its supervision, as an alternative for the traditional exchange of correspondence and emails. In the first half of 2009, eCorporate was opened up to financial holding companies, credit institutions, investment firms, management companies of undertakings for collective investment, bureaux de change, settlement institutions and electronic money institutions.

By means of the eCorporate portal, the CBFA makes the information it has on an institution available to the latter and, where appropriate, to that institution's company auditor(s). The institutions, for their part, are required henceforth to submit the regulatory information via eCorporate.

The scorecarding tool developed in 2008 helps determine the risk profile of the institutions under supervision in an integrated - that is, based on both quantitative and qualitative information - and consistent manner. The application is currently being used for credit institutions and investment firms.

E. HUMAN RESOURCES MANAGEMENT

Development of staff numbers in 2008

Over recent years, staff numbers have developed as follows:

	2004	2005	2006	2007	2008
Number of staff members according to the staff register (units)	408	421	438	435	442
Number of staff according to the staff register (FTEs)	383.33	397.63	415.06	411.96	419.70
Number of staff calculated on the basis of the Royal Decree of 22 May 2005[159]	367.33	377.73	386.66	381.32	394.01
Average number of staff	386.53	419.5	430.83	435.67	436.09

156 See the CBFA Annual Report 2007, p. 101.
157 See the CBFA Annual Report 2006, p. 95.
158 In particular, the reporting obligations of credit institutions have undergone continual changes in recent years.
159 Royal Decree of 22 May 2005 on the financing of the CBFA's operating expenses implementing Article 56 of the Law of 2 August 2002 on the supervision of the financial sector and on financial services, and implementing various legal provisions on the tasks of the CBFA (hereafter the "financing decree"), Belgian Official Gazette 27 May 2005, p. 24963, Article 1, § 1. See the present report, p. 99.

The actual workforce of the CBFA saw a net increase in 2008 of 7.74 FTEs. The average staff complement remains more or less stable.

The number of staff that can be employed by the CBFA is determined by the Royal Decree of 22 May 2005 on the financing of its operating expenses, and as at 1 January 2008 consisted of 414 full time equivalents (FTEs). The number of staff indicated in the royal decree does not necessarily correspond to the number entered in the staff register.

The staff complement calculated in accordance with the Royal Decree of 22 May 2005 excludes, however, staff who are on a career break, long-term disability, secondment or pre-retirement leave, as well as staff members employed under an initial employment contract.

Characteristics of the workforce

At the end of 2008, 52% of the CBFA's staff had university degrees. The CBFA employs nearly as many women as men, and the average employee age is 41.93.

The qualifications of university graduate staff are as in the following areas:

Law	39.5%
Economics	46.5%
Mathematics	7%
Other	7%
Several degrees/specializations	57%

University graduates assigned to prudential supervision have the following educational backgrounds:

Qualifications of university graduates assigned to prudential supervision

Law	29.5%	of whom 76% have an additional specialty
Economics	61%	of whom 50% have an additional specialty
Natural sciences	9.5%	

As a public institution, the CBFA is subject to the legislation on the use of official languages in government affairs. The beginning of 2009 saw the publication of the royal decrees that establish the hierarchical grades and the linguistic framework for the CBFA[160].

As far as the former is concerned, it should be noted that the university graduate staff of the CBFA constitute a single linguistic grade, a provision that guarantees a level career path.

The proportion between the official languages as such is set, on the basis of detailed calculation, at 46.75% French-speaking and 53.25% Dutch speaking staff members within each language grade, with the exception of the management level, where the proportion is 50/50 with 20% officially bilingual members.

The CBFA is required to provide periodical statistics to the Permanent Committee for Language Supervision as regards its compliance with these proportions. Any imbalances among staff in the lower levels are due to historic growth and will change only through attrition, insofar as there are no new hires within these categories. For the other categories, the regulatory relationships are at all times borne in mind when filling vacant positions.

160 Royal Decree of 5 February 2009 establishing the linguistic framework for the Banking, Finance and Insurance Commission, Belgian Official Gazette, 10 March 2009, p. 20952 and Royal Decree of 5 February 2009 establishing the hierarchical grades for the Banking, Finance and Insurance Commission, Belgian Official Gazette, 10 March 2009, p. 20954.

The integration of statutory and contractual staff of the former ISA

The table below reflects the impact as at 31 December 2008 of the integration measures applicable to the staff of the former ISA as regards pre-retirement leave[161] and the transfer to an integration contract.

Staff of former ISA	Executive (cadre)	Non-executive	Total
as at 01/01/2004	**62.8**	**58.3**	**121.1**
Departure: pre-retirement leave/retirement	-10.3	-7.4	-17.7
Departure: other	-1.8	-3.0	-4.8
Change in working hours	0.1	1.3	1.4
as at 31/12/2008	**50.8**	**49.2**	**100.0**
Of which, CBFA integration contract	35.35 70%	15.4 31.3%	50.75 51%

As the above table indicates, in 2008 about half the staff of the former ISA had transferred to contractual status, with proportionately more executive (cadre) than non-executive staff (cadres). This difference is due to the meagre financial incentive for transferring to a contractual status for holders of a bachelor's degree. The CBFA considers that the integration procedure has now been completed, insofar as all employees with civil servant status who met the requisite conditions[162] and wished to do so have been able to transfer to a contractual status.

Recruitment

The CBFA traditionally seeks to recruit highly educated employees who have already successfully obtained useful work experience elsewhere. The average age at recruitment is 28.

In 2008, there were 21 vacant positions. In April 2008, the CBFA conducted a recruitment campaign in the general press. 19 new hires were made in 2008.

Taking account of departures and changes of employment status, 10 positions remained to be filled in June 2009, of which 6 were executive positions. Once these vacancies are been filled, the personnel allotment of 414 FTEs will be complete.

The selection procedure for executive staff was adjusted in early 2008 with the primary objective of reducing the time taken by the recruitment process and standardizing the assignment/orientation of candidates. A recruitment team was established with 11 members from the various departments, chosen on the basis of their representativeness of the various staff profiles within the CBFA. The team received training in conducting job interviews; they assist People & Communication in deciding whether to admit the applicant to the next stage in the recruitment process and provide guidance as appropriate to the positions to be filled.

If the first interview is evaluated positively, a *written test* is administered, as in the past. The test generally takes place with representatives of the service in which the vacancy is being filled, but the content of the tests are intended to be as general as possible in order to be able to evaluate the candidates' versatility adequately. Candidates who pass the test are, as a final stage, sent to an external consultancy for an assessment of their personality and basic competence.

Via this updated process, it was possible in 2008 to screen more candidates and to reduce the average time taken by the recruitment process to around 2 months.

161 See the CBFA Annual Report 2006, p. 92.
162 See the CBFA Annual Report 2006, p. 91.

F. CONSULTATION ON SOCIAL MATTERS

Together with the National Bank of Belgium, the National Delcredere Office, the Participation Fund, the Federal Participation and Investment Corporation, the National Lottery and Credibe, the CBFA is part of Joint Committee 325. Within this Committee, a sectoral agreement for 2007-2008 was concluded on 3 December 2007; as in previous years, job security, the right to training and cost of living increases were central.

At the suggestion of the CBFA's Occupational Health and Safety Committee (CPPT/CPBW), and in the light of the requirements of the Law of 4 August 1996 on employee well-being at work and of CLA no. 72, it was decided to conduct a stress survey in 2007. The survey took place in mid-January 2008 and the results have helped to set priorities as regards human resources management.

Likewise under the auspices of the Occupational Health and Safety Committee, the final phase of the CBFA transport plan, approved by the Management Committee in December 2005, was commenced with the organization of a "teleworking" pilot project. The project ran from 1 March to 31 December 2008.

G. PROCESSING OF PERSONAL INFORMATION BY THE CBFA

In the performance of its duties, the CBFA is sometimes called upon to process data that are personal in nature, as defined in Article 1 of the Law of 8 December 1992 on privacy protection in relation to the processing of personal data, either because through its supervisory tasks it has direct contact with natural persons, or because it gains access indirectly to data relating to natural persons in the course of its supervision of legal entities.

As regards its responsibilities for processing personal information, the CBFA is subject to the aforementioned Law of 8 December 1992. This law imposes various obligations on any person or body responsible for processing data, including:

(i) the obligation to inform natural persons whose data are being processed (Article 9, §§ 1 and 2 of the Law),

(ii) the obligation to grant such persons access to their data (Article 10, § 1 of the Law), and

(iii) the obligation to permit them to correct or withdraw data that are incorrect or processed in an illicit manner (Article 12 of the Law).

The Law of 8 December 1992 nevertheless provides that the King can exempt from these obligations public institutions such as the CBFA that perform administrative policy tasks (Article 3, § 5, 3°, of the Law).

The Royal Decree of 29 April 2009[163], adopted following a positive opinion issued by the Belgian Privacy Commission[164], exempts the CBFA under two circumstances:

163 Belgian Official Gazette of 13 May 2009
164 Opinion no. 26/2008 of 23 July 2008.

- where the data being processed come from third parties and not the natural person concerned, given that the CBFA's obligation of professional secrecy, as provided for in Articles 74 and following of the Law of 2 August 2002, prohibits it from divulging the said information the natural person concerned; and
- where the data are processed in the context of an administrative sanction proceeding conducted in accordance with Section 5 of Chapter III of the Law of 2 August 2002, (Articles 70 to 73) in order to prevent access to personal data from interfering with the smooth conduct of the inquiry or investigation.

Pursuant to the preparatory work for Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, Member States must implement in national legislation a provision that grants an exception to the right of individuals to access and correct information where the data being processed are subject to an obligation of professional secrecy arising from the banking directives (and financial directives in general, insofar as these cover the same obligation of secrecy) in the areas that fall within the competence of the CBFA[165]. The Royal Decree of 29 April 2009 thus introduces this exception into Belgian law, granting the above-mentioned exemption to the CBFA.

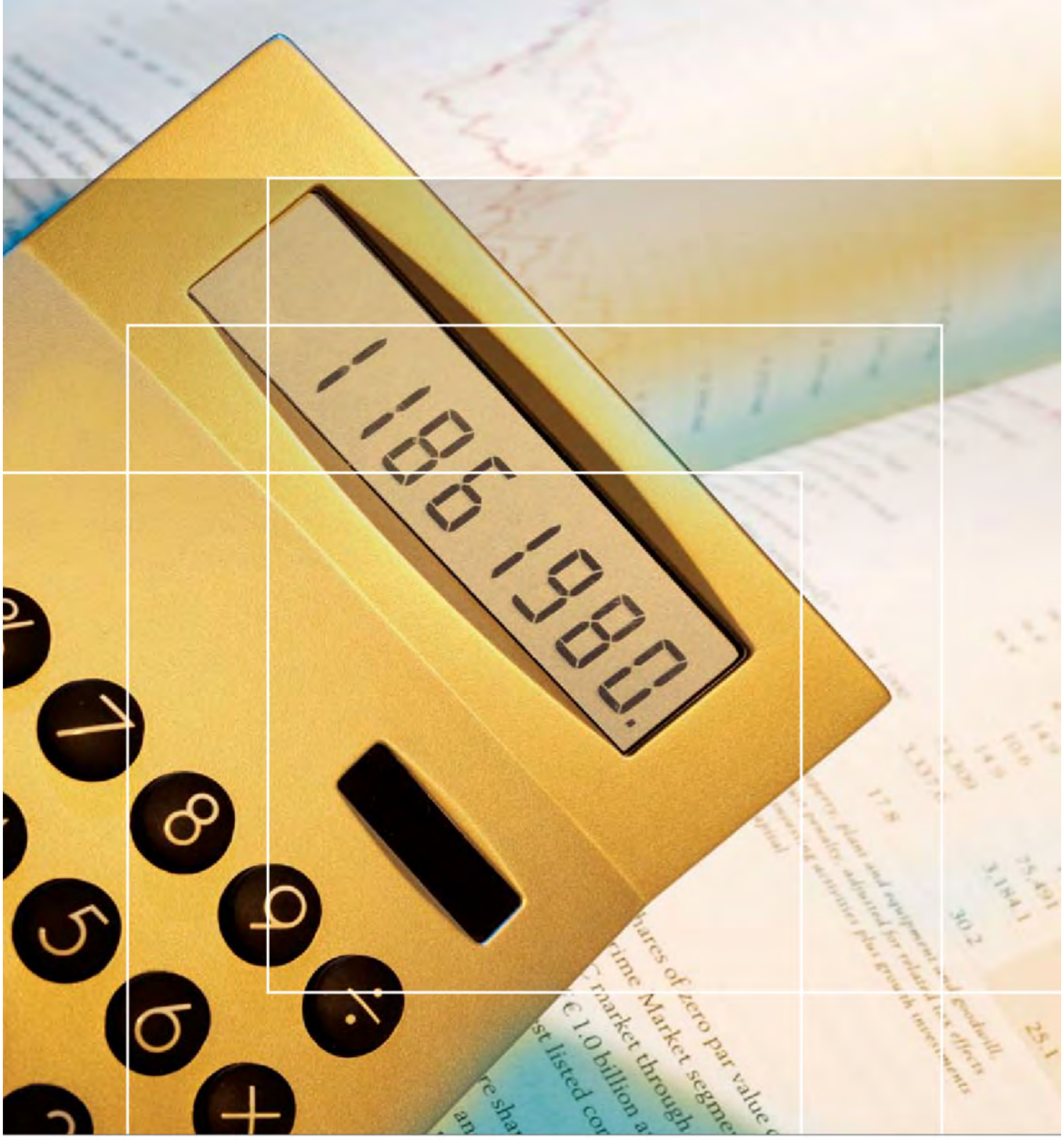
H. FINANCING OF THE CBFA'S OPERATING EXPENSES

Unlike in previous years, the Royal Decree of 22 May 2005 on the financing of the CBFA's operating expenses (the 'financing decree') was not amended in 2008.

The CBFA did adopt a policy regarding the transfer of insurance portfolios in the period between the end of the financial year used as the starting point for calculating the contributions and the date when the contributions were requested.

The data used as the basis for calculation, pursuant to the financing decree, could in certain sectors be more than a year old by the date when the contributions to operating expenses fall due. If no account is taken of the restructuring carried out in the intervening period, this can lead to an inequitable distribution of the sectoral contribution envelope across the institutions required to contribute. Given that the financing decree strives to determine the individual contributions in accordance with the size of each institution on 1 January of the operating year to be covered, the CBFA adjusts the data used as a basis for calculating the contribution in the event of a restructuring, so as to reflect the actual situation of the institution(s) in question at that date.

165 See COM (92) 422 final - SYN 287 of 15 October 1992, p. 25, as well as recital 44 of the above-mentioned Directive 95/46/EC. See also the commentaries on this point in the report to the King that precedes the Royal Decree of 29 April 2009.



CHAPTER 4

FINANCIAL STATEMENTS FOR THE 2008 FINANCIAL YEAR*

* All amounts are expressed in € 000 unless otherwise stated.

The financial statements of the CBFA for the 2008 financial year were approved on 22 April 2009 by its Supervisory Board, in accordance with Article 48, §1, 4°, of the Law of 2 August 2002.

BALANCE SHEET

ASSETS	Financial year 2008	Financial year 2007
FIXED ASSETS	**55 296**	**54 542**
I. Formation expenses	**1 250**	**1 110**
II. Tangible and intangible fixed assets	**54 046**	**53 432**
1. Tangible fixed assets		
A. Land and buildings	52 754	51 943
B. Plant, machinery and equipment	46	66
C. Furniture and vehicles	26	84
2. Intangible fixed assets	1 220	1 339
LIQUID ASSETS	**54 349**	**50 303**
IV. Receivables within max. one year	**2 489**	**2 795**
A. Receivables in respect of operating expenses	1 341	1 442
B. Other receivables	1 148	1 353
V. Investments	**49 500**	**46 000**
VI. Liquid assets	**1 308**	**625**
VII. Deferred charges and accrued assets	**1 052**	**883**
TOTAL ASSETS	**109 645**	**104 845**

LIABILITIES	Financial year 2008	Financial year 2007
OWN FUNDS	**15 000**	**15 000**
II. Reserves	**15 000**	**15 000**
Restricted reserves	15 000	15 000
A. General budget reserve	4 500	4 500
B. Liquidity reserve	10 500	10 500
FINANCING FUND	**11 096**	**11 418**
PROVISIONS	**2 353**	**2 326**
III. Provisions for liabilities and charges	**2 353**	**2 326**
A. Pensions and similar obligations	1 103	1 136
C. Other liabilities and charges	1 250	1 190
AMOUNTS OWED	**81 196**	**76 101**
IV. Amounts over more than one year	**39 654**	**40 825**
A. Financial liabilities	39 654	40 825
2. Credit institutions	39 654	40 825
V. Amounts owed over more than one year	**39 749**	**33 391**
A. Amounts owed over more than one year, portion due within the year	1 171	1 118
C. Amounts owed in respect of operating expenses	7 980	5 900
1. Suppliers	6 595	4 508
2. Other amounts owed	1 385	1 392
D. Amounts owed in respect of taxes, remuneration and social charges	7 714	7 397
1. Taxes	1 443	835
2. Remunerations and social charges	6 271	6 562
E. Other amounts owed	22 884	18 976
VI. Deferred income and accrued charges	**1 793**	**1 885**
TOTAL LIABILITIES	**109 645**	**104 845**

INCOME STATEMENT (in € 000)	Financial year 2008	Financial year 2007
I Income	**90 073**	**81 906**
A. Contributions to operating expenses	89 579	80 988
B. Other income	494	918
II Operating expenses	**66 659**	**62 233**
A. Services and miscellaneous goods	10 874	9 022
B. Remuneration, social charges and pensions	53 886	51 509
C. Write-downs on receivables in respect of operating expenses	47	28
D. Provisions for liabilities and charges	-294	-1 458
E. Depreciation on fomation expenses and fixed assets	2 146	3 133
III. Operating surplus	**23 414**	**19 673**
IV. Financial income	**1 440**	**1 326**
A. Income from current assets	1 440	1 160
B. Other financial income		166
V. Financial charges	**1 970**	**2 023**
A. Debt charges	1 965	2 018
C. Other financial charges	5	6
VI. Normal operating surplus	**22 884**	**18 976**
VII. Extraordinary income	**1 059**	
D. Other extraordinary income	1 059	
VIII. Extraordinary charges	**1 059**	
D. Other extraordinary charges	1 059	
IX. Operating surplus for the financial year	**22 884**	**18 976**

Allocation of the operating surplus for the financial year	Financial year 2008	Financial year 2007
A. Operating surplus for the financial year to be allocated	22 884	18 976
D. Repayments pursuant to Royal Decree of 22 May 2005 on the operating expenses of the CBFA	22 884	18 976

ANNEXES

BALANCE SHEET

ASSETS

II. Statement of fixed assets	Land and buildings	Software	Plant, machinery and equipment	Furniture and vehicles	Total tangible fixed assets	Develop-ment charges
a) Acquisition value						
As at the end of the previous financial year	56 866	1 229	1 336	1 373	60 804	1 734
Movements during the financial year						
Acquisitions	2 524	63	30	0	2 617	285
Other						
As at the end of the financial year	59 390	1 292	1 366	1 373	63 421	2 019
b) Depreciation and write-downs						
As at the end of the previous financial year	4 923	1 229	1 270	1 289	8 711	395
Movements during the financial year						
Entered	1 713	63	50	58	1 884	404
Other						
As at the end of the financial year	6 636	1 292	1 320	1 347	10 595	799
c) Net carrying value as at the end of the financial year	**52 754**	**0**	**46**	**26**	**52 826**	**1 220**

V. CASH INVESTMENTS	2008 Financial year	2007 Financial year
Invested via the Federal Public Service Finances (Treasury)	49 500	46 000

LIABILITIES

2. PROVISIONS FOR LIABILITIES AND CHARGES	2008 Financial year	2007 Financial year
Pensions	1 103	1 136
Estimated costs of adjustments		80
Pre-retirement leave	1 250	1 110

INCOME STATEMENT

I.A. CONTRIBUTION TO OPERATING EXPENSES

A1. Gross contributions	2008 Financial year	2007 Financial year
1.a. Credit institutions, investment firms and investment advice companies - Art. 10	19 062	17 767
1.b. Intermediaries (in banking and investment services) - Art.10*bis*	1 245	1 300
2. Public offers of securities - Art. 14	873	1 201
3. Investment firms - Art. 15, 16 and 17	34 281	28 665
4. Belgian market listings - Art. 21	6 737	6 271
5. Investigations office and consumer protection - Art. 22	845	754
6. Sundry former CBF	3 860	3 795
7. Insurance sector - Art. 2	16 536	15 471
8. Intermediaries (insurance) - Art. 4	3 660	3 408
9. Sundry former ISA	2 480	2 356
Total	**89 579**	**80 988**

A2. Net contributions	2008 Financial year	2007 Financial year
1.a. Credit institutions, investment firms and investment advice companies - Art. 10	11 788	11 633
1.b. Intermediaries (in banking and investment services) - Art. 10*bis*	770	851
2. Public offers of securities - Art. 14	873	1 201
3. Investment firms - Art. 15, 16 and 17	23 584	20 583
4. Belgian market listings - Art. 21	4 166	4 106
5. Investigations office and consumer protection - Art. 22	845	754
6. Sundry former CBF	3 587	3 565
7. Insurance sector - Art. 2	15 039	13 670
8. Intermediaries (insurance) - Art. 4	3 660	3 408
9. Sundry former ISA	2 383	2 241
Total	**66 695**	**62 012**

II. B. 1. Employees entered in the staff register	2008 Financial year	2007 Financial year
a) Total at end of financial year	442	435
b) Average number of full-time equivalent staff	413	413
c) Number of hours worked	563 855	565 057

II. B. 2. Remuneration, social charges and pensions	2008 Financial year	2007 Financial year
a) Remuneration and direct social benefits	36 517	34 239
b) Employer's social security contributions	10 210	9 635
c) Employers' premiums for voluntary insurance	1 974	2 274
d) Other staff charges	4 166	4 293
e) Pensions	1 019	1 068
Total	**53 886**	**51 509**

II. D. Provisions for liabilities and charges	2008 Financial year	2007 Financial year
Liberation of various provisions	-80	-4
Sundry	108	-1 147
Use of financing fund	-322	-307
Total	**-294**	**-1 458**

RIGHTS AND OBLIGATIONS NOT INCLUDED IN THE BALANCE SHEET

Pending disputes and other obligations

The CBFA is the subject of a number of claims for damages, based on alleged shortcomings regarding the supervision of credit institutions, investment firms or capitalization companies. Taking into account the specific circumstances of each of these claims, the CBFA is of the opinion that they are inadmissible and/or unfounded, and thus no provision has been set aside for them.

Notes to the 2008 financial statements

1. Legal framework

The financial statements were drawn up in accordance with the provisions of Article 57 of the Law of 2 August 2002 on the supervision of the financial sector and on financial services, and of the Royal Decree of 12 August 2003 determining the layout of the financial statements[166]. The layout of the balance sheet and of the income statement is adapted to the specific character of the CBFA's tasks and activities.

The operating expenses of the CBFA are financed by the companies and sectors subject to its supervisio[167]. Pursuant to the Royal Decree of 22 May 2005[168], the maximum amount of the CBFA's 2008 operating expenses[169] eligible for cover was 67.2 million euros.

Contributions that exceed the maximum allowable budget of the CBFA or, if lower, its operating expenses, must be repaid to certain companies and sectors in accordance with the method set out in the Royal Decree[170].

The maximum amount of the budget may be adjusted at the end of the financial year using one of the two following methods:

- taking into account the development of the costs in respect of the members of the CBFA's bodies and its staff, as certified by the CBFA's auditor. For 2008 the maximum number of staff the CBFA was entitled to employ was 414[171].
- indexing the budget for other expenditures, likewise certified, to the consumer price index.

2. Valuation rules and notes to particular captions

The overview below provides a full picture of the approved valuation rules at the end of the financial year.

Formation expenses

Restructuring costs are charged in full to the financial year in which they are incurred.

Fixed assets

The caption "Tangible fixed assets" is subdivided into:

- land and buildings;
- plant, machinery and equipment;
- furniture and vehicles;
- other tangible fixed assets.

The acquisition value of the CBFA's registered office is depreciated progressively over 25 years, in parallel with the capital repayments of the loan contracted to finance that building.

Apart from the registered office, tangible fixed assets also include pruchased goods expected to have a useful life of several years and with a minimum purchase price of €1 000 per unit.

These tangible fixed assets are entered at acquisition price and depreciated according to the straight line method over four years, save for hardware, which is depreciated over three years.

166 Royal Decree implementing Article 57, first paragraph, of the Law of 2 August 2002 on the supervision of the financial sector and on financial services, Belgian Official Gazette, 15 October 2003, p. 50050.
167 See the CBFA Annual Report 2005, p. 16 and 17.
168 Royal Decree of 22 May 2005 on the operating expenses of the CBFA, implementing Article 56 of the Law of 2 August 2002 on the supervision of the financial sector and on financial services, and implementing various legal provisions on the tasks of the CBFA (hereafter the "Decree on operating expenses"), Belgian Official Gazette, 27 May 2005, p. 24963, Article 1, § 1.
169 Other than the costs in respect of collaborative bodies as referred to in Article 117, § 5, of the Law of 2 August 2002.
170 Decree on operating expenses, Articles 8, 9, 25 and 26.
171 Royal Decree amending the Royal Decree of 22 May 2005 on the operating expenses of the CBFA, implementing Article 56 of the Law of 2 August 2002 on the supervision of the financial sector and on financial services, and implementing various legal provisions on the tasks of the CBFA, Belgian Official Gazette, 29 December 2006, p. 76365, Article 1, 2°, and Article 13, fourth paragraph, 2°.

The caption "intangible fixed assets" concerns IT application development costs paid to third parties. Provided these do not exceed €100 000 per application, they are depreciated over five years according to the straight line method, with effect from the entry into operation of the application question.

IT licences are depreciated in full in the year of acquisition.

Receivables

The caption "Receivables" concerns chiefly the contributions to the operating expenses of the CBFA due from companies subject to its supervision. Amounts receivable are entered for the amounts yet to be settled. With respect to the valuation, a distinction is made between amounts receivable from Belgian and foreign debtors other than intermediaries and amounts receivable from intermediaries[172].

Amounts receivable from Belgian and foreign debtors other than intermediaries

Amounts receivable from Belgian debtors are entered as doubtful if they remain unpaid three months after a dossier is submitted for collection to the Land Registry, Public Records and Crown Lands Office of the Federal Public Services Finances. At that point, a write-down of 50% is entered. Where payment is still not forthcoming after a further three months, an additional write-down of 50% is entered.

Amounts receivable from foreign debtors are entered as doubtful and subject to a write-down of 50% where, three months after dispatch of a registered letter, no payment has been received. Where payment is still not forthcoming after a further period of three months, the balance of the amount receivable is written off in full.

In the event of a firm's bankruptcy, the amount receivable is immediately entered as doubtful and a write-down is entered forthwith for the full amount.

Amounts receivable from intermediaries

Unpaid amounts receivable from intermediaries are entered under doubtful amounts two years after the intermediary concerned has been struck from the register. At the same time, a provision is set aside for the amount outstanding.

Liquid assets

Cash balances, balances on demand deposits and time deposits are valued at nominal value.

Provisions

Provisions are set aside to cover losses or charges, the nature of which is clearly defined and which, at balance sheet date, must be considered as likely or certain to be incurred, but whose extent can only be estimated.

Provisions for liabilities and charges are individualized according to the liabilities and charges that they are intended to cover.

Amounts owed

Amounts owed are entered at nominal value as at balance sheet date for the financial year.

Amounts receivable and owed, denominated in foreign currency

Items denominated in foreign currency are translated into their equivalent in euros at the exchange rate in effect at the end of the financial year. Differences can occur in the case of liabilities denominated in foreign currency; where they occur, they are processed as exchange-rate differences.

3. Notes to the balance sheet

Formation expenses

In 2004, a provision of 5 million euros was set aside to cover future charges in respect of the arrangement for pre-retirement leave for staff of the former ISA[173]. This amount was included under "Formation expenses" and

172 These are the insurance intermediaries referred to in the Law of 27 March 1995 on insurance and reinsurance broking and the distribution of insurance (Belgian Official Gazette, 14 June 1995), as amended by the Law of 22 February 2006 amending the Law of 25 June 1992 on non-marine insurance policies and the Law of 27 March 1995 on insurance and reinsurance broking and on the distribution of insurance (Belgian Official Gazette, 15 March 2006), and the intermediaries in banking and investment services referred to in the Law of 22 March 2006 on banking and investment intermediaries and the distribution of financial instruments (Belgian Official Gazette, 28 April 2006).

173 See the CBFA Annual Report 2004, p. 110.

is depreciated each year by the amount actually paid out in that year.

In 2005, this provision was adjusted and reduced to 3 million euro[174]. Since the reduction of the provision, the period during which pre-retirement leave could be taken up was extended by one year[175], with the result that three additional employees became eligible. At the end of 2008, the provision, after being allocated to cover the costs for 2008 (€0.919 million) was thus reduced to €1 250 million.

The adjustments to the provisions and to the formation expenses (€1.059 million) is entered under extraordinary charges and extraordinary income, respectively. This was, however, a one-time operation.

Fixed assets

As regards "Tangible fixed assets", the investments entered in 2008 were:

- the purchase (€1.6 million) in 2008, to be depreciated over 25 years, of an adjacent building intended for the expansion of the registered office;
- the renovation of the existing offices.

Under "Intangible fixed assets", in accordance with the applicable rules of valuation, the development of the eCorporate IT application and the extension of the transaction reporting system in implementation of MiFID[176] was entered in 2008 at cost.

Current assets

The volume of liquid assets is directly related to the size of the operating surplus for 2008, which - after approval of the annual financial statements - must, in accordance with the Decree on operating expenses, be reimbursed to the sector.

Deferred charges and accrued assets on the asset side consist primarily of costs incurred in 2008 but that come due in full or in part at the latest in 2009 (membership fees, insurance contracts, maintenance contracts), prorated interest on investments with the Treasury that come due in 2009, as well as yet-to-be reimbursed salary costs for seconded personnel.

Financing fund

The financing fund and amounts owed to credit institutions are gradually decreasing with the depreciation of the building for which they provide financing.

Provisions

To cover the charges for 2008, €0.919 million was added to the provision relating to the arrangement for pre-retirement leave for staff of the former ISA, bringing the total amount of the provision to €1 250 million by the end of the year[177].

Amounts owed

Amounts owed over more than one year (€39.6 million) concern solely debts incurred for the financing of the CBFA's registered office. The annual repayment due in 2009 (€1.2 million) is entered under the caption "Amounts owed over more than one year, portion due within the year".

Amounts owed to suppliers increased in 2008 mainly because of items that had already been invoiced but were not yet been paid, and the items not yet invoiced that are payable within the terms of the cooperation agreement with the NBB.

The caption "Other amounts owed" consists of the operating surplus for the 2008 financial year (€22.9 million) that is to be reimbursed to the sectors referred to in the above-mentioned decree on operating expenses[178].

The breakdown of the operating surplus across the supervisory tasks of the former CBF and the former ISA[179] is as follows for the 2006 and 2007 financial years:

	CBFA	CBF share	ISA share
2007[180]	18 976	17 059	1 917
2008	22 884	21 291	1 593

174 See the CBFA Annual Report 2005, p. 100.
175 Royal Decree of 15 January 2007, Belgian Official Gazette, 30 January 2007.
176 On MiFID, see the CBFA Annual Report 2007, p. 101.
177 See above.
178 See the CBFA Annual Report 2005, p. 16.
179 The costs attendant on the former CBF and former ISA supervisory tasks continue to be financed separately. See CBFA Annual Report 2005, p. 16.
180 See the CBFA Annual Report 2007, p. 116.

4. Notes to the income statement

The 2008 financial year closed with an operating surplus of €22.9 million.

Income

Income comprises chiefly the amounts companies subject to CBFA supervision are called upon to contribute, in accordance with the Royal Decree of 22 May 2005[181], to cover the operating expenses of the CBFA. Calculation of those amounts is based on either a fixed sum per sector supervised or a tariff of fees by transaction or based on the volume of activity.

After closing the financial statements and determining the operating expenses to be covered, any surplus of contributions over costs is reimbursed.

With the exception of amounts owed in respect of public offers of financial instruments[182], all sectors saw an increase of the total amount of their contributions in 2008 to the operating costs of the CBFA.

As regards the fixed contributions, the reason for the increase in 2008, apart from the impact of individual corrections, is to be found in the adjustment, for 2008, of the maximum resource package by 7.29%[183].

Operating expenses

	2008		2007		Change 2007/2008
Sundry goods and services	10 874	16.3%	9 022	14.5%	+ 20.5%
Staff charges	53 886	80.8%	51 509	82.8%	+ 4.6%
Write-downs and provisions	1 899	2.8%	1 702	2.7%	+ 11.6%
Total operating costs	**66 659**	**100%**	**62 233**	**100%**	**+ 7.1%**

The bulk of the CBFA's operating expenses is accounted for by staff charges (80.8%).

The rise in these charges is chiefly the result of indexation, and to a lesser degree of salary increases.

The caption "Sundry goods and services", which in 2007 saw a considerable increase (+41.3%) on account of the implementation of various service level agreements[184] with the NBB which specify that the CBFA will henceforth draw upon the expertise of the NBB for various support services, in particular in the area of IT, increased in 2008 by 20.5%. This increase corresponds for the most part to the cost of managing the CBFA's IT infrastructure (entered under "rent and maintenance of material") and to honoraria paid by the CBFA, the cost of organizing, in cooperation with the NBB, the International Conference for Banking Supervisors (ICBS) in September 2008, and the membership fees paid to the international organizations of supervisors (CESR, CEBS, CEIOPS) (entered under "Sundry").

181 See the CBFA Annual Report 2005, p. 16.
182 Art. 14 of the Decree on operating expenses.
183 See the present report, p. 99.
184 See the CBFA Annual Reports 2005, p. 102 and 2006, p. 105, as well as the present report, p. 94.

Type of expense	2008	2007
Buildings	884	947
Rent and maintenance of material	3 564	2 985
Office expenses	896	986
Sundry	5 530	4 104
Total	**10 874**	**9 022**

Financial income

Financial income stems from revenue from the investment of liquid assets. By way of reminder, these investments consist of time deposits with the Treasury and of current accounts for day-to-day management, in accordance with the Circular of 28 November 1997.

5. Adjustment to amounts due in 2009

According to the Decree on operating expenses, the CBFA's maximum budget and the fixed amounts of pre-financing due from the CBFA's contributories may be adjusted each year in accordance with the development of staff charges and the consumer price index for other expenditures and charges[185].

Changes in the CBFA's staff charges and in the charges in respect of the members of the institution's governing bodies have been certified by the CBFA's auditor, as have been changes in all other costs.

Notwithstanding the fact that the actual amount of the CBFA's operating expenses was lower than the amount of its maximum budget, as was the case in 2008[186], it was decided that the amounts due for 2009 would be adjusted in accordance with the provisions of Article 1 of the Royal Decree of 22 May 2005, in order to maintain equilibrium among the contributions of the various sectors. Not adjusting the contribution levels would mean that the increase in operating expenses would be borne exclusively by the sectors for which the total amounts of pre-financing due is not set down in the Royal Decree of 22 May 2005[187].

185 Article 1, § 1 of the Decree on operating expenses. See CBFA Annual Report 2005, p. 16.
186 See the CBFA Annual Report 2007, p. 117.
187 As opposed to those sectors for which the Royal Decree sets down very specific pre-financing amounts. See the CBFA Annual Report 2005, p. 17.

Auditor's report on the financial year ending 31 December 2008

In accordance with the legal and regulatory provisions, we are pleased to report to you on the performance of the audit mandate entrusted to us.

Unqualified audit opinion on the financial statements

We have audited the financial statements for the financial year ending on 31 December 2008, prepared in accordance with the reference accounting system in use in Belgium, with a balance sheet total of EUR 109 645 000 and with an income statement that closed with a surplus of EUR 22 884 000. We have likewise conducted the specific examinations required by the Law of 2 August 2002 and the Royal Decree of 2003.

The preparation of the financial statements is the responsibility of the Management Committee. a responsibility that includes, among other things: the establishment, implementation and maintenance of an internal control function regarding the drawing up and faithful rendering of the financial statements, free of material misstatement resulting from fraud or error; the selection and application of appropriate valuation rules; and the preparation of bookkeeping estimates that are reasonable under the given circumstances.

It is our responsibility to express an opinion about those financial statements, based on our examinations. Our audit was conducted in accordance with the legal provisions and according to the audit standards in force in Belgium, as issued by the *Institut des Reviseurs d'Entreprises/Instituut der Bedrijfsrevisoren*. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of any material misstatement resulting from fraud or error.

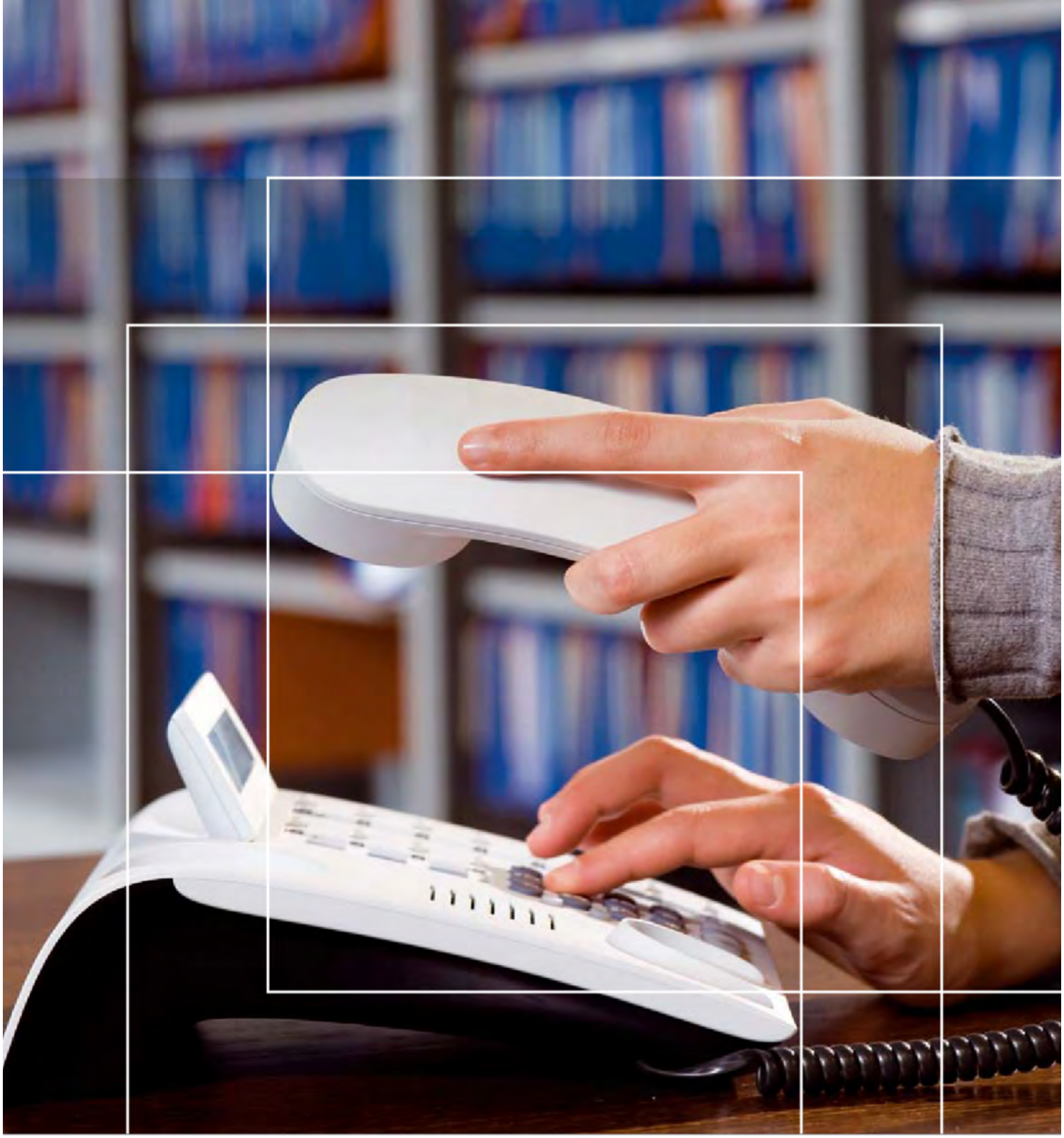
In accordance with those standards, we have considered the CBFA's administrative and accounting organization, as well as its internal control procedures. The officers of the CBFA and the members of its Management Committee have given clear answer to our requests for elucidation or information. We have examined, on the basis of random tests, the evidence supporting the amounts included in the financial statements. We have assessed the soundness of the accounting principles, the judiciousness of the significant accounting estimates made by the CBFA and the overall presentation of the financial statements. We believe that our procedures provide a reasonable basis for our opinion.

In our opinion, taking into account the applicable legal and regulatory requirements, the financial statements closed as at 31 December 2008 give a true and fair view of the assets, the financial situation and the operating expenses of the CBFA, and the information given in the notes in accordance with the provisions of the Royal Decree of 12 August 2003.

Brussels, 13 April 2009

André **KILESSE**

Auditor



ANNEXES

COMPOSITION OF THE DEPARTMENTS AND SERVICES**

** Situation as at 30 June 2009.

Reporting to Mr Jean-Paul SERVAIS, Chairman

Press Officers

Luk **Van Eylen**[188]
Veerle **De Schryver***
Hein **Lannoy***

Internal Audit

Herman **De Rijck**
Els **Lagrou**

Supervision of Financial Information and of Financial Markets, Accountancy and Finance

Thierry **Lhoest**,
Deputy Director

Luk **Behets**
Luk **Delboo**[189]
Geoffrey **Delrée**
Sonja **D'Hollander***
Kristof **Dumortier**
Nathalie **Flamen**
Johan **Lembreght***
Kris **Martens**
Roland **Melotte**
Martine **Nemry**
Stefaan **Robberechts**
Koen **Schoorens**
Maud **Watelet**

Supervision of Financial Transactions and Market Operators, Surveillance and Analysis, and International Regulation

Jean-Michel **Van Cottem**,
Deputy Director

Niek **Bundervoet**
Aimery **Clerbaux**[190]
Bénédicte **Clerckx***
Stéphane **De Maght***
Ann **De Pauw**
Valérie **Demeur**
Annick **Lambrighs**[189]
Didier **Niclaes**[191]
Patrick **Van Caelenberghe**
Dieter **Vandelanotte**
Hendrik **Van Driessche**

Headed by Mr Henk BECQUAERT

Supervision of Pension Institutions

Filip **Gijsel**,
Deputy Director

Saskia **Bollu**[192]
Karel **De Bondt**
Maria **Di Romana**
Gerhard **Gieselink**
Caroline **Gillain**
Bertrand **Leton**
Fabienne **Maudoux**
Marc **Meganck***
Marie-Paule **Peiffer**
Johanna **Secq**
Paul **Teichmann**
Marleen **Tombeur**
Ingrid **Trouillez**[193]
Diederik **Vandendriessche**
Caroline **Vandevelde***

Supervision of Domestic Insurance Companies

Filip **Gijsel**,
Deputy Director

Christel **Beaujean**
Dirk **De Paepe**
Guido **De Pelsemaeker**
Erik **Degadt**
André **Desmet**
Olivier **Fache**
Delphine **Genot**
Dirk **Goeman**
Jan **Hooybergs**
Pascale-Agnès **Keymeulen**
Philippe **Loison**
Carine **Luyckx**
Françoise **Renglet**
Carl **Vanden Auweele**
Edouard **Van Horenbeeck***
Steve **Vanhuldenberg**

Collective Management of Savings Products and Centre of Expertise for Collective Asset Management

Greet **T'Jonck**,
Deputy Director

Conny **Croes**
Nathalie **Flamen**
Séverine **Fratta**
Gaëtan **Laga***
Johan **Lammens**
Astrid **Moens**
Tom **Van den Elzen**
Marilyn **Vermeulen**
Benoit **Zinnen**

* Serves as coordinator.
188 Seconded to the Prime Minister's Office.
189 Working partly in another service.
190 Seconded, on a part-time basis, to the Permanent Representation of Belgium to the European Union.
191 Also serves as internal coordinator for the activities relating to the Committee of European Securities Regulators (CESR).
192 Also serves as Secretary of the Commission for Voluntary Supplementary Pensions of the Self-Employed and of the Board for Voluntary Supplementary Pensions of the Self-Employed.
193 Also serves as Secretary of the Supplementary Pensions Commission and of the Supplementary Pensions Board.

Headed by Mr Rudi BONTE

Large Bancassurance Groups and Centre of Expertise for IT Audit

Koen **Algoet**,
Deputy Director

Yves **Billiet**
Jacques **Bodard**
Len **Braem**
Paul **Callebaut**
Philippe **de Barsy**
Christophe **Debrabandere**
Isabelle **De Groote**
Michel **De Schuyter**
Jan **De Smedt**
Peter **Dhoedt**
Philippe **Dubois**
Pierre **Jurdan***
Véronique **Lorea**
Bart **Maselis**
Peter **Monderen**
Sarah **Ndayirukiye**
Jérôme **Nélis**
Nicolas **Staner**
Gino **Thielemans**
Thierry **Thuysbaert**
Katherina **Tiebout**
Marc **Van Caenegem***
Joseph **Van Cauwenbergh**
Inge **Van de Paer**
Johan **Vanhaverbeke**
Brenda **Van Tendeloo**
Marc **Verleye***
Rudy **Vermaelen**

Domestic Banks and Investment Firms, and Bureaux de Change

Françoise **Herbay**,
Deputy Director

Joan **Carette**
Ilse **Ceulemans**
Sofie **Covemaeker**
Marc **Denys**
Jean-Luc **Hacha**
Madeleine **Kaleyanga Tshiama**
Philippe **Leirens**
Christine **Pécasse**
Willy **Sermon**
Christel **Spaepen**
Marc **Van de Gucht***
Glenn **Van Noten**

Headed by Madam Marcia DE WACHTER

Protection of Consumers of Financial Services

Luc **Roeges**,
Deputy Director

Elisabeth **Bardiaux**
Pascale **Coulon**
Jan **De Pagie**
Patrick **Declerck**
Philippe **Despontin**
Annick **Dewulf**[194]
Christian **Janssens**
Brigitte **Leën**
Annick **Mettepenningen**
Philippe **Reul**[195]
Monique **Siscot**
Luc **Van Cauter***
Cécile **Van Leeuw**
Lutgarde **Vandermassen**
Luc **Vynckier**

Supervision of Intermediaries

Luc **Roeges**,
Deputy Director

Herlindis **Boogaerts***
Nathalie **Gigot**
Nicole **Peeters**
Marie-Ange **Rosseels**
Christophe **Viaene**
Rosanne **Volckaert**

* Serves as coordinator.
194 Also serves as Secretary of the Insurance Commission.
195 Seconded to the Belgian-Congolese Redemption and Management Fund.

Headed by Mr Michel FLAMÉE

Foreign Banks, Investment Firms and Insurance Companies and Centre of Expertise for Quantitative Methods

Christian **Jacob**,
Deputy Director

Philippe **Authom**
Jean-François **Bodart**
Cindy **Courtois**
Anne-Sophie **Dasnois**
Eva **De Cnodder**
Dirk **De Moor**
Alain **Degroide***
Gaëtan **Doucet**
Isabelle **Gérard**
Patrick **Gregoire**
Luc **Hars**
Michel **Hastir**
Giles **Motteu**
Peter **Piu**
Joseph **Pulinx**
Frederic **Romont**
Vincent **Sapin***
Karel **Spruyt**
Viviane **Van Herzele**
Alexander **Van Ouytsel**
Koen **Verheyden**
Alain **Vranken**
Coleet **Vynckier**
Patricia **Zaina**

Large "Assurfinance" Groups, Institutions Specialized in Clearing, Settlement and Custody

Patrick **Massin**,
Deputy Director

Lot **Anné**
Gentiane **Bury**
Leen **Celen**
Claire **Dubuisson**
Cécile **Flandre***
Jean-Marie **Hardy**
Patricia **Kaiser**
Laurent **Ohn***
Florence **Rigo**
Serge **Rompteau**[196]
Peter **Stafford**
Nicolas **Strypstein**
Lai Hang **Tam**
Brigitte **Vandevelde**
Paul **Windels**
Valérie **Woit**

Headed by Madam Françoise MASAI

Legal Service

Georges **Carton de Tournai**,
Director

Hilde **Daems**
Sylvie **Decoster**
Jean-Pierre **Deguée***
Veerle **De Schryver**
Ann **Dirkx**[197]
Antoine **Greindl**
Clarisse **Lewalle**
Hans **Seeldrayers**
Catherine **Terrier**
Frank **Trimpeneers**
Antoine **Van Cauwenberge**[198]*
Aline **Waleffe**
Sabrina **Zegers**

Headed by Mr Peter PRAET

Prudential Policy - Banks and Insurance

Jo **Swyngedouw**,
Deputy Director

Guillaume **Bérard**
Benoit **Bienfait**
Michel **Colinet***
Emmanuel **Cortese**
Jean-Michel **Delaval**[199]
Peter **De Vos**
Ann **Devos**
David **Guillaume***
Jurgen **Janssens**[199]
Luc **Kaiser**
Jeroen **Lamoot**
Hein **Lannoy**[200]*
Annemie **Lefevre**
Pierre **Lemoine**
Jos **Meuleman**
Marc **Peters**
Marc **Pickeur***
Claire **Renoirte**[199]
Rodolphe **Ruggeri**[199]
Dominik **Smoniewski**
Kajal **Vandenput**

* Serves as coordinator.
196 Seconded to the Commission des Normes Comptables/Commissie voor Boekhoudige Normen (Belgian commission for accounting standards).
197 Also serves as Euro-coordinator.
198 Chargé de mission to the Chairman of the Supervisory Board.
199 Member of the staff of the National Bank of Belgium, but operationally included in Prudential Policy - Banks and Insurance at the CBFA, within the framework of the synergies between the two institutions.
200 Also serves as Assistant Secretary of the Financial Stability Committee.

Headed by Mr Albert NIESTEN, Secretary General, in his capacity as Investigations Officer

Investigations Office

Michaël **André**
Marie-Sheila **Bastians**
Merel **Pieters**

Headed by Mr Albert NIESTEN, Secretary General

Annemie **Rombouts**,
Deputy Director

Personnel, Administration and Infrastructure

Jean-Marie **Jacquemin**
Egwin **Schoolmeesters***

People & Communication

Marie-Josèphe **Léonard**
Myriam **Penninckx***

IT

Emmanuel **De Haes**
Hilde **Dierckx**
Jef **De Moitié**
Véronique **Léonard***
Jan **Vyverman**

Accounting and Comptroller

Sabine **Philippart**
Paul **Verbiest***

Translation

Natasja **Baeteman**
Jean-Pierre **Coeurnelle**
Françoise **Danthinne**
Xavier **Jeunechamps**
Jan **Leers**
Monica **Sandor**
Christine **Triest**

* Serves as coordinator

The CBFA granted the request made by Mr Frans Beukelaers, deputy director, to exercise his right to retire as from 1 April 2008. Frans Beukelaers began his career with the Banking Commission on 16 May 1977 in the Banking Supervision service, and spent his entire career in the prudential supervision of credit institutions. He was appointed deputy director of "Large Bancassurance Groups" on 1 July 2001.

The CBFA wishes to express its gratitude to Frans Beukelaers for his unstinting service to the institution.

The CBFA wishes also to thank the following staff members whose professional careers ended during the year under review: Monique Lein, Fabienne Ooslandt.

In Memoriam

It was with great sadness that the CBFA learned of the death of Baron Jean Godeaux, honorary chairman, on 27 April 2009.

Mr Jean Godeaux was appointed to head the Banking Commission in 1974 and held that post until he was named Governor of the National Bank of Belgium in 1982. Upon reaching retirement age in 1989, he was ennobled in recognition of his service to the nation.

The CBFA cherishes the memory of Baron Godeaux, whom it praised, in 1982, not only for his undeniable professional qualities but also his unfailing dedication, lively intelligence, vast culture and great personability[201].

The CBFA also mourns the death of three members of its staff:

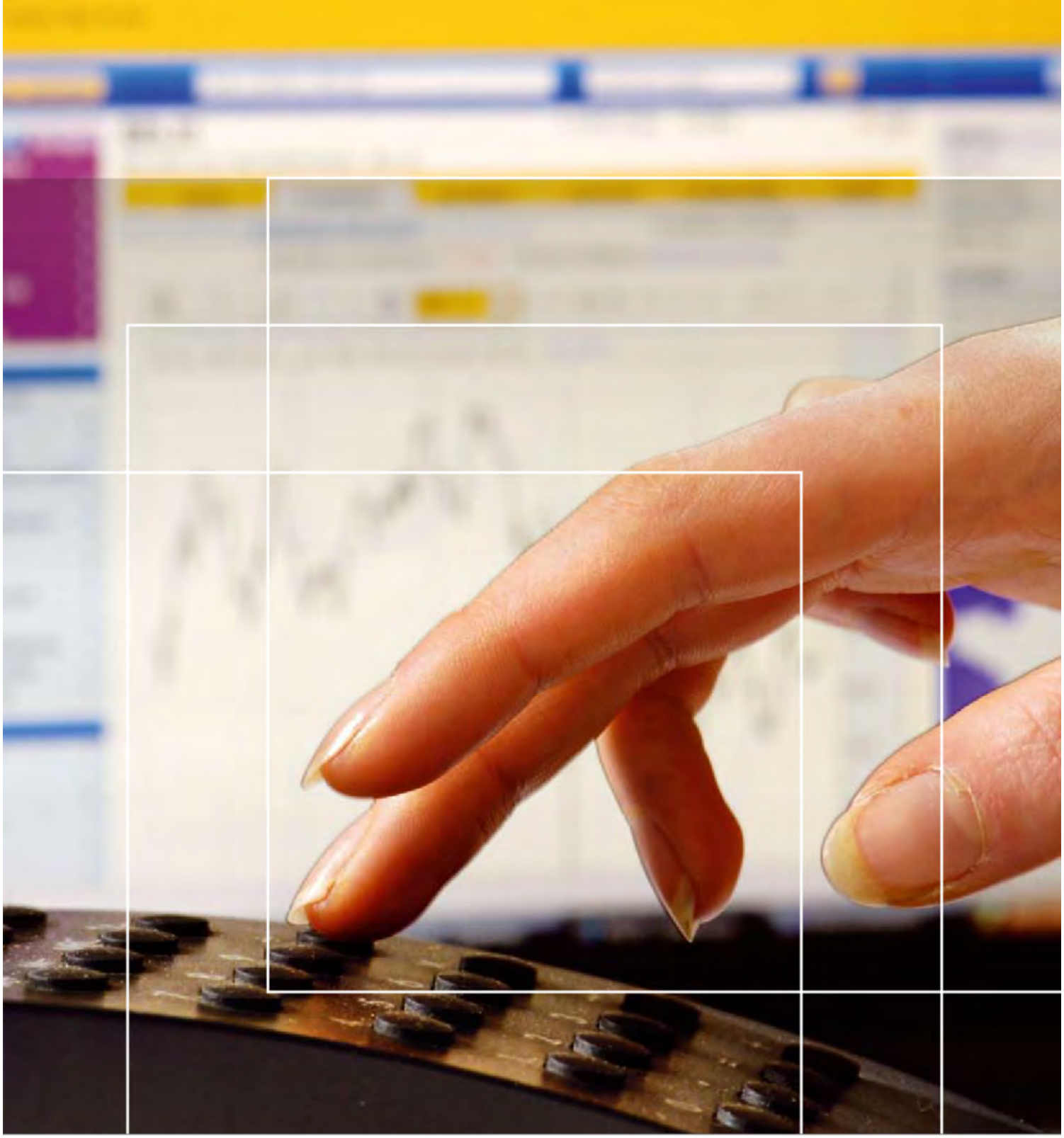
Mr Luc Van Den Broeck, who joined the CBF on 6 September 1993 and who died unexpectedly on 2 July 2008.

Mrs Marie-Thérèse Ruelle, who began working for the Insurance Supervisory Authority (ISA) on 1 April 1977, then joined the CBFA in 2004 after the merger of the ISA and the CBF to form the new CBFA. She died on 1 September 2008 after a lengthy illness.

Mrs Jeannine Tilman, who joined the Banking Commission on 1 April 1976, and who died on 16 April 2009 after several years of work incapacity.

Their memory will be cherished.

201 See the Banking Commission's Annual Report 1981-1982.



ANNEXES

LIST OF EUROPEAN AND INTERNATIONAL ORGANIZATIONS MENTIONED

BCBS	*Basel Committee on Banking Supervision*
BSC	*Banking Supervision Committee*
CEBS	*Committee of European Banking Supervisors*
CEIOPS	*Committee of European Insurance and Occupational Pensions Supervisors*
CESR	*Committee of European Securities Regulators*
EER	*European Economic Area*
FSB	*Financial Stability Board*
IAIS	*International Association of Insurance Supervisors*
IASB	*International Accounting Standards Board*
IOSCO	*International Organisation of Securities Commissions*