

PRESS KIT

AUTORITÉ DES MARCHÉS FINANCIERS The French securities regulator

AMF *Autorité des marchés financiers*

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AUTORITÉ DES MARCHÉS FINANCIERS: MAKING REGULATION CLEARER AND MORE EFFICIENT

France's new securities regulator, the Autorité des marchés financiers (AMF) was established by the Financial Security Act of 1 August 2003. It was formed from the merger of the Commission des Opérations de Bourse (COB), the Conseil des Marchés Financiers (CMF) and the Conseil de Discipline de la Gestion Financière (CDGF). The objective in amalgamating these bodies was to two-fold: to improve the coordination and efficiency of France's financial regulatory system and to raise the French regulator's international profile.

The remit of the AMF is to:

- safeguard investments in financial products
- ensure that investors receive material information
- maintain orderly financial markets

In addition to these three responsibilities, France's legislature has reaffirmed the AMF's international role by directing it to lend its support to European and international initiatives in the field of financial regulation.

The AMF comprises a 16-member Board, a 12-member Disciplinary Commission and a staff of 320.

An original status: an independent public authority with legal personality

The legislature wanted to affirm the AMF's status as a public entity. This is justified by the policing powers it exercises on behalf of the State and is reinforced by the way in which its 28 members are chosen: all are appointed by other public authorities. The AMF, however, is a new kind of regulatory body, one that falls outside the traditional framework.

Unlike France's other independent administrative authorities (but like most of its foreign counterparts), the AMF is a legal person separate from the State. It can therefore file suit – and conversely, be named as defendant – in a civil action. As a legal person in its own right, it can levy fees (taxes) and receive revenue directly. Alongside this financial autonomy, the AMF enjoys considerable managerial independence in organisational and staffing matters.

Broadened responsibilities

The scope of the AMF's authority is broad but coherent, encompassing securities transactions, financial disclosure, collective investment schemes, investment service providers, exchanges and market infrastructure. In addition, the Act has given it new supervisory powers over investment advisers and rating agencies and enlarged its regulatory responsibilities in the area of corporate governance and supervision of investment research. Lastly, the AMF shares responsibility with other regulatory authorities¹ for overseeing the direct marketing of financial products.

¹ The Comité des Entreprises d'Assurance (CEA) for insurance companies and the Comité des Etablissements de Crédit et des Entreprises d'Investissement (CECEI) for credit institutions and investment firms.

AN INDEPENDENT MULTIDISCIPLINARY STRUCTURE WITH COLLECTIVE RESPONSIBILITY

A novel feature of the AMF is that it consists of two separate collegial bodies, the Board and the Disciplinary Commission.

The members of the Board and the Disciplinary Commission are appointed by different public authorities. The independence that results from this diversity of appointment is strengthened by the fact that members serve fixed five-year terms of office, renewable once. And it is further safeguarded by compatibility requirements and procedures for preventing conflicts of interest.²

The minister of the economy designates a government representative, who has a seat on all of the AMF's bodies but does not vote in their deliberations (this representative is not present when disciplinary decisions are taken).

The AMF Board

The Board exercises the powers of the AMF. It is composed of 16 members:

- a chairman appointed by a decree from the President of the Republic;
- a councillor of the Conseil d'Etat designated by the vice-president of that body;
- a justice of the Court of Cassation designated by the chief justice of that court;
- a senior member of the court of auditors (*Cour des Comptes*) designated by the auditor general;
- two *ex officio* members: the chairman of the national accounting board (*Conseil National de la Comptabilité*) and a representative of the governor of the Banque de France, designated by that governor;
- three qualified persons named by the presidents of the three constitutional chambers (the Senate, the National Assembly and the Economic and Social Council);
- six qualified persons chosen by the minister of the economy after consultation with organisations representing issuers, intermediaries and investors and market undertakings;
- a representative of employee shareholders designated by the minister of the economy after consultation with representative labour unions and employee associations.

Half the Board is renewed every 30 months. The Board may delegate some of its powers to specialised committees of its members, chaired by the AMF chairman. It may also set up consultative committees of experts to assist it in preparing decisions.

The AMF chairman chooses the general secretary, whom he appoints on the advice of the Board and with the consent of the minister of the economy. The general secretary is the executive in charge of the AMF staff and the officer entitled to authorise receipt and disbursement of funds.

² Cf. last two paragraphs of Article L. 624-1-I of the new Monetary and Financial Code.

Disciplinary Commission

The Act gives the Disciplinary Commission exclusive authority to exercise the AMF's power to impose sanctions.

The Commission is composed of 12 members, none of whom is also a member of the Board:

- two councillors of the Conseil d'Etat designated by the vice-president of that body;
- two justices of the Court of Cassation designated by the chief justice of that court;
- six qualified persons chosen by the minister of the economy after consultation with organisations representing issuers, intermediaries and investors and market undertakings;
- two representatives of the employees of investment service providers, fund management companies, market undertakings, clearing houses, clearing and settlement systems and central depositories, designated by the minister of the economy after consultation with representative labour unions and employee associations.

The chairman is elected by the members of the Commission from among the four judges of the Conseil d'Etat and Court of Cassation serving on it. The Commission may establish divisions of six members each.

BROAD BUT COHERENT REGULATORY SCOPE

The Autorité des Marchés Financiers has regulatory jurisdiction over the following areas.

Securities and financial disclosure. The AMF sets rules for and monitors transactions involving the securities of publicly traded companies (initial public offerings, capital increases, mergers, etc.) and ensures that tender offers are conducted in orderly fashion. It also monitors companies to ensure that they provide complete, relevant information on a timely basis and in an equitable manner to all market participants (investors, analysts, fund managers, the press, the general public, etc.).

Collective investment products.³ The AMF authorises the formation of collective investment schemes (SICAVs and FCPs) and reviews the information in the prospectus that must be given to customers prior to subscription. For complex products such as structured funds and funds with guarantees or other protection features, the AMF ensures that special characteristics are clearly disclosed, and their consequences explained, to potential investors.

Exchanges and market infrastructure. The AMF establishes principles of organisation and operation for market undertakings and clearing and settlement systems. It approves the rules of clearing houses and sets conduct-of-business rules for their members. It monitors the markets and the transactions that take place on them.

Professionals (credit institutions authorised to provide investment services, investment firms, investment management companies, investment advisers, marketers). The AMF establishes rules of conduct and professional obligations that must be observed by persons authorised to provide investment services or advice on financial investments. It registers and approves management companies at the incorporation stage, assessing the skills, fitness and propriety of corporate officers as well as the adequacy and suitability of the company's resources. The AMF also establishes conduct-of-business rules for custody and administration of financial instruments.

To implement its rule-making responsibilities, the AMF issues **General Regulations** subject to the approval of the minister of the economy. It may also issue instructions and recommendations for the purpose of specifying how the General Regulations are to be interpreted.

The AMF is empowered to adjudicate any complaint relating to financial instruments or financial markets. In disputes involving individuals, the AMF's **Ombudsman** is tasked with attempting to reach an out-of-court settlement.

³ Open end mutual funds (SICAVs), unincorporated investment funds (FCPs), property investment companies (SCPIs), etc.

NEW RESPONSIBILITIES

Two new exclusive responsibilities

Supervision of investment advisers

The Financial Security Act establishes a new legal category of independent investment adviser. This activity was previously non-regulated and conducted primarily by wealth management advisers. The Act entrusts the regulation of independent investment advisers to the AMF.

Every adviser must belong to a professional association accredited by the AMF. His or her name must appear on a list compiled and regularly updated by that association. A central file of all independent investment advisers will be kept by the AMF and made available online at its website. The AMF will ensure that advisers honour their professional obligations, and it will impose sanctions for breaches of those obligations.

Supervision of rating agencies

The AMF will publish a report annually on the role of rating agencies, their rules of conduct, the transparency of their methods, and the impact of their activity on issuers and financial markets.

Enlargement of existing responsibilities

Corporate governance and internal auditing

The Act establishes a series of new requirements relating to corporate governance and internal controls.

- The chairman of a company's board of directors must issue a report describing the preparation and organisation of the board's activities and giving details of the internal control procedures that have been put in place.
- The company's statutory auditors must issue a report on the section of the chairman's report devoted to internal procedures for controlling the compilation and presentation of accounting and financial information.
- For public companies,⁴ these reports must be made public in compliance with the General Regulations of the AMF.
- The AMF must issue a report annually on the information published pursuant to these requirements.

Oversight of securities analysts

The Act extends the AMF's regulatory jurisdiction to cover all securities analysts, including independent analysts. The Act also requires investment service providers to keep their analysts' work on file for inspection by the AMF for at least three years.

⁴ That is, companies 'making a public offer of securities' as defined in the Code.

Relations with external auditors

The Act gives the AMF powers that were previously granted to the COB by the decree of 12 August 1969.

- The AMF must be informed of proposals to renew the engagement of a public company's statutory auditors. The AMF may make observations of any kind on these proposals, and its observations must be brought to the attention of the general meeting of shareholders or the body charged with designating the auditors, as well as to the attention of those auditors.
- The AMF may ask the auditors of public companies to provide all relevant information on the entities that they audit.

The Act also imposes new obligations on statutory auditors of public companies.

- Auditors must inform the AMF of any fact or decision that warrants their intention of refusing to certify a company's financial statements.
- Whenever an alert procedure is initiated, the auditors must provide the AMF with a copy of the document transmitted to the chairman of the company's board of directors or executive board.
- Auditors must also send the AMF the conclusions of the report they intend to present to the general meeting of shareholders on the subject of irregularities or inaccuracies uncovered by them in the course of their engagement.

External auditors may also question the AMF about any issue encountered in the course of their work that could have an effect on the financial information disclosed by an issuer.

To make it possible for these provisions to be implemented, the Act releases statutory auditors from their obligation of professional secrecy as regards communications with the AMF.

A new shared responsibility: supervision of direct marketers

The Act provides a unified legal framework for direct solicitation and marketing in respect of banking and financial products and services. It assigns the duty of supervising direct marketers to the AMF, the CEA (*Comité des Entreprises d'Assurance*) or the CECEI (*Comité des Établissement de Crédit et des Entreprises d'Investissement*), depending on which authority has jurisdiction over the principal (portfolio management company, investment service provider, insurance company or credit institution) for whom the direct marketer is acting.

Any person engaging in direct solicitation or marketing by visiting a potential client must hold a card evidencing a licence agreement issued by the entity for which the person is acting. He or she must also be registered in a central database maintained jointly by the three regulators. Direct marketers must observe the rules of conduct set forth in the Act. For those who fail to meet with applicable laws, regulations or professional obligations, a disciplinary sanction can be imposed by the regulator of competent jurisdiction (AMF, Commission de contrôle des assurances, des mutuelles et des instituts de prévoyance or Commission Bancaire), coupled with criminal sanctions as necessary.

The Disciplinary Commission has been kept separate from the Board in order to segregate the prosecutorial and disciplinary functions. This requirement was established by rulings of the Paris appeal court and the Court of Cassation interpreting Article 6 of the European Convention on Human Rights.

Four stages of an enforcement action can now be distinguished:

- Inspections and investigations: initiated and conducted under the direction of the AMF's general secretary.
- Opening of a disciplinary proceeding: decided by the AMF's Board, which serves notice of the charges and refers the case to the Disciplinary Commission after examining the report of the investigation or audit.
- Documentation of the disciplinary proceeding: conducted by a member of the Commission serving as rapporteur.
- Imposition of sanctions: ordered by the Disciplinary Commission (without the rapporteur being present).

Audit and investigative powers placed under the direction of the general secretary

To carry out its statutory mission, the AMF conducts documentary and on-site inspections and investigations. The decision to initiate such actions is taken by the general secretary, under whose authority the actions are conducted.

The investigators are authorised by the general secretary and may summon and take statements from any person. Persons called to testify are entitled to have the counsel of their choice in attendance. The written records of evidence and findings are signed by the witness or the person concerned by the investigations. In researching securities violations, investigators may be authorised by the chief judge of the regional court (*Tribunal de Grande Instance*) to enter and search premises and confiscate documents, under court supervision. The AMF may also conduct investigations at the request of foreign regulatory authorities with equivalent jurisdiction.

Reports on inspections and investigations are prepared and transmitted to the Board, which determines whether there are grounds to open a disciplinary proceeding. These reports are not made public.

Opening of disciplinary proceedings decided by the Board

The Board reviews the report of the investigation or inspection prepared by the AMF staff. If the Board decides to open a disciplinary proceeding, it serves notice of the charges to the person(s) concerned and forwards the case file to the Disciplinary Commission. This document is not made public.

In urgent cases involving a professional entity, the Board may also order a provisional suspension of activity by the investment service provider at the same time that it is opening a disciplinary proceeding.

If the inspection or investigation identifies possible criminal offences, the Board transmits the report to the public prosecutor. This transmission may be made public.

If the suspicions involve securities violations (price manipulation, false information, insider trading), the Board immediately forwards the report to the public prosecutor for the Paris regional court, which has sole jurisdiction in such cases.

In criminal prosecutions for securities violations, the AMF may stand as the complainant.

The Board may also transmit the report to other regulatory authorities (for example, the Commission Bancaire or the Commission de contrôle des assurances, des mutuelles et des instituts de prévoyance) if the facts of the case fall within their competence.

Adversarial proceeding conducted exclusively before the Disciplinary Commission

The Disciplinary Commission alone conducts the proceeding and decides what sanctions to impose, if any. The Commission may not hear a case based on facts that occurred more than three years previously if no act contributing to the uncovering, declaration or punishment of those facts has taken place during that period.

The chairman of the Commission selects one of its members to serve as the rapporteur charged with preparing the case for trial, hearing both parties. The rapporteur may be assisted by the AMF staff. The rapporteur puts his findings in writing, and this report is provided to the person(s) charged, who may submit their observations in writing.

The person charged is then called before the Disciplinary Commission for a sitting that involves an adversarial procedure: the rapporteur presents his report, and then the person charged and his counsel are heard. The defendant is entitled to have the last word. The sitting is open to the public if any of the persons charged so requests. When the proceedings are finished, the Commission may decide to impose a sanction (without the rapporteur or the representative of the government being present).

The Commission may impose sanctions or penalties on the following persons:

- professional entities under its supervision, for any breach of professional obligations established by laws, regulations or rules of professional conduct approved by the AMF;
- natural persons (individuals) under the authority of or acting on behalf of such entities;
- any other person whose practices contravene legislative or regulatory provisions, when such practices infringe investors' rights or impair the orderly operation of markets.

Professional entities are liable to sanctions related to the conduct of their business activity (warning, reprimand, temporary or permanent prohibition on providing all or part of the services previously provided) as well as fines up to €1.5 million or ten times the unlawful profits realised (five times when the professional in question is an individual, except in cases of market manipulation).

Other persons may be assessed fines not exceeding €1.5 million or ten times the amount of realised profits.

The amount of the fine is set based on the gravity of the acts committed and in proportion to the profits realised or other advantages gained by virtue of those acts.

The Commission may make public its disciplinary decisions in any publications, journals or reports that it chooses.

An appeal may be made against any disciplinary decision. The competent forum is the Paris appeal court, except when the decision involves sanctions against professional entities (investment service providers, direct marketers, investment advisers, depositories, members of regulated markets, etc.), in which case petitions for appeal must go to the Conseil d'Etat.

Other powers of the AMF

To ensure compliance with laws and regulations, the AMF has been granted other powers including the following:

- Administrative injunction: The AMF Board may, after giving the person concerned an opportunity to offer explanations, order a person to cease engaging in practices contrary not just to the AMF's General Regulations but to laws and regulations in general. These decisions may be made public. If the person does not comply with the injunction, the Board may refer the case to the Disciplinary Commission.
- Cease and desist order: The AMF chairman may ask for a court order directing a person to put an end to an established irregularity. The chairman's request goes to the chief judge of the Paris regional court, which may attach a penalty for failure to comply with the order.
- Sequestration order: The AMF chairman or general secretary, giving grounds for their request, may ask the chief judge of the regional court for an order taking temporary possession of funds, valuables, securities or rights belonging to persons believed by them to be guilty of wrongdoing.

AN ACTIVE INTERNATIONAL ROLE

Having inherited a long tradition of securities markets and clear principles in matters of investor protection, financial disclosure and transparency, France's financial regulator has always played a prominent role in international regulatory forums. That role takes on greater importance than ever in today's highly integrated financial markets, which require emerging international standards to be precise, consistent and effectively enacted into law.⁵ The same is true in the European Economic Area, where the Committee of European Securities Regulators (CESR), set up in 2001, has been given the additional responsibility of proposing technical rules to permit harmonised implementation of European Commission directives.

With the creation of the AMF, the Financial Security Act enhances the representation of France's regulatory system within international bodies, making it more homogeneous and thus more effective. The Act also elevates the AMF's role in international and European regulation of financial markets to the rank of an explicit statutory mission.

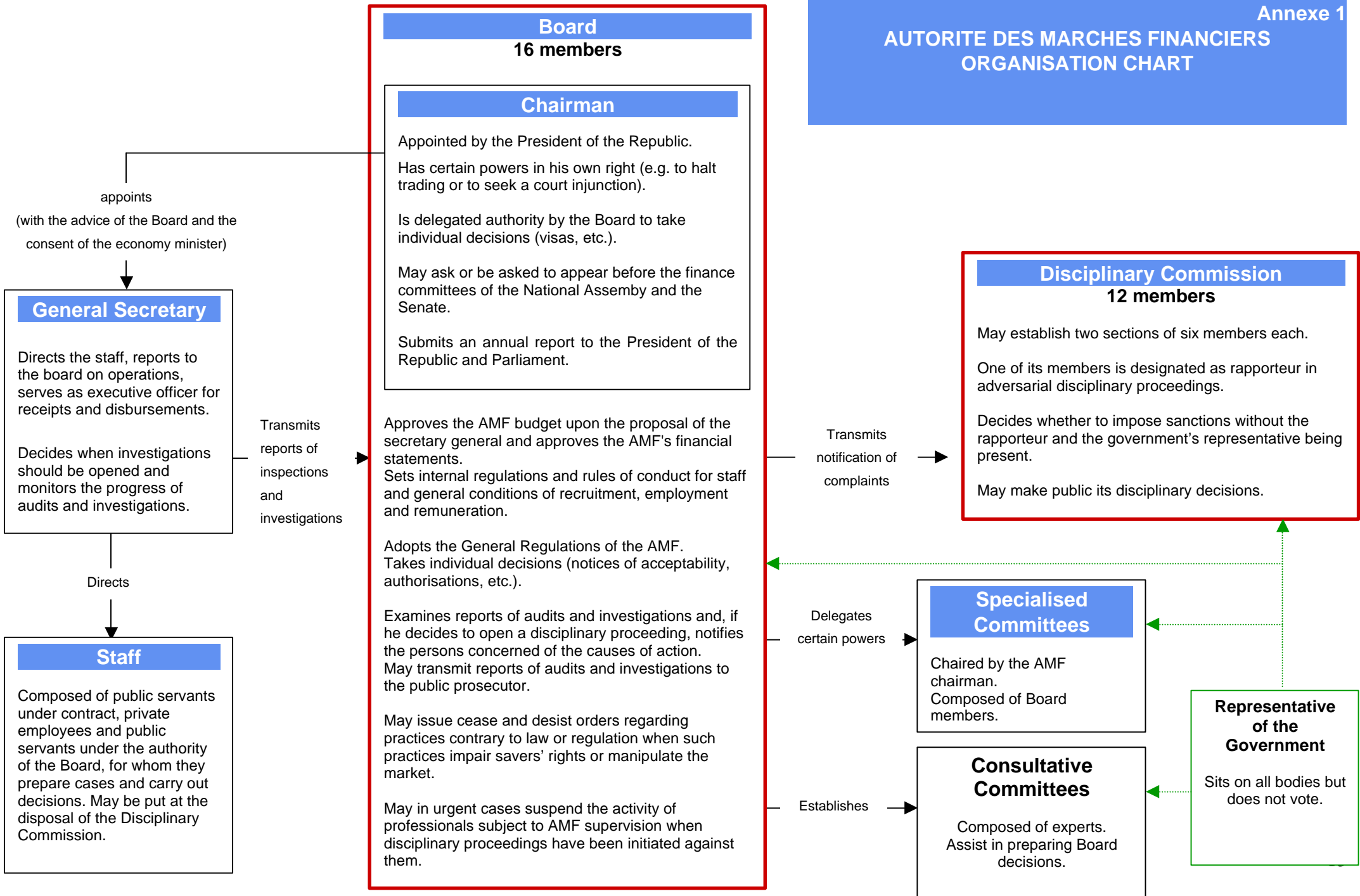
The AMF is an active member of the International Organisation of Securities Commissions (IOSCO), the Committee of European Securities Regulators (CESR), the Financial Stability Forum (FSF) and the Institut Francophone de la Régulation Financière (IFREFI). The AMF also participates in numerous international initiatives to improve financial regulation.

On a bilateral level, the AMF works closely with more than thirty of its European and international counterparts under cooperation and information exchange agreements.

⁵ The Financial Stability Forum (FSF) has issued a list of 12 key international standards for regulation of financial systems. Six of these directly concern financial markets: 1) *Principles of corporate governance (OECD)*; 2) *International accounting standards (IASB)*; 3) *International standards on auditing (IFAC)*; 4) *Core principles for systematically important payments systems*; 5) *40 recommendations of the Financial Action Task Force on money laundering (FATF)*; 6) *IOSCO objectives and principles of securities regulation (IOSCO)*.

Annexe 1

AUTORITE DES MARCHES FINANCIERS ORGANISATION CHART



INTERNATIONAL ORGANISATIONS AND AGREEMENTS

The AMF is active internationally at four levels.

Worldwide

The **Organisation International of Securities Commissions (IOSCO)**, established in 1983, brings together the supervisory authorities of financial markets throughout the world. The AMF sits on IOSCO's Technical Committee and Executive Committee.

IOSCO = 168 members

The **Financial Stability Forum (FSF)** brings together securities regulators, central banks and finance ministries of the world's main financial centres as well as the IMF, the World Bank, international organisations of regulators and the European Central Bank.

The Forum's objective is to promote financial stability, improve the functioning of markets, and reduce systemic risk by coordinating international efforts in market surveillance and financial regulation.

FSF = 42 members

European

The **Committee of European Securities Regulators (CESR)** brings together the financial markets regulatory authorities of the European Economic Area (EEA).

CESR = 17 member countries

Austria (FMA), Belgium (CBF), Denmark (Finanstilsynet), Finland (Rahoitustarkastus), France (AMF), Germany (BAFin), Greece (CMC), Iceland (FSA), Ireland (CBI), Italy (Consob), Luxembourg (CSSF), Netherlands (AFM), Norway (Kredittilsynet), Portugal (CMVM), Spain (CNMV), Sweden (Finansinspektionen), United Kingdom (FSA).

Regulation of Euronext

Agreement on market surveillance and integrity: CBF (Belgium), AMF (France), AFM (Netherlands), CMVM (Portugal), FSA (United Kingdom).

Regulation of the clearing house (Clearnet)

Memorandum of understanding on the supervision of clearing activities on Euronext markets: Autorité des marchés financiers (France), Commission bancaire (France), CECEI (France), Banque de France, AFM (Pays-Bas), Banque centrale des Pays-bas, Commission Bancaire et Financière (Belgique), Banque nationale de Belgique, CMVM (Portugal), Banque centrale du Portugal.

Regulation of Euroclear France

Memoranda of understanding on the supervision of payments and settlements activities on Euronext markets:

- bilateral agreement: Autorité des marchés financiers (France), Central Bank of France, Commission Bancaire et Financière (Belgique), Central Bank of Belgium;
- trilateral agreement: Autorité des marchés financiers (France), Central Bank of France, AFM (Pays-Bas), Central Bank of Netherlands, Commission Bancaire et Financière (Belgique), Central Bank of Belgium.

Bilateral

Cooperation agreements with other authorities (information exchange, investigations, technical co-operation, etc.).

35 commissions having signed agreements with the AMF

Algeria (COSOB), Argentina (CNV), Australia (ASIC), Belgium (CBF), Brazil (CVM), British Columbia (BCSC), Chile (SVS), China (CRSC), Czech Republic (CSC), Egypt (CMA), Germany (BAFin), Guernsey (GFSC), Hong Kong (SFC), Hungary (HBSMS), Italy (Consob), Jersey (JFSC), Lithuania (LSC), Malaysia (SC), Mexico (CNBV), Monaco (CCGPABA), Morocco (CDVM), Ontario (OSC), Poland (PSEC), Portugal (CMVM), Quebec (CMVQ), Singapore (MAS), South Africa (FSB), South Korea (FSC), Spain (CNMV), Switzerland (CFB), Tunisia (CMF), Turkey (CMB), United States (SEC, CFTC), West African Monetary Union (CREPMF).

These bilateral relations have been further extended by two multilateral agreements between CESR members (17 signatories) and IOSCO members (22 signatories).

French speaking bodies

The **Institut Francophone de la Régulation Financière (IFREFI)** is a flexible arrangement for dialogue and cooperation between financial markets regulators in French-speaking countries.

9 founding members

Algeria (COSOB), Belgium (CBF), France (AMF), Guinea (PBVC), Luxembourg (CSSF), Morocco (CDVM), Quebec (CVMQ), Switzerland (CFB), West African Monetary Union (CREPMF).

FINANCIAL SECURITY ACT: MODERNISING FRANCE'S SUPERVISORY AUTHORITIES

Situation before the Act

	Mutuals	Insurance	Credit institutions	Investment services	Markets	Asset management
Regulations	Minister of Social Affairs	Minister of Finance	CRBF	COB + CMF		COB
Advisory jurisdiction	CSM	CNA	CNCT	COB + CMF		
Rules of conduct	CCMIP	CCA	CB	CMF		COB/CDGF
Prudential supervision						
Authorisation	Minister of Social Affairs	Minister of Finances	CECEI	CECEI/CMF	CECEI	COB

CB: Commission Bancaire; CCA: Commission de Contrôle des Assurances; CCGF: Comité Consultatif de la Gestion Financière; CCMIP: Commission de Contrôle des Mutuelles et Institutions de Prévoyance; CDGF: Conseil de Discipline de la Gestion Financière; CECEI: Comité des Établissements de Crédit et des Entreprises d'Investissement; CMF: Conseil des Marchés Financiers; CNA: Conseil National des Assurances; CNCT: Conseil National du Crédit et du Titre; COB: Commission des Opérations de Bourse; CRBF: Comité de la Réglementation Bancaire et Financière; CSM: Conseil Supérieur de la Mutualité

Situation after the Act

	Mutuals	Insurance	Credit institutions	Investment services	Markets	Asset management
Regulations	Minister of Social Affairs	Minister of Finances		AMF		
Advisory jurisdiction	CSM	CCLRF / CCSF		AMF		
Rules of conduct	CCAMIP		CB	AMF		
Prudential supervision						
Authorisation	Minister of Social Affairs	CEA	CECEI			

AMF: Autorité des Marchés Financiers; CCAMIP: Commission de Contrôle des Assurances, des Mutuelles et Institutions de Prévoyance; CCLRF: Comité Consultatif de la Législation et de la Réglementation Financières; CCSF: Comité Consultatif du Secteur Financier; CEA: Comité des Entreprises d'Assurance

Source: Economics and Finance Ministry