I-1.28: The auditor, a crucial player on financial markets

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1. The European Commission published its Green Paper on October 13, entitled *Audit Policy: Lessons from the Crisis*. Without intending to perform a substantial or methodological analysis of this Paper[1], which is seminal because the avenues it opens up will define the choices that will be made about future mandatory legislation. The current debate simply analyzes the relative benefits of various possible solutions, and not on the larger picture described in the Green Paper. Indeed, the larger picture is seen as having been adequately described by the Green Paper, and the Commission believes that its position is strengthened by the synthesis that it wrote up based upon the reactions it received during the public consultation[2]. In the present article, we would like to ask a simple question that the Green Paper purports to have already answered: what is the role of the auditor on financial markets? The Commission believes that auditors must 'meet the financial market's expectations', meaning that they must inform the market as to the precise solidity of the audited firm. But should this starting point be accepted as fact?

2. The question of the role is often correlated to the question of status. Indeed, it is habitual in sociology to pair 'status' and 'role' because the latter proceeds from the former in an institutional conception, whereas status must be derived from the role, in a pragmatic vision. Therefore, doubtlessly because of the preeminent place of the State in France, a French mind is first and foremost concerned with institutions, and therefore with status, which determines power, relegating the question of role to a secondary position. On the other hand, an English or American mind is more concerned with the influence that power has on concrete subjects, and so accords primary importance to the effects that various powers have, and the positions acquired by various players: in sum, the primary concern is with roles.

3. The pairing of status and role also touches upon the distinction between various academic disciplines. Indeed, Law is a discipline of forms and categories and therefore tends to envisage the world using the abstractions that it is able to superimpose upon facts, thereby creating a new reality. Economists, even though their discipline constantly oscillates between descriptive modesty and normative demands, do not have the ability to create reality using rules. This is doubtlessly why law is more sensitive to statuses and economists more attentive to roles, even within institutional economics, which takes institutions for facts.

4. Therefore, to simply take an example close to our subject, French legal doctrine first studied regulation through the question of Independent Administrative Authorities[3], meaning the status of the regulator and the powers that these Authorities are legitimate to exercise (and those that they are not legitimate to exercise): the role of regulators on markets, and the adequacy and effectiveness of their functions was a secondary concern. Examining the subjects affected by these powers and the people affected by the agents' carrying out of their functions demonstrates a pragmatism that is more characteristic of the study of economics. Here, the question of role is being considered, first and foremost.

5. Let us take another example. For a legal scholar, the economic agent is a company that, according to a theory intentionally qualified as 'institutional'[4], only possesses being thanks to the notion of legal personality. Conversely, economists define corporations not by their form or status, but rather by their role, since, according to the definition found in Competition Law[5], a company is characterized by its economic activity on a market. Therein, the corporation is identifiable by its role, not by its form.

6. As concerns auditors, it is possible to begin our examination using status or role. Where the audit is examined in terms of the financial crisis, as does the European Commission by the very title of the Green Paper, the starting point is indeed the auditor's role in the crisis. This is part of the Commission's will to be pragmatic, a will that we share. Pragmatism, like abstraction or formalism, is a method of thought rather than an absence of thought, and therefore requires coherency.

7. However, as we shall see, the Green Paper is not always coherent in its own affirmations. The present study does not purport to refute the Commission's methodological approach, which is based upon the fact that Lehman Brothers' accounts were certified just a few days before the bank's failure, showing that auditing is not adapted to the requirements of a properly functioning financial market, although financial stability is a major imperative. Therefore, the audit must be structurally reworked. Let us begin using the same approach as the Commission.

8. A financial crisis is an abnormal state on financial markets, in which regulation must intervene in order to manage the crisis and find a way to end it[6]. Financial regulation itself certainly applies to calm markets, but always keeps in mind their potential crises, because confidence can evaporate. In order to ensure that the precious and volatile common good of confidence remains within markets, contemporary financial regulation keeps tomorrow's crisis in mind by preventing systemic risk: tomorrow's crisis is ever present within the workings of the market, especially because of self-fulfilling movements.

9. Therefore, the auditor has a role in crises because he has a role within markets. The auditor plays a role on financial markets by providing information on corporations' economic and financial situation. But, when speaking of regulation, we must first examine the roles played by various agents within systems, rather than their status. This is implied by the definition of regulatory law, which is teleological, meaning that the rule does not emanate as much from the orders of the legislature as from the goal that motivated the legislature's initial instructions[7].

10. The various agents found in regulated systems, regardless of their status (which has become irrelevant[8]), are all attempting to achieve a goal, and therefore their behavior is completely strategic. The art of drafting legislation must therefore entirely rely upon the comprehension of the role that the legislature wishes to assign to certain agents in regulated systems in order to subsequently produce

incentives for these agents to remain within their respective roles, thanks to an appropriate status. Thereby, the determination of these roles is the primary concern when studying auditing through financial market regulation, which is the postulate advanced by the Green Paper. Only afterwards can the status and professional regime applicable to the auditor be defined in such a way as to allow the European or national lawgiver to provide incentives for the auditor to remain within his role. Thereby, the legislature will have mastered his 'art'[9] by ensuring that the auditor has the appropriate status to carry out the desired role.

11. Thereby, we return to the very simple question concerning the role of the auditor, understood in terms of the financial market's needs, since it is in these terms that the Green Paper frames its discussion. In order to identify the auditor's role, we must try to differentiate bookkeeping, which is the accountant's role, from the auditor's role, which, in response to investors' expectations, tends more and more towards informing them as to the risks they are taking, on the basis of trustworthy accounts established by corporations themselves. Therefore, the functions of accountant and auditor are increasingly divergent, since the auditor, like the regulator, has taken on the role of informant for investors, in order to allow the latter to take risks in an enlightened fashion. Under these conditions, the accountant and the auditor no longer exercise two different functions on the same plane: they exercise two separate professions in two separate worlds. They have two different roles (I).

12. Furthermore, the Green Paper insists on the fact that all relevant parties on financial markets have faith in what the auditor says. It concludes that because of this 'systemic effect', the auditor has become a 'systemic agent' on financial markets. The vocabulary is inappropriate, because the auditor is a 'crucial player' on financial markets, and not a systemic player. The misuse of this term distorts the propositions made for reform (II).

I. The auditor: a certifier and a provider of autonomous and primordial information on risks revealed by corporations and taken by investors on financial markets

13. At its important colloquium on *Financial Reporting and Auditing: A time for change?* held in Brussels on February 9-10, 2011[10], the European Commission correctly pointed out the tight correlation between accounting's performance, especially accounting standards', on one hand, and auditing's performance, on the other. Indeed, accounting is intended to provide a photograph of a legal person's assets and the financial movements caused by its activity. Technically, this discipline consists in recording and listing the figures that allow for a description of both assets and obligations.

14. The corporation's capital is traditionally seen as being the creditors' collateral. This idea remains fundamental in banking regulation. Although it has been updated and made more flexible with the accessory notion of 'quasi-equity', this elementary civil law notion remains the reference for the entire system of prudential banking standards, which are not directly concerned with questions of liquidity, but which nonetheless have a direct impact on bubbles and crises.

15. We do not intend, here, to discuss strictly accounting-related subjects, such as the pertinence of the notion of *market value*, which evaluates assets from a market perspective rather than a historical one, making them more exact, but also more volatile, and thereby exposes financial instruments to the variations of outside markets. Rather, we observe that accounting is currently seen more as a means of information for third parties than as a report of good management drawn up by corporate officers.

16. Were this the case, accounting would completely cease to be a tool for managing the company, and would simply become an informational tool for future investors, who acquire various financial instruments, of which a share is simply one type amongst many others, and supposing that the recipient of the information is not envisaging a hostile takeover. We realize how much accounting is currently located in between these two conceptions regarding information provided to the financial market. This is the key to regulating the financial market.

17. But, on the other hand, standard setting authorities remember that the asset-based conception of accounting was prudent, especially via its Germanic reference to the historical cost of assets. This explains why, in the name of prudency, immaterial assets, which are simply latent capital gains, only appear on the balance sheet according to the cost of their fabrication, and not at the their hypothetical sale price, which penalizes the image a company presents to investors and deforms its market value. But, this patrimonial prudence allows accounting to avoid being procyclical and increasing systemic market crises. We know that accounting standards based on market concepts do have such an effect, and produce this type of backlash.

18. Therefore, is there not a natural repartition of roles? Since accounting should remain prudent and it should not allow the market to completely infiltrate the corporation, since it should not allow the corporate accounts to violently fluctuate based on market variations, since the consequence of this self-fulfilling mechanism is to first cause bubbles and then to burst them with the same unreasonable and devastating nature, we must recognize that accounting must remain the guardian of a sufficiently stable image of the corporation in order to teach the financial market the virtue of a calm, immobile photo. Thereby, we would avoid the market flooding into the country through accounts that entirely reproduce anticipated market movements, especially rises and falls in purchasing prices.

19. Has this sort of contamination affected auditing? The basic rules remain the same, since the auditor is simply there to verify that the accountants have provided an 'exact, sincere, and faithful' image of the corporation. These three adjectives are increasingly mysterious[11], especially fidelity as compared to the notion of exactitude, which supposes a conceptual difference between the two notions, because professional and regulatory rules have entrusted accounting with a more ambiguous role, which reflexively blurs the role of the auditor. Indeed, if we continue to link the role of accounting and the role of the auditor, we must therefore consider that accounting provides information not on the stable value of a company's assets, but rather on its market value, because that is what interests buyers, who are corporate outsiders.

20. But, in this case, the auditor's function must be radically different from the accountant's, and not simply as a checker of correct bookkeeping. Indeed, if we follow the Green Paper's presuppositions on this point[12], the financial market cannot accept such a hiatus between patrimonial prudence, on one hand, (which, however, 'calms' the market and reduces the risk of bubbles), which justifies, for example, the continued refusal to incorporate immaterial assets into accounts; and, on the other hand, the financial market's need to permanently have real-time market information at its disposal.

21. The financial market is, indeed, a place of speculation, where investors must take risks and accept that they might lose, since they claim to hope to win. But, in order to create confidence, which is the foundation of any banking and financial system (banking and finance having become an integral part of one another)[13], the investor must know how much risk he is taking by investing on the market, rather than be protected from any risk.

22. The principal information (financial instruments can themselves be defined as information about their issuer) that must be provided is

on the nature and extent of the risks that the buyer or holder of a share takes by continuing to hold them in his portfolio. The subprime crisis is a systemic crisis[14] because buyers did not think that the instruments they bought were risky. Similarly, borrowers on the American real-estate market did not know that the variable reimbursement rate would make them insolvent when the time came to repay their debt. Therefore, it is not the rejection of risk that is problematic, because risk remains inherent to the act of investing and the liberal model of capitalism is therefore not refuted, but rather, information on risk was completely lacking.

23. Naturally, like all institutions, the European Commission wonders, 'who was in charge of providing the markets with information on investment risks?'. Reading the Green Paper and the reactions it caused[15], as well as the speeches made at the conference held on February 9-10, 2011, this does not seem to be the role of accountants. Indeed, the incorporation of external market data, and especially variations in potential price, into accounting is today seen as being one of the causes of the crisis, and a return to patrimonial prudence is favored. Regulators, even though they interfere more and more with the governance of publicly traded companies[16], and have accounting departments in their agencies, are not responsible for directly dealing with the trustworthiness of accounts, except in very limited cases where truly false information has been provided to the markets.

24. Issuers must provide the markets with information. Thereby, shareholders' right to information, which is a general principle of law that exists independently from statute making it obligatory, exists for the benefit of the current shareholder and the potential shareholder, represented by the entire financial market. In the now solidly established couple formed by market regulation and the governance of publicly-traded companies[17], the auditor, like the regulator, is not in charge of emitting direct information on corporate risk, but the former simply validates that information, while the latter circulates it. Both perform 'market gestures', essential to establish the confidence upon which the market is based.

25. It is therefore extremely important not to confuse roles and responsibilities. It is the company's responsibility to provide information on risks, especially via accounting. It is the investor's responsibility to accept the consequences of the risks he takes. It is the regulator's responsibility to circulate information on risks and to ensure the quality of that information. It is the auditor's responsibility to certify that the information has been drawn up in a trustworthy manner, even though he has not drawn up the information himself, and even though his responsibility is not to relinquish the investor of the consequences of his risk-taking, or of his power.

26. If, like the Commission, one believes that there was a punctual and structural failure in auditing, that means that the auditor must provide the market with 'what it expects'. This expression is ceaselessly used by the Commission, which insists that there is an 'expectation gap' between what the financial market expects from the auditor, and the impression of solidity the market drew from the fact that *Lehman Brothers*' accounts were audited.

27. This reference to the fact that auditing must correspond to the market's expectations is oft-repeated in the Green Paper. The entire paper is based on this in a teleological fashion that aims at structuring the auditing market. Therefore, from a pragmatic point of view, the method is simple: we simply have to find out 'what the market expects' in order to structure the auditor's role accordingly.

28. However, the financial market expects to be informed as to the nature and extent of risk that investors take by purchasing or holding financial instruments, and the only decision that they have to make is whether or not to take that risk. But, information is a common good that originates on the financial market. Therefore, the information on risk must be trustworthy: since the decision to take risk or not lies with investors, they bear the consequences of untrustworthy information. Investors and the financial system itself manifestly expect auditors to declare trustworthy the representation the balance sheet gives of risk, even though accounts do not reveal all risks, just as they do not reveal everything about a company. This is why corporate reports and their annexes have become the key elements for market information. Indeed, financial regulation, in that it is primarily concerned with risk and its propagation, is totally foreign to the competitive system[18]. Systemic risk is managed by an alliance between financial regulators and central banks, which have become linked within common organizations.

29. By combining accounting information, the fact that the accounts were audited, and other information generally published by the company, as well as information emitted by credit rating agencies, and even regulators, investors can take risks. However, investors should not try to assign the responsibility for their risks to a third party. It is not because sources and filters of information converge and combine that auditors are obliged to provide information on the health of a company as shown via its correctly-kept accounts. If the auditor makes sure that the accounts are well kept, he has performed his job; others must also do theirs.

30. The crisis has made the auditor's essential and specific role even more salient, since auditors inform financial markets of risks. The European Commission has correctly established that thinking about the audit is the same as learning lessons from the crisis. The consequences of this are that it permanently establishes the difference between companies that accept investment from parties indifferent to management (publicly-traded companies and private equity), and closed companies. This role makes the auditor an agent of financial markets, which lessens the distinction between accounting standards bodies and financial regulators. This increases the public policy concerns relating to their role, because, as the Commission ceaselessly insists, their mission involves financial stability as a whole.

31. Auditors must be aware that such a conception of their role, defined by the financial market, is a transformation of their profession of the sort that financial law performed on corporate law, and implies devoting ever more resources to carrying out their tasks. Multinational auditing firms, which are capable of auditing multinational enterprises' consolidated accounts, are perfectly suited to carrying out these roles in interconnected financial markets, for both are in networks that go beyond national legislations.

32. Similarly, the auditor's primary role on financial markets is to serve investors. Classically, the auditor's role is to give an opinion on corporate officers' accountability and management, but we can state that at present, the market and the minority shareholder have become one and the same. Of course, the auditor is nominated at the general meeting of shareholders, but this method of nomination is not ideal, because general meetings are captured by corporate officers in various ways, and therefore the company is not the reflection of the enterprise[19]. This is why auditors' impartiality, which is a necessary quality enabling them to fulfill their role on financial markets, cannot be guaranteed solely using this method of appointment.

33. In order to allow the auditor to exercise his informational mission in a completely impartial manner, the auditor must have the means at his disposal to prevent himself from being captured. The economic theory of capture has been deepened as concerns the regulator in relationship to regulated companies[20], and we can make good use of this theory here. It is necessary that the auditor be sufficiently well-informed to prevent the company from devising a method for hiding pertinent information from him. Concretely, the company must not be able to establish information asymmetry to hide extensive risk from the auditor, because the auditor did not have the independent, technical aptitude necessary to detect it. The auditor has the legal means at his disposal, but he must also have the *de facto* means he needs.

34. This means that auditing firms must be sufficiently structured, organized, and international. Furthermore, auditors, like lawyers, must have a professional obligation of independence and deontology. Auditors must be financially capable of renouncing a client with whom they are in conflict over an overly diligent audit. This deontological diligence is demanded by professional rules, but is really only possible for auditing firms that are sufficiently powerful to allow themselves this necessary luxury.

35. This is where the European Commission has not understood the consequences of its conception of auditors' role on financial markets. Indeed, it believes that auditing firms are insufficiently numerous, which is seen to be problematic in and of itself. The same observation is made concerning credit rating agencies. The solution would be to 'liberalize' the industry, using force to create room for new competitors, using asymmetrical regulation.

36. It is difficult to understand, here, the difference between role and status. Indeed, the status to which the Commission objects is that of overly-powerful auditing firms on an overly-concentrated market. But, who risks capturing the other? It is not the auditor who captures the audited company, but rather the company that captures the auditor. The observed party always captures the observer, never the inverse, because the observer can simply use the powers granted him by the law, whereas the observed party always seeks to capture the observer, especially when the observed party has the power to choose his observer. Therefore, weakening the auditor in his relationship towards the audited firm makes no sense.

37. Furthermore, the European Commission seems to desire the status of auditing firms in strong competition with one another. But, competitive behavior means offering consumers a product or service at the lowest possible price. This is perhaps possible for bookkeeping, which is the provision of a photograph of the company that it can give to third parties. This is the role of accountants. This has nothing to do with verifying the trustworthiness of the information on financial risks that the company might cause investors who continue to hold shares in the company even though they ought to sell them, or those who are still outside the company and who might be tempted to buy its shares without knowing the extent and nature of risks that they might take by doing so.

38. Indeed, the auditor is a third party, a sort of market body, just like the regulator. This is why it is so necessary to avoid capture by the audited company. And yet, competition means offering services at equilibrium prices, meaning at the lowest possible price for the best possible quality. However, the audited company wants to pay as little as possible and to be supervised as little as possible by the third party auditor. Therefore, competition will lead companies to prefer small auditing firms unable to resist the pressure of competition, even though larger and more credible firms would be better equipped to provide this public service. This is not to say that auditing firms should not be regulated, especially as concerns the avoidance of conflicts of interest (like credit rating agencies), but competition is foreign to this major regulatory concern.

39. Using competition to liberalize an industry means designing an industry according to a liberal model. Here, the issue is not only fighting a phenomenon of market concentration, but also to extol the virtues of liberalizing an industry whose goal has always been to fight the privileges of former monopolies and to bring about market prices[21]. Indeed, the European Commission has other concerns: it is not particularly trying to lower auditors' fees, which only regards companies, and not the general interest. Rather, the Commission is trying to increase auditors' vigilance and making sure they are able to correctly alert markets.

40. Furthermore, the European Commission, clearly expresses its goal of changing the audit's purpose from auditing accounts to auditing risk, from providing internal information to shareholders to providing information to everyone on the market. When competition is incorrectly used as a regulatory mechanism, it risks affecting the quality of the audit, and hindering the desired movement away from auditing corporate accounts towards informing the market of the risks to which investors are exposed. We have seen that the insufficient independence of ordinary shareholders in relation to corporate officers would diminish the quality of the audit, because the company has no interest in being well-audited, for virtue is, by definition, tiresome[22].

II. The Auditor: A crucial yet asystemic player on financial markets

41. The Green Paper draws an analogy between auditors and banks in that both are purported to belong to the same category of systemic operators. This qualification is important because the authors of this document draw the conclusion that it is legitimate to subject auditors to the same regulation as banks. Since 'too big to fail' summarizes systemic risk, small banks are now preferred to big banks: maximum competition between these small banks prevents them from growing. Therefore, it is desired to structurally avoid audit firms from reaching large proportions, whether or not they have behaved correctly

42. This method of reasoning is becoming more and more common in banking regulation, with the invention of the notion of 'super-systemic'[23] banks. This notion, invented in England, describes financial establishments whose bankruptcy would be so catastrophic that it would cause the near-explosion of the entire system. These sorts of floating landmines do not require regulation; rather, everything must be done in order to prevent this type of bank from existing. Rather than forbidding them, which legal dispersion would make very difficult, prudential standards are being created to set equity levels that are so high that no bank can meet these requirements, which amounts to the same. The ideal of the small bank has been transposed upon auditing firms. In that case, we should make sure that this common qualification holds water.

43. The notion of systemic bank is directly linked to the notion of systemic risk. The European Commission is extremely sensitive to this fact because its entire thought process revolves around financial stability and the prevention of systemic risk. States proceed in the same manner, by drawing up lists of systemic financial establishments, and creating *ad hoc* agencies that are able to take rapid decisions in case of an imminent systemic crisis.

44. Thereby, the notion of a systemic bank is consubstantial with the catastrophic consequences of its failure, because it produces a domino effect. The systemic character is closely related to the hypothesis of the operator's bankruptcy, even though the experience gained after the 2008 financial crisis has led us to nuance these criteria: the size of the establishment is no longer a sufficient criteria. The list of systemic establishments should be drawn up *ex ante*. Indeed, the previous system was built on mandatory equity requirements for financial establishments and insurance companies, which was found to be too abstract. At present, States draw up lists of their systemic firms in advance.

45. Let us return to the market for auditing services. The four firms that operate on this market are unable to create a domino effect either on their own market or on the financial market, as we observed during the bankruptcy of Arthur Andersen. Its assets, essentially its employees, because it provides an intellectual service, were reabsorbed by its competitors without causing market panic or a crisis of investor confidence on financial markets. The Green Paper therefore contains a misinterpretation in the strongest sense of the word. This invalidates the suggestions made as to the size of auditing firms, and smacks of old-fashioned competition law theories that considered, using the theory of automatic abuse, that the size of a firm in relationship to its market made it automatically monopolistic. Competition

law has since established that the size of a company, its power on the market, and even its monopolistic situation, are not abuses per se.

46. When the Green Paper describes the auditor as a ‘systemic operator’, which leads to comparison with banks and the evocation of rules applied to banks, it really means to say something else. Auditors publish the most important information of all: the trustworthiness of the information they have certified. Auditors are therefore an essential agent in the system: the system relies upon them (in the same way it relies upon regulators), because the financial market relies upon information and the auditor, like the regulator, reassures investors that information is trustworthy and they can take risks.

47. This systemic effect is completely independent of the auditor’s market concentration. It is part of the auditor’s function as an agent of the market who is in charge of informing investors about the economic nature (which is important especially when it comes to financial instruments with underpinnings such as electricity), and the extent of financial risks they might take. The hypothesis of the bankruptcy of an auditing firm is completely irrelevant to this definition, because whether or not the market is concentrated, whether or not an auditing firm goes bankrupt, nothing changes in the auditor’s role.

48. Nonetheless, this systemic effect leads us to affirm that financial markets cannot go without auditors, and we must establish high quality standards for the audit, because, as emphasized by the Green Paper, auditors are not ordinary service providers, but rather, must be considered as agents working for the financial market, who give credit to the public offerings made by companies. Therefore, auditors are crucial operators[24].

49. This means that the entire mandatory and incentivizing legal apparatus surrounding banks and financial establishments, and which only exists in the perspective of their potential bankruptcy, is not pertinent when applied to auditors. But, this is the origin of the Green Paper’s error. Indeed, the auditor’s role is essential for financial markets to properly function and for investor protection, because the auditor provides them with the most precious piece of information: the trustworthiness of the accounting information relating to the extent of risk that their inherently speculative activity contains, and which is a decision that only investors can make themselves.

50. Therefore, the auditor is a crucial agent on financial markets. This is why auditing must be regulated, albeit differently from accounting[25]. Auditors must coexist with regulators, both professional regulators and market regulators, as well as accounting standards bodies and banking regulators, who are all legitimately involved in the auditing profession.

51. Therefore, even though crucial operators must not be confused with systemic operators, they must also not be treated as though they were ordinary service providers on a competitive market. As the Green Paper points out, the auditor’s function belongs to the domain of public policy and involves the heart of financial stability in that it lends credibility to accounts, a piece of information that, along with other information, lead to confidence, a common good. Therefore, in order to cite the Dodd-Frank Act as an example[26], the reinforcement of the information provided to investors on risks contained in the securities they purchase will only make the role of auditors even more important.

52. This role necessarily has consequences as to status. Therefore, auditing firms must be tightly regulated, especially by professional organizations that can become even more effective by operating in international networks to produce common standards, thereby reflecting global markets[27].

53. Deontology, which is not spontaneously produced by the market, but which is consubstantial with the confidence required by financial markets, must be established through controls on who can access the profession, as well as through disciplinary procedures. The title must be scrupulously protected, because investors must recognize the link that exists between auditors and the State, the primary issuer of confidence, in comparison to the relationship with other publishers of interpretations of the primary information published by companies (such as the press).

54. Auditing must therefore be regulated in who can become an auditor, how the audit is carried out, the organization of auditing firms, etc., because auditors are crucial agents on financial markets. This is not true of accountants. Auditors are not, however, systemic operators, and it would be erroneous to compare them with banks and to transpose the rules and ideas created for banks upon auditors.

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[12] Voir FRISON-ROCHE, Marie-Anne, Les présupposés du Livre Vert de la Commission européenne, *op. cit*.

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[15] *Summary of Responses Green Paper*, *op cit*

[16] FRISON-ROCHE, Marie-Anne, ‘Corporate law seen through the prism of Regulatory Law,’ *The Journal of Regulation*, n°2, June 2010, I-

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[17] FRISON-ROCHE, Marie-Anne, 'Corporate law seen through the prism of Regulatory Law,' *The Journal of Regulation*, n°2, June 2010, I-1-6.
[18] FRISON-ROCHE, Marie-Anne, Distinction between economic Regulation and financial Regulation, *in* Special Issue Finance, *The Journal of Regulation*, n°3, September 2010, I-1.11
[19] See above 00
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[25] Cf. *supra* #00
[26] SEVE, Margot, The Dodd-Frank Wall Street and Consumer Protection Act: may an Act check all of Regulatory Law's boxes?, *The Journal of Regulation*, 2011, I-1.21.
[27]HAAS, Jérôme, *Neutrality in Systems of Economic Regulation*, The Journal of Regulation, *forthcoming*