

## **5.9 REPORT BY THE CHAIRMAN OF THE BOARD OF DIRECTORS ON THE CONDITIONS OF PREPARATION AND ORGANIZATION OF THE BOARD OF DIRECTORS' WORK AND ON INTERNAL CONTROL PROCEDURES**

### **5.9.1 Conditions of preparation and organization of the Board of Directors' work**

#### **5.9.1.1 Composition of the Board of Directors**

Our Board of Directors is currently composed of nine members, including four outside directors.

A list of the Company's directors is included in § 6.1.1.2 of the present Reference document

#### **5.9.1.2 Frequency of meetings**

During the fiscal year ended, the Board of Directors of the Company met on seven occasions, that is to say approximately once every two months.

#### **5.9.1.3 Notices of meetings and attendance by directors**

Convening notices were sent to the directors and the Auditors by regular mail, sufficiently in advance, as provided in the bylaws. On average, convening notices of Board of Directors' meetings are sent about twelve days before the meeting date.

Furthermore, in accordance with article L. 823–17 and R. 823–9 of the French Commercial code ("*Code de commerce*"), the statutory auditors were sent convening notices of Board of Directors' meetings at which interim and annual financial statements are examined and settled, by registered letter, with acknowledgement receipt.

The Board of Directors' attendance records show that all directors were present or represented at each meeting held in 2008.

#### **5.9.1.4 Chairing of Board of Directors' meetings**

All seven meetings of the Board of Directors held during fiscal year ended were presided over by its Chairman.

#### **5.9.1.5 Minutes**

Minutes of Board of Directors' meetings are prepared after each meeting they relate and are systematically submitted to all the members of the Board of Directors' approval at the next meeting, following which they are signed and entered into the record of Board proceedings.

#### **5.9.1.6 Activities of the Board of Directors in 2008**

The Board of Directors met seven times in 2008. It mainly conducted quarterly reviews of business and of the Company's major projects, settled the Company annual and consolidated financial statements for fiscal year ended December 31, 2007 and prepared the shareholders' meeting, suggested the appointment of a new Director, proposed financial authorizations, made an assessment of the Board of Directors' functioning, examined the situation of foreign subsidiaries, examined the acquisition of "AB BIODISK", "AviaraDx, Inc" and "PML Microbiologicals, Inc.", settled the interim financial statements, settled a draft budget for fiscal year 2009, and approved regulated agreements.

At the Board's meeting of June 12, 2008, it conducted a self-assessment using, inter alia, a questionnaire in which each director was given the possibility to express his position. An analysis of the replies, which was discussed by the Board of Directors indicated that its members consider the composition, the structure and the way the Board of Directors works, in particular in terms of collective performance and individual member involvement, to be satisfactory.

#### **5.9.1.7 Activities of the Audit Committee in 2008**

The make-up of the audit committee is described in § 6.1.2.1.1 of the present Reference document.

The full Audit Committee met six times in 2008:

- On January 18, 2008, it met by telephone conference and reviewed the texts of press releases announcing revenue for the fourth quarter of 2007 and for the full 2007 fiscal year respectively;
- On March 10, 2008, with all of its members and the Company statutory Auditors attending, it examined the main aspects of the financial statements for fiscal year 2007, the draft of the management report and the 2007 reference document, the principal financial risks to which the Company was exposed and the draft of a press release on the financial results for the year;
- On April 25, 2008, the Committee reviewed in particular the text of the press release announcing revenue and the quarterly financial information for the first quarter 2008;
- On July 21, 2008, the committee met by telephone and reviewed the text of the press release announcing revenue for the second quarter 2008,
- On September 2, 2008, with all of its members and the Company statutory auditors attending, it examined the half-year financial statements for the six months to June 30, 2008, the draft interim report on business and the draft press release on the half-year financial results;
- On October 22, 2008, the committee reviewed the text of the press release announcing the revenue for the third quarter of 2008 and the quarterly financial report.

As required by its own rules, the Audit Committee reported to the Board of Directors on the performance of its assignments and presented the observations it deemed relevant.

#### **5.9.1.8 Activities of the Compensation Committee in 2008**

The members of the Compensation Committee are listed in § 6.1.2.2.1 of the present Reference document.

The Compensation Committee met on two occasions in 2008, on March 13 and December 19. The main issues dealt with at those meetings were the compensation policy, the employee share ownership Plan, and the AFEP-MEDEF recommendations on the compensation of representative executives.

As required by its own rules, the Compensation Committee reported to the Board of Directors on the performance of its assignments and presented all necessary information.

### **5.9.2 Compensation**

#### **5.9.2.1 Determination of legal representatives' compensation**

##### **Directors' fees**

Resolution five of the ordinary shareholders' meeting of June 12, 2008 set a ceiling of 300,000 euros per year on the aggregate of directors' fees allocated to the directors.

Rules governing the allocation of directors' fees provide that all directors shall receive a fixed sum for each Board of Directors' meeting or Committee meeting they attend during the year.

## **Compensation of the Chairman and Chief Executive Officer**

The Chairman and Chief Executive Officer receives a fixed compensation, set by Mérieux Alliance, the Company's majority shareholder, for the employment contract he entered into with this company. As of December 31, 2008, only the Chairman and Chief Executive Officer was entitled to a supplementary, defined-benefit pension plan. The plan, for senior executives of the Company, was discontinued and no premiums were paid in 2008.

## **Compensation of the Deputy Managing Director**

The fixed and variable compensation paid to the Deputy Managing Director are set by the Chairman and Chief Executive Officer. It is reviewed annually by the Compensation Committee, which reports thereon to the Board of Directors.

The variable portion of his compensation is based entirely on the attainment of certain objectives set at the beginning of the year, including in terms of revenue, rate of return, product launches and external growth transactions.

The Deputy Managing Director may be allocated free shares, under plans recommended by the Compensation Committee and adopted by the Board of Directors, subject to the respect of set acquisitions criteria and performance conditions. These plans provide that, in the case of shares granted on or after January 1, 2007, only forty percent may be disposed of after the initial two-year lock-up period, seventy percent after three years and ninety percent after four years. Recipients must anyway hold on to at least ten percent of the shares granted to them until the expiration of their appointment as company legal representatives.

The amount of the compensation of the Chairman and Chief Executive Officer, directors and Deputy Managing Director are stated in particular in the Company's management report.

The compensation of Alexandre Mérieux, Deputy Managing Director appointed on December 19, 2008, is paid by Mérieux Alliance (See § 6.2.1)

The information required under Article L. 225-100-3 appears in § 5.8.17 of this Reference Document.

### **5.9.2.2 Employee Savings Plan**

An employee profit-sharing plan was set up for fiscal years 2008 and 2009 for bioMérieux SA personnel. The distributable amounts under the profit-sharing plan is determined in light of the consolidated operating result.

An employee share-ownership plan is also in effect within the Company, the share-ownership reserve being based on the statutory mechanism.

### **5.9.3 Senior management of the Company and restrictions on the authority of the Chief Executive Officer**

The Company's Board of Directors has opted to combine the positions of Chairman of the Board of Directors and Chief Executive Officer.

The Board of Directors did not impose any special restrictions on the authority of the Chief Executive Officer, other than certain clauses of its internal rules and regulations that require the Chief Executive Officer to submit to the Board the following for approval: (i) the strategic plan of the Company and its subsidiaries, (ii) the annual budget and its quarterly implementation, and (iii) the authority to engage in any strategic transactions (acquisitions, exchange, compromise, creation of security interests, financing of any kind, etc.) not previously included in the strategic plan or the budget and involving more than 30 million euros.

The Chairman and Chief Executive Officer has extensive authority to act on behalf of the Company in all circumstances. He may exercise such authority within the scope of the Company's corporate purpose and subject to the powers expressly granted by law to the shareholders' meetings and the Board of Directors. He represents the Company in its relations with third parties.

## **5.9.4 Control procedures**

### **5.9.4.1 Objectives of the Company's internal control procedures**

The main purposes of the internal control procedures introduced by the Company and the Group are:

- to ensure that the management operations and performance of operations and the conduct of employees are consistent within the framework of guidelines set forth regarding corporate business by the governing bodies, applicable laws and regulations and the Company's internal rules and regulations;
- to ascertain that accounting, financial and management information provided to the Company's governing bodies fairly reflects the business and position of the Company and the Group.

Internal control cannot however absolutely guarantee that the above-mentioned objectives will be reached.

The description of the Company's internal control systems contained in this report was prepared on the basis of a full review of existing procedures, through interviews with the main executives in charge of the firm and an examination of available documents relating to issues at hand.

### **5.9.4.2 Internal control of operations**

#### **5.9.4.2.1 Persons and departments in charge of internal control of operations**

In order to deal with its expansion and operations in many countries, bioMérieux has structured its organization in such a way as to enable all facilities in all countries to have the skills that they require, given the nature of their business and the size of their operations.

The Management of bioMérieux is assisted in its work by several committees:

- the Strategy Committee currently has four members (Alain Mérieux, Stéphane Bancel, Alexandre Mérieux and Jean Le Dain). The committee proposes to the Board of Directors medium and long-term strategic objectives for the Group, focusing on (i) business activities development main lines, (ii) scientific and technological options, (iii) geographical expansion main lines, (iv) strategic alliances and partnerships, and (v) Group image's communication and management;
- the Executive Committee is chaired by Stéphane Bancel, Chief Executive Officer. Its membership consists of the Assistant Manager, the heads of Sales, Industrial Applications, Research and Development, Strategy and Business Development, Quality Management System, HSE, Internal audit & ERP, Production and Quality, Information Systems, the Chief Executive Officer of bioMérieux Inc. and the Chief Financial Officer. The Management Committee is in charge of putting into practice the general corporate strategy decisions made by the Board of Directors. It meets once a month and each of its meetings includes a review of operations, human resources, strategy implementation and research and development management. The Committee's assignment is to oversee strategic projects, set priorities and ensure that the Company's various divisions have access to the resources they require.
- the Investment Committee meets monthly and is made up of the Chief Executive Officer, the heads of Industrial Applications, Quality Management System, HSE, Internal audit & ERP, along with the financial management team. It makes decisions regarding all industrial investments (in tangible or intangible assets) made for an amount set annually and monitors the progress of realizations related to these capital projects. Commitments made are reported to the Management Committee.
- the Project Approval Committee is chaired by the Chief Executive Officer and includes the heads of Sales, Industrial Applications, Research and Development, Strategy and Business Development, Production and Quality. The committee makes decisions regarding the start of new projects under the development program. It selects project teams and allocates resources. It monitors the various project stages up to the marketing of the concerned product. Projects are reviewed at least once a year and may be subject to special reviews in the event of significant changes..

Certain departments also play a key role in the internal control of operations:

The Corporate Quality Management System ("SMQ"), HSE, Internal audit & ERP Division whose assignments intend, notably, to control:

- the conformity of processes used to design, produce, distribute, install and maintain bioMérieux products in accordance with the needs of its clients and regulatory requirements;
- the effectiveness of the quality management system at all bioMérieux group's entities;
- the consistency of bioMérieux products with the needs of its clients and regulatory requirements;
- the tracking of customer complaints and the implementation of vigilance processes.

The Division carries out steps to comply with rules necessary to achieve quality objectives, or to ensure that all of the Company's personnel comply with such rules. It also plays a key role in authorizing the marketing of products, deciding on information to be released to clients and, if necessary, corrective steps to be implemented, including the product recalls. A procedure known as "*post market surveillance*" was also set forth. It is used to regularly ascertain that products are consistent with current scientific information. The division is also in charge of documents relating to products, and tracks client complaints and how they are handled. It ascertains that regulatory requirements are complied with in all of the countries where bioMérieux products are sold.

For the purpose of these objectives, the QMS division is divided into several Quality Assurance departments in charge with providing support to the major divisions within the firm:

- Commercial Operations Quality Assurance Department, responsible for quality assurance in the Marketing, Sales, Distribution and Client Support activities;
- Manufacturing Quality Assurance Departments (one for North America and Latin America and another for the Europe and Asia Pacific Regions);
- R&D Quality Assurance Department covering all product development activities worldwide;
- Support and Industry Quality Assurance Department, covering all support functions (HR, IS, Purchasing, etc.) as well as the Industry Department.

In addition, this Division designs, supports and oversees the application of the health, safety and environment policy.

A health, safety and environment policy has been defined. It is consistent with bioMérieux's Quality endeavors. It provides for various measures, covering in particular (i) the prevention of accidents and work-related illness with the follow-up of specific benchmarks, (ii) the search for better energy efficiency, the preservation of natural resources and the environment, (iii) restriction of access to various sites, as well to sensitive premises and information. This policy is implemented by senior management within each entity which is responsible, within its own perimeter, for ensuring the protection of persons and assets, as well as for the minimization of the environmental impact of bioMérieux's business.

Furthermore, internal controllers periodically review compliance of sites or subsidiaries with the quality system.

The Internal Control Division has dedicated resources whose task is to continually improve operational processes via a risk analysis mechanism, the conduct of internal audits, due diligence and advisory duties.

The Legal Affairs and Intellectual Property Division oversees bioMérieux's relations with third parties (suppliers, clients, partners, governments, etc.) and the functioning of corporate governance, and sees to it that existing rules and regulations are complied with and that the Company's interests are protected. Jointly with the divisions concerned, it oversees the protection and appreciation of scientific innovations generated by bioMérieux. In order to achieve these objectives, the division is structured in two main offices in France and the United States and employs a network of consultants in other parts of the world. It is structured along operating and geographic lines.

The Information Systems Division is in charge of:

- supporting the bioMérieux’s business strategy and systems by providing services and products meeting the needs of users of information systems, while complying with applicable laws and regulations;
- ensuring the availability, continuity and quality of applications provided;
- managing and protecting information in terms of its security and integrity, in accordance with confidentiality levels set;
- providing technical and functional support to customers within the Group.

In order to fulfill these objectives, the division operates out of two facilities in France and the United States and relies on a network of IT correspondents at all Group subsidiaries.

The Company has devised a security policy affording it protection against major IT risks.

An IT system governance process allocates responsibility for current activities and IT on the existing application portfolio; the main systems are reviewed by the Management Committee.

#### 5.9.4.2.2 General procedures for the internal control of operations

##### **Quality policy**

The Company's quality policy has three main lines:

- to satisfy customer demand while complying with regulatory restrictions applicable to products;
- to ensure that everyone is responsible for or involved in attaining this compliance objective;
- to anticipate differences in clients' needs and to contribute actively to progress and innovation.

A Quality Corporate Manual describes the quality management system at the Company and at each bioMérieux subsidiary, production facility, bioMérieux research and development center, for all of the Company's activities, from the design of products to their delivery, installation and maintenance. Those manuals are used as permanent references for the implementation, management and improvement of the Quality Management System, as well as for relations between bioMérieux and its clients, as they describe all measures carried out to guarantee the quality of products and services sold.

In addition to this Quality Corporate Manual, each site has a “Supplement” or local Quality Manual describing provisions that are specific to it.

"Corporate" guide lines and procedures apply to management practices for certain processes involving more than one facility, in particular project management, capital expenditures management, etc.

##### **Regulatory standards**

All bioMérieux products are designed, manufactured and delivered in accordance with the quality standards applicable to *in vitro* diagnostics.

The quality management system for the development, manufacture and delivery of products has obtained ISO 9001 and ISO 13485 certifications, voluntarily or when required by regulation.

All the manufacturing sites are ISO 9001 certified. The main manufacturing sites are also ISO 13485 certified. An action plan has been initiated with a view to obtaining ISO 13485 certification for the Madrid site.

## Audits

The Company's sites are subject to audits and inspections by regulatory authorities (FDA, Afssaps), agencies acting on behalf of regulatory authorities and certifying organizations commissioned by the Company in connection with the voluntary measures referred to above, to ensure conformity with the ISO 9001 and ISO 13485 standards. Other audits and inspections are performed by clients wishing to ascertain that the Group's products and processes comply with applicable standards and their own requirements, or for the purpose of obtaining quality assurances.

Audits are also performed on-site by the Company's own quality auditors, on the basis of a program set annually.

Control over manufacturing processes is guaranteed by the validation of production processes and control performed during the course of production. In addition, each batch of finished products is not released until it is tested for conformity with the relevant specifications.

An FDA inspection took place at the Marcy site in January 2008. It only gave rise to two non-significant observations, for which corrective action plan has been implemented.

Another FDA inspection took place at the Craponne site in September 2008, which did not give rise to any specific observations.

### 5.9.4.2.3 Control procedures applicable to subsidiaries

The operational control of subsidiaries is provided by:

- regional management structures (in Europe, North America, Latin America, Asia) that, together with support structures, verify the relevance of the appropriate human, financial and business resources available locally;
- the presence of certain operational and/or finance executives on the boards (board of directors or its equivalent) overseeing the activities of subsidiaries;
- a financial and administrative management structure at each subsidiary;
- an annual budget and detailed monthly reports prepared by each subsidiary and sent to the regional head and to the international management control department;
- a monthly review of the subsidiaries' main performance indicators, pertaining primarily to their revenue and financial structure, comparing them to the indicators for the previous year and to the budget. The management committee reviews a synthesis of these indicators per region and for the group. Following those reviews, the management of each subsidiary is notified of the management committee's observations and decisions. Regional directors ensure that any measure to be taken is duly implemented.

### 5.9.4.3 Internal accounting and financial control

#### 5.9.4.3.1 Persons and departments in charge of operational internal control

The administrative and financial management structure of bioMérieux includes:

- the administrative and financial management structures of each Group entity, under the authority of the general manager of the subsidiary concerned and of the Group's finance division;
- a management control structure, adapted to the Group's own structure and comprised of:
  - controllers for manufacturing, distribution or supporting activities (e.g. research and development) who are in charge of analyzing, in liaison with the managers concerned, the performance and costs of the Group's principal structures;
  - international controllers, who are responsible for the management control of subsidiaries outside France; in the specific case of bioMérieux Inc., international control is provided by specialized local staff;
- a finance and cash management structure;
- a financial reporting and consolidation structure;
- a taxation structure.

This arrangement enables corporate management to set budgetary objectives for each structure and subsidiary, and then to monitor on a monthly basis and analyze in details accounting and financial information on the various corporate levels.

The Group's Chief Financial Officer is a member of the Management Committee and is therefore responsible for centralizing and reporting on all indicators monitored by it.

The accounting and financial structure employs mainly two integrated information systems : Movex, a system used at large facilities, and Solomon, a system for smaller entities.

In addition to the organizational measures and internal operational control procedures outlined above, significant internal control systems have been put in place for accounting and finance, management audits, consolidation and cash management.

#### 5.9.4.3.2 Accounting and finance

bioMérieux has issued a "manual of accounting and consolidation principles" for use by the Group's entities. It lists the principal items in the consolidated financial statements and specifies what is to be included under each, as well as the methods to be used; the manual was updated in 2005 to reflect the adoption of the new IFRS accounting rules.

For bioMérieux SA and its principal subsidiaries, the procedures necessitated by the application of those principles and local regulations when accounting for ordinary and recurrent transactions are incorporated in the accounting software, in order to make data processing secure and automatic. A limited number of entries are made by hand at those entities.

The administrative and financial management of each entity also performs credit management functions to decide and periodically review the amount of credit allowed for individual clients, and to anticipate risks of insolvency, including by subscribing to credit-rating companies.

#### 5.9.4.3.3 Management control

Each year, the annual budget is prepared on the basis of the five-year corporate strategic plan and is validated by the Board of Directors. The budget serves as a basis to evaluate the performance of each Group entity and business division.



bioMérieux and its subsidiaries all have management controllers whose duties include verifying compliance with the budget. In addition, certain structures (such as research and development and manufacturing) have their own management accounting's office, which draws up their annual budget, coordinates Group entities and provides budgetary control.

#### 5.9.4.3.4 Consolidation

The consolidation process is carried out at the bioMérieux corporate level. It provides an opportunity for the consolidating staff to ascertain that the financial statements of the subsidiaries are prepared in accordance with the Group's accounting principles, as set forth in procedure manuals provided to all Group entities.

The consolidation process includes a thorough analysis of the financial statements:

- the financial statements of each subsidiary are examined by the international controller's office before being consolidated;
- the staff in charge of consolidation compares the consolidated financial statements with the available management indicators for the Group (including revenue statistics follow-up) and the budgetary forecast and results of previous periods. Consolidated debt is compared with monitored cash records. The internal audit is summarized in a report attached to the consolidated financial statements and submitted to the Group's top management.

#### 5.9.4.3.5 Cash management

Because of the large number of countries in which bioMérieux operates, cash management also plays an important role in the internal accounting and financial control system. It is mainly concerned with:

- maintaining a balance between the finances of Group entities, by means of:
  - annual cash forecasts revised monthly on the basis of schedules included in reporting guidelines;
  - a cash pooling system under which bioMérieux coordinates the cash needs and resources of twenty one subsidiaries; the system is backed up by fund transfer procedures established with one of the Group's principal banks;
  - very wise investment practices for temporary cash surpluses, which are invested exclusively in money-market instruments;
- managing currency risks so as to minimize the impact of exchange-rate fluctuations on budgeted income; this is done through:
  - a policy of billing for export sales to third parties exclusively in strong currencies;
  - the hedging, whenever possible, of about 80 % of the exposed cash flow at the start of the year;
  - monthly adjustments in hedges depending on actual transactions.

Nevertheless, some risk exposures exist, due in part to the volume of business and the debt in emerging countries.

In addition to having an impact on the Company's income, exchange-rate fluctuations can affect its shareholders' equity. The Company does not hedge the risk to which its assets are exposed in this respect.

#### **5.9.4.4 External audit**

The Statutory Auditors' committee, consisting of Deloitte et Associés and its network and of Commissariat Contrôle Audit (CCA), audits the consolidated financial statements and the individual financial statements of the parent company bioMérieux SA and the individual financial statements of most Group companies. For the other subsidiaries, the Statutory Auditors' committee relies on the work done by those companies' external auditors.

In addition to the reports required by law, the audits by the independent auditors are summarized in a report that covers the significant items identified and the manner in which they have been resolved, as well as recommendations regarding the Group's internal auditing system. These recommendations are examined with the management of the subsidiaries concerned and their implementation is monitored.

The main regulated agreements appear in the Statutory Auditors' special report attached hereto.

#### **5.9.4.5 Terms and procedures for attending Shareholders' Meetings**

See § 3.1.10.2 above

The Chairman of the Board of Directors  
Alain Mérieux