



In this issue

Editorial

Financial services industry

Credit institutions and investment firms

Investment products and asset management

Insurance, reinsurance and pensions

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Visit our [website](#)

Regulatory Radar

Regulatory Newsletter, Issue 14, July-August 2009

Newsletter on banking and financial regulation

Regulation and deregulation

Almost one year after the cataclysmic events in the financial industry, society as a whole is still coming to grips with what happened. Behaviour and decisions of politicians and officials from central banks and regulators during the hectic weeks of September-October 2008 are under scrutiny, as is the good habit of parliament based democracies. The case that has attracted most attention in the US is whether Paulson and Bernanke stepped beyond their powers in allegedly pressuring the BofA CEO not to abandon the Merrill Lynch merger, even though Mr. Lewis thought this would have been better for his shareholders. Clearly, Bernanke and Paulson took the view that the stability of the financial system would not survive a second Lehman. It was all for the well-being of the system.

This example links to several questions for society as a whole that goes beyond the frantic redrawing of regulation that is going on.

The events have shown that if confidence in the financial sector is lost, only the government can stop the rot by bailing out the system. Letting banks go bankrupt is much harder than letting car procedures fail, given their central role in the economy.

1. How to contain the moral hazard?
I.e. if times are good, bankers can take risks, reap the rewards and let the government clean up the mess if the bet fails. The unease about Goldman Sachs' recent good performance and the comment by King Albert II that bankers need to act with higher ethical standards, are just two examples of the last weeks that show that the majority of society thinks that bank executives indeed irresponsibly bet the farm. Let us not forget, though, that also the banks' shareholders profit(ed) from the upside...
2. Given that as a government, representing the taxpaying society, one de facto acts as back stop for the risks in extreme times, what rights does that

entail for society to set the rules along which the financial industry should play? Indicative for the swing the pendulum is taking in this domain, is the public outrage about remuneration policies, and the nascent regulation pertaining to them. The current feeling clearly is that the sector is too important for the economy, to be left to manage itself.

3. Is a more heavy hand of the government a temporary feature, and if yes, how will the government retreat, assuming that confidence in the sector has been re-established?

If these questions sound familiar, this is because they represent the age old debate about regulation and deregulation. Moreover, these questions are not restricted to the banking industry. One could apply them equally well to the utility industry (electricity, water,...), the pharmaceutical industry, the food and agriculture industry, that each also provide essential ingredients to our daily live.

After all, financial crises have happened in the past in both regulated (or even centrally planned) and deregulated economies. We are probably just witnessing a cyclical increase of government control and regulation that will certainly abate when the memories of the current crises are only to be found in academic studies.

As Alan Greenspan so convincingly argues in his memoirs, the creative destruction that characterizes free markets, has proven a very powerful tool to lift the standard of living of all members of society.

In June, interesting publications have been issued on topics such as credit rating agencies, anti-money laundering, hybrid capita instruments, hedge funds regulation and securitization in the insurance sector.

Finally, in Belgium the CBFA published, amongst others, the circular to insurance and reinsurance companies on the reporting by senior management concerning the evaluation of internal control systems and on senior management's declaration concerning the periodic financial statements.

We have our summer break now and will be back by mid September.

We hope you enjoy the reading.

The Editorial Board.



Official Journal of the European Union (OJ)

⇒ [Commission Regulation \(EC\) No 460/2009 of 4 June 2009](#) amending Regulation (EC) No 1126/2008 adopting certain international accounting standards in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council as regards International Financial Reporting Interpretations Committee's (IFRIC) Interpretation 16 was published in OJ L 139.

⇒ [Commission Regulation \(EC\) No 494/2009 of 3 June 2009](#) amending Regulation (EC) No 1126/2008 adopting certain international accounting standards in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council as regards International Accounting Standard (IAS) 27 was published in OJ L 149.

⇒ [Commission Regulation \(EC\) No 495/2009 of 3 June 2009](#) amending Regulation (EC) No 1126/2008 adopting certain international accounting standards in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council as regards International Financial Reporting Standard (IFRS) 3 was published in OJ L 149.

⇒ [Commission Regulation \(EC\) No 496/2009 of 11 June 2009](#) amending Council Regulation (EC) No 872/2004 concerning further restrictive measures in relation to Liberia was published in OJ L 149.

⇒ [Décision de la Banque Centrale Européenne du 9 juin 2009](#) modifiant la décision BCE/2007/7 relative aux modalités de TARGET2-BCE (BCE/2009/13) (2009/465/CE) was published in OJ L 151.

⇒ [Directive 2009/49/EC of the European Parliament and of the Council of 18 June 2009](#) amending Council Directives 78/660/EEC and 83/349/EEC as regards certain disclosure requirements for medium-sized companies and the obligation to draw up consolidated accounts was published in OJ L 164.

Banking, Finance and Insurance Commission (CBFA)

Circular 2009_25

The CBFA published on June 16th, the ⇒ [circular 2009_25](#) to listed companies concerning eCorporate: submitting documents.

Circular 2009_24

The CBFA published on June 11th, the ⇒ [circular 2009_24](#) on the acquisition of own shares or certificates by listed companies or by companies whose securities are admitted to trading on certain MTFs.

Official Journal of Belgium

Composition, organisation, operation and independence of the CTIF-CFI

On June 29th, [the Royal decree](#) of June 11th, which amends the composition, organisation, operation and independence of the Belgian Financial Intelligence Processing Unit (CTIF-CFI), was published.

Consultative or informative documents

European Commission

Early signs of improvement but euro-area economy is still in contraction mode

In a [press release](#) of June 29th, the European Commission announced the publication of its [quarterly report on the euro area](#). A first focus section assesses the impact of the economic and financial crisis on potential growth. A second focus section discusses the economic and budgetary challenges posed by population ageing in times of crisis.

Report on the financial crisis and financial education following the second meeting of the EGFE

On June 25th, the European Commission [published](#) the report on the financial crisis and financial education following the second meeting of the Expert Group on Financial Education (EGFE).

Commission takes action to ensure that Member States implement European Union rules

In a [press release](#) of June 25th, the European Commission announced its decision to refer Austria, Ireland, Italy and Spain to the European Court of Justice over non-implementation into national law of the Statutory Audit Directive. The Commission has also decided to send formal requests to Belgium, Ireland, Greece, Luxembourg, Poland and Portugal as they have failed to fully implement into their national laws the latest Directive in the field of accounting within the prescribed deadline. These formal requests take the form of "reasoned opinions", the second stage of the infringement procedure laid down in Article 226 of the EC Treaty. If there is no satisfactory reply within two months, the Commission may refer the matter to the European Court of Justice.

Commission requests Belgium and the UK to implement Transparency Directive

In a [press release](#) of June 25th, the European Commission announced its decision to address formal requests under the EC Treaty infringements procedure to

Belgium and the United Kingdom to communicate measures implementing the Commission Directive 2005/81/EC amending the Directive on the transparency of financial relations between Member States and public undertakings. Member States were required to implement the Directive in national law by 19 December 2006. The requests take the form of "reasoned opinions", the second step in infringement procedures under Article 226 of the EC Treaty. Belgium and the UK now have two months to notify to the Commission the measures they have taken to implement the Directive. Failing this, the Commission may refer them to the European Court of Justice.

Consultation on possible adoption of international standards for statutory audit of European Union companies

In a [press release](#) of June 22nd, the European Commission announced the launch of a [public consultation](#) to determine whether International Standards on Auditing (ISAs) should be adopted in the European Union. Interested parties are invited to respond to the consultation by 15 September 2009.

Disaggregation of major holdings of voting rights

On June 22th, the European Commission [published](#) the European Securities Market Expert Group (ESME) opinion on disaggregation of major holdings of voting rights.

Consultation on expert group report on credit histories

In a [press release](#) of June 15th, the European Commission announced the publication of the [report of the expert group on credit histories](#). The group had been mandated to identify solutions that would improve the access to and the exchange of consumers' credit data within the European Union. The report and reactions to it will contribute significantly to the policy debate on responsible lending. The report, which does not necessarily represent the views of the Commission, will be open for consultation until 31 August 2009.

Consultation on how to ensure responsible lending and borrowing in the EU

In a [press release](#) of June 15th, the European Commission announced the launch of a [consultation](#) on how to ensure responsible lending and borrowing in the EU. Views from all interested stakeholders are welcome by 31 August 2009.

Consultation on possible end-date for Single Euro Payments Area (SEPA) migration

In a [press release](#) of June 8th, the European Commission announced the launch of a [consultation](#) on whether and how deadlines should be set for the migration of existing payment products (i.e. credit transfers and direct debits) to the new Single Euro

Payments Area (SEPA) products. Interested parties are invited to send their comments to the Commission by 3 August 2009.

Payments Info-letter

In June, the European Commission [published](#) the 4th issue of its Payments Info-letter.

European Central Bank (ECB)

Safety and soundness of the post-trading infrastructure in the EU

In a [press release](#) of June 23rd, The European System of Central Banks (ESCB) and the Committee of European Securities Regulators (CESR) announced the publication of [recommendations](#) for securities settlement systems and central counterparties (CCPs) in the European Union together with a [feedback document](#) to the consultations held in this respect.

Financial Stability Review

The ECB [published](#), on June 15th, its Financial Stability Review.

Federation of European Securities Exchanges (FESE)

Tick size regimes

In a [press release](#) of June 30th, FESE announced the introduction of harmonized tick size regimes in Europe.

Response to IOSCO consultation on unregulated financial markets and products

On June 17th, FESE published its [response](#) to the IOSCO consultation on unregulated financial markets and products.

Response to the Commission on the Review of the Market Abuse Directive

On June 17th, FESE published its [response](#) to the Commission on the Review of the Market Abuse Directive.

Response to the Commission on the Harmonisation of Securities Law

On June 12th, FESE published its [response](#) to the Commission consultation on the harmonisation of securities Law.

European Mortgage Federation (EMF)

Mortgage Info

On June 29th, EMF published its [👉monthly newsletter](#).

International Monetary Fund (IMF)

IMF Research Bulletin

The June issue of [👉IMF Research Bulletin](#) was released.

Credit Rating Agencies

IMF released on 19 June 2009 a [👉Working Paper](#) on The Systemic Regulation of Credit Rating Agencies and Rated Markets. It argues that macro-prudential regulation is necessary to address the systemic risk inherent to ratings. The paper illustrates how financial markets have increasingly relied on ratings. It shows how downgrades have led to systemic market losses and increased illiquidity. The paper suggests the use of "ratings maps" and stress-tests to assess the systemic risk of ratings, and increased capital or liquidity buffers to manage such risk.

Financial Crisis

On 9 June 2009 IMF released a [👉Staff Position Note](#) on the Fiscal implications of the Global Economic and Financial Crisis.

Bank restructuring

On 5 June 2009 IMF released a [👉Staff Position Note](#) which clarifies the economics behind bank restructuring and evaluates various restructuring options for systemically important banks.

Financial Action Task Force (FATF)

Chairman's Summary and FATF Statement

The [👉key outcomes](#) of the FATF XX Plenary meeting which was held in Lyon on 24-26 June 2009, and the FATF statement concerning the anti-money laundering and countering the financing of terrorism (AML/CFT) systems of Iran, Uzbekistan, Turkmenistan, Pakistan and São Tome and Principe was released.

International Organisation of Securities Commissions (IOSCO)

International Auditing Standards

In a [👉press release](#) of June 12th, IOSCO published a statement on International Auditing standards.

Principles for the effective regulation of short selling

On June 19th, IOSCO [published](#) its principles for the effective regulation of short selling.

Banking, Finance and Insurance Commission (CBFA)

Consultation on the transposition of Directive 2007/36 on the exercise of certain rights of shareholders in listed companies

In a [press release](#) of June 22nd, the CBFA announced the launch of a [public consultation](#) on the transposition of Directive 2007/36 on the exercise of certain rights of shareholders in listed companies. Interested parties are invited to respond to the consultation by 31 July 2009.

[» Back to top](#)



Credit institutions and investment firms

Consultative or informative documents

Bank for International Settlements (BIS)

79th annual report

In a [press release](#) of June 29th, the BIS announced the publication of its [annual report](#) which includes the following chapters:

- Rescue, recovery, reform;
- The global financial crisis;
- The financial sector under stress;
- Fallout for the industrial economies;
- Fallout for the emerging market economies;
- Policy responses to the crisis;
- Risk and opportunities: towards a fail-safe financial system.

European Commission

Compliance with the anti-money laundering directive by cross-border banking groups at group level

On June 30th, the European Commission published a [Commission Staff Working Paper](#) on compliance with the anti-money laundering directive by cross-border banking groups at group level.

Committee of European Banking Supervisors (CEBS)

CEBS has published two reports setting out the outcome of its assessment of banks' disclosures

In a [press release](#) of June 24th, the CEBS announced the publication of two reports setting out the outcome of its efforts in assessing banks' disclosures published i) in their [2008 audited annual reports on activities and exposures affected by the financial crisis](#) and ii) under [Pillar 3](#).

Liquidity identity card

In a [press release](#) of June 22nd, the CEBS announced the publication of its [liquidity identity card](#) aiming at providing supervisors of European cross-border banking groups with a single prudential language to enable meaningful exchange of information, in particular within colleges of supervisors.

Consultation paper on CEBS's draft implementation guidelines on the revised large exposures regime

In a [press release](#) of June 12th, the CEBS announced the launch of a [consultation](#) on draft implementation guidelines for three aspects of the revised large exposures regime. The consultation is open to all interested parties, including supervised institutions and other market participants, until 11 September 2009.

Call for technical advice - second part on article 122a of the amended CRD

In a [press release](#) of June 12th, the CEBS announced the receipt of a [call for technical advice - second part](#) on article 122a of the amended CRD.

Second advice on options and national discretions

In a [press release](#) of June 10th, the CEBS announced the publication of its [second advice](#) on options and national discretions.

2008 annual report

In a [press release](#) of June 9th, the CEBS announced the publication of its [annual report](#) which deals with the following:

- The convergence of supervisory practices ;
- Implementation of the CRD ;
- Convergence of supervisory policies ;
- Liquidity risk management.

CEBS published its advice on the information that may be exchanged between home and host supervisors of branches under article 42 of the CRD

In a [press release](#) of June 3rd, the CEBS announced the

publication of its [↗advice](#) on the information that may be exchanged between home and host supervisors of branches under article 42 of the Capital Requirements Directive (CRD).

Committee of European Securities Regulators (CESR)

Update on the assessment of the first four proposals for MiFID pre-trade transparency waivers

On June 29th, CESR [↗published](#) an update on the assessment of the first four proposals for MiFID pre-trade transparency waivers.

Safety and soundness of the post-trading infrastructure in the EU

In a [↗press release](#) of June 23rd, The European System of Central Banks (ESCB) and the Committee of European Securities Regulators (CESR) announced the publication of recommendations ([↗Ref. CESR/09-446](#)) for securities settlement systems and central counterparties (CCPs) in the European Union (together with a feedback document ([↗Ref. CESR/09-447](#)) to the consultations held in this respect.

Impact of MiFID on equity secondary markets

In a [↗press release](#) of June 10th, CESR announced the [↗publication](#) of its assessment of MiFID on the functioning of equity secondary markets.

Call for evidence on mutual recognition with non-EU jurisdictions

On June 8th, CESR launched a [↗call for evidence](#) on mutual recognition with non-EU jurisdictions.

Financial Stability Board (FSF)

Inaugural meeting

In a [↗press release](#) of June 27th, FSF communicated it held its inaugural meeting in Basel.

European Mortgage Federation (EMF)

Response to DG SANCO Consultation paper on Consumer Collective Redress

On June 26th, EMF published its [↗response](#) to DG SANCO Consultation paper on Consumer Collective Redress.

Capital Requirements Directive

On June 4th, EMF published a [↗note](#) on the

implementation of CRD in the EU.

International Organisation of Securities Commissions (IOSCO)

Recommendations in Response to the Financial Crisis in Emerging Markets

In a [press release](#) of June 24th, IOSCO announced the [publication](#) of its consultation report entitled [Impact on and Responses of Emerging Markets to the financial crisis](#).

Stocktaking on the use of credit ratings

In a [press release](#) of June 15th, IOSCO announced the publication by the Joint Forum of its study, [Stocktaking on the use of credit ratings](#).

Annual Conference

On June 11th, IOSCO published the [final update](#) of the conclusions reached at its annual conference.

International Capital Markets Associations (ICMA)

Banking crisis

On June 29, 2009 [ICMA](#) published [its response](#) to DP09/02 - A regulatory response to the global banking crisis is now available.

European Banking Federation (EBF)

Market Abuse Directive review

The EBF published, on June 10th, its [response](#) to the European Commission call for evidence on the Review of Directive 2003/6/EC on insider dealing and market manipulation.

Comments on the CEBS Consultation on amendments to Guidelines on FINREP

The EBF published, on June 12th, its [comments](#) on the CEBS Consultation on amendments to guidelines on FINREP.

European Federation of Finance House Associations (EUROFINAS)

Report of the Expert Group on Credit Histories set up by the European Commission

In a [press release](#) of June 15th, EUROFINAS welcomed the publication of the report of the Expert Group on Credit Histories set up by the European Commission.

Access to credit histories

EUROFINAS released its [preliminary position](#) on access to credit histories.

European Association of Co-operative Banks (EACB)

Supplementary Measures – Leverage Ratio

On 24 June 2009 EACB published its [letter](#) to Basel Committee on Supplementary Measures - Leverage Ratio

Market Abuse Directive

On 10 June 2009 EACB released its [answer](#) to the call for evidence of the European Commission on the review of the Market Abuse Directive (2003/6/EC).

[» Back to top](#)



Investment products and asset management

Consultative or informative documents

Committee of European Banking Supervisors (CEBS)

Consultation on implementation guidelines on hybrid capital instruments

In a [press release](#) of June 22nd, the CEBS announced the publication of its [consultation paper](#) on its implementation guidelines on hybrid capital instruments. The consultation is open to all interested parties, including supervised institutions and other market participants, until 23 September 2009.

Committee of European Securities Regulators (CESR)

Risk Measurement for the purposes of the calculation of UCITS' global exposure

On June 15th, CESR launched a [consultation](#) on its technical advice at level 2 on Risk Measurement for the purposes of the calculation of UCITS' global exposure.

European Fund and Asset Management

Association (EFAMA)

Annual Report

On 19 June 2009 EFAMA released its [Annual Report 08-09](#).

New president

EFAMA has announced on 19 June 2009 that Mr Jean-Baptiste de Franssu was elected President of EFAMA for a two-year term. Please find the [press release](#).

International Organisation of Securities Commissions (IOSCO)

Disclosure requirements for public offerings of Asset-Backed Securities

On June 29th, IOSCO launched a [consultation](#) on Disclosure requirements for public offerings of Asset-Backed Securities.

Principles for hedge funds regulation

In a [press release](#) of June 22th, IOSCO announced the [publication](#) of its report on Hedge Funds oversight.

International Capital Markets Associations (ICMA)

Market Abuse Directive

On 10 June 2009 ICMA published [its response](#) to European Commission call for evidence on the review of the Market Abuse Directive.

ICMA appoints new Chief Executive and President

On 5 June 2009 ICMA announced the [appointments](#) of Martin Scheck as Chief Executive and René Karsenti as President, effective August 1, 2009.

European Savings Banks Group (ESBG)

Market Abuse Directive

On 10 June 2009 ESBG published [its response](#) to EU Commission call for evidence on the review of the Market Abuse Directive.



Insurance, reinsurance and pensions

Normative documents

Banking, Finance and Insurance Commission (CBFA)

Circular CBFA_2009_26

The CBFA published on June 25th, [Circular CBFA_2009_26](#) to insurance and reinsurance companies on the reporting by senior management concerning the evaluation of internal control systems and on senior management's declaration concerning the periodic financial statements.

Consultative or informative documents

Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS)

Insurance Guarantee Schemes

On June 29th, CEIOPS published its [input](#) to the EC work on Insurance Guarantee Schemes, following the request of the EC in May 2009. The report includes 13 recommendations for those issues where CEIOPS members reached a consensus.

Securitization in the Insurance sector

In a [press release](#) of June 25th, CEIOPS announced the publication of its [report](#) on securitization in the Insurance sector.

Half-year Report on the financial conditions and financial stability of the insurance and occupational pension fund sector in the EU/EEA

In a [press release](#) of June 24th, CEIOPS announced the publication of its half-year [report](#) on financial stability.

Annual Report 2008 and Working Program 2009

On June 8th, CEIOPS published its [Annual Report 2008 and Working Program 2009](#). The document provides a comprehensive overview of CEIOPS achievements in 2008 and an outline of CEIOPS objectives for the current year.

European insurance and reinsurance federation (CEA)

European Commission's Green Paper on the Review of the Brussels I Regulation

On June 30th, CEA published its [response](#) to the European Commission's Green Paper on the Review of the Brussels I Regulation.

CEA hosts first international conference

In a [press release](#) of June 26th, CEA reported its first successful international conference on June 19th.

Annual report

On June 19th, CEA published its [annual report](#).

Comments on CEIOPS Consultation Paper 36

On June 8th, CEA published its [comments](#) on CEIOPS Consultation Paper 36 on "SPVs".

Comments on CEIOPS Consultation Paper 35

On June 8th, CEA published its [comments](#) on CEIOPS Consultation Paper 35 on Valuation of Assets and "Other Liabilities".

Comments on CEIOPS Consultation Paper 34

On June 8th, CEA published its [comments](#) on CEIOPS Consultation Paper 34 on Transparency and Accountability.

Comments on CEIOPS Consultation Paper 33

On June 8th, CEA published its [comments](#) on CEIOPS Consultation Paper 33 on level 2 measures for "Draft Advice on Governance".

High level messages on CEIOPS Consultation Papers 26 to 37

On June 8th, CEA published its [high level messages](#) on CEIOPS Consultation Papers 26 to 37.

Comments on CEIOPS Consultation Paper 37

On June 5th, CEA published its [comments](#) on CEIOPS Consultation Paper 37 on the procedure to be followed for the approval of an internal model.

Comments on CEIOPS Consultation Paper 32

On June 5th, CEA published its [comments](#) on CEIOPS Consultation Paper 32 on TP – Assumptions about future management actions.

Comments on CEIOPS Consultation Paper 31

On June 5th, CEA published its [comments](#) on CEIOPS Consultation Paper 31 on Allowance for Financial Mitigation Techniques.

Comments on CEIOPS Consultation Paper 30

On June 5th, CEA published its [comments](#) on CEIOPS Consultation Paper 30 on TP - Treatment of Future Premiums.

Comments on CEIOPS Consultation Paper 29

On June 5th, CEA published its [comments](#) on CEIOPS Consultation Paper 29 on Own Funds - Criteria for supervisory approval of ancillary own funds.

Comments on CEIOPS Consultation Paper 28

On June 5th, CEA published its [comments](#) on CEIOPS Consultation Paper 28 on SCR standard formula - Counterparty default risk module.

Comments on CEIOPS Consultation Paper 26

On June 5th, CEA published its [comments](#) on CEIOPS Consultation Paper 26 on TP - Methods and statistical techniques for calculating the best estimate.

Block Exemption Regulation Renewal

In a [press release](#) of June 2nd, CEA announced the publication of a [position paper](#) in response to the European Commission's Report on the functioning of the Insurance Block Exemption Regulation (BER) that was published on 24 March 2009. In its response the CEA sets out in detail why the insurance industry strongly believes that all four areas currently exempted by the BER need to be renewed when the current BER expires in 2010.

International Association of Insurance Supervisors (IAIS)

IAIS takes actions to further strengthen insurance supervision

In a [press release](#) of June 25th, IAIS reaffirmed a number of actions being taken to reinforce insurance regulation and improve the resilience of the global insurance sector against new challenges.

Insurance supervisors strengthen international cooperation efforts

In a [press release](#) of June 25th, IAIS reported that an important step in strengthening cooperation among insurance supervisors worldwide was taken with the first three insurance supervisory authorities becoming

signatories to the IAIS Multilateral Memorandum of Understanding (MMoU).

Preliminary Views on Revenue Recognition in Contracts with Customers

On June 19th, IAIS published its [comment](#) on the IASB discussion paper Preliminary Views on Revenue Recognition in Contracts with Customers.

Stocktaking on the use of credit ratings

In a [press release](#) of June 15th, IAIS announced the publication by the Joint Forum of its study, [Stocktaking on the use of credit ratings](#).

Banking, Finance and Insurance Commission (CBFA)

Opinion C/2009/1

The CBFA published on June 29th, the [opinion](#) n° 2009/1 of the Insurance Commission.

Results of the survey on the information requirements of insurance intermediaries

The CBFA published on June 17th, the [results](#) of the survey on the information requirements of insurance intermediaries.

[» Back to top](#)

We are always interested in your feedback. Please let us know what you think of this newsletter and send your comments to [Regulatory Radar](#).

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