

Chapter 7

The AMF and Consumers

As well as regulating, authorising, overseeing and disciplining market participants, the AMF educates consumers and mediates between them and the industry if a problem arises.

It maintains an ongoing dialogue with the financial community through five consultative commissions, set up in 2004 and composed of industry professionals, issuers and investors. Like its predecessors, the AMF can also call on the expertise of specialised taskforces. And it has set up a Scientific Advisory Board.

1 Ombudsman Report

A The Ombudsman Service

1 Overview and Aims

The legal foundations of the Ombudsman's role are established in Article L. 621-19 of the Financial and Monetary Code: "[The AMF] is authorised to receive claims relating to matters within its jurisdiction from any interested party and to deal with them appropriately. When appropriate, it proposes amicable resolution of the disputes brought to its attention, via conciliation or mediation".

This activity is carried out in the broader context of Europe, based on Commission Recommendation 98/257/EC of 30 March 1998 on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes. Those principles are independence, transparency, adversarial process, effectiveness (the procedure must be easily accessible, free and quick), legality and liberty (both parties must accept the procedure).

The European Council set up a Europe-wide network for extra-judicial settlement of consumer disputes on 25 May 2000. Under this mechanism, the Commission is informed of all national bodies responsible for out-of-court settlement and mediation that comply with the principles set out in the 1998 and 2001 recommendations on becoming a full member of the European Consumers Network (or ECC-Net). And in February 2001, the Commission set up the FIN-NET network alongside ECC-Net as part of the Financial Services Action Plan. The AMF Ombudsman is a member of FIN-NET.

Within this framework, the Ombudsman Service helps the AMF to keep a watchful eye on markets and to protect public savings and investment effectively. The service endeavours to provide a pertinent analysis of complaints and requests for mediation and to supply reliable answers as quickly as possible. When scrutinising complaints lodged by non-professional investors against investment services providers (ISPs) or issuers, it weighs up the interests of both constituencies through an objective, adversarial analysis of all factual and legal aspects. The Ombudsman Service also takes part in the AMF's educational activities, contributing to its image and its policy of communicating with consumers – for example, by attending investor forums and meetings.

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Being positioned in the middle ground between retail and professional investors, the Ombudsman often receives interview requests from journalists, who are keen to bring its activities to a wider audience or find out more about specific aspects of a particular activity.

2 Resources and Procedures

The Ombudsman works with a team of three legal experts and two assistants.

The service has two separate roles, consultation and mediation. However, it often answers technical questions within the context of a dispute.

- In its consultation role, the service chiefly provides retail investors with answers to technical queries relating to all aspects of the AMF's activities.
- Requests for mediation generally arise from a search for out-of-court settlement to a dispute between a client and an ISP or issuer.

In addition, a telephone hotline desk is available on Tuesday and Thursday afternoons to respond to urgent queries, advice callers on submitting complaints to the Ombudsman and provide information about ongoing cases.

Every case and the events related to it are recorded in a database, making it possible to monitor the service's activities in real time and activate an automatic reminder system.

Referrals are made by post, email or fax, and most of them originate from France.

Some matters are outside the AMF's jurisdiction but are referred to the Ombudsman anyway because they deal with investment-related problems.

This is the case of queries relating to life insurance contracts, even those that involve unit-linked policies. In reality, these contracts are regulated by insurance legislation, and the AMF has no power to enforce legal compliance or punish infringements. Although the concerns shared by specialised regulators are related, e.g. informing investors about the fund underlying an insurance investment or about transparent fee structures, this has nothing to do with the way their powers are apportioned. The same is true of questions relating purely to banking – anything connected with a deposit account or a tax matter, for example. In each case, the Ombudsman Service steers complainants toward the agency or agencies that can best answer their queries.

B New Inquiries and Mediation Requests

The Ombudsman Service handled 1,926 cases in 2005, comprising 1,391 inquiries and 535 mediation requests.

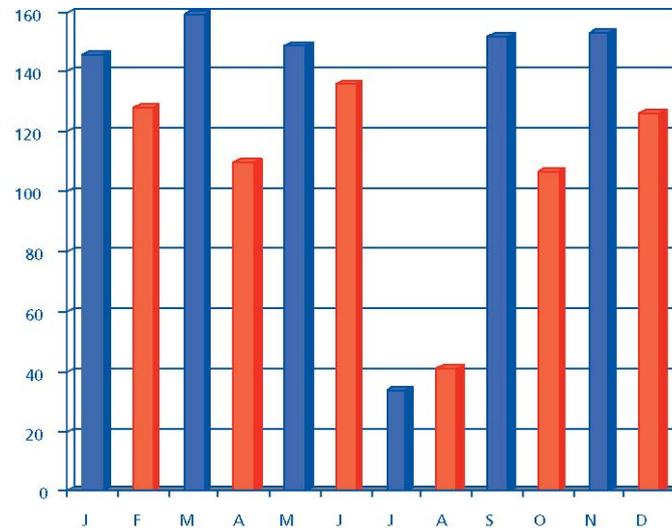
The annual caseload was higher than in 2004, when the number of cases totalled 1,861 (1,426 inquiries and 485 mediation request).

The breakdown between the two categories was the same year on year, i.e. 74% inquiries and 26% mediation requests.

The hotline desk took calls from 1,441 people, down slightly on 2004. The difference may be due to the fact that the hotline was open only one day a week instead of two in July and August 2005.

Graph 1

Telephone inquiries between 1 January and 31 December 2005



Source : AMF

C Subject Areas

The caseload can be broken into 11 broad subject areas:

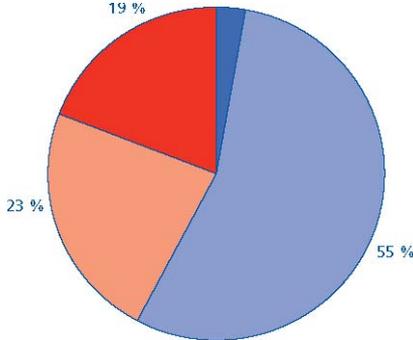
- collective investment schemes
- discretionary management
- order transmission/execution
- custody account keeping
- issuers
- general market matters
- financial instruments (other than collective schemes)
- direct marketing, asset management and advisory services
- supervisory and regulatory agencies
- miscellaneous topics

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1 Inquiries and Mediation Request by Subject Area

Graph 2

1 January to 31 December 2005



Source: AMF

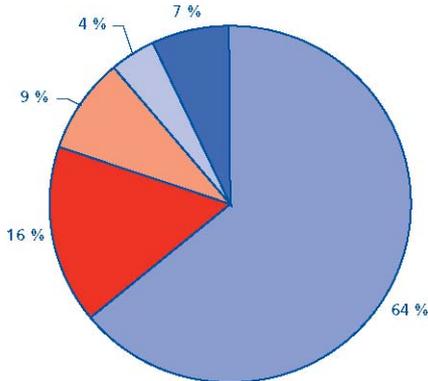
Key
55%: Issuers + general market matters + financial instruments
23%: Collective schemes + discretionary management
19%: Order reception/transmission + custody account keeping
3%: Miscellaneous

A full 55% of the cases dealt with in 2005 concerned issuers, general market matters and financial instruments.

2 Inquiries

Graph 3

Inquiries, by subject area: 1 January to 31 December 2005



Source: AMF

Key
64%: Issuers (*esp takeover bids/exchange offers and collective proceedings*) + general market matters (*esp alleged market anomalies*) + financial instruments
16%: Collective schemes + discretionary management
9%: Order reception/transmission + custody account keeping
7%: Regulatory role (direct marketing, asset management and investment advice, supervisory/regulatory/defence agencies)
4%: Miscellaneous

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As in 2004, most of the inquiries concerned issuers, general market matters and financial instruments. The percentage remained at 64%.

a) Takeover Bids, Mergers and Corporate Financing

As in previous years, the Ombudsman Service had to explain and illustrate the role played by the AMF. Simply drawing attention to the regulator's statutory and regulatory responsibilities at various stages of an offer is not enough to calm investors' fears or answer their queries on matters such as the scope of the AMF's approval process. Having answered an initial query, the Ombudsman Service often receives follow-up questions. This was the case in 2005, which was marked by large-scale mergers such as those between Snecma and Sagem and between Sanofi and Aventis.

Investors who are used to takeover bids often misunderstand what happens in a merger; they ask the AMF to intervene and make sure that the share-for-share exchange ratio offered to shareholders in the predecessor corporation is fair.

In such cases, it is necessary to explain that the AMF is not responsible for determining whether a planned merger is acceptable, as it does for takeover bids, but for registering the draft prospectus prepared by the successor corporation for the issuance of new shares. The prospectus, known as Document E, is then appended to the report of the board of directors or the chairman of the managing board to the general shareholder meetings of the companies involved, convened in accordance with the commercial code to vote on the merger plan.

Prior to registration, the AMF ensures that the prospectus is exhaustive and intelligible and that the information it contains is consistent. Registration does not imply that the AMF is approving the merger or authenticating the financial and accounting data disclosed in the prospectus. It means that the information fulfils regulatory requirements and, in consequence, that the shares issued as consideration for the merger can subsequently be admitted to listing on Euronext Paris.

The bid by France Télécom for the Dutch firm Equant also elicited many questions. Equant sold its assets and liabilities to France Télécom, and the cash proceeds of the sale were then distributed to Equant shareholders. Since the transaction was carried out under Dutch law and was subject to the approval of a general meeting of Equant shareholders, it did not come under French takeover regulations and was not submitted to the AMF for inspection.

In addition to requests for explanations as well as criticism of price setting methods and a supposed lack of consideration afforded to retail investors, some of the complaints about corporate financing transactions concern the way that the procedures themselves are conducted.

For example, an intermediary or a custody account keeper may be criticised for providing inadequate or imprecise information on matters such as subscription rights.

In several cases, the Ombudsman Service was questioned as to whether custodians should be forced to sell pre-emptive rights that have not been exercised by their holder or whether such sales should be optional. Although Article 332-5 of the AMF General Regulation requires a custody account keeper to inform its account-holders as soon as possible about corporate actions to which they must respond, it is under no legal or regulatory obligation to take the initiative and sell pre-emptive rights. Furthermore, Article 332-6 states: "The custody account keeper ensures that, barring any legal or regulatory provision to the contrary, any movement of financial instruments affecting the account of an account holder is carried out only on the instruction of that account holder".

The legal precedents on this matter are confined to two Court of Cassation decisions. In its 12 January 1999 decision (*BNP v. Moritz*) on a public exchange offer, the court found that a custodian could not take the initiative and act in lieu of the account holder for the management of the latter's assets unless there was a risk of loss. In its 3 November 1952 judgment (*Gaucher v. Comptoir d'Escompte de Paris*) on pre-emptive rights, the court rejected an appeal lodged by

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Mr Gaucher against a decision handed down on 28 April 1948 by the Poitiers Appeals Court, which had found that "no blame attaches to Comptoir National d'Escompte de Paris, which acted not in its own interest but to ensure that Mr Gaucher's subscription rights would not lapse and be forfeited. Mr Gaucher's failure to give instructions before his departure is the sole reason for the prejudice he has suffered".

In practice, after examining the corporate action notices for the share issues in the cases forwarded to it, the Ombudsman Service observed that custodians adopted different practices. However, it noted a broader trend among major institutions not to act in lieu of their clients, even though the notices stated that the rights or warrants in question would lapse if the client failed to act.

Consequently, in light of prevailing regulation, legal precedents and industry practice, the issue at bar was whether a decision not to sell rights automatically could be considered by the AMF as a shortcoming that might constitute professional misfeasance, thus offering grounds for compensating the client involved in the mediation procedure. After consulting other AMF departments, the Ombudsman Service responded in the negative. It noted that a mandatory automatic sale could adversely affect the exercise of an investor's choice: a custodian had been forced to set a shorter subscription period than the one given in the prospectus – and thus published in the Euronext market notice – so that the rights of clients having given no instructions could be sold on the second-to-last listing day. In one case, it emerged that the instruction of a client wanting to exercise its pre-emptive rights had not been executed because it had arrived after the cut-off date set by the bank, which was eight days earlier than the date in the prospectus.

If the automatic sale of unexercised rights were to be made mandatory under current regulations, it would have to be supervised so that clients' interests continue to be protected. Provisions would have to be made in at least three areas. First, information on implementing the protective clause must be given in the account agreement and in each corporate action notice. Second, where a shorter subscription period has to be set, it must be the same for all account holders and must leave shareholders enough time to send their instructions if they want to subscribe for new shares. Third, investors that acquire rights in the market after the exercise deadline set by the custodian will be sent a warning, either through the custodian's website or by the department responsible for order transmission/reception.

b) Market Anomalies

Frequent complaints were once again received about market anomalies or problems of disclosure by companies in financial distress. Faced with an unfavourable or sudden price movement, some investors were swift to blame it on fraudulent manipulation, calling for public exposure and sanctions. In such cases, the Ombudsman Service had to explain to complainants that even if an investigation or inquiry were to be launched, they would not be informed about its progress because such procedures are confidential.

This type of whistleblowing is amplified by the internet, and especially online broker forums, which can be used to organise mass mailings of form letters to the Ombudsman in an effort to draw the AMF's attention to a particular security.

Such letters are examined and then passed along to the AMF's specialised departments. In 2005, the Investigations and Market Surveillance Division received 120 complaints about purportedly suspicious transactions from retail investors, along with requests for investigations or appraisals of complex price movements.

On-site inspections or documentary audits were organised in response to some of these complaints, and warnings were posted on the AMF website. This was the case, for example, following a letter from a consumer who had been contacted by Bruno Beuriot Gestion, a company carrying on an unauthorised asset management business. A public warning was web-posted and the matter was referred to the prosecuting authorities.

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When the Ombudsman is notified about a matter that may constitute a criminal offence, it offers to alert the legal authorities.

c) Trading Incidents

As in 2004, many retail investors complained that they had received no information following a trading halt or suspension. This is the case when trading is suspended pending a press release from the issuer or when news of a court-ordered reorganisation or winding-up is released belatedly. In the latter case, although the AMF regularly updates its web-posted list of companies that have missed the deadline for publishing their financial statements (or, where such is the case, their registration documents), individual shareholders sometimes feel they have been overlooked, and they seek advice on what to do when they learn the outcome of legal action.

In 2005, a large number of inquiries were made about the situation of Metaleurop. The suspension of trading in Metaleurop shares, ordered on 27 June 2003, was prolonged at the AMF's request until the courts hearing the case had announced their findings. In a decision handed down on 11 October 2005, the Paris Appeals Court rejected a motion to extend the liquidation of Metaleurop Nord, decided in March 2003, to its parent company Metaleurop SA, which was placed under observation as part of a reorganisation procedure ordered by the commercial tribunal. On 24 November 2005, Metaleurop announced that the tribunal had approved a recovery plan during which the company would continue to operate. Trading in the shares resumed on 25 January 2006.

Inquiries handled in 2005

	Situation at 31 December 2005
Number of inquiries handled	1,452
* o/w inquiries received within the month	88%
* o/w inquiries received more than one month earlier	12%

Source: AMF

A query is closed once the initial question and any subsequent questions or clarification requests have been answered. The average response time is one month, but sometimes the Ombudsman Service has to call on other AMF departments for their input and opinions. In such cases, every effort is made to prevent delays in response times.

In 2005, 88% of inquiries were closed within one month.

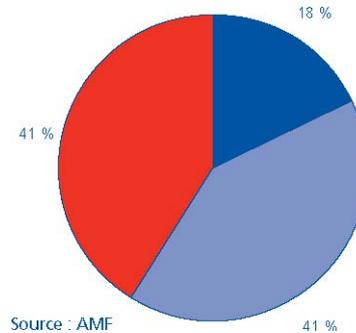
Between 1 January and 31 December 2005, the service responded to a total of 1,452 inquiries covering all areas under the AMF's jurisdiction. None of its response letters was challenged by the persons submitting the inquiries.

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3 Mediation

Graph 4

Mediation cases, by subject area



Key

18%: Issuers + general market matters + financial instruments

41%: Collective schemes (esp. pre-investment information) + discretionary management

41%: Order reception/transmission

The number of cases relating to issuers, general market matters and financial instruments rose slightly compared with 2004.

Forty-one per cent of all mediation requests involved collective investment schemes and discretionary investment.

a) Structured Funds

An analysis of mediation cases shows that some issues crop up every year. Structured funds are a case in point. Numerous complaints were received in 2005, not only about discretionary management but also about the marketing of collective investment schemes.

In 2005, the Benefic range marketed by La Poste elicited yet another wave of mediation requests.

Since investigations were already under way with a view to initiating a sanction proceeding, the Ombudsman Service was unable to intervene actively, pursuant to the principles of its governing charter. It could only refer complainants to the department at La Poste responsible for centralising complaints about Benefic products, while asking La Poste to keep it informed of the outcome.

Following a decision on 15 December 2005 by the AMF Enforcement Committee¹, the mediation procedure can now be used once again for extra-judicial settlement of disputes arising either when Benefic products were marketed or during their lifespan.

At 31 December 2005, 42 such cases had been opened.

The AMF also received complaints about other structured funds. These generally concerned the conditions in which the funds were marketed, namely a lack of detail about their structure or whether they offered a capital guarantee. It is noticeable that, in many of the cases, the complainants mistook advertising materials for a prospectus.

In light of these same observations, the following recommendations must borne in mind:

¹ See Chapter 6

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- investors should ask as many questions as possible, particularly about the capital guarantee, and should study product literature carefully;
- professionals should keep a record of each stage of a transaction in order to provide irrefutable proof that they have made every effort to ensure that the product meets the investor's objectives.

b) Discretionary Management

The complaints about discretionary management received in 2005 once again concerned the duty of investment services providers to inform and advise their clients.

Retail investors' criticisms focused on an inappropriate initial choice of investment policy, irregular or non-existent monitoring of their portfolio, and the lack of adjustment in case of heavy losses. These complaints arose because investment objectives had been too broadly defined. The Ombudsman Service therefore repeated its usual recommendation that both parties should define the investment policy precisely at the outset in a detailed written instrument. The professional must communicate regularly with its clients and keep a record of their correspondence throughout the duration of the mandate, informing them immediately of any changes in investment policy.

Handling of mediation cases

	Situation to 31 December 2005
Number of mediation cases closed:	591
* o/w cases less than six months old	82%
* cases more than six months old	18%

Source: AMF

A full 82% of mediation cases were closed within six months. Most of those not completed within that time involved cases suspended pending an investigation or an opinion from another AMF division. Sometimes, the information or documents requested was hard to obtain for some reason – for example, the events in question occurred a long time ago, or the service provider had changed in the meantime.

The Ombudsman Service dealt with 591 mediation cases between 1 January and 31 December 2005.

Agreements were reached in 59% of cases that were considered on their merits (i.e. excluding those outside the AMF's jurisdiction, groundless requests, and cases in which an investigation or legal proceedings are ongoing).

The mediation procedure must be accepted by both parties and, once under way, can be abandoned at any time.

Regarding cases involving an adversary process overseen by the Ombudsman, it is especially gratifying to note that more than half of those dealt with in 2005 resulted in an out-of-court settlement in the form of a rectification (i.e. the contested transaction is cancelled), total or partial compensation for loss, or a conciliatory gesture.

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D Outlook

In addition to dealing with inquiries and mediation requests, the Ombudsman Service continued to play a part in the AMF's consultative commissions, especially those responsible for retail investors and minority shareholders and for asset management.

The Ombudsman was also a member of the taskforce on financial product marketing, headed by Jacques Delmas-Marsalet². Composed of representatives of the general directorate of the Treasury and economic policy, the consultative committee for the financial sector, the insurance and banking industry supervisors and the AMF, the group worked from April to October 2005. Several areas of concern were addressed in its final recommendation report, now under examination with a view to implementation.

Close attention will be paid to the action taken subsequent to the group's recommendations on information and advice as well as those on better customer support and alternative methods of dispute settlement. The Ombudsman will take a special interest in mediation in the case of disagreement with the outcome of a complaint handling procedure. The first principle recommended in the Delmas-Marsalet report was to make provision for "a mediator with jurisdiction over disputes involving savings products in the banking and financial fields. Investors should be informed of the existence of this mediator and the means for contacting him in the event of a negative response to [the investor's] complaint".

Much will also be learned from the findings of a study into alternative dispute settlement methods for each economic sector, a mission assigned by the finance minister to the chairman of the consultative committee for the financial sector.

The Ombudsman Service is in a unique position to observe the difficulty of enforcing and interpreting financial regulations (and in some cases their shortcomings). It therefore has a duty to alert the other AMF departments to these problems, not just to reduce the risk of disputes but also to contribute to appropriate and effective regulation.

2 Cooperating and Consulting with the Financial Community

A The Consultative Commissions

Using the powers provided for in Article L. 621-2 III of the Financial and Monetary Code, the AMF decided in February 2004 to set up five standing consultative commissions to assist it in its deliberations and help formulate policy in light of changes in techniques, products and market structures, and the legal and financial environment, both domestic and international.

The five commissions are made up of experts appointed by the AMF's Board. They are chaired by Board members, who coordinate the work programmes and report back to plenary meetings of the Board. The members of the commissions are appointed for a three-year term.

Each commission draws up its own work programme. The AMF's departments handle the preparatory work, referring some cross-sector issues to several commissions. The commissions' opinions are forwarded to the Board. In 2005, the consultative commissions met nine times on average.

² See Chapter 7

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1 Disclosures and Corporate Finance

Headed by AMF Board Member Jean-Michel Naulot since 21 March 2005, the Disclosures and Corporate Finance Commission met ten times in 2005.

Regarding new regulatory developments, the commission concentrated on transposing the Prospectus Directive³ and the ensuing amendments to the AMF General Regulation. It had already tackled a variety of questions arising from the transposition of this directive back in 2004. In 2005, before work started on a new version of Book II of the General Regulation, the commission was once again called on to address a number of detailed issues, including the negative scope of registered securities (i.e. the criteria for not considering an issue of securities as a public offering), the application of the prospectus waivers provided for in the directive, the continued use of the registration document, the language regime for prospectuses, and statutory auditors' liability for prospectuses. Furthermore, the commission examined a draft set of amendments to the General Regulation in May 2005, followed at end-June by industry responses to a public consultation. The commission also examined the draft implementing instruction for Book II of the General Regulation on mandatory disclosures for offers of securities to the public as well as the summary recommendations for preparing registration documents, issued by the COB in 2003 and the AMF in 2004. These recommendations were first screened by the AMF to identify those that had been superseded by the adoption of International Financial Reporting Standards (IFRS) and the European regulation on prospectuses.

Another work area for the commission was the amendment of the General Regulation further to the transposition of the Market Abuse Directive⁴, especially the new rules on the disclosure of directors' dealings and the requirement to keep insider lists. Commission members also took part in an ad hoc working group charged with discussing the implementation of the insider list requirement. Two other issues addressed by the commission were the changes made to the General Regulation for the launch of Alternext and the elimination of the mandatory prospectus for share buybacks.

Meanwhile, three other matters were referred to the commission in 2005 and will be examined in further detail in 2006. On the first matter – implementing the recommendations of the working group on financial valuation and fairness opinions – the commission made several observations that were taken into account when the regulations were drafted. Regarding the working group's report, the commission will make a more detailed analysis in 2006 of the transition to IFRS, in light of issuers' filings for 2005 and the related provisions of the Markets in Financial Instruments Directive. In this respect, the commission's attention was drawn to several factors: the possibility of seeking an admission to listing for securities without the issuer's consent, the examination of the requirement to centralise orders during a takeover bid, and the definitions of "professional investor" and "eligible counterparty".

In 2005, as in the previous year, the AMF submitted its annual reports on credit rating agencies and on corporate governance and internal control procedures to the commission in December, prior to publication, in order to seek its opinion. For first-half 2006, in addition to the above topics, the commission plans to examine the transposition of the Takeover and Transparency Directives⁵ and the findings of the working group on internal control standards and earnings forecasts and estimates; it will also address the question of implementing the recommendations of the working group on independent investment research.

³ See Chapter 2 International Cooperation and Regulation

⁴ See Chapter 3 Corporate Finance and the Quality of Financial Disclosure

⁵ See Chapter 2 International Cooperation and Regulation.

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Commission members ⁶

Jean-Michel Naulot (Chairman)⁷ – Antoine Giscard d'Estaing (Vice-Chairman)
Olivier Azières (Azières Conseil), Claude Baj (CB Conseil), Jean-François Biard (BNP-Paribas), Dominique Bompont (Sullivan & Cromwell), Françoise Bonfante (UBS Securities France SA), Éric Bourdais de Charbonnière (Michelin), Bernard Bourigeaud⁸ (Atos Origin), Franck Ceddaha (Oddo Corporate Finance), Jean Cédelle (Calyon), Martine Charbonnier (Euronext), Jean-Pierre Cloiseau (Lafarge), Philippe Crouzet⁹ (ACTEO), France Drummond (Paris II), Philippe Lagayette (JP Morgan), Michel Léger (Léger et Associés), André Lévy-Lang¹⁰, Marie-Christine de Nayer (Société Générale), Helman le Pas de Sécheval (Groupama), Jacques Rossi (Cabinet Rossi), Bruno Van Ryb¹¹ (MiddleNext).

2 Retail Investors and Minority Shareholders

The Consultative Commission on Retail Investors and Minority Shareholders met nine times in 2005, the same as in 2004. In addition to acting as an initial forum for discussing AMF taskforce reports, it gave its opinion on substantive issues relating to AMF policy and took positions on strategic regulatory issues.

The commission was consulted on draft regulatory provisions affecting retail investors, minority shareholders and the associations representing them. The issues it has addressed include:

- a decree implementing the executive order on transferable securities
- a decree governing the approval of shareholder defence groups
- the transposition of the Occupational Pensions Directive
- a decree establishing the definition of "qualified investors"

It also commented on strategic issues such as:

- responding to the growing complexity of savings media
- the trade-off between the exhaustiveness and clarity of information, in connection with the problem of making simplified fund prospectuses easier to understand
- issues arising from the greater openness of financial markets, following the proposals of the European Commission Green Paper on Asset Management
- how the development of open architecture will affect the distribution of financial products (based on a TNS Sofres/Fidelity study¹²).

The commission gave its reactions to the proposals set forth in the main reports published under the auspices or with the involvement of the AMF, i.e. the Delmas-Marsalet report on financial product marketing, the Mansion report on the exercise of voting rights at general shareholder meetings, the Naulot report on financial valuation and fairness opinions, and the report of the investor education taskforce. On the topic of general meeting voting, for example, the commission looked into the practice of securities lending, debated whether voting should be restricted to registered shareholders, and considered how to account for different types of vote, especially abstentions.

⁶ Eliane Rouyer (Accor) and John Glen (Air Liquide) joined the commission in consultative in January 2006

⁷ The commission was chaired AMF Board Member Bernard Esambert until 20 March 2005

⁸ Left the consultative commission in January 2006.

⁹ Replaced by Benoît Bazin (Compagnie de Saint-Gobain) in July 2005.

¹⁰ Left the consultative commission in January 2006.

¹¹ Replaced by Evelyne Deloirie (Middlenext) in July 2005.

¹² Survey carried out in October/November 2005 by TNS Sofres for Fidelity International

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It examined issues relating to employee savings schemes. Among other things, it gave its opinion on the AMF's policy stances for leveraged employee profit-sharing funds, as well on special processes used in employee savings schemes (e.g. subscriptions, bridging funds).

The commission also took part in the AMF's work on fund governance, carried out under IOSCO mandate and based on examining the existing mechanisms used in the life insurance and employee savings sector. In consequence, the commission gave its opinion on the need for fund governance procedures and helped develop the governance framework for a new type of real estate investment fund, the OPCI.

In addition, it debated the issue of mediation mechanisms and examined ways of helping organisations play a greater part in European Union decision-making processes.

Commission members¹³

Jean-Claude Mothié (Chairman), Claire Favre (Vice-Chair)
Jacques Coutance, Vincent Dutfoy (CLAS¹⁴), Agnès Gaultier de la Ferrière (FAS¹⁵), Marcel Jayr (member des retail investor committees of ANSA and Euronext), Pierre-Henri Leroy (Proxinvest) Viviane Neiter (APAI¹⁶), Colette Neuville (ADAM¹⁷), François Perrin-Pelletier (FAIDER¹⁸), Fabrice Rémon (Deminor), Marie-Claude Robert (the COB's first Ombudsman), Aldo Sicurani (FFCI¹⁹), Marcel Tixier (ANAF²⁰), François de Witt (journalist).

3 Markets and Exchanges

Chaired by Bernard Field, the Consultative Commission on Markets and Exchanges met nine times in 2005.

On several occasions, it gave its opinion on changes to the Euronext Paris rulebook, including those resulting from the merger of the Premier Marché, Second Marché and Nouveau Marché to form a single list, and on the listing arrangements for the new market. It also provided support for the creation of Alternext and for the reshaping of the Euronext market model. In the regulated markets run by Euronext Paris, the most substantive change was the elimination of anonymous trading in the central order book for companies in the C segment of Eurolist. The other regulatory amendments submitted to the commission concerned trades executed at the weighted average price (with a reduction in the minimum period) and the size of blocks that must be reported when buying or selling trading exchange-traded funds outside the central order book.

The three other developments on which the commission gave its opinion were:

- the principle of admitting an investment management company as a member of a regulated market;
- a proposal to introduce mechanisms to prevent market abuse, specifically in the case of penny stocks;
- the reform of the regulations applicable to compliance and internal control at investment services providers.

One main area of consultation for the commission, as regards setting European standards and adapting the regulatory framework in light of EU directives and regulations, was the Markets in

¹³ Many of the members of this commission took part in the working group on investor education (see below)

¹⁴ Association of Crédit Lyonnais. shareholders

¹⁵ French federation of employee and pensioner shareholders

¹⁶ Association for the promotion of individual share ownership

¹⁷ Association for the defence of minority shareholders

¹⁸ Federation of independent associations for the defence of retirement savings

¹⁹ Federation of investment clubs

²⁰ Association of French shareholders.

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Financial Instruments Directive (MiFID). At the beginning of the year, the commission's members were involved in drafting the technical advice given by the Committee of European Securities Regulators (CESR) to the European Commission on MiFID. In the second half-year, the commission was asked to give its opinion on the broad guidelines for transposing the directive, i.e. organisation of transposition work, principles, and options for Member States. The commission also continued examining the amendments made to the General Regulation in order to finalise the transposition of legislation on market abuse (insider lists, suspicious transactions) and to transpose the Prospectus Directive.

Two further topics on which the commission give an opinion were the draft amendments to the General Regulation in the sphere of investment research and, like last year, the AMF report on credit rating agencies.

Commission members²¹

Bernard Field (Chairman), Jean-Pierre Pinatton (Vice-Chairman)
Jean-Pierre Aubin (Viel Tradition), Jean-François Bay (Seeds Finance/ AFII), Thierry Coste (CASA), Alain Couret (CMS Bureau Francis Lefebvre), Marie-Noëlle Dompé (cabinet Darrois & Villey), Jacques Hamon (CEREG), Gérald Harlin (Axa), Alain Kayayan (investment analyst, Exane), Jean-Bernard Laumet (HSBC/CCF), Patrice Marteau (PPR), Jean-Pierre Mattout (Kramer Levin Naftalis & Frankel LLP), Alain Moynet (BNP Paribas), Jean-Pierre Mustier (Société Générale), Yves Nachbaur (Banque de France), Catherine Langlais (Euronext), Hubert de Vauplane (BNP Paribas).

4 Asset Management

The Consultative Commission on Asset Management is a forum for dialogue with the financial community. All sectors of the industry – asset managers, depositories and institutional investors – are represented on the commission, which met ten times in 2005.

Having spent most of its first year analysing the AMF's new General Regulation, the commission gave a more strategic dimension to its work in 2005. An in-depth debate stretching over several meetings arose when examining the European Commission Green Paper on Asset Management and preparing the AMF's response to the ensuing public consultation.

This debate led to a deeper understanding of the industry's need to rationalise its organisation on a Europe-wide basis; and it helped clarify the thinking that informs the choice of country in which a fund is regulated and the country where the asset management activity is located. Such discussions are vital because they help the regulator to avoid policy choices that would create unwarranted barriers to locating an asset management business in France. The debate also provided an opportunity to review ways of improving the notification procedure for the European passport, thus contributing to the positions taken by AMF in CESR-Investment Management, the expert group tasked with addressing this issue. In terms of methods, one of the highlights was the commission's outreach: it sought the opinions of representatives of the European Commission, the French asset management association (AFG) and an external consultant.

In addition, the commission continued to play a consultative role in the regulatory area under the AMF's jurisdiction. Among the many significant regulatory amendments submitted to and debated by the commission were proposed changes to the regime for exchange-traded funds, clarifications to the rules on fee rebates in funds of funds, and the possibility of submitting simplified prospectuses in an open format ("free form").

The linkage between the commission's work and the work of the taskforces set up to address specific issues of significance for the asset management industry was established through regular progress reviews with the taskforce leaders. This was the case for the working group on depositories, the working group on internal control, and the mission headed by Jacques Delmas-

²¹ Catherine Patou (IXIS) and Frédéric Simon (CA Indosuez Cheuvreux) were asked to take part in the work of the commission in early 2006

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Marsalet to examine financial product marketing. In addition, the commission took part in the work done by the AMF for the introduction of OPCI schemes.

The commission was regularly informed about the findings made by the AMF in the course of its duties. It thus had the opportunity to scrutinise the situation reports on authorisation activity and depository inspections, as well as the financial data filed by investment managers. Similarly, it was informed about the work done by the AMF at international level, both through CESR and through the International Organisation of Securities Commissions (IOSCO).

Commission members

Philippe Adhémar (Chairman), Monique Bourven (Vice-Chair)
André Battestini (Ulysse Patrimoine), Christian Boisson (Crédit Agricole AM), Dominique Eugène (AFII), Gilles Glicenstein (BNP Paribas AM), Philippe Goubeault (AGIRC), Guillaume Jalenques de Labeau (SPGC²²), Pierre Jolain (Haas Gestion), Jean-Louis Landais (Banque de France), Pierre Lasserre (Exane), Jean-Louis Laurens²³ (Axa IM), Eric Mijot (investment analyst, SFAF²⁴), Gérard Pfauwadel (Unigestion AM), Hélène Ploix (Pechel Industries), Roland Portait (Essec/CNAM), Bruno Prigent (Société Générale), Antoine de Salins²⁵ (FRR²⁶), Patrick Sellam (Cabinet Patrick Sellam).

5 Clearing, Custody and Securities Settlement

The Consultative Commission on Clearing, Custody and Securities Settlement met five times in 2005, giving its opinion on all aspects of the work on post-trade infrastructures.

It examined two draft amendments to the AMF General Regulation, one on "external segregation" of assets and a ban on debit positions on securities accounts, the other following on from executive order 2005-3030 of 31 March 2005 on simplified rules for transferring ownership of financial instruments admitted to the operations of a central securities depository or delivered through a securities settlement system.

It also looked at the initial proposals of the working group on depositories, notably tighter rules for depositories delegating asset custody and the need to obtain an authorisation to operate as a depository.

The commission gave its opinion on the initial guidelines for the new real estate investment fund, the OPCI, and drew attention to the procedures for calculating and monitoring net asset values.

It was asked to study the recommendations of the working group on improving the exercise of voting rights at general shareholder meetings in France, as well as all the consultations organised by the European Commission on the same topic in Europe.

Throughout 2005, the commission was kept informed about developments in the clearing and securities settlement sector in Europe. It monitored work on the ESCB-CESR standards, examined the Kauppi-Villiers report from the European Parliament, summarised the responses to the European Commission communication on securities settlement and clearing in Europe, and discussed the changing relationship between Euronext and LCH.Clearnet as well as the prospects for a single central counterparty in Europe, evoked by Commissioner Charlie McCreevy.

²² Société Parisienne de Gestion et de Conseil.

²³ Replaced in January 2006 by Nicolas Moreau (AXA IM).

²⁴ French investment analysts society

²⁵ Joined the consultative commission in May 2005

²⁶ Fonds de Réserve des Retraites.

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Commission members

Dominique Hoenn (Chairman), Jean de Demandolx Dedons (Vice-Chairman)
Philippe Bissara²⁷ (ANSA), Gérard Bourret²⁸ (Ofivalmo), Philippe Castellanelli (HSBC/CCF), Xavier Chaillot (Société Générale), Emmanuel de Fournoux (AFEI²⁹), Michel Germain (Paris II), Pierre Guillemet (Calyon), Yvon Lucas (Banque de France), Guy Mengin (Banque OBC), Joël Merere³⁰ (Euroclear France), Philippe Puzet (Arllys), Patrice Renault³¹ (LCH.Clearnet France), Marcel Roncin (AFTI³²), Bernard Vibert³³ (Crédit Lyonnais).

B Market Advisory Groups

Alongside the consultative commissions, the AMF also conferred with advisory groups of market professionals and experts on highly specific issues.

1 Working Group on Financial Valuation and Fairness Opinions

Chaired by Jean-Michel Naulot, this working group was commissioned by the AMF Board to make an in-depth analysis in the fields of financial valuation and fairness opinions. It submitted its findings on 13 April 2005³⁴.

The group concentrated on four areas:

- determining a set of fundamental principles for all transactions in which an independent appraiser is appointed;
- extending the scope of mandatory opinions;
- tightening compliance requirements and oversight of appraisers;
- reiterating the rules and principles that appraisers must obey when implementing different valuation methods.

The working group's report was presented to the AMF Board before being put out for public consultation from 26 April to 10 June 2005. The ensuing responses and comments were summarised³⁵ and then posted on the AMF website on 16 December 2005. The Authority received 15 responses from industry groups, companies or firms specialised in valuations and fairness opinions, and other professionals. On the whole, the respondents endorsed the working group's recommendations, which had been examined initially by the Consultative Commission on Disclosures and Corporate Finance.

In principle, another public consultation will be held and the recommendations will then be implemented by means of regulations. Furthermore, since the topic of fairness opinions is closely linked to that of takeover bids, consideration has been given to work on the Takeover Directive and its implementation schedule.

²⁷ Philippe Bissara resigned from the consultative commission in December 2005. ANSA is now represented by Philippe Puzet, Chairman of Arlis, part of the Lagardère group, one of the original members of the commission

²⁸ Gérard Bourret announced his retirement from the consultative commission. He has been replaced by Christophe Lepître (ADI Alternative Investments).

²⁹ French Association of Investment Firms

³⁰ Replaced by Pierre Slechten (Euroclear France).

³¹ Replaced by Christophe Hémon (LCH.Clearnet SA).

³² French Association of Securities Professionals

³³ Bernard Vibert, compliance officer with Crédit Lyonnais, has retired. He was replaced in January 2006 by Anne Landier-Juglar, compliance director at CACEIS.

³⁴ AMF monthly review, issue 13, April 2005, pages 11 - 58.

³⁵ AMF monthly review, issue 21, January 2006, pages 5 - 14.

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2 Discussions on Takeover Bids

The Takeover Directive³⁶, which seeks to create a framework for takeover bids in Europe, was adopted by the European Parliament and the Council in 2004. Published in the Official Journal of the European Union on 30 April 2004, it came into force on 21 May 2004 and must be transposed by 21 May 2006 at the latest.

The basic principles are similar to those governing French takeover legislation, but the directive is distinguished by the fact that two of its key articles are optional. These are Article 9, which sets the conditions for implementing pre-bid defences, and Article 11, which deals with breaking through these defences.

Voluntary arrangements are provided for in Article 12. Under this article, Member States can allow companies based on their territory to waive two principles: first, that only a general meeting of shareholders called during the offer period is entitled to authorise pre-bid defences (Article 9), and second that restrictions on the transfer of shares and voting rights, as well as multiple voting rights, are suspended during or after an offer period³⁷ (Article 11).

Member States choosing this option must allow companies to apply these principles voluntarily, on condition that they have been authorised to do so by an extraordinary general meeting of shareholders. Such authorisations must be renewed every eighteen months.

Whether or not they apply the principles laid down in these articles, Member States can introduce a reciprocity clause into their legislation, allowing a company to disapply the principles if targeted by a bid from a firm (or one of its subsidiaries) that does not itself apply them.

a) Assignment Conducted by Jean-François Lepetit at the Request of the Finance Minister

In November 2004, the finance minister asked Jean-François Lepetit, formerly chairman of the COB and the CMF, to set up a commission to examine the options available to Member States under the Takeover Directive, as well as the attendant consequences, with a view to transposing the directive in France.

The commission met for the first time in December 2004. Its members were Jean-Louis Beffa, Chairman and Chief Executive of Compagnie de Saint-Gobain, Gérard de la Martinière, Chairman of the FFSA,³⁸ and Dominique Schmidt, a law professor and attorney at the Paris and Strasbourg bars.

Jean-François Lepetit presented the commission's guidelines to the finance minister on 10 June 2005, and the final report³⁹ was published on 27 June 2005. The report recommended transposing Article 9, on the grounds that its consequences were very similar to the existing arrangements under French law. By contrast, it advised against implementing Article 11, which it said would seriously interfere with contractual freedom and deprive investors and entrepreneurs of the flexibility needed to secure effective financing for the French economy. Moreover, according to the report, French law already guarantees a high level of transparency for shareholders in this regard. It concluded by saying that the enforcement of Article 9 should be subject to a reciprocity clause so as to ensure that French companies compete on an equal footing with their foreign counterparts.

The broad outlines of the Takeover Act passed on 31 March 2006 follow the draft transposition legislation set out in the report.

³⁶ AMF 2003 Annual Report

³⁷ With the exception of French-style double voting rights

³⁸ Fédération Française des Sociétés d'Assurance.

³⁹ The report is available on the finance ministry website at www.minefi.gouv.fr

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b) Working Group on Takeover Bids

The AMF Board set up a working group on takeover bids in October 2005 in connection with the transposition of the Takeover Directive. The group is co-chaired by two Board members, Claire Favre and Dominique Hoenn.

Following the passage of France's new takeover legislation, the AMF needed to write the implementing measures for the directive into its General Regulation. Accordingly, the working group addressed the issues that were hardest to transpose, especially where several interpretations or options were possible.

Regarding pre-bid defences (Article 9), the group examined the linkage between the legitimate power of general shareholder meetings and the need to comply with the general principles governing takeover bids. First and foremost of these principles is the interplay of bids and counterbids, which the AMF is responsible for enforcing. On this point, questions had been raised about the type of defensive strategies available to a bid target under French law and about the limits of the powers of general meetings during an offer period.

The group's discussions also focused on the reciprocal arrangements provided for under Article 12 of the directive and the type of decision that the AMF takes in the event that the equivalence of defensive measures is challenged. The working group debated the rules for pre-disclosures. It recommended that an offeror filing an international bid should issue a detailed statement saying whether it is subject to laws that are equivalent to French takeover legislation. In addition to that statement, the AMF would decide on a case by case basis whether those measures were equivalent. That decision would be subject to a fast-track appeal process through the courts.

The working group's opinion was sought on two questions raised in the April 2005 report on financial valuation and fairness opinions:

- should one of the criteria for the acceptability of a takeover bid be an obligatory fairness opinion prepared by an independent appraiser?
- if so, should the AMF make its acceptability decision after the independent appraiser's report has been published?

The working group also addressed the following issues:

- the conditions for introducing a mandatory notice of intent, to be issued by persons or entities preparing a takeover bid (this requirement arises from an amendment to the Takeover Bill);
- new arrangements for combining the procedures for vetting takeover bids and reviewing prospectuses, inherited from the CMF and the COB, respectively. When the two regulators merged to form the AMF, those procedures were simply put side by side in the General Regulation published in 2004.

The group also discussed the introduction of a right for investors to be compensated in securities in the case of a squeeze-out following a takeover bid. It came out in favour of this right, on two conditions: the initial offer must have involved a full or partial exchange of shares, and provisions must be made for cashing out untendered shares, so as to compensate shareholders that do not respond to the bid.

The working group is due to examine a draft amendment to the General Regulation, which will be submitted for public consultation in first-half 2006.

3 Working Group on Independent Investment Research

Set up in December 2004 and chaired by AMF Board Member Jean de Demandolx Dedons, this working group issued its report – *A Fresh Start for Independent Investment Research in the French Market* –⁴⁰ in mid-July 2005.

The group, comprising representatives of investment research houses, senior executives of stockbrokers and asset managers, a representative of market operators, a financial journalist and representatives of research industry groups, painted a mixed picture of independent research in France. It also reviewed the situation in other countries.

It put forward eight recommendations:

- The AMF should establish a regulatory definition of independent investment research based on legal, economic and ethical criteria.
- The AMF should register independent financial analysts directly or indirectly, e.g. through membership of an approved industry body.
- The AMF should uphold the principle of equal access to listed companies' financial disclosures for all registered buy side, sell side or independent analysts covering the stocks concerned.
- Production of independent investment research should be promoted, alongside the research produced by banking syndicates involved in distributing securities during initial public offerings, or for any listed company, whenever there is a significant issue of equities of securities granting access to the company's share capital.
- Regulatory approval should be given for "split" billing of brokerage commissions, under which execution of trades and investment research are billed separately and the research-related portion of the commission can be passed on to an independent research house.
- A funding pool should be created for independent financial analysis that small-cap and mid-cap issuers could contribute to voluntarily.
- The AMF should be given the power to arbitrate in disputes between analysts and listed companies or between analysts and brokerage firms.
- Regulation of these issues should be coordinated at European level.

The working group's report was put out to public consultation until 30 September 2005. It elicited some fifteen responses, chiefly from industry groups representing issuers, analysts and investment services providers, but also from a credit rating agency, investment management companies and a listing sponsor.

A summary of these responses was posted on the AMF website on 20 December 2005⁴¹.

The AMF is due to draft and put forward a set of amendments to its General Regulation in first-half 2006 with a view to adopting some of the group's recommendations. In other cases, the stakeholders themselves will have either to be involved in the implementation process or to initiate it. In this case, the AMF will allow the internal industry dialogue to go forward before it will consider amending its regulations for implementation purposes or contemplate the regulatory adjustments needed to enforce the recommendation on split billing of execution and research. This approach is all the more necessary since intermediaries and investment managers operate on an international scale, and the framework put in place should not differ from the one used in the United Kingdom.

⁴⁰ AMF monthly review, issue 16, July-August 2005, pages 44 - 79.

⁴¹ AMF monthly review, issue 21, January 2006, pages 21 - 44.

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Furthermore, some market participants have offered to play a leading role in creating a pooled financing system for research and to set up a stakeholder working group that would establish the rules for allocating those funds. The group would determine the type of service to be provided and the procedures for monitoring and assessing it, and would provide for sanctions should the case arise. However a cost and feasibility study will need to be carried out before the project is taken any further.

4 Working Group on Investor Education

The AMF's capacity to carry out its investor protection duties depends increasingly on providing consumers with relevant information so that they can weigh up investment proposals. This method of regulation is all the more effective when investors understand the information they receive, so the level of investor education is a crucial parameter in financial market regulation. Moreover, consumers are faced with increasingly sophisticated products and are being urged with growing insistence to take personal responsibility for their own investment decisions.

For these reasons, a taskforce co-chaired by AMF Board Members Jean-Claude Mothié and Claire Favre started work at end-2004 to draw up recommendations for investor education. The group, composed of representatives of investors, producers, associations, organisations and government departments⁴², released its findings in May 2005⁴³.

The group noted that although the French are being encouraged to build up their long-term savings, they are insufficiently educated in financial matters to face up to their responsibilities with equanimity. Admittedly, there is an abundant supply of training and informational materials, but these are not suited to the extensive and often unvoiced needs of investors. Accordingly, the working group concluded that it was necessary to frame a comprehensive policy to foster economic and financial culture in France. The aim of the policy should be to provide everyone with the basic information needed to make informed investment decisions – a need that has since been confirmed by the Organisation for Economic Cooperation and Development⁴⁴.

The working group therefore recommended setting up an independent agency to address this task, which would consist in harnessing energies that are still unfocused. The strategic priorities would be:

- to prepare and organise large-scale public information campaigns, relying on the media and distribution networks;
- to promote, direct and integrate existing consumer training programmes;
- to act as a researcher and coordinator at international level, examining investor requirements and the impact of possible measures in order to target actions more effectively.

The agency in question would not itself provide training, except in special circumstances warranted by the lack of a specific response to a particular need. By contrast, the new policy represents a shift in the scale of financial education and should focus on the successive points

⁴² The working group was composed of some 20 representatives from the following organisations: Assemblée des Chambres Françaises de Commerce et d'Industrie (ACFCI), French Association of Investment Firms (AFEI), French Asset Management Association (AFG), Association pour la Promotion de l'Actionariat Individuel (APAI), Banque de France, Chambre de Commerce et d'Industrie de Paris (CCIP), financial sector consultative committee (CCSF), Comité des Investisseurs Particuliers, Euronext – L'École de la Bourse, Fédération des Associations Indépendantes de Défense des Épargnants pour la Retraite (FAIDER), Fédération Française des Associations d'Actionnaires Salariés et Anciens Salariés (FAS), French Banking Federation (FBF), Fédération Française des Clubs d'Investissement (FFCI), Fédération Française des Sociétés d'Assurance (FFSA), Cercle de Liaison des Informateurs Financiers Français (CLIFF), Institut National de la Consommation (INC), Jean Pierre Gaillard (journalist), finance ministry, education ministry, labour ministry, Paris Europlace, Société Française des Analystes financiers (SFAF).

⁴³ AMF monthly review, issue 14, May 2005, pages 22 - 48.

⁴⁴ The OECD Council adopted a recommendation in July 2005 on principles and good practices for financial education and awareness in member countries.

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via which investors transit, from school through to their workplace and then their bank, thus providing information in a format that will reach the constituencies concerned.

The institute would carry on its activities in compliance with the basic principles of objectivity, neutrality and fair competition between service providers. It would bring together all private and public stakeholders already active in informing and educating retail investors; and it would be financed by the members of the working group, hence by the public authorities.

In first quarter 2006, Philippe Herzog, a university professor, former Member of the European Parliament and an economic advisor to the prime minister of France, agreed to chair the institute. The board of directors will be composed of representatives of the commercial and financial sectors, academics, media representatives, associations of savers, shareholders and employee stock owners, and experts from the national education system.

5 Working Group on Improving the Exercise of Shareholder Voting Rights in France

The New Economic Regulations Act passed in 2001 eliminated the barriers preventing shareholders from exercising their voting rights at general meetings. Despite this, issuers, individual shareholders, investors and intermediaries are still experiencing cumbersome and expensive constraints, both legal and technical, in the voting process. Recently, these practical problems have become more acute as a result of two regulatory developments, one domestic, the other European:

- The AMF regulation requiring investment fund managers to account for their exercise of the voting rights attaching to the securities held by their funds was enforced for the first time in 2005;
- On 10 January 2006, after a series of public consultations on cross-border voting, the European Commission presented 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.

To crystallise its thinking, assess the financial aspects of the voting process and encourage shareholders to exercise their voting rights, the AMF Board decided to analyse this issue in depth, together with the industry. It therefore commissioned Board Member Yves Mansion to form a working group of experts in this field.

The group's report⁴⁵ was submitted to the AMF Board in September 2005 and then put out for public consultation from 15 September to 15 October 2005.

The working group drew on the active input and practical experience of all those involved in the voting process: issuers of various sizes and their industry groups, shareholder associations, custodian banks and paying agents, analysts, proxy providers, professional investors, institutional managers, and specialised intermediaries.

The group adopted a method that consisted in analysing each stage of the voting process, from the notice of meeting to the publication of the proceedings. It sought solutions for each of the barriers or inhibiting factors it identified, placing systematic emphasis on building a consensus among stakeholders on useful recommendations.

The report set out 24 recommendations based on four guidelines: accessibility of information, proper conduct of meetings, efficient vote processing, and investor responsibility.

⁴⁵ AMF monthly review, issue 17, September 2005, pages 11 - 66.

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- Make information more accessible:

- Before the general meeting, companies or custodians should post the relevant documents on their websites; the documents must be identical to those published simultaneously in the official gazette.
- Arguments and resolutions must be clearly explained, and each should be accompanied by an objective summary.
- To make meetings more accessible to non-resident shareholders, the use of English, in addition to French, should be encouraged (but not made mandatory);
- Voting results should be made available shortly after the meeting, with a breakdown of the votes on each resolution; and a meeting report should be made available within three months.
- Every shareholder should be able to receive confirmation, on request, that his or her vote has been taken into account.

- Ensure that the general meeting is properly conducted:

- To improve the functioning of general meetings, the working group recommends that abstentions should be identified separately from yes and no votes, the process of tabling written questions should be improved by introducing a pre-meeting submission deadline; and answers to written questions should be summarised and grouped by topic;
- To improve supervision of the meeting, the working group recommends that the meeting officers should make a series of verifications using procedures based on the guidelines of the French Association of Private Companies (AFEP); and that companies offering an electronic voting facility should agree on common standards

- Eliminate barriers to remote voting:

- The group recommends replacing the present requirement to block shares ahead of the general meeting with a system based on record dates. This is the most innovative recommendation in the report. The blocking system is seen as a hindrance to shareholder expression, even though the shares are not tied up permanently. The group thus recommended introducing a record date and setting it as close as possible to the meeting date in order to ensure that shareholders who are eligible to vote do not lose that eligibility on the day of the meeting. A recent reform that establishes transfer of ownership at the securities settlement date will make it possible to set the record date three days before the meeting,
- To encourage online voting ahead of general meetings, the group recommends that the legal conditions for electronic signatures should be relaxed and that the financial community should design the technical architecture.

- Oversee investor responsibility:

- The group identified the need for closer supervision of proxy solicitation. This could be achieved by setting up a procedure for reporting solicitations, supervising the information given to shareholders whose votes are solicited (notably about the objectives of the proxy) and demanding fuller disclosure about how the proxy will be implemented.
- The group recommends clarifying the status and activity of proxy voting providers.
- As regards stock lending, the working group believes that managers should take back loaned stock before the general meeting.

A summary of responses to the consultation, published on the AMF website on 16 December 2005 ⁴⁶, showed that all the recommendations were welcomed, although some stakeholders wanted to go well beyond the consensus position on certain issues that concerned them more directly.

Some of the working group's proposals are in the process of being implemented. They include easing the eligibility requirements for electronic signatures and introducing an optional nullity for votes cast at general meetings, replacing share blocking by a record date system, establishing a framework for proxy solicitation, and adopting methods to allow issuers and custodians to disseminate pre- and post-meeting information electronically.

⁴⁶ AMF monthly review, issue 21, January 2006, pages 15 - 20.

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The report's conclusions were presented to the European Commission in December 2005 in connection with the draft directive on shareholder voting.

6 Working Group on Depositories

Under the Financial and Monetary Code, depositories are responsible for safeguarding the assets of collective investment schemes (CISs) and ensuring that the decisions taken by investment managers are lawful. The law stipulates that the operating rules for depositories are to be defined in the AMF General Regulation.

Three other factors make that definition necessary:

- The investment techniques used by CISs are changing. This raises questions both about the scope of action of depositories, with regard to assets which they do not always keep in a custody account, and about their control operations.
- The AMF has observed considerable disparities in account keeping practices and in the way that depositories carry out their duties.
- The development of open architecture raises procedural questions about liability accounting for CISs, a function often performed by depositories.

For this reason, the AMF formed a working group composed of the main industry associations, depositories and asset managers, instructing it to present the Board with proposals for a draft regulatory framework that took these factors into consideration. These proposals will be put out to public consultation during 2006.

7 Working Group on Internal Control Standards

The AMF has set up a working group with a remit to choose and adapt a set of internal control standards that will allow French companies to fulfil their legal obligations. This decision was first announced in January 2005, when the AMF presented its first report⁴⁷ on the information disclosed by issuers about the preparation and organisation of the work of the board of directors or the supervisory board and about internal control procedures. Co-chaired by Jean Cédelle and Guillaume Gasztowtt, the group is composed of some twenty members, including organisations representing companies (AFEP, MEDEF, IFACI, ANSA, AMRAE, Middenext) and accounting institutions (CNCC, CSOEC, etc.), as well as experts.

The working group's task is to bring issuers, the regulator and auditors to a common position on this matter and to publish standards that can be used as a management tool by securities issuers. This will also help to standardise company chairmen's reports on internal control, making them easier for investors to read.

The activities of the working group are part of an approach that is consistent with EU directives and also with the COSO framework⁴⁸, especially as regards the content of internal control, even though the terminology is not absolutely identical.

The group met for the first time in May 2005 and continues to meet either monthly or every two months.

⁴⁷ AMF monthly review, issue 10 de January 2005, pages 43 - 78.

⁴⁸ *Internal Control – Integrated Framework*, published in the USA in 1992 by the Committee of Sponsoring Organizations of the Treadway Commission (COSO)

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8 Working Group on Forecasts

In collaboration with the national institute of statutory auditors, AFEP and the employers' federation (MEDEF), the AMF set up a working group to address difficulties in interpreting the definition of 'forecasts' and 'trend information' given in European Commission Regulation 809/2004/EC of 29 April 2004, implementing the Prospectus Directive, which took effect on 1 July 2005 and regulates prospectus disclosures.

For the first time, forward-looking information has been given a regulatory definition as a 'profit forecast', described ⁴⁹ as "a form of words which expressly states or by implication indicates a figure or a minimum or maximum figure for the likely level of profits or losses for the current financial period and/or financial periods subsequent to that period, or contains data from which a calculation of such a figure for future profits or losses may be made, even if no particular figure is mentioned and the word 'profit' is not used".

The only definition of 'forecast' that existed before the Regulation was given in a report issued in 2000 by the working group on profit warnings, chaired by Jean-François Lepetit⁵⁰. Thus the European regulation has ushered in a new way of thinking. The scope of this new approach needs to be assessed, bearing in mind that a 'forecast' differs from a 'trend' and is accompanied by a statement from the statutory auditors.

The working group prepared a set of guidelines to help issuers get to grips with the new definition of forecasts and to overcome interpretational problems.

9 The AMF's Contribution to the Jacques Delmas-Marsalet Taskforce On Financial Product Marketing

The French finance minister on 6 April 2005 gave Jacques Delmas-Marsalet, an AMF Board Member and former chairman of the insurance oversight commission, a mission to "prevent the risk of mis-selling [of financial products] and move towards harmonised and consistent organisation of [product] marketing". The aim was to understand the perspective of retail investors, enabling them to make informed choices and hence allocate their savings more efficiently.

Jacques Delmas-Marsalet submitted his report to the minister on 21 November 2005. It contained six recommendations aimed at improving the relevancy of the information given to investors and providing them with impartial, needs-focused advice. Those recommendations were:

- improve product information;
- target product marketing more effectively within retail networks;
- provide suitable advice;
- safeguard the objectivity and impartiality of advice;
- promote greater responsibility;
- improve after-sales service.

These six recommendations are subdivided into 25 more precise proposals. For implementation purposes, aside from a small number of legal and regulatory measures, the report recommends that the proposals should be written into conduct of business rules that would be drawn up by industry groups and submitted on their own initiative to the authorities for approval.

⁴⁹ Art 2(10) of European Regulation 809/2004

⁵⁰ Available online at www.amf-france.org

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To carry out his task, Jacques Delmas-Marsalet relied on the findings of a working group comprising the directorate of the Treasury and economic policy, the consultative committee for the financial sector and three other independent authorities responsible for regulating and controlling the financial industry (the AMF and the insurance and banking regulators). He also consulted with financial institutions, industry groups, consumer associations and experts. The AMF provided the secretariat for the mission, and its staff provided input for the eleven meetings of the working group, held between April and September 2005.

C The Scientific Advisory Board

The AMF's Scientific Advisory Board met three times in 2005, in accordance with the schedule set when it was founded⁵¹.

The first meeting, held in March, concentrated on analysing long-term movements in financial asset prices. Specifically, the board was presented with research into the influence of demographic factors on stock prices (a study by Patrick Artus of IXIS CIB) and the correlation between share prices and interest rates (Michel Aglietta from CEPII⁵² and Laurent Berrebi from Groupama Asset Management). Two of the key conclusions of this research are that demographic factors play a significant role in investment behaviour and are therefore likely to affect asset prices, and that the nature of the long-run correlation between share and bond prices depends on the degree of inflationary pressure in the economies concerned.

At its summer session, the board turned its attention to two topics: the importance of anonymity in stock market trading (Thierry Foucault, HEC) and the role of institutional investors in corporate governance (Dominique Plihon, Paris-XIII University). The research presented for the first topic suggested that transaction costs declined when Euronext passed its anonymity rule in April 2001. On the second point, discussions focused on the emergence in continental Europe of a governance model based on the one prevailing in English speaking countries – often referred to as the "shareholder value model" – and its attendant consequences for corporate management.

The last session of the year looked at long-term savings. Michel Boutillier and Valérie Oheix of Nanterre University presented a paper highlighting the composition of household savings in Europe and the USA, and the way that financial intermediaries use those funds. The analysis showed that continental European households are heavily underinvested in equities compared with their British and American counterparts. A team from EDHEC (Noël Amenc, Daniel Haguet, Jean François Lepetit and Lionel Martellini) presented its research into the special demands of managing pension savings scheme. It stressed that portfolio allocations into equities or bonds were influenced by the scheme's very long investment horizon.

Members of the Scientific Advisory Board

Michel Aglietta (Paris-X Nanterre University), Michel Albouy (University of Grenoble PMF – ESA), Noël Amenc (EDHEC), Patrick Artus (IXIS-CIB), Christian de Boissieu (Paris-I University), François Champarnaud (Agence des Participations de l'État); Patricia Charlety (professor, ESSEC); Jean-Michel Charpin (INSEE); Olivier Davanne (partner, DPA Conseil); Thierry Foucault (HEC), Olivier Garnier (Société Générale Asset Management), Édith Ginglinger (Paris-Dauphine University), Christian Gourieroux (Paris-IX University, ENSAE), Ruben Lee (Oxford Finance Group), Jean François Lepetit (director, BNP Paribas), François-Serge Lhabitant (Union Bancaire Privée), Albert Menkveld (Vrije Universiteit Amsterdam), André Orléan (CNRS), Olivier Pastré (Paris-VIII University, GP Banque), Benn Steil (Council on Foreign Relations), Marc-Olivier Strauss-Kahn (Banque de France), Xavier Vives (INSEAD).

⁵¹ AMF Annual Report 2004

⁵² Centre d'Études Prospectives et d'Informations Internationales.

3 Educational and Consumer Information Activities

A Educational Activities

The AMF protects investors' interests through its educational role, and it also plays an active part in informing the market about regulatory developments. For this purpose, it provides professional and retail investors and the industry with a range of tools, such as a website, educational publications (factsheets, guidebooks, FAQs) and a monthly review. New publications in 2005 included information sheets about direct marketing and save-as-you-earn schemes, and a quarterly newsletter⁵³ containing key economic and financial data, together with research and in-depth analyses of financial markets.

Faced with a busy transposition schedule for EU directives in 2005, the AMF stepped up its information campaigns for professionals, organising a range of educational activities on transposition-related issues. These included:

- briefings on the transposition of the Prospectus Directive;
- a six-monthly guide to EU directives, entitled *French Regulation in Europe's Future Financial Landscape*⁵⁴. With the European market in financial services taking shape, the AMF saw the need for a single document reviewing forthcoming regulatory developments arising from legislative transposition. The guide provides a summary table of new and future European legislation, a provisional timetable for transposition into French law, digests of the main financial directives adopted or being implemented, and a round-up of new European Commission initiatives. The guide also includes separate pull-out sections reviewing the directives currently being transposed into French law, as well as new measures under discussion, that affect four specific constituencies: listed companies, investment services providers, investment management companies, and financial investment advisers/direct marketers.
- a quarterly newsletter dealing with financial regulation.

The AMF also organises annual events that provide an opportunity to meet with industry professionals:

- a conference cycle, *Les Entretiens de l'AMF*⁵⁵, which in 2005 addressed the issues of control, transparency and governance;
- a one-day briefing session for investment services supervisors;
- conferences to explain regulatory developments and innovations to the press and the industry.

The AMF also operates a hotline⁵⁶, a documentation centre and the Ombudsman Service to answer questions and inquiries from retail investors and professionals.

AMF representatives also attend a wide variety of public events, such as forums, investment fairs and conferences, both in France and abroad⁵⁷.

⁵³ To subscribe to the Economic and Financial Newsletter, visit the AMF website at www.amf-france.org and click To Subscribe on the homepage

⁵⁴ Downloadable for consultation from the AMF website at www.amf-france.org.

⁵⁵ All the literature published for this event is available on the AMF website at www.amf-france.org

⁵⁶ Hotline +33 1 5345 6200, open from 9.30 am to 12.30 pm and from 2.30 to 4.30 pm from Monday to Thursday

⁵⁷ 126 in 2005.

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Furthermore, the AMF runs a decentralised nationwide network through the Banque de France's system of branches, where people can go for information and literature about the Authority and its missions.

B Regulatory Alerts

Another facet of investor protection is the warnings and alerts issued by the AMF and its fellow regulators when they identify financial products and services that infringe prevailing laws and regulations.

1 AMF Alerts

In general, the AMF reminds investors residing in France of the need to use utmost caution whenever an unknown company offers them financial products or services, either through a website or by unsolicited mail, whether electronic or postal.

Consumers who may be tempted by a financial product or investment that is not authorised for marketing in France should remember that they are not protected by law and have only limited means of redress.

The AMF also reminds consumers that, before taking a decision to invest in a product, they should check whether it and the company offering it have been duly authorised. They can do this by querying the collective investment scheme database, Geco, on the AMF website.

Consumers who are approached by an investment services provider other than an investment manager (e.g. investment firms, credit institutions), can check whether it has been authorised by the CECEI.

The AMF warns investors about the most common scams and swindles by publishing a broad description on its website⁵⁸. For example:

- the Nigerian advance fee scheme
- "Congratulations, you've won the jackpot!"
- "An interesting career perspective"
- phishing⁵⁹
- high-yield investment programmes
- e-mail investment tips about US companies

The site tells investors how the schemes work and how to protect themselves.

The AMF also issues press releases to warn consumers about unauthorised products or services or direct marketing by unauthorised persons. Between 2004 and 2005, further to complaints lodged with the Ombudsman Service or incidents detected by the market surveillance division, the AMF investigated 11 offers of illegal products and services. In each case, it issued a press release and alerted the legal authorities.

⁵⁸ : Investor Area => Warnings!

⁵⁹ Phishing: identity theft. The word is formed from "fishing" and "phreaking" (hacking into phone networks).

2 Alerts from European Regulators

When cooperating with the Committee of European Securities Regulators (CESR) for the purposes of market surveillance, the AMF regularly receives warnings from its fellow regulators about persons or entities offering investment services without the necessary authorisations or offering products that have not received regulatory approval. The AMF passes on these messages by publishing alerts from CESR members on its website.

In 2005, the AMF published 63 such press releases⁶⁰.

C The Website

The AMF has posted a range of documents and information for consumers on its website:

- guides explaining how financial markets work, describing different products and setting out the golden rules for managing investments wisely (Home > Publications);
- a database containing all disclosure documents distributed under AMF supervision by listed companies (Home > Decisions & disclosures);
- a list of AMF-approved collective investment schemes, together with their prospectuses and net asset values (Home > Collective investment schemes).

The AMF website performs two main functions:

- it makes information more accessible to Internet users and especially to retail investors,
- it makes browsing more pleasant and intuitive.

Access by user profile

The homepage gives investors direct, easy access to the information they need, from handy tips and warnings to special guides and information about mediation services. Users can also visit the investor area, which contains a wealth of useful information.

The homepage also offers access to separate areas with information for a range of market professionals, including issuers, service providers, investment services supervisors and compliance officers.

Sections of the website

The core sections are always online and can be accessed from anywhere on the main site. They include Who We Are, Ombudsman, Texts, News Releases, Publications, Decisions & Disclosures, Collective Investment Schemes, Sanctions, and International.

The Investment Services Providers section contains descriptions of the main categories of provider – investment services providers, custody account-keepers, participants in payment and securities settlement systems – and offers access to the lists of approved asset management companies, other approved investment services providers and participants in settlement systems.

The other sections available from the homepage are:

"Consultations", which publishes details of public consultations organised by the AMF (sorted by subject) together with summaries of responses

⁶⁰ Investor Area => Warnings!

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"FIAs and Direct Marketers", which provides a description of these new categories and also offers access to the registry of cold callers and the list of AMF-approved FIAs and associations

Mailing lists:

Users can sign up for mailing lists that will keep them informed of the latest news on the site.

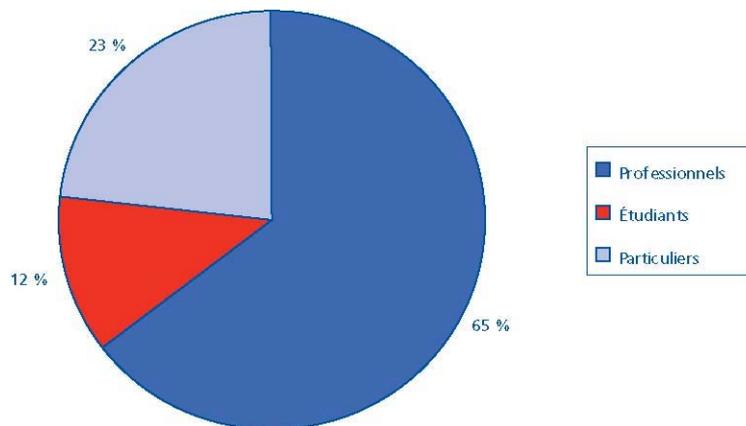
The website is also available in English.

D Public Documentation and Information Centre

Professionals, retail investors, students and anyone wishing to do research into the AMF's areas of activity or into companies listed on French regulated markets can use the public documentation and information centre.

Graph 5

Requests for information, by source



Source: AMF
**** légende ***

Professionnels	Industry
Étudiants	Students
Particuliers	Individuals

1 Remit of the Documentation Centre

Aside from serving the AMF itself, the documentation centre deals with requests for information received by phone, email or letter. People can also make an appointment to visit the centre to look for information that is not available on the AMF website, such as old regulations, COB and CMF archives, and prospectuses approved by the COB before 1999 and not posted online.

Where necessary, the documentation centre refers people to the AMF's operational divisions and to the legal affairs and mediation help desks.

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2 Services

The documentation centre helps the public to find information about investment regulation and financial markets. It also provides web addresses and contact details for a wide variety of organisations. If necessary, the centre refers callers to other specialised documentation centres. And it provides details of articles and other publications on financial topics to help students and professionals in their research or business activities. Copies of information memorandums, opinions, net asset values, stock prices and educational publications can also be sent on request by email, fax or post to persons without internet access.

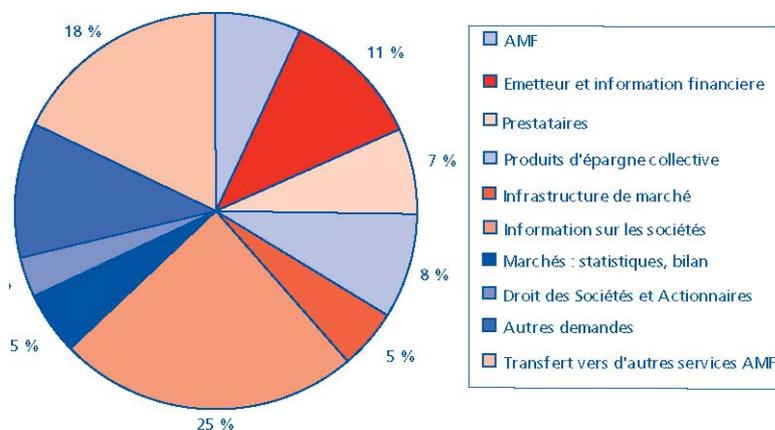
Internet users who find it difficult to find information can turn to the centre, which provides a guide to using the AMF website.

In 2005, the documentation centre answered 4,423 telephone queries, 16% more than in 2004. It dealt with 1,655 emails and 20 letters, more or less the same number as in 2004. These telephone and email services allow inquirers to contact the documentation centre at any time, regardless of where they are located.

Most of the visitors to the centre came to read prospectuses and information memorandums that were approved between 1968 and 1999 and are not available in full on the AMF website. These documents are stored either on microfiche or in electronic format.

Graph 6

Request for information in 2005, by subject area



Source AMF

*** légende ***

AMF

Issuers and disclosures

Investment services providers

Collective investment schemes

Market infrastructures

Company information

Markets (statistics, results)

Legislation on businesses and shareholders

Other

Referrals to other AMF departments

Working alongside the Ombudsman Service and the documentation centre, the legal affairs division answers questions from market professionals, chiefly by email. It also operates a telephone helpline, which dealt with 1,324 calls from professionals in 2005.

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E Cooperation with the Banque de France

1 Oversight of Investment Services Providers

The AMF and the Banque de France work closely together, notably through cross-representation. A representative of the governor of the Banque de France sits on the AMF Board. Likewise, the AMF Chairman is a member of the committee on investment firms and credit institutions (Comité des Entreprises d'Investissement et des Établissements de Crédit, CECEI). AMF divisions have a long-standing history of cooperation with their Banque de France counterparts in the areas of banking disclosure, and have traditionally worked closely with the staff of the Commission Bancaire. The two institutions share reports, exchange views and provide each other with specialised personnel on secondment. Exchanges of information are governed by statutory provisions on shared secrecy.

In connection with the reform of the direct marketing system, the AMF, the insurance industry supervisor and the CECEI have organised a centralised file of direct marketers,⁶¹ which is managed by the Banque de France.

2 Regional Representation of the AMF

Regional cooperation is equally important. Under a new agreement signed in 2005 (and prior to that, with the COB in 1999), the regional directors of the Banque de France are also the regional representatives of the AMF.

Regional Banque de France directors can take part in AMF missions on their home territory, within the limits of the activities that the Authority is entitled to delegate to them. These include:

Financial reporting. Regional delegates are the AMF correspondents for all matters relating to periodic and ongoing disclosures made by companies operating within their bailiwick. They inform the AMF if any of these companies runs into difficulties. And they are consulted systematically when a new company in their region plans to go public;

Supervision of direct marketing of financial instruments, financial investment advice, and the marketing of investment services;

Market surveillance;

Questions and complaints from retail investors, which are forwarded as-is to the Ombudsman Service. If the query does not come within the AMF's jurisdiction, the regional delegate refers the investor to the appropriate agency or government department.

Several Banque de France regional offices also operate public documentation centres, supplying members of the public with reference material, including AMF publications and, in many cases, information on listed companies.

Documentation centres operated by Banque de France delegations

AMIENS	03 22 82 28 00
CAEN	02 31 38 33 00
CHÂLON-SUR-MARNE	03 26 66 71 00
DIJON	03 80 40 41 41
LILLE	03 20 40 47 47
LIMOGES	05 55 11 53 00

⁶¹ <http://www.demarcheurs-financiers.fr>

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LYON	04 72 41 25 25
MARSEILLE	04 91 04 10 10
METZ	03 87 39 94 00
NANTES	02 40 12 53 53
ORLÉANS	02 38 77 78 78
RENNES	02 99 25 12 12
TOULOUSE	05 61 61 35 35

Furthermore, the AMF's chairman can ask the regional delegate to represent him at regional events relating to financial markets.

Annual meetings are organised with regional delegates in order to review the events of the past year and inform them about major regulatory developments. The main items on the agenda of the 2005 meeting were the new definition of offers of securities to the public, the supervision of financial investment advisers, and the rules on financial product marketing.