

Chapter 2

International Cooperation and Regulation

As financial markets extend their cross-border reach, regulation has acquired a significant European and international dimension. Mindful of the complex mechanisms that govern the regulatory process, the Autorité des Marchés Financiers (AMF) has modified its working methods to reflect the new constraints placed upon the regulator. The changes will ensure that the AMF can defend the principles that guide its actions, especially in investor protection. Moreover, they will deliver optimal conditions to enable participants on the French market to pursue their business activities in a competitive setting.

Accordingly, the AMF takes active part in the work of the international organisations to which it belongs, including the International Organisation of Securities Commissions (IOSCO), the Committee of European Securities Regulators (CESR) and the Financial Stability Forum (FSF). The AMF also works hard to convey its philosophy on financial regulation to the institutions of the European Union – the Commission and the Parliament – as well as to industry associations and research centres.

1 Contributing to the Work of International Organisations

Several organisations work together at the international level to coordinate initiatives and debate on financial regulation issues.

- The Financial Stability Forum (FSF) provides an overarching presence, supplying overall supervision and ensuring that international finance-related initiatives take a consistent approach. The FSF has stepped up its role as a venue for exchange and dialogue, and as a driver and coordinator of global policy on financial stability and market regulation. By acting as a meeting point for government bodies, supervisors and international organisations, the FSF makes it easier to coordinate participants' activities and encourages government authorities to account of the work done by regulators.
- Next is the International Organisation of Securities Commissions (IOSCO), which focuses on financial markets regulation. IOSCO sets the basic principles of financial regulation, and organises and strengthens international cooperation. The organisation has taken on added importance since a string of fraud-related failures in the early 2000s, which underscored the need to harmonise standards and foster cooperation among regulators.
- The Joint Forum, which comprises representatives from IOSCO, the Basel Committee and the International Association of Insurance Supervisors (IAIS), provides a setting in which to discuss issues that affect the three main finance sectors – banking, insurance and securities – in an effort to build a consistent overall approach.
- At the regional level, the Committee of European Securities Regulators (CESR) comprises the market regulators of the countries in the European Economic Area¹. It provides advice to the European Commission and coordinates regulatory work to ensure harmonised and convergent implementation of EU legislation. Its activities, like those of the European Commission, follow the principles established by IOSCO.

¹ The 25 Member States of the European Union + Norway and Iceland.

A The Financial Stability Forum (FSF)

Founded in the wake of the 1998 Asian crisis, the Financial Stability Forum comprises finance ministry representatives, central bank governors and the chairs of the securities, banking and insurance regulators of the G7/G8, along with representatives of international financial institutions and regulatory groupings. Its main task is to monitor the global economic situation, with emphasis on assessing the risks to financial stability.

In 2005, the FSF focussed its attention on offshore centres², hedge funds and credit risk transfer. This chapter deals with these topics in more depth below.

The FSF stepped up its dialogue with the industry by organising a morning discussion with market representatives before each of its meetings. The most recent meeting, for instance, provided an opportunity to present the report by the Counterparty Risk Management Policy Group II (CRMPGII) chaired by E. Gerald Corrigan. The report sets out recommendations and guiding principles to reduce the risks of financial shocks and limit their systemic effects. Discussions continued on the subject of hedge funds through meetings in London and Washington between FSF members and representatives of the hedge funds community.

As regards non-cooperative jurisdictions, the FSF discontinued the list that ranked offshore centres according to their level of cooperation. The lack of commonly defined and recognised procedures was making it difficult to update the ranking, which was first compiled in 2000. Also, some Forum members said they were unhappy with the *de facto* name-and-shame policy associated with publishing the list. A compromise was reached at the March 2005 FSF meeting in Tokyo, where it was decided to entrust an FSF sub-group with the job of summarising efforts by international committees of supervisors, the World Bank and the International Monetary Fund (IMF) to assess jurisdictions identified as non-cooperative, in order to propose, if appropriate, a joint action led by the FSF. It is too early to say whether this new process will be successful and effective.

A range of initiatives by governments, national authorities, professional associations and international supervisory bodies prompted the FSF to include hedge funds on its agenda. A two-part approach was taken. The FSF held meetings with practitioners to gain an overview of domestic policies on hedge funds. It also asked IOSCO to conduct a closer examination of questions pertaining to the structure of hedge funds, and notably issues regarding the administration of funds and valuation methods. The Joint Forum, meanwhile, is continuing its work on counterparty risk.

The FSF also turned its attention to the increased presence of households in banks' risk exposure. It acknowledged the need to monitor developments in prudential risks but also to consider the relationship between financial intermediaries and their customers in terms of the marketing of financial products and services. In this regard, the FSF supported the work of the Joint Forum, which is set to begin a project on this issue.

Moreover, the FSF is keeping a close eye on changes in accounting standards and in the organisation of international audit structures. As part of this, it is organising exchanges between accounting standard-setters and standards users in a bid to identify any interplay between these standards and issues relating to financial stability and systemic risk.

B International Organisation of Securities Commissions (IOSCO)

Created in 1983, IOSCO has more than 178 ordinary and affiliate members. Its two main committees are the Presidents' Committee and the Executive Committee.

² Offshore centres are financial centres offering favourable tax treatment and flexible regulations. These qualities are designed to attract legal structures that hold accounts or earnings from transactions conducted in onshore financial centres.

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The Executive Committee runs IOSCO on a day-to-day basis, based on the guidance of the Presidents' Committee. Two working committees help it to achieve its tasks:

- The Technical Committee is made up of 15 authorities representing the world's most developed and international markets. Its role is to analyse the main issues affecting the international regulation of securities and derivatives markets, and to devise practical responses to these issues.

The Technical Committee comprises five Standing Committees:

- SC1: Multinational Disclosure and Accounting
 - SC2: Regulation of Secondary Markets
 - SC3: Regulation of Market Intermediaries
 - SC4: Enforcement and Exchange of Information
 - SC5: Investment Management
- The Emerging Markets Committee, which has five working groups, is in charge of promoting and improving the efficiency of emerging securities and derivatives markets, by establishing standards, organising training programmes for the staff of member regulators and transferring technology and expertise.

At its annual conference in Colombo in 2005, IOSCO adopted a new strategic direction, based on four main goals:

- promote IOSCO as the international standard-setter for financial markets regulation;
- improve enforcement-related cooperation between regulators;
- promote implementation of IOSCO's principles;
- raise IOSCO's profile.

By harnessing the momentum generated by the "Parmalat" Report on financial fraud³, the new strategic direction is designed to make IOSCO more effective and enhance the impact of the organisation's decisions.

1 Improving the Exchange of Information

As part of cooperation efforts between regulators, the IOSCO Presidents' Committee adopted a resolution at the 2005 annual conference endorsing the 2002 Multilateral Memorandum of Understanding (MMOU)⁴ on the Exchange of Information as the international standard for the exchange of information and cooperation between regulators.

This endorsement was accompanied by a commitment by all IOSCO members to sign the MMOU by 2010. Also, any applicants wanting to join IOSCO must be screened to ensure that they are capable of signing the MMOU before they become members. IOSCO members have responded energetically to the resolution. Many emerging country authorities have begun admission procedures or are working on reforms to strengthen their applications.

The procedure adopted at the 2002 Presidents' Conference was intended to function as a progressive approach with incentives. The MMOU was endorsed in 2005 as a central reference point and has been established as a mandatory step. Thus far, no procedures have been created to penalise failure to meet the obligations under the MMOU. However, as the 2010 deadline approaches, penalties could be introduced.

³ Cf. AMF Annual Report, "Report of the IOSCO Technical Committee on Strengthening Capital Markets against Financial Fraud", www.iosco.org/pubdocs/pdf/IOSCOPD192.pdf.

⁴ See below.

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2 Enhancing Technical Cooperation

To help its members meet their new obligations, IOSCO included provision in its strategic direction for increasing technical cooperation by members and promoting partnerships between developed-market and emerging-market authorities to aid the latter prepare their applications. In 2004, the Presidents' Committee voted to raise members' financial contributions to provide the resources to implement more ambitious programmes.

Building on these efforts, the Enforcement Committee continued its work in 2005 by promoting access to the "Methodology for Assessing Implementation of the IOSCO Objectives and Principles of Securities Regulation". In November 2005, the Committee held a seminar in Kampala, Uganda, to train staff of regulators in the Africa and Middle East region on using the IOSCO methodology, which is the primary tool for analysing regulations. The AMF contributed to these efforts by organising some of the seminar's training courses.

Andrew Sheng, Chairman of the Hong Kong Authority, stepped down as Chair of the Technical Committee in 2005. He was replaced by Michel Prada, AMF Chairman and Vice Chairman of the Technical Committee. Mr Prada will remain in office until the initial appointment expires in June 2006. R el Campos, a Commissioner of the US Securities and Exchange Commission (SEC), was named Vice Chairman.

C The Joint Forum

The Joint Forum comprises representatives from IOSCO (securities), the IAIS⁵ (insurance) and the Basel Committee (banking). The bulk of its work in 2005 was concerned with preparing business continuity principles. The Joint Forum also began discussions on the marketing of financial products and services, looking at the obligations of investment services providers towards their customers. A working group will explore this issue by concentrating on the differences between the banking, insurance and securities sectors. This initiative, which IOSCO suggested to the Joint Forum based on a proposal by the AMF, should help to clarify regulations in this area. With this mandate, the Joint Forum is recentring on cross-sector issues, after previously focussing mainly on prudential questions.

D Committee of European Securities Regulators (CESR)

The AMF devoted much of its energy to the work of CESR. The AMF is represented in all the committee's working groups and permanent groups, and chaired the groups on MiFID Level 2 measures and eligible assets for UCITS, as well as the Audit Task Force.

Discussions continued over CESR governance and the Committee's role in the Lamfalussy process, which is taking form and developing as the Financial Services Action Plan (FSAP) is implemented. In 2004, CESR published the "Himalaya" Report⁶ on its positioning in the European institutional framework. The Committee is being prevented from expanding its resources and powers essentially for institutional reasons. This is hampering CESR's ability to coordinate European regulators and guide them to greater convergence and more effective cooperation.

CESR stands at a pivotal point as it completes its advice to the European Commission on implementing measures for FASP Directives before turning its attention to the issue of coordinating supervisory activities. The Committee's work schedule will be shaped by supervisory

⁵ International Association of Insurance Supervisors

⁶ Cf. AMF 2004 Annual Report, p. 51, "Which Supervisory Tools for the EU Securities Markets? Preliminary Progress Report (Himalaya Report)", CESR Document 04-333f, www.cesr-eu.org.

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questions and the practical issues of implementing the directives, from passports to delegation of powers, and coordinated supervision. It should be stressed in this regard that the directives adopted under the FSAP have profoundly altered the way that powers are distributed between European regulatory authorities, making closer cooperation necessary. These changes raise the question of whether new IT systems are needed to exchange information on market supervision, or failing that, whether domestic systems are compatible. In preparation for these developments, at its last meeting in November 2005 CESR set up a working group under Michel Prada to analyse the latest phase and make the proposals needed to get CESR ready to move forward. The group, which comprises eight chairmen from IOSCO's Technical Committee, is scheduled to submit its conclusions in the first half of 2006.

E Relations with EU Institutions

The AMF works alongside the Directorate General for the Treasury and Economic Policy (DGTPE), other French regulators and industry associations to convey France's conception of financial regulation to the EU institutions.

This undertaking necessarily entails a multi-faceted approach. In its dealings with the EU institutions, the AMF responds to Commission consultations, organises meetings with Commission services and MEPs, attends European Parliament hearings and fosters ties with professional associations. The AMF also takes part in and voices its opinion at conferences and other events devoted to financial regulation. It participated actively in the discussions held by the European Commission on the Asset Management Green Paper, submitting a detailed response⁷.

In December 2005, the European Parliament asked the AMF Chairman to speak before the Inter-Institutional Monitoring Group on the Lamfalussy Process. This gave him an opportunity to highlight some of the key points in the AMF's response to the Financial Services Green Paper.

In its response to the Green Paper, the AMF underscored the FSAP's role in reforming and modernising European finance law and modifying the legal framework to reflect innovation and the increasingly international scope of markets, all in a relatively short space of time.

The AMF also called on the Commission to consider the need to deepen the Lamfalussy process to enable it to take full effect. In addition, the Authority singled out a few other important aspects for the Commission's attention, including the need for a directive on securities settlement, the need to measure the effects of the Hague Convention on the law applicable to certain rights in respect of securities held with an intermediary, and the risks of disruption to the uniform enforcement of EU law. The AMF also stressed the importance of a debate on transparency in the bond market.

Furthermore, the AMF pointed again to the sound conclusions contained in CESR's⁸ "Himalaya" Report, and reiterated its desire to see action on the report's main proposals.

2 Corporate Finance and Disclosure

International efforts were focussed mainly on bond market transparency. In this, they followed the recommendations contained in the December 2004 "Parmalat" Report on international financial fraud prepared by the Chairmen's Task Force of the IOSCO Technical Committee.

In Europe, CESR concentrated on implementing measures and roll-out of the Prospectus and Transparency Directives. It also took over IOSCO's work on rating agencies.

⁷ Cf. below p. 74.

⁸ 2004 Annual Report,

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A IOSCO's Work on Prospectuses for Debt Securities

At its 2 October 2005 meeting in Frankfurt, the IOSCO Technical Committee approved a consultation paper entitled "International Disclosure Principles for Cross-Border Offerings and Listings of Debt Securities by Foreign Issuers". Prepared by Standing Committee No. 1, the paper sets out broad principles to guide regulators when they establish prospectus requirements for foreign issuers making cross-border offerings and listings of debt securities

The principles apply only to "plain vanilla" debt securities offered to or likely to be bought by retail investors. Convertible and structured bonds are excluded, but bonds with subordination clauses or covenants are covered.

The principles form a follow-up project to the standards for equity securities prepared by IOSCO in 1998.

The content of IOSCO's proposed prospectus for debt products differs in some respects from Annex IV of European Regulation 809/2004/EC of 29 April 2004. Notably, the IOSCO principles call for more comprehensive information on the issuer's business activities, including details of patents, R&D policies and key business locations, plus a description of governance rules and related party transactions.

Once the consultation feedback has been examined, the principles should be adopted by the IOSCO Technical Committee in the first half of 2006.

B The Prospectus Directive⁹

The Prospectus Directive was published in the Official Journal of the European Union on 31 December 2003. It aims to make the single market more efficient by enabling issuers to make an offering or apply for a listing of financial instruments using the same prospectus throughout the EU, without further authorisation from the host country regulator (under the "single passport" procedure). The directive also enhances investor protection by strengthening disclosure requirements for issuers.

Over the last four years, the AMF has played an active part in CESR's efforts to prepare a new regime governing the prospectus to be published by companies offering securities to the public. After the directive was adopted, a group of experts – the Prospectus Group – was mandated in 2003 to provide technical advice on European Regulation 809/2004, which was to implement the directive.

In 2004, the Prospectus Group, aided by CESR-Fin, the permanent group in charge of accounting issues, drafted a set of recommendations designed to permit convergent implementation of the European Regulation by Member States. The recommendations were published in February 2005. The AMF has translated them into French and made them available online¹⁰.

In 2005, the Prospectus Group issued a final technical opinion on a possible amendment to European Regulation 809/2004 regarding the financial information to be disclosed by issuers with a complex financial history. The group published its advice on 27 October 2005.

The entry into force of European Regulation 809/2004 on 1 July 2005 raised a number of practical questions for European regulators, issuers and market professionals. Furthermore, regulators have to cooperate to ensure that the passport procedure used to facilitate cross-border transactions works properly. For these reasons, CESR set up a working group on the Prospectus Directive, comprising representatives from different regulators.

⁹ The AMF has published a handbook on the European Directives that govern financial markets. "French Regulation in Europe's Future Financial Landscape" is posted online at www.amf-france.org/documents/general/6479_1.pdf.

¹⁰ Textes de référence/Accès par type de textes/Règlement général/Règlementation de référence.

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The group's two objectives are to help the passport system function effectively and to establish common positions for regulators on questions related to implementing the directive and its accompanying regulation. Initial efforts were devoted to defining procedures for regulators to provide each other with notification concerning certificates of approval for prospectuses. The group also began analysing a number of issues relating to language arrangements and the content of prospectuses. The group will publish common positions on the CESR website.

The Prospectus Directive was transposed into French law by the Economic Confidence and Modernisation Act 2005-842 of 26 July 2005 (the Breton Act). The Directive's Implementing Regulation came into effect on 1 July 2005.

The amendments to the AMF General Regulation arising from transposition of the Prospectus Directive were approved by the Order of 1 September 2005 and came into force on 9 September 2005.

2005				2006				2007			
1st	2nd	3rd	4th	1st	2nd	3rd	4th	1st	2nd	3rd	4th
*											
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* European Regulation with effect from 01/07/2005.

** Economic Confidence and Modernisation Act 2005-842 of 26/07/2005 and AMF GR in force at 09/09/2005.

C Transparency Directive

Directive 2004/109/EC of the European Parliament and of the Council on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market was published in the Official Journal of the European Union on 31 December 2004¹¹.

1 About the Directive

The directive rounds out the framework provided by the Market Abuse and Prospectus Directives by harmonising periodic and ongoing disclosure requirements for issuers of financial instruments traded on a regulated market. The directive also harmonises the reporting requirements for major holdings.

The Transparency Directive is based on minimum harmonisation, meaning that home Member States may impose additional requirements on issuers and shareholders under their jurisdiction. For shares and debt securities with a face value of less than €1,000, the home Member State is defined as the Member State in which the issuer has its registered office. For other types of securities, the issuer can choose as its home Member State either the Member State in which it has its registered office or the Member State in which its securities are admitted to trading on a regulated market. That choice remains valid for three years.

An issuer with its registered office in a country outside the European Union may be exempted from some of the provisions of the directive by the competent authorities in its home Member State, provided that the legislation of the third country in question imposes equivalent or stricter obligations. The European Commission will clarify the equivalence requirements once CESR has finalised its advice.

¹¹ Official Journal of the European Union L. 390, 31 Dec. p. 38.

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The directive defines regulated information as covering the following¹²:

- information to be disclosed under the Transparency Directive;
- information to be disclosed by home Member States, over and above the disclosure requirements of the directive;
- sensitive information be disclosed under the Market Abuse Directive¹³.

2 Disclosure Requirements under the Directive

The directive sets out periodic and ongoing disclosure requirements for issuers.

Under the periodic requirements, issuers are required to make public:

- an annual financial report at the latest four months after the end of each financial year. The annual report must comprise the audited financial statements, the management report, the audit report, and statements by the persons responsible within the issuer for the financial statements (Art. 4);
- a half-year financial report at the latest two months after the end of the period in question. The half-year report must comprise a condensed set of financial statements, an interim management report, and statements by the persons responsible within the issuer for the condensed set of financial statements. Note that the directive does not require these statements to be subject to limited review, but does allow Member States to introduce such a stipulation. Accordingly, it is expected that in France, companies under AMF supervision will still have to conduct limited reviews (Art. 5);
- interim statements at least twice a year (and in reality on a quarterly basis). However, issuers that, under either national legislation or the rules of the regulated market or of their own initiative, publish quarterly financial reports in accordance with such legislation or rules are not required to publish these interim statements (Art. 6).

The directive also establishes a number of principles covering communications between issuers and their shareholders and bondholders (Articles 17 and 18)¹⁴.

The directive also addresses ongoing information requirements, harmonising disclosure requirements for major holdings as well as some related reporting requirements, for example on changes in voting rights (Art. 9 *et seq.*).

The directive also requires issuers to publish additional information on new loan issues and on changes in the rights of holders of securities (Art. 16).

¹² Art. 2.1 k).

¹³ Depending on the Member State, reports on directors' dealings may or may not count as regulated information that the issuer must make public. According to advice by CESR, such reports qualify as regulated information only to the extent that this information is available to the issuer (CESR Technical Advice, ref. CESR/05-407 of 30 June 2005). However, the draft Implementing Directive that the Commission prepared for the Transparency Directive based on CESR's advice does not include this definition of regulated information.

¹⁴ There is the question of whether to include this information in the definition of regulated information. According to CESR, such information does not count as regulated information, but the Commission did not include this point in its draft Implementing Directive (CESR Technical Advice, ref. CESR/05-407 of 30 June 2005).

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3 Publication of Regulated Information

The directive sets out three disclosure requirements. Regulated information must be:

- disseminated by issuers using media that can be relied upon for the effective dissemination of information throughout the European Union (Art. 21). Issuers must take active steps in this regard, and not merely post the information on the company’s website;
- filed with the competent authority of the home Member State (Art. 19). Issuers should also provide the competent authority with information on draft amendments to instruments of incorporation or statutes (Art. 19);
- sent to the official mechanism for the central storage of regulated information, which each home Member State is required to have in place (Art. 21).

4 Implementing the Directive

For the directive to be applied, the Commission has to adopt implementing measures based on the advice provided by CESR, and the directive and its accompanying measures have to be transposed into French law.

As part of the process of preparing the implementing measures, the Commission asked Member States to consider a draft directive containing measures to implement the Transparency Directive.

Prepared on the basis of the formal advice provided by CESR on 30 June 2005, the draft deals with implementing measures for major holdings, dissemination of regulated information, auditor reviews of half-year financial statements and equivalence requirements.

In 2005, CESR was given a new mandate to provide advice before 30 June 2006 on systems for storing regulated information at the Member State level and on the filing of regulated information by electronic means with the competent authorities. CESR published an initial consultation paper as part of its new mandate in January 2006.

Timetable: the directive was partly transposed by the Breton Act of 26 July 2005, which refers to the AMF General Regulation as regards implementation procedures. The Commission is expected to adopt implementing measures over the course of 2006 based on CESR’s advice. On 30 June 2005, CESR submitted its advice on dissemination standards, procedures for reporting major holdings, reviews of half-year financial statements, and equivalence requirements; on 30 January 2006 it submitted a second set of advice on central storage mechanisms. The deadline for full transposition is 20 January 2007.

2005				2006				2007			
1st	2nd	3rd	4th	1st	2nd	3rd	4th	1st	2nd	3rd	4th
CESR implementing measures				AMF Consultation							

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D Credit Rating Agencies

Following the adoption by IOSCO's Technical Committee of Code of Conduct Fundamentals for Credit Rating Agencies¹⁵ on 4 December 2004, discussions on the issue continued on both sides of the Atlantic.

In response to a request from the European Commission, on 30 March 2005 CESR published technical advice on possible regulatory measures concerning credit rating agencies (CRAs). The advice concluded by emphasising that the Code of Conduct Fundamentals published by IOSCO in December 2004 offered a useful response to the Commission's questions regarding conduct of business rules. CESR suggested promoting a self-regulation strategy initially to give the agencies time to incorporate the IOSCO recommendations and to give the recommendations time to produce results. Based on this advice, the European Commission indicated in the Financial Services White Paper published on 5 December that no new legislation was planned at this stage and that for the time being, self-regulation by market participants was the best way to find the most appropriate additional responses to market developments.

Pursuing its efforts in this area, CESR introduced a plan to monitor implementation of the IOSCO recommendations by CRAs operating in Europe. This compliance control process will remain a voluntary one in which the agencies regularly inform CESR on how they are implementing the measures.

In France, the AMF compared the agencies' codes of conduct against IOSCO's code as part of its 2005 annual report on rating agencies, their ethical rules, the transparency of their methods and the impact of their activities on issuers and the financial markets¹⁶.

In the USA, the SEC continued its work on the role and operations of CRAs and in April 2005 published a rule proposal to define the term "Nationally Recognized Statistical Rating Organization" (NRSRO), a status it has granted to five agencies¹⁷. This initiative was followed in late June by another bill to promote competition and strengthen investor protection in the credit rating industry. If adopted, this bill will fundamentally change the SEC's role by placing it in charge of registering eligible credit rating agencies and overseeing the companies, in particular handling inspection, examination, and enforcement. Public consultations have already been held and the results are currently being analysed.

E Corporate Governance: IOSCO Working Group, European Commission Projects

The process of harmonising the rules on company law, corporate governance, accounting and auditing has led to the creation of an extensive legal framework, comprising 12 directives, two regulations and one communication by the European Commission.

The Commission has set in train a process aimed at modernising company law and enhancing corporate governance in all EU Member States. Yet it is no simple task to take harmonisation forward in an area where legal cultures vary considerably from one Member State to the next, and where domestic practices continue to hold sway.

Less than three years after the European Commission's communication was adopted, the Commission's 2003 Action Plan is being put out for a new consultation. In its introduction, the consultation paper, which is entitled "Future Priorities for the Action Plan on Modernising

¹⁵ www.iosco.org/ioscopd180.

¹⁶ See below "AMF 2005 Report on Rating Agencies"

¹⁷ A.M. Best Company, Dominion Bond Rating Service Limited, Fitch Inc., Moody's Investors Service Inc., Standard & Poor's Division of the McGraw Hill Companies Inc.

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Company Law and Enhancing Corporate Governance”, emphasises that most of the short-term objectives set in 2003 have been accomplished.

And indeed, since May 2003, most of the short-term measures have been successfully delivered or are in the process of being delivered, including the following:

- two recommendations on directors were adopted, the first dealing with the remuneration of directors of listed companies, and the second with the role of non-executive directors of listed companies;
- a revision of the four accounting directives was proposed and initiated. Now, all listed companies in Europe are required to publish reports on corporate governance, internal control and risk management;
- a consultative group of experts was formed to provide detailed technical advice to help prepare legislative proposals;
- the European Corporate Governance Forum was set up in 2004 to examine best corporate governance practices in Member States. The Commission felt that it was important to promote coordination and convergence of national codes by organising high-level meetings in a dedicated forum;
- the European Commission recently adopted a proposal for a directive on the exercise of voting rights by shareholders of companies having their registered office in a Member State and whose shares are admitted to trading on a regulated market and amending Directive 2004/109/EC.

The situation today contrasts with the setting in 2003 when the Action Plan was adopted, in the wake of, and partly as a response to, a series of financial scandals. These scandals sparked a debate on corporate governance and prompted shareholders to call for more transparency and information from companies. But while the Commission is being guided by the goals of enhancing transparency and increasing the role of shareholders, it also has to consider the Lisbon Agenda and its aim of giving European companies the tools to take on international competition.

3 International and European Cooperation in Accounting and Audit Issues

A IOSCO’s Work on Accounting and Financial Information (SC1)

The goal of IOSCO’s Standing Committee No. 1 (SC1) is to enhance the disclosure of accounting and financial information. The plenary committee is supported by four sub-committees that deal with accounting, interpretation and enforcement of IFRS, auditing and non-financial disclosure.

1 Quality of Accounting Standards

In 2005, SC1 proposed a new list of representatives for the Standards Advisory Council (SAC), a committee of the International Accounting Standards Board (IASB) that advises the Board on project priorities. SAC members were appointed in October 2005. Two IOSCO representatives sit on the council.

As part of its work on monitoring IASB and IFRIC¹⁸ initiatives, SC1 continued to participate in IFRIC projects through its two observers, one sent by the SEC and the other – an AMF

¹⁸ International Financial Reporting Interpretation Committee.

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representative – by CESR-Fin. SC1 members also took part in various working groups set up by the IASB on performance reporting, financial instruments, insurance and the extraction of natural resources.

The SC1 Accounting Sub-Committee also issued comments on several projects in 2005, including one on concession arrangements and a joint project by the IASB and the FASB, the US accounting standard-setter, on business combinations, minority interests and contingencies.

2 Consistent Interpretation and Enforcement of IFRS

The primary goal of the SC1 Sub-Committee on Interpretation & Enforcement of IFRS is to facilitate the consistent interpretation and enforcement of IFRS in affected jurisdictions. In a clear sign of how determined regulators are to pursue this objective, in October 2005 IOSCO published a media release announcing that regulators would share their decisions on the interpretation and enforcement of IFRS. A database is to be set up to facilitate the process by cataloguing IFRS-related decisions. This will provide a reference source for input to future regulatory decisions, echoing an initiative already taken by the European regulators that belong to CESR-Fin. The system is expected to be operational by July 2006.

B CESR-Fin

CESR-Fin is a permanent operational group charged with examining issues relating to accounting and financial reporting. CESR-Fin's plenary committees are chaired by the UK Authority, but the group has also established three sub-committees:

- The Sub-Committee on International Standards Endorsement (SISE) is responsible for monitoring the work of the IASB and the IFRIC, its interpretation committee. It does this in conjunction with the European Commission, because CESR-Fin has observer status on the Accounting Regulatory Committee (ARC), whose role is to advise the European Commission on adopting international accounting standards.
- The Sub-Committee on Enforcement (SCE) aims to promote consistent enforcement of IFRS by European regulators.
- The Audit Task Force (ATF) is tasked with monitoring audit-related developments, particularly in the context of amendments to the Eighth Directive on Statutory Audit.

1 Quality of Accounting Standards

As well as keeping a close watch on the work of the IASB, the IFRIC, the ARC and its technical committee, the European Financial Reporting Advisory Group (EFRAG), CESR-Fin also issued the following three positions in 2005:

a) Technical Advice on Equivalence

Based on a mandate granted in 2004 by the European Commission, in June 2005 European regulators finalised their technical advice on the equivalence of US, Canadian and Japanese Generally Accepted Accounting Principles (GAAP) with IFRS¹⁹. The source of the mandate lies in the Prospectus and Transparency Directives, both of which exempt issuers registered in non-EU countries from publishing financial statements under IFRS provided they use GAAP that have been assessed as being equivalent to IFRS.

¹⁹ CESR has posted the advice on its website: <http://www.cesr-eu.org>.

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CESR's advice is that these GAAP, each taken as a whole, are equivalent to IFRS, subject to the following:

- companies that have subsidiaries such as qualifying special purpose entities that are not consolidated for third country GAAP purposes, but are required to be consolidated for the purposes of IFRS, should report a pro forma balance sheet and income statement including these entities;
- companies reporting under Japanese GAAP that have used the pooling of interest method or a consolidation procedure that does not require uniform accounting methods within the group (thereby maintaining methods that are not consistent with IFRS or with Japanese GAAP), should report a pro forma balance sheet and income statement on the basis of IFRS covering business combinations and consistent accounting policies, respectively;
- issuers reporting under Japanese or US GAAP should adopt accounting policies for the expensing of stock options on a basis equivalent to IFRS, for implementation on or before 1 January 2007²⁰;
- in respect of certain other cases given in the advice, issuers are required to make additional disclosures of which some are to be descriptive and others quantitative.

The European Commission now has to formulate a decision based on CESR's advice. However, the potential ramifications of this move are generating considerable political pressure, with the result that the Commission is planning to postpone its decision until late 2006.

b) October 2005 Recommendation on Performance Measures

European companies make wide use of performance measures that are not as such extracted from the audited financial statements, but are derived from them (EBITDA, for example) or stem from other sources (e.g. production or activity levels). These measures can provide the market with valuable information if certain precautions are taken. However, if improperly used and presented, they could mislead investors. For this reason, in October 2005 European regulators published a recommendation to provide guidance on using and presenting alternative performance measures²¹.

The recommendation applies to financial performance measures. A performance measure is a measure that is not defined in accounting terms, i.e. that is not presented on the face of the audited financial statements (intermediate total). It should be understandable, relevant, reliable and comparable, and issuers should define the terminology used and the basis of calculation adopted. Where possible, issuers should present alternative performance measures only in combination with defined measures. Furthermore, issuers should give defined performance measures greater prominence than alternative measures, and should explain differences between the measures, for example through a reconciliation of figures. Comparable information for other periods should also be provided, and the definition of measures should be consistent over time. To provide perspective, the issuer should explain why it uses a particular alternative performance measure (for example, the measure might be used internally to measure and control the company's profitability and financial position). Also, the issuer should disclose whether its alternative performance measures have been reviewed by the statutory auditor, and if so, indicate the nature and findings of the review.

CESR's recommendation is in line with the AMF's Communication of 20 September 2005 on Earnings Disclosures²².

²⁰ CESR understands that Japan is considering proposals to adopt such a standard according to this timetable and that the USA has adopted such a standard that will in most cases be applicable as from 2006.

²¹ CESR has posted its Recommendation on Alternative Performance Measures at <http://www.cesr-eu.org>.

²² http://www.amf-france.org/documents/general/6316_1.pdf.

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c) Public Statement About Clear and Transparent Disclosure on the Use of Accounting Options

The accounting framework for the consolidated accounts of European companies whose securities are listed on a regulated market has been modified. European regulators have been working hard since 2000 to prepare for this major change, and in December 2003 CESR published a recommendation on the transition to IFRS, calling for a progressive, three-stage approach in financial reporting²³.

For most issuers, their 2005 consolidated accounts were the first set of annual financial statements prepared under IFRS. Keenly aware that this first experience would be crucial for the market, European regulators released a public statement on 12 January 2006 emphasising the importance of clear and transparent disclosure on the use of accounting options²⁴.

The statement has a dual objective: to remind European issuers of the importance of clear and transparent disclosure on the implicit or explicit use of accounting options; and to alert users to the fact that the presence of options could affect comparability between different issuers, making it important to carefully consider all accounting policies disclosed.

Paragraphs 108 *et seq.* of IAS 1 on the presentation of financial statements require reporting entities to disclose a summary of significant accounting policies. Notably, this summary should include the information needed to have a clear and complete picture on the use of options.

CESR identified four specific situations where options are available²⁵:

- in the endorsed IFRS themselves. In particular, IFRS 1 on first-time adoption of IFRS includes no fewer than 12 optional exemptions, over and above the obligatory exceptions. In this case, the standards include disclosure requirements, notably on the use of options;
- under some accounting treatments that are not specifically dealt with under IFRS, such as accounting for service concession arrangements, emission rights and puts on minority interests. In this situation, it is important for issuers to provide disclosure on the policy adopted, following the order of seniority given for sources of policy guidance by IAS 8 on accounting policies;
- as part of the European Commission's carve-out of IAS 39 on recognition and measurement of financial instruments. Some of the provisions of IAS 39 on the treatment for portfolio hedging have not been made mandatory. Thus, some companies will apply all the IAS 39 provisions, while others will make use of mechanisms created as part of the carve out. CESR stresses the need for all issuers to be transparent in explaining their policies;
- the obligatory time-lag between the issue of a standard and its adoption by the EU may also create "options". The European Commission said in a 30 November 2005 statement that regulations endorsing IFRS published in the Official Journal of the EU and entering into force after the balance sheet date but before the date the financial statements are signed, can be used by companies where early application is permitted in the regulation and the related IFRS. Here again, it is important for issuers to provide disclosure if they choose to apply standards early.

²³ The AMF included this recommendation in its March 2004 monthly review, pages 27 *et seq.*

²⁴ The statement, entitled "CESR reminds issuers and investors about the importance of clear and transparent disclosure on the use of any options made available by applicable financial reporting standards", is posted on the CESR website: <http://www.cesr-eu.org>.

²⁵ The AMF discussed a number of the issues raised by the CESR statement in article entitled "*Les points relevés par l'AMF à l'occasion des premières communications sur la transition aux IFRS*", which was posted on the AMF website on 7 December 2005 and published in the December 2005 monthly review.

2 Consistent Enforcement of IFRS

In 2005, CESR-Fin's Standing Sub-Committee on Enforcement (SCE) continued efforts to foster a common approach by European regulators to supervising enforcement of IFRS by listed companies. The SCE concentrated in particular on implementing a mechanism for close and effective coordination across Europe's entire supervisory community, including securities regulators and financial review panels. The sub-committee has a two-fold aim in this regard: to ensure high-quality enforcement of IFRS; and to make certain that individual decisions taken by EU Member States do not result in the development of multiple accounting frameworks.

In accordance with CESR Standard No. 2 on Financial Information²⁶, which lays the foundation for coordinating enforcement activities, European regulators should be guided by the following three principles:

- EU national enforcers taking a decision with respect to an issuer should take into account decisions taken by other European enforcers. Where possible, preconsultation should take place, operational constraints permitting;
- decisions should be entered in a pan-European database;
- decisions that could have an impact on harmonised enforcement of IFRS in Europe will be discussed at European Enforcers Coordination Sessions (EECS), to be organised by the SCE and attended by all the abovementioned entities.

Beginning in January 2005, the EECS provided a forum for discussing issues encountered by regulators. Over seven sessions, participants heard and ruled on 27 cases, as well as on the AMF's first decision in this area. All decisions have been entered in the EECS database since October 2005.

Over the months ahead, one of the key challenges facing the SCE and the EECS will be to build up the database and make it a valuable decision-support tool for regulators. Through its coordination initiatives, the SCE will also have to work to establish a demarcation line between issues relating to enforcement and those involving IFRS interpretations, for which IFRIC has sole jurisdiction. To achieve this, there are plans to include an IFRIC representative in selected EECS.

The SCE also took part in drafting a guide on selection methods to clarify how to apply principle 13 of CESR Standard No. 1 on Financial Information²⁷. The principle in question, which states that enforcement should be based on a procedure for selecting the issuers and documents to be examined, does not come with detailed guidance. The SCE felt that a harmonised method would make an important contribution to building a common approach to supervision.

C International Harmonisation of Auditor Rules

1 IOSCO Standing Committee N°1 (SC1)

In 2005, SC1 pursued its efforts to promote international standards on auditing and auditor independence. In particular, the standing committee:

- drafted the IOSCO Survey on the Oversight of Auditors, which looked at the oversight arrangements put in place by Member States of the Technical and Emerging Markets Committees. The survey findings were released in April 2005 and revealed that the IOSCO principles for auditor oversight and auditor independence had been broadly implemented in

²⁶ Coordination of Enforcement Activities.

²⁷ Enforcement of Standards on Financial Information in Europe.

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most developed markets and by some emerging markets, although there was considerable variation in the methods and structures used by member jurisdictions. IOSCO is analysing the results and considering possible revisions to IOSCO's regulatory principles in this area;

- prepared a response to the consultation by the International Auditing and Assurance Standards Board (IAASB) on improving the clarity of auditing standards. This aim of this major project is to establish a clear-cut distinction in auditing standards between procedures that are required in all audits and presumptive requirements from which an auditor may depart if it implements alternative procedures that, in its view, will reach the same standard. SC1 expressed support for the project, with the double proviso that the IAASB should limit the use of presumptive requirements and avoid calling into question the aim of protecting the public interest, which applies when auditing the financial statements of any publicly-listed company;
- looked at the concentration of audit firms at the worldwide level and the potential impact on audit quality. Although there is no immediate threat, the current four-firm oligopoly should be monitored closely.

SC1 also continued its activities in the field of auditing. It took part in the IAASB's Consultative Advisory Group and in the Ethics Committee of the International Federation of Accountants (IFAC). The sub-committee also maintained regular contacts with IAASB members and continued its work on that organisation's draft standards.

2 Reforming the IFAC and the Monitoring Group

Following preparatory work by the Monitoring Group of Regulators, which comprises leading representatives from the world's financial regulation community²⁸, and by the IFAC, the Public Interest Oversight Board (PIOB)²⁹ held its inaugural meeting on 28 February 2005. The PIOB has eight members, plus two European Commission representatives who attend meetings as observers. Its task is to oversee standards-setting processes at the IFAC's public interest activity committees (on audit, ethics and education standards). It is chaired by Dr Stavros Thomadakis, former Chairman of the Hellenic Capital Markets Commission.

4 Intermediaries, Financial Markets and Post-Trade Issues

Work by IOSCO in this area included conducting a closer analysis of the effects of market demutualisation and following up on an initial study on transparency in the secondary bond market. IOSCO also issued recommendations on policies for error trades and outsourcing by market intermediaries. AMF is chairing an SC3 group on the compliance function at service providers, and is also taking part in work on due diligence requirements for market intermediaries in financial transactions.

In Europe, work on market intermediaries and infrastructures focussed primarily on the debate over MiFID implementation measures and the start of preparations to transpose the directive.

²⁸ IAIS, World Bank, Basel Committee, FSF, IOSCO.

²⁹ Created in 2003, the Public Interest Oversight Board comprises ten members, seven of which are appointed by the European Commission. Its remit is to oversee IFAC public interest activity committees (i.e. the committees on auditing, ethics and education).

A IOSCO's Work on Financial Markets (SC2)

After a six-month consultation, in October 2005 the Technical Committee gave its final approval to a report by Standing Committee No. 2 (SC2) on error trade policies, i.e. the rules and procedures applicable to regulated-market transactions executed in error either due to the actions of a market user or through malfunction of a trading system. The report, which is posted on the IOSCO website, contains seven recommendations to introduce clear and transparent policies for dealing with error trades on regulated markets. The report places special emphasis on the policies for cancelling error trades, and recommends that regulated markets give thought to preventive measures.

Following the release of the "Parmalat" Report, SC2 returned to its discussions on the transparency of the corporate bond market. Having published an earlier report on the issue in May 2004, in November the group launched a series of national consultations to engage with the market's main participants. The findings, which are expected in the first quarter of 2006, will give IOSCO a clearer idea of how to build on its initial recommendations on the transparency of secondary markets.

In the light of changes over the last five years in terms of the demutualisation and listing of exchanges, SC2 decided to revisit the report on this theme published in June 2001, back when these developments were in their infancy and few markets were listed. Current work is focussed on assessing what these changes mean for regulators, especially from the perspective of the regulatory functions that many exchanges continue to perform. Special attention is being paid to conflicts of interest between these regulatory functions and the profit targets set by the shareholders of market infrastructures. The report is scheduled to be approved some time in the first half of 2006.

B IOSCO's Work on Market Intermediaries (SC3)

1 Outsourcing

In early 2005, the Technical Committee approved a set of principles applicable to market intermediaries making use of outsourcing arrangements. SC3 spearheaded the project, coordinating closely with related efforts by the Joint Forum and taking into account work done by CESR to prepare technical advice on MiFID and other work by the Committee of European Banking Supervisors (CEBS). IOSCO is paying attention to this issue, as are banking and insurance supervisors, because outsourcing is on the rise in the financial services sector. The report has been posted on the IOSCO website.

2 The Compliance Function

SC3 continued efforts aimed at preparing a set of principles for the compliance function. A consultation was held from August to October. At its meeting in February 2006, the Technical Committee approved a final document that incorporated consultation feedback. In drafting the principles, SC3 took account of Basel Committee initiatives, as well as European projects conducted as part of MiFID-related comitology procedures.

The principles cover:

- the establishment by market intermediaries of a compliance function to identify, assess, advise on, monitor and report on the company's compliance with applicable legal, regulatory, professional and ethical provisions;

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- the role and responsibilities of senior managers and the board of directors in implementing and developing the compliance policy:
 - role and responsibility of the compliance officer,
 - independence of the function,
 - qualifications, experience, professional and personal qualities of staff exercising compliance responsibilities,
 - notifying regulators of any material breaches of legal, regulatory, professional and ethical provisions;
- assessment of the function by the intermediary and by third parties such as the company's auditors, self-regulatory organisations or regulators;
- performance of the compliance function at companies with cross-border activities.

3 Due Diligence Requirements for Market Intermediaries Acting on Behalf of Issuers

Following on from the “Parmalat” Report on international cooperation in the fight against financial fraud, discussions were begun on due diligence requirements for market intermediaries conducting financial transactions – especially complex structured transactions – on behalf of issuers. Work is expected to focus on due diligence requirements for intermediaries, particularly in terms of information management, given the many and sometimes conflicting roles that intermediaries play, e.g. lending to an issuer while simultaneously advising on and structuring an offer for the same issuer, acting as market maker, or investing in the issuer's equities and bonds. Price-setting mechanisms and allocation procedures will also be covered.

C Markets in Financial Instruments Directive

Directive 2004/39/EC on Markets in Financial Instruments (MiFID) is one of the cornerstones of the action plan launched by the European Commission in May 1999 to establish a single market in financial services. MiFID rounds out some of the principles set down in the 1993 Investment Services Directive (ISD) by improving a number of the provisions governing the European passport for investment services. The new directive also introduces greater competition between order execution systems. Because it creates a more competitive framework, MiFID also establishes principles that strengthen investor protection, ensure market transparency and provide competent authorities with additional resources to supervise regulated markets, multilateral trading facilities (MTFs) and investment firms.

In 2005, AMF continued to work on a range of issues connected with the adoption of MiFID. At the European level, it pursued efforts to draft implementing measures for the directive. At home, it began preparations to transpose MiFID into French law.

1 Comitology

The European Commission will probably adopt the MiFID implementing measures in Summer 2006, once it has received the opinion of the European Parliament and approval from the European Securities Committee (ESC). In May 2005, the ESC began examining drafts prepared by the European Commission on the basis of two sets of technical advice provided by CESR in January and April 2005.

Based on CESR's technical advice, the Commission prepared four working documents:

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- the first covers transaction reporting and systems for exchanging information, dealing with Articles 25 (on the requirement to report transactions) and 58 (on cooperation between regulators) of the directive;
- the second covers organisational requirements for investment firms, dealing with Articles 13 (on organisational rules) and 18 (on prevention and management of conflicts of interest) of the directive;
- the third covers market transparency and the admission of financial instruments to trading, dealing with the provisions on pre-trade transparency for regulated markets and MTFs (Articles 29 and 44), the criteria for and requirements placed on systematic internalisers (Articles 4 and 27), post-trade transparency (Articles 28, 30 and 45), and the rules for processing client orders (Article 22-2);
- the fourth covers conduct of business rules and other investor protection rules, dealing with the provisions on client disclosure, best execution, client order handling rules, eligible counterparties and the definitions of investment advice and derivative instruments (Articles 4, 19, 21, 22(1) and 24).

The AMF's chief concern is to make certain that authorities can continue to deliver proper supervision for the markets under their care, despite the fragmentation of trading venues, while ensuring satisfactory levels of transparency and an efficient price-setting process.

2 Preparing to Transpose MiFID

The legal process of transposing MiFID began in France with the adoption of the Act of 20 July 2005 on bringing certain aspects of French financial legislation into line with Community law. Article 5 of the new act gives the government the power to transpose MiFID by issuing executive orders.

The AMF began transposition work in the second half of 2005, contributing to legislative efforts, and preparing amendments to its own General Regulation. It set up a special internal team for this purpose, with four working groups assigned to the following areas:

- Authorisation procedures, ISP organisational rules and passporting: the goal of this group is to work with the authorities responsible for authorising ISPs (other than investment management companies) to identify issues related to authorisation, supervision of persons referred to in the directive and the use of the European passport; the group also aims to work towards harmonising the requirements for the provision of investment services.
- Rules of conduct and rules applying to the provision of investment services: MiFID is more specific than the ISD was in terms of the rules for protecting investors, whom it divides into two categories (professional and non-professional). Furthermore, the new directive places the principle of best execution at the heart of the regulatory framework. A considerable amount of work will be required in this area, including substantial amendments to the current Book III of the AMF General Regulation.
- Operation of markets and other order execution venues: the French marketplace is facing major changes that will require significant amendments to the AMF General Regulation, from the abolition of the concentration rule to the harmonisation of transparency requirements for different order execution systems and new provisions for admitting financial instruments to trading on a regulated market.
- Organisation of supervision and cooperation by the AMF: by introducing new ways for regulators to exchange information, and by requiring regulators to cooperate more closely, MiFID also has major implications for the way that regulators operate and organise themselves.

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This warrants continued Level 3 efforts within CESR to prepare for implementation of the new directive.

Besides working on its internal organisation, the AMF plans to use the transposition preparations as an opportunity to get ready for and keep step with changes on the French marketplace by involving industry professionals – especially their associations – in its work at the earliest possible stage. The guidelines that emerge from this dialogue will be discussed by the AMF’s consultative commissions and validated by the Board, before the start of public consultations on the new version of the General Regulation. These consultations will take place in several phases and are due to get underway in the second half of 2006.

Transposing MiFID is a major challenge for the AMF and a key component of the debate on the competitiveness of the French financial industry. It also forms part of the European Commission’s wider discussion on “better regulation”, a concept that the AMF has placed at the heart of its future regulatory framework.

Timetable: MiFID entered into force on 30 April 2004. Level 2 measures are currently being drawn up. CESR submitted its technical advice to the European Commission at the end of January for the first set of mandates and at the beginning of May 2005 for the second set. The European Commission is expected to adopt the implementing measures in June 2006, once the ESC has completed its discussions and the European Parliament has given an opinion.

The transposition deadline for the directive has been pushed back from 30 April 2006 to 31 January 2007 in view of the scale of the changes entailed. Financial industry professionals will have until 1 November 2007 to comply with the new obligations.

2005				2006				2007			
1st	2nd	3rd	4th	1st	2nd	3rd	4th	1st	2nd	3rd	4th
*				**				***			

*Level 2 implementing measures adopted in Q2 2006.

** Bill and draft AMF GR provisions in force by 31/01/2007

*** Compliance deadline extended until 01/11/2007.

D Discussions and Work on Post-Trade Activities

Work by European institutions on post-trade issues gained new momentum in 2005. The European Parliament asked MEP Piia-Noora Kauppi to prepare a report on clearing and settlement in Europe, which it then adopted in July 2005. MEPs welcomed the European Commission’s decision to conduct an impact assessment on the need for a post-trade directive. They indicated that they did not feel a new directive was absolutely necessary, but did not reject the idea either, deeming that the findings of the Commission’s impact assessment would determine which legislative route to take.

Also in 2005, three expert groups coordinated by the European Commission – Clearing and Settlement Advisory and Monitoring (CESAME), Legal Certainty, and Tax Compliance (FISCO) – continued to analyse different aspects of post-trade harmonisation in Europe. In September 2005, European Commissioner Charlie McCreevy reiterated the need for post-trade participants to quickly find ways to reduce cross-border transaction costs and pointed out the possible benefits of consolidation, notably through the establishment of a single clearing house for Europe. Commissioner McCreevy warned that if the industry did not come up with any initiatives, the European Commission might take on the task itself.

1 Joint Efforts by ESCB/CESR

After publishing its October 2004 report on “Standards for Securities Clearing and Settlement in the European Union”, in 2005 the joint ESCB³⁰/CESR working group concentrated on developing a methodology for assessing these standards based on the methods published in 2002 by the CPSS³¹/IOSCO working group. Work was also done on clarifying the content and scope of a number of standards. Outstanding questions concerned the role of central depositories, the regulations applicable to entities that are authorised in some countries to perform central depository functions as well as banking services, and the procedures for regulating, supervising and monitoring entities that might be covered by the scope of these standards.

However, the initial timetable for conducting this work was suspended to make time for a detailed impact assessment on measuring intraday credit exposures at the entities in question.

The European Commission and Parliament also began considering these issues. CESR decided to hold off finalising its own work, deeming it advisable to wait until the Commission had released its policy and expressed its position on a future clearing and settlement directive. The Chairman of CESR sent the European Commission a letter to this effect in December 2005.

As well as continuing its work on settlement systems, the ESCB/CESR joint group prepared a set of standards for central counterparties (clearing houses), together with an assessment methodology, based on CPSS/IOSCO recommendations published in 2004. Once again, CESR put its own programme on hold to wait for the European authorities to set out their position on an EU initiative in this area.

2 The Hague Convention – Unidroit

While the Legal Certainty group³² pursued its efforts, the debate over securities law in Europe intensified around the Hague Convention and the Unidroit preliminary draft convention.

In 2002, the Hague Conference drew up an international convention providing choice-of-law rules, based on the law selected by the intermediary and the account holder. On 15 December 2003, the European Commission, led by Commissioner Frits Bolkestein, proposed that the European Community sign the Convention. The suggestion met with fierce opposition from European banks and from the European Central Bank, which were concerned about the impact of such an agreement on security arrangements in settlement systems and about the benefits for European participants. As a result, the European Commission conducted an impact assessment, which it is expected to present in early 2006.

Meanwhile, in March 2005 Unidroit, a private international organisation, began intergovernmental negotiations to draft an international convention harmonising national laws on the indirect holding of securities. The European Commission received a mandate in December 2005 to take part in the Unidroit talks.

³⁰ European System of Central Banks.

³¹ Committee on Payment and Settlement Systems.

³² The Legal Certainty group was set up following the release of the European Commission's April 2004 communication on clearing and settlement in Europe. It is made up of experts in the field who have been asked to examine the legal obstacles to the development of a European post-trade environment.

5 Asset Management

The international community turned its attention to hedge funds in 2005, with IOSCO, the FSF and the Joint Forum all devoting time to the issue. A number of initiatives are underway and are slated for completion in 2006. Elsewhere, IOSCO published a report first started in 2004 on market timing and late trading. At the European level, CESR's asset management groups stepped up their efforts, while the release of a European Commission Green Paper triggered a broader debate on asset management policy. The AMF was among those that responded to the Green Paper.

A IOSCO's Work on Asset Management (SC5)

In 2005, governments, national watchdogs, professional associations and international regulators alike all turned their attention to hedge funds. Estimated at USD 1,000 billion, the assets managed by these funds had grown to the point that regulatory concerns were being raised. Hedge funds were criticised for their involvement in the governance of listed companies because of their alleged lack of corporate commitment. The downgrades to General Motors and Ford in Summer 2005 fuelled fears about financial stability, especially on the credit derivatives market. More generally, regulators questioned the ability of these funds to properly manage risk³³.

These concerns were discussed at the FSF meeting of 8/9 September 2005 and at the Joint Forum meeting on 24 August. The AMF was an active participant at both events.

At its September 2005 meeting, the FSF paid particular attention to the work of IOSCO's Standing Committee on Investment Management (SC5), which the AMF has chaired since November 2003. SC5 undertook a far-ranging consultation of sector professionals to assess the systems, rules and practices used by hedge funds in administration, risk management and fund valuation. Drawing on recent work by industry associations³⁴, SC5 may issue recommendations on codes of conduct for hedge funds in the coming months, just as IOSCO did for rating agencies in 2004. The approach proposed by SC5 received final validation from the IOSCO Executive Committee in October 2005.

Still on the subject of hedge funds, in 2005 SC5 updated its 2003 report entitled "Regulatory and Investor Protection Issues Arising from the Participation by Retail Investors in (Funds-of) Hedge Funds" to reflect the many regulatory initiatives taken by its members over the recent period. In the USA, for example, the SEC ruled in 2004 that hedge funds managing over USD 25 million should register with it from 1 February 2006 onwards. Some European regulators, including the AMF, introduced secure and specially-tailored regulatory arrangements for the sector in a move aimed at raising investor numbers in this area. In February 2006, IOSCO published the preliminary report, which has been put out to public consultation.

Also in 2005, SC5 finalised two key reports that received final approval from the IOSCO Executive Committee in October 2005.

The first report, entitled "Anti-Money Laundering Guidance for Collective Investment Schemes (CIS)", sets out the regulatory standards that investment funds must follow in the fight against money laundering. The guidance is intended to be consistent with, and build upon, the 40 Recommendations published by the Financial Action Task Force (FATF) in June 2003.

³³ See FSA public consultation document 05/04 entitled "Hedge Funds: a Discussion on Risks and Regulatory Engagements" (June 2005) and "Hedge Funds: an Exploratory Study of Conduct-Related Issues" (August 2005) by the Netherlands Authority for the Financial Markets.

³⁴ See "Report of the Counterparty Risk Management Policy Group" (27 July 2005), also "MFA's Sound Practices for Hedge Fund Managers" (August 2005) by the US-based Managed Funds Association, and "Asset Pricing and Fund Valuation in the Hedge Fund Industry" (April 2005) by the UK's Alternative Investment Management Association.

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The second report, entitled “Best Practices Standards on Anti Market Timing and Associated Issues”, provides guidance for regulators on market timing and late trading issues. Accordingly, it includes sections on portfolio valuation, agreements with distributors, internal control programmes, requirements for external auditors, and disclosure.

SC5 also did work on CIS governance, which the AMF covered in its symposium on 29 November 2005³⁵. SC5 is expected to conclude its work in this area in second-half 2006.

B European Initiatives

1 The European Commission’s Asset Management Green Paper and the AMF’s Contribution

In 2005, the highlight for asset management in Europe came with the July release of the European Commission’s Green Paper. The paper, which followed a preliminary report in February describing the state of play, marked the start of the debate on the EU framework for investment funds. Acknowledging the limitations of the internal market in the funds industry, the Commission sketched out a range of ways to organise participants more effectively across the continent. The Commission’s Financial Services White Paper, published in December 2005, subsequently confirmed asset management as one of the two areas of the financial sector, along with securities settlement, where the Commission planned to issue new legislation.

According to the Commission, investors could benefit from scale economies if the internal market is deepened in terms of the products that can be passported (to include hedge funds, real estate funds and private equity funds), and in terms of the options for cross-border structures (passports for investment management companies and depositories, go-ahead for cross-border mergers, cross-border master/feeder arrangements).

Given the importance of this issue, the AMF began drafting a contribution to the Commission’s debate as soon as the preliminary document was published in February. The problems raised in the Green Paper and the proposed lines of reflection were covered in a far-ranging consultation with the market and investors:

- the AMF consultative commission on asset management devoted several sessions to discussing the real needs of the industry in terms of freedom of establishment, and to analysing the European Commission’s concrete proposals. Meanwhile, the consultative commission on retail investors and minority shareholders looked at the investor issues raised by structures where responsibility for supervising collective investment activities might potentially be divided between several countries;
- the AMF was also in frequent contact with asset management professionals and their representative association.

The consultation response, which was prepared jointly with the DGTPE, was scrutinised by the Board. As well as submitting this contribution, the AMF also presented its views to the European Commission in December 2005.

The AMF is broadly in favour of holding discussions on most of the proposals put out to consultation by the Commission.

It is right that the industry should seek to organise itself as efficiently as possible at the European level. However, steps must be taken to ensure that the resulting structure is compatible with supervision that will guarantee investor protection. It is also important that these scale

³⁵ Round Table No. 3 at the *Entretiens de l’AMF* 2005 Symposium was devoted to CIS governance. See www.amf-france.org/documents/general/6401-1.pdf.

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economies benefit end investors in the shape of lower commissions and management fees, through a more open distribution architecture.

This process must be accompanied by significant progress in harmonising regulations and regulatory practices in Europe. It is also necessary to clarify the responsibilities of regulators and introduce arrangements to enable close cooperation.

The Commission's proposals mostly give investment management companies greater freedom to select the Member State that will authorise and supervise them. But the process of harmonising the regulations that apply to participants is still in its early stages in Europe. Measures must be taken to prevent regulatory arbitrage from dictating the business location decisions of investment management companies.

The regulation of collective investment schemes is largely concerned with ensuring that asset management companies have adequate resources relative to the funds under their care. Under some of the arrangements proposed by the Commission (asset management company passport, cross-border master/feeder arrangements), two different regulatory authorities would be involved, with one in charge of the fund, and the other supervising the company. Clearly, this raises practical problems, creating a need for strengthened and close cooperation between regulators. Furthermore, although the legal responsibilities of each regulator may be clearly delineated in principle, investors may still have trouble understanding them.

Thus, while passports for asset management companies and depositories, and cross-border master/feeder arrangements deserve further study, they will require a high degree of harmonisation in the regulations applicable to participants. Cross-border fund mergers, meanwhile, may be encouraged, provided that certain requirements are met and some harmonisation is ensured.

In addition, the AMF believes that many of the sources of inefficiency in the European fund market will be addressed by full application of CESR's recommendations, which are designed to make it easier to compare information on funds authorised in different Member States, and to eliminate the differences in notification procedures and asset eligibility. These measures should smooth product passporting and reduce the need for alternative arrangements, i.e. company passports, cross-border master/feeder arrangements, which create uncertainty about regulators' responsibilities.

In any case, the host Member State must retain jurisdiction over domestic marketing rules, and steps should be taken to ensure that economies of scale are passed on to investors.

Harmonising the rules for products and participants goes hand in hand with the process of completing the internal market. And while products and participants may already be functioning at a European level, and regulators are heading in that direction, investors will continue to act locally for a long time to come. National traditions and attitudes to financial products will persist, and even the level of responsibility that investors take for savings decisions will continue to vary across Member States. For this reason, Member States must remain free to define marketing rules, as the UCITS Directive currently allows, although they may rely on an EU-wide base to do so.

The AMF has also noted that production and distribution structures, and investor education, are powerful barriers to returning scale economies to investors, not just in France but in most of the countries of Europe. Moreover, the scale economies expected from some of the measures to boost fund size are regularly overestimated and need to be assessed more accurately.

Finally, the AMF believes that a key priority must be to address the distortions created by the EU legal framework in terms of the rules for different products. Circumventing the rules in the UCITS Directive by using other instruments, like certificates, inflation-linked bonds and life insurance products, compromises the consistency of the overall system and investor protection.

2 CESR on Investment Management

CESR's expert group on investment management (CESR-IM) is chaired by Lamberto Cardia, the Chairman of CONSOB, Italy's financial regulator. Set up in late 2003, it aims to promote convergence in national approaches to EU legislation and in regulatory practices in the field of investment management. CESR-IM established an action plan in June 2004. On the basis of this plan, and with the AMF's support, in 2005 it worked on two areas where the need for a shared approach was clearest, namely building consensus in interpreting the provisions of the UCITS Directive on the eligible assets for UCITS, and simplifying the procedures for a fund authorised in one Member State to apply to be marketed in another Member State.

In both of these areas, the AMF's priority was to reach a consensus that would further European harmonisation while still ensuring a high level of investor protection.

On the first topic, to ensure a uniform European investment funds market, regulators had to agree on the terms for qualifying a fund as harmonised, i.e. able to be authorised in one Member State and then distributed throughout the EU. The AMF had noted many instances where funds that it did not deem compliant with the UCITS Directive received authorisation from the regulator of a different Member State and then requested access to the French market under the fund passport process. This type of situation creates legal uncertainty for the management industry and even leads to regulatory arbitrage as participants seek to have funds authorised in the financial centres that interpret the legislation most loosely.

The AMF spearheaded much of the work done under the mandate given to CESR-IM by the Commission. The main issues on the agenda were eligibility for closed-end funds, money-market instruments, and derivatives linked to indices replicating changes in baskets of commodities and hedge funds. The importance of the task was increased by the fact that the mandate provided for the Commission to take Level 2 measures, i.e. measures that apply to Member States. This was an exceptional situation that came about because the objective was to clarify definitions.

An initial document was put out to consultation in March 2005. A large number of responses, mainly from the asset management industry, prompted the release of a second consultation document in October 2005. The CESR chairmen approved the final document in January 2006³⁶. It is now up to the Commission to use this document to prepare Level 2 provisions; Level 3 provisions could take the shape of a recommendation by the Commission or by CESR.

At this stage, and in accordance with the AMF's objectives, the CESR document:

- offers some advances in asset eligibility that will enable French funds to compete with foreign funds on an equal footing;
- includes safeguards to ensure the overall consistency of the UCITS Directive in terms of the risk levels of harmonised funds, exposure to certain unusual risks, and the option of exiting these funds at any time.

This example shows how much time is needed to reach a consensus on complex questions with high financial stakes for national industries, especially if regulators have different philosophies on the issue. The time devoted to these efforts also reflects CESR-IM's determination to base its advice on an extensive market consultation.

When it tackled notification procedures, CESR-IM found itself discussing an issue that was seemingly operational but that turned out to be of vital importance to the smooth functioning of the fund passport process in Europe - one of the chief demands of the investment management industry. Ambiguities in the UCITS Directive had prompted Member States to develop different approaches to the notification procedure for funds authorised in one Member State and

³⁶ CESR's Advice to the European Commission on Clarification of Definitions concerning Eligible Assets for Investments of UCITS, 26 January 2006, ref. CESR/06-005 and CESR's feedback statement following the consultation on CESR's Advice to the European Commission on Clarification of Definitions concerning Eligible Assets for Investments of UCITS, 26 January 2006, ref. CESR/06-005.

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passported for marketing in another Member State. This led to different ways of dealing with the two-month period after which passported fund can be marketed, in terms of the documents required, procedures for certifying documents, and the treatment of umbrella funds. Under the UCITS Directive, the host Member State of the passported fund should have some room for manoeuvre in fund marketing arrangements and the compliance of these arrangements with domestic provisions. However, some standardisation is needed for the rest of the procedure. Following on from work carried out over the course of 2005, late in the year CESR held a consultation on a first set of advice based on the consensus reached by regulators.

In accordance with the AMF's objectives, this advice should provide the industry with a harmonised framework that will save time without impinging on the autonomy of Member States in product marketing and without affecting the level of protection provided to French investors by foreign funds marketed in France under the passport procedure.

Working through a review panel, the group also followed up on the implementation of earlier advice. The texts adopted by CESR based on CESR-IM's proposals are only at Level 3 under the Lamfalussy process (except, as mentioned above, where the Commission exceptionally gave CESR a mandate to clarify definitions). As a result, they do not apply directly to Member States, meaning that individual Member States have to make a commitment to enforcing them. For this reason, it is vital to make sure that CESR's advice is being properly implemented. A review panel performs this function by keeping track of implementation based on reports filed by Member States.

Responding to a request by the European Commission, in 2005 CESR asked Member States to answer a questionnaire on the implementation of two European recommendations: 2004/383/EC on the use of financial derivative instruments for UCITS; and 2004/384/EC on the content of the simplified prospectus. CESR-IM acted as a forum for discussing implementation-related delays or problems in Member States. In June 2005, the CESR chairmen approved the report on the results of the questionnaire. The report was then sent to the European Commission and the ESC and published on the CESR website³⁷.

In 2006, CESR-IM will continue working to promote a common approach by regulators to implementing and interpreting EU legislation. The group's main priority is to finalise its work on eligible assets and the notification procedure. The remainder of its agenda will be determined in conjunction with the Commission and will depend on progress in the debate, which began with the Asset Management Green Paper, about future reforms to the directive.

³⁷ In France, the main principles of Recommendation 2004/383/EC on the use of financial derivative instruments (limiting exposure to counterparty risk, limiting fund exposure, requirements for investment management companies and rules on temporary buying and selling of securities) were transposed by an amendment to Decree 89-623. The procedures for implementing these principles were incorporated in the AMF General Regulation by an amendment made on 9 March 2006 to Articles 411-44-1 to 411-44-6 and in Instruction 2006-04 on the procedures for calculating fund exposure. Both these documents were put out to public consultations that ran until 6 May 2005. Recommendation 2004/384/EC was transposed to France via AMF Instruction 2005-02 on the full prospectus required by non-sophisticated funds.

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6 Supervision, Investigations and Technical Cooperation

A Enforcement Related Cooperation ³⁸

1 The AMF's Involvement in the Work of IOSCO (SC4)

Throughout 2005, the AMF once again made an active contribution to the work of the IOSCO Technical Committee's Standing Committee No. 4 (SC4), which looks at how regulators can cooperate and exchange information ³⁹.

SC4 undertook a series of initiatives.

The main project consisted in drawing up a list of regulators with which SC4 members had found it difficult to exchange information. Some of these regulators simply did not respond to requests for cooperation, others provided incomplete or unusable information (failing to identify payers, for example), while still others took too long to reply.

Once the list was prepared, SC4 contacted the authorities in question to set up a dialogue aimed at identifying and finding solutions to legal or practical difficulties.

Broadly, the jurisdictions included in the first round of contacts welcomed this initiative. However, the committee will be careful to make sure that good intentions translate into action.

A second set of jurisdictions will be contacted in 2006.

SC4 also completed a report on asset freezes, submitting it to IOSCO's Technical Committee. The aim was to assess the state of current legislation and to make recommendations, to be approved by the IOSCO Presidents' Committee at the annual general meeting in June 2006. The importance of this issue was underscored after investigations in different countries revealed that fraudsters were exploiting differences in national legal systems to retain the profits from their illegal activities, preventing regulators from accessing the funds and returning them to victims.

SC4 also continued work in other areas within its remit, including boiler rooms and hedge funds.

In 2006, SC4 is to draft a new report on the role and impact of the internet on the securities industry, updating two reports prepared some years ago by the IOSCO Internet Task Force ⁴⁰. The AMF will play a lead role in this project.

The AMF also takes part in the IOSCO Screening Group.

The Screening Group is responsible for analysing applications to sign up for the multilateral memorandum of understanding (MMOU). A regulator that wants to become an MMOU signatory must demonstrate to a group of experts from 24 regulators – the Screening Group – that its legal system can cope with the agreement's requirements ⁴¹. The Screening Group then makes a recommendation, which it sends to the chairs of IOSCO's Technical, Executive and Emerging Markets Committees, which then have to decide whether to accept the application ⁴².

³⁸ See Chapter 5 on International Cooperation below

³⁹ SC4 comprises 20 regulators from the following countries and provinces: Australia, Brazil, Canada – Ontario, Canada – Quebec, France, Germany, Greece, Hong Kong, Italy, Japan, Mexico, Netherlands, Norway, Poland, Portugal, Spain, Switzerland, UK, USA – CFTC, USA – SEC.

⁴⁰ These reports are available in full at www.iosco.org.

⁴¹ The 24 members of the Screening Group are the 20 members of SC4, plus the regulators of South Africa, India, Sri Lanka and Turkey.

⁴² Potentially subject, if the application is rejected, to an additional review by the Executive Committee. See above

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The AMF has taken part in the work of this group from the outset and was one of the first signatories of the MMOU. By February 2006, 30 regulators had signed up, enabling them to exchange information more easily, notably on market supervision and investigations into market fraud⁴³. Several other regulators have already or will shortly submit their applications. IOSCO has asked all its members to sign up by 1 January 2010.

Further, a system was set up to provide technical assistance to members that want help in preparing their MMOU applications. Under these arrangements, a Screening Group member helps the candidate regulator to prepare its application, identifying any legal impediments that would prevent it from signing up.

The AMF was one of the first two regulators, along with Spain's CNMV, to provide technical assistance to a fellow regulator in this context. If successful, this initiative will be repeated in 2006.

The AMF is a member of the French delegation to the Financial Action Task Force on Money Laundering. However, it also represented IOSCO, which has observer status with the task force, at a number of FATF meetings.

2 CESR-Pol

CESR-Pol's⁴⁴ primary goal is to make it easier for members to share information and thus be more effective when supervising transactions executed in the securities markets under their jurisdiction. The group enables authorities to amass the data they need to conduct their enquiries more effectively and to coordinate their efforts during international investigations.

CESR-Pol's organisation and operating procedures were overhauled in 2005 to make the committee more operational. As part of this process, a permanent Surveillance and Intelligence Sub-Group was set up, comprising supervision officers and market participants. Provision was also made for the creation of Urgent Issue Groups (UIGs) to take faster and more effective action on pressing issues. UIGs will look at questions that affect several members, concern the coordination of cross-border investigations, or involve interpreting or promoting a shared approach on a given matter.

In the context of cooperation between CESR members, the AMF regularly transmits the alerts that it posts on its website to its counterparts via the network of CESR-Pol members. Similarly, it regularly receives notification of public warnings issued by fellow regulators about people or companies offering unauthorised investment services or products. It was sent more than 70 such warnings in 2005. The AMF spreads the message by publishing these messages online⁴⁵.

CESR-Pol works regularly on ways to tackle problems of cooperation and information exchange with third-country jurisdictions. It is actively partnering IOSCO in this area, in addition to its own direct dealings with selected jurisdictions.

CESR-Pol also maintains regular ties with the US Commodity Futures Trading Commission (CFTC), in an effort to find ways of improving mutual cooperation.

⁴³ By 15 January 2006, regulators from the following countries and provinces had signed up: Australia (ASIC), Belgium (CBFA), Canada – Alberta (SC), Canada – British Columbia (BCSC), Canada – Ontario (OSC), Canada – Quebec (AMF), France (AMF), Germany (BAFIN), Greece (CMC), Hong Kong (SFC), Hungary (FSA), India (SEBI), Isle of Man, Italy (CONSOB), Jersey (FSC), Lithuania (SC), Malta (MFSA), Mexico (CNBV), New Zealand (SC), Poland (PSEC), Portugal (CMVM), Singapore, Slovakia (FMA), South Africa (FSB), Spain (CNMV), Sri Lanka (SEC), Turkey (CMB), UK (FSA) and USA (CFTC and SEC).

⁴⁴ This permanent CESR working group was formed in 1999 following the signature of a Multilateral Memorandum of Understanding on the Exchange of Information and the Surveillance of Securities Activities, under the auspices of the Federation of European Securities Commissions (FESCO). It comprises the enforcement and supervision officers of CESR's 27 member-commissions. The head of investigations and market supervision of the AMF has had a seat on CESR-Pol since the committee was first established.

⁴⁵ Under "Warnings issued by CESR regulators".

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In 2005, European regulators continued to work on the operational implementation of the Market Abuse Directive and its accompanying directives and regulation. After a consultation period, the final version of “Level 3 – Preliminary Guidance and Information on the Common Operation of the Directive” was published on 11 May 2005. Prepared by CESR-Pol, this document was designed to provide the financial services industry with information and advice from regulators⁴⁶. Also, in mid-2004, a programme was initiated to determine the actions and measures that regulators could take in the short and medium term to develop cooperation and foster a shared approach on market abuse. This programme yielded its first results. Notably, CESR-Pol established best practices for investigations and joint hearings, and created specific procedures for sharing different types of information.

B Technical Cooperation

As part of its task of participating in European and international financial markets regulation, the AMF continued its bilateral and multilateral cooperation with foreign counterparts. It hosted some 20 foreign delegations, including other regulators, but also professionals and researchers, holding discussions on areas of common interests and sharing views and experiences on a wide range of subjects related to financial regulation and vocational training.

The AMF also continued its collaborative efforts in the context of the Institut Francophone de la Régulation Financière (IFREFI), a grouping of financial markets regulators that use French as a working language.

Initiated by the COB in 2000, the IFREFI has been established progressively as a flexible framework for dialogue and cooperation.

The founding charter was signed in 2002, and since then the institute has organised its meetings around two central events.

The Chairmen’s Meeting provides the opportunity for a high-level exchange of views on recent developments in financial regulation and allows participants to give in-depth consideration to one topic of mutual interest every year. The 2005 meeting, held in Brussels at the invitation of the CBFA, the Belgian regulator, focussed on fraudulent bankruptcies and rating agencies. The meeting was attended by 25 delegations, representing 27 countries and 16 financial markets⁴⁷.

The meeting is traditionally followed by a training seminar for the staff of market authorities that use French as their working language. The 2005 seminar was devoted to the authorisation and supervision of ISPs. It covered the minimum requirements for issuing authorisations (material resources, own funds, qualifications and competence, fitness and propriety, ethical standards of directors), and the overall framework of supervision (documentary audits and on-site inspections, inspections of internal organisation and financial structure), as well as supervision techniques, including sampling, questionnaires and analyses, sanction rulings against ISPs and, more generally, conduct of business rules applicable to professionals.

⁴⁶ The document addresses the issue of accepted market practices, providing an indicative and provisional list, together with descriptions, of the practices accepted thus far by member regulators. It also gave a non-exhaustive and descriptive list of practices that might constitute market manipulation, together with factors that service providers could construe as evidence of possible infringements that should be notified to the authorities. Lastly, it established a common format to be used by investment firms and credit institutions to report suspicious transactions.

⁴⁷ The following were represented: Algeria (COSOB), Belgium (CBFA), Cameroon (CMF), the Central African Economic and Monetary Community (the CEMAC, which comprises five countries), France (AMF), Luxembourg (CSSF), Monaco, Morocco (CDVM), Quebec (AMF), Romania, Switzerland (CFB), Tunisia, and the West African Monetary Union (UMOA, which comprises eight countries).

