Chapter 4

Investment Service Providers, Investment Products and Market Infrastructures

The AMF authorises, regulates and supervises investment management companies. It also participates in the regulation and supervision of other investment service providers and market infrastructures, including market undertakings, clearing houses and central depositaries. Indirectly, it also regulates and supervises financial investment advisers. The AMF authorises and monitors collective investment schemes and other collective investment products, in particular by verifying the quality of the information they disseminate.

The constant challenge facing the AMF is to balance investor protection with the growth of the financial services industry. The AMF General Regulation has been amended several times to address the concerns of the financial community and to improve the competitiveness of France's investment management market. Each amendment to the regulations has been preceded by consultations with industry associations, before being submitted for review by the consultative commissions and adoption by the AMF Board.

The consultation process has made it possible to reach a broad consensus among regulators and industry professionals, in accordance with the Better Regulation approach launched by the AMF.

Regulatory activity was intense in 2006, with:

- Further implementation of the projects launched under the terms of the Financial Security Act[1] and the instruction issued for the implementation of COB Regulation 96-02 on asset management companies and investment service providers authorised to engage in the business of asset management.
- Finalisation of the work on real-estate collective investment schemes;
- Further work on the depositary function;
- Establishing the functions of compliance and internal control officers for asset management companies;
- Improving the procedures for calculating collective investment schemes' commitments to derivatives;
- The net asset valuation periods for collective investment schemes operating under streamlined investment rules;
- The option of offering categories of units hedged against currency risk;
- Simplification of the notification procedure for authorisation to market UCITS in France;
- Establishing official rules for financial investment advisers.

The AMF also published Frequently-Asked Questions lists or articles on specific topics in its monthly review to express positions that it has adopted.

This ongoing improvement of the regulatory framework fostered dynamic growth of France's asset management industry in 2006, as can be seen in the following developments:

- Gross assets under management by general-purpose collective investment schemes stood at EUR 1,242 billion at 31 December 2006, as opposed to EUR 1,066 billion at 31 December 2005. This represents an increase of 16.5%. The number of collective investment schemes increased from 7,073 at the end of 2005 to 7,320 at the end of 2006;

- The number of new collective investment schemes rose from 1,074 in 2005 to 1,247 in 2006;
- The total number of investment management companies increased from 484 to 500. The number of new companies created increased slightly from 37 in 2005 to 42 in 2006.

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[1] *Act 2003-706 of 1 August 2003.*

Table 1
Collective investment management activity in 2006

	DECISIONS	2002	2003	2004	2005	2006
Asset management companies	Authorisations granted to investment management companies	36*	33*	68	37	42
	Use of European passport to conduct business in another state of the European Economic Area					
	Freedom of establishment			1	4	6
	Freedom to provide services			47	23	70
	Use of European passports					
	Freedom of establishment			0	0	1
	Freedom to provide services			15	11	10
	Collective investment schemes authorised (total)	1 204	1 033	937	1 074	1 247
	O/w Open-end investment companies (SICAVS)	27	28	13	19	27
	O/w General-purpose unincorporated investment funds (FCPs)	826	697	689	797	933
	Venture capital funds (FCPRS)	37	34	51	41	46
	Employee investment schemes (FCPES)	312	272	174	214	240
	Futures and options funds (FCIMTS)	2	2	10	3	1
	Collective investment schemes declared via the simplified procedure	189	177	149	0	0
	Contractual collective investment schemes	0	0	0	26	129
	Authorisations granted for transformation of collective investment schemes	2 586	3 792	6 745	7 700	6 701
	Authorisations granted to UCITS**	461	402	254	341	777
	Approvals issued for debt securitisation funds (FCCs) and subfunds	7	6	6	6	4
	Approvals issued for real estate investment partnerships	10	45	31	37	23
Other	Entities opened to public	1	2	8	6	9
	Capital increases	0	0	10	11	11
	Change in price, updated prospectuses	9	43	13	20	4
	Approvals issued for film production finance vehicles (SOFICA)	6	10	18	29	13
	O/w Newly established	4	10	11	12	10
	O/w Capital increases	2	0	7	17***	3
	Approvals issued for fishing industry finance vehicles (Sofipêche)	4	4	8	2	0
	O/w Newly established	4	4	8	2	0
	O/w Capital increases	0	0	0	0	0

Source: AMF
* The number of investment management companies also includes collective investment scheme management companies, which were eliminated in 2004.
** Or subfunds.
*** Of which 14 additional approvals.

1> Highlights

A > Investment service providers and investment management companies

1 > Authorisation procedures for investment management companies and approval of their activity programmes

Instruction 2006-02 of 24 January 2006 on authorisation procedures and approval of the activity programmes of asset management companies and of investment service providers offering asset management as an auxiliary line of business replaced the COB instruction of 17 December 1996, updating the content and objectives as required. The new instruction:

- Simplifies the investment management companies' procedures for filings with the AMF:

  - By standardising filings,
  - By specifying the scope and nature of the information to be provided;

- Brings the instruction into line with the AMF General Regulation and introduces various policy elements.

2 > Changes in compliance and internal control regulations

Amendments to Articles 321-5 to 321-23-9 and 322-12 to 322-22-20[2] of the AMF General Regulation harmonised the provisions derived from the old COB and CMF Regulations on compliance and internal control applying to various categories of investment service providers. These amendments were also intended to bring the provisions of the AMF General Regulation into line with those of the Banking and Financial Regulations Committee Regulation 97-02, as amended.

The provisions eliminate the distinction between internal control officers and compliance officers. They also introduce two discrete notions:

- The function of head of investment services compliance for investment service providers other than asset management companies;

- The function of head of compliance and internal control for asset management companies.

The latter combines the compliance tasks of the former with periodic and ongoing internal control.

The provisions are based on the following principles:

- Heads of investment services compliance and heads of compliance and internal control must hold professional licences issued by the AMF, following an examination conducted by a panel made up of two industry professionals and a member of the AMF's staff;

- In the case of asset management companies, if the size of the company warrants having two persons (one in charge of periodic control and ongoing control, other than compliance, and one in charge of compliance) the professional licence must be issued to the person in charge of periodic control;

- Small investment service providers, including asset management companies, that cannot afford to pay a person solely for compliance or internal control, must appoint senior manager to be responsible for investment services compliance, or for compliance and internal control. This person may delegate internal control tasks to in-house staff or outsource them. As appropriate, the AMF may require a senior manager to delegate some or all of the internal control tasks to an external provider, if it deems that the manager in question is materially unable to perform them or incurs the risk of a conflict of interest.

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[2] *Order of 9 March 2006 by the Minister of the Economy, Finance and Industry approving amendments to the AMF General Regulation.*

If an external provider is used, the provider must present its staff member concerned for the professional licence examination at the AMF's request, even if the person concerned is not deemed to need a professional licence. The AMF will base its decision to validate the outsourcing contract on the examination panel's opinion.

3 > Depositaries

Under the Financial Security Act of 1 August 2003, the AMF has the power to set "the requirements for engaging in the business of depositary for collective investment schemes". A review of the collective investment scheme depositary function[3] highlighted the growing disparity between a rapidly changing business environment and the laws and regulations that govern it.

In 2006, the AMF staff continued its work in consultation with a working group made up primarily of representatives from the main industry associations, depositary institutions and investment management companies. Their discussions focused on the development of a suitable and operational regulatory framework.

This work resulted in a draft General Regulation that was submitted for public consultation between July and September 2006.

The main innovations consisted firstly in providing that positions in assets not held in a custody account should be registered in a separate position-keeping book and secondly in organising relations between the depositary and the other participants involved in the day-to-day management of collective investment schemes by establishing a procedure for dealing with new customers and monitoring collective investment schemes so that the depositary can play its supervisory role.

On 6 March 2007, the AMF Board adopted the final version of the General Regulation, as approved by the Minister of the Economy, Finance and Industry and published in the Official Journal of the French Republic dated 15 May 2007.

4 > Institutions for occupational retirement provision

Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement provision has been transposed into French law by Order 2006-344 of 23 March 2006 on supplementary occupational retirement provision.

The stated objective of the directive is to create an internal market for occupational retirement provision. The main participants in this market are occupational retirement institutions[4], which are entitled to provide companies with supplementary retirement provision on a funded basis and to do business across borders within the European Union.

The Order of 23 March 2006 introduced an appropriate legal entity into French law so that asset management companies specialising in employee savings schemes can offer their retirement provision services in other countries of the European Union using the European passport created by the directive. This entity is the Institution for Collective Occupational Retirement Provision (IRPROCO)[5].

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[3] *AMF monthly review, No 11, February 2005.*

[4] *Article 6 of Directive 2003/41/EC of 3 June 2003 defines an institution for occupational retirement provision as "an institution, irrespective of its legal form, operating on a funded basis, established separately from any sponsoring undertaking or trade for the purpose of providing retirement benefits in the context of an occupational activity on the basis of an agreement or a contract agreed […] and which carries out activities directly arising therefrom."*

[5] *IRPROCO is defined in Article 8 of Order 2006-344 of 23 March 2006.*

It is administered by a private legal entity other than a non-profit association. This legal entity can only offer group retirement plans (PERCO) and is restricted to custody of financial instruments held in the name of employees that contribute to such schemes. Financial management is delegated to an asset management company, an insurance company or a foreign European Union pension fund[6]. This provision enables investment management companies specialising in employee investment schemes to offer their know-how to other firms located in other Member States of the European Union.

5 > Prime brokers

Some alternative investment strategies rely on a prime broker, which enables collective investment schemes to implement their strategies and secure financing, notably by borrowing securities and cash against their assets. The collateral may take the form of a lien on the assets or transfer of full ownership to the prime broker.

The offer of prime brokerage services to French investment management companies has fostered the development of on-shore hedge funds.

Prime brokers provide such collective investment schemes – primarily leveraged schemes with stream lined investment rules and contractual funds – with an all-inclusive service combining credit (financing for leveraged strategies), brokerage and custody. The prime broker's loans and the schemes' positions in derivatives are collateralised by the schemes' assets. The collateral is usually set up using streamlined formalities under the terms of Article L. 431-7-3 of the Monetary and Financial Code, which stems from Order 2005-171 of 24 February 2005, which In turn transposed the Collateral Directive[7] into French law.

As part of the authorisation process for a collective investment scheme using a prime broker, the AMF staff conducts a special examination of the contractual and operational relationships between the investment management company, the prime broker and the depositary.
The prime broker's activities must not impede the depositary in its supervision of the lawfulness of the investment management company's decisions or in the fulfilment of its legal obligations with regard to custody of the assets.

Furthermore, the AMF pays special attention to how collective investment schemes transfer full ownership of financial instruments as collateral or how they pledge such assets as collateral.
At the end of 2006, the AMF had examined the services offered by six pairings of prime brokers and depositaries before authorisation applications for collective investment schemes were filed. Seven collective investment schemes set up under French law were using the services of a prime broker/depositary pairing at the end of 2006.

B > Investment products

1 > Net asset valuation periods for collective investment schemes with streamlined investment rules

The AMF amended Articles 413-8 and 413-19 of its General Regulation[8] to resolve problems with the valuation of collective investment schemes that invest in illiquid underlying assets, such as funds of hedge funds, while improving investor information at the same time.

The amendments were made to remedy the problems encountered in applying the following three principles in combination:

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[6] Article 8 III 4th paragraph of the Order of 23 March 2006: "Financial management of the sums paid in by the beneficiaries, if the legal entity does business as an institution for occupational retirement provision in another Member State or in another State party to the Agreement on the European Economic Area, must be provided by an institution for occupational retirement provision authorised in a Member State or in a State party to the Agreement on the European Economic Area, by an insurance organisation authorised in a Member State or in a State party to the Agreement on the European Economic Area, or by one or more investment firms that provide the service mentioned in Article L. 321-1 of the Monetary and Financial Code as their main business."

[7] Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements.

[8] Order of 10 May 2006 by the Minister of the Economy, Finance and Industry approving amendments to the AMF General Regulation, published in the French Official Journal on 17 May 2006

1° Managing the liquidity schedule of a French collective investment scheme is an integral part of financial management. The investment management company is responsible for setting subscription and redemption procedures, scheduling net asset valuations and defining notice periods that are consistent with the overall liquidity of the collective investment scheme and with the type of investors targeted by the scheme;

2° In the case of collective investment schemes with streamlined investment rules, a maximum period of 60 days has been stipulated between the date on which orders are centralised and the date on which the depositary delivers units or shares to subscribers or pays for redeemed units or shares. This time limit is defined by the AMF General Regulation and applies only to such funds. The 60 days include the notice period for subscription or redemption orders, meaning the time between the deadline for transmitting subscription and redemption orders for execution and the date of the net asset valuation at which the order is executed, the time needed to calculate the net asset value at which the order is executed, and the payment or delivery time.
This means that:

- The order centralisation date is the date and time at which the transfer agent for the collective investment scheme registers the order to purchase or redeem units or shares;
- The net asset valuation date is the date of the net asset value at which the subscription or redemption order is executed;

- The net asset valuation date for collective investment schemes with streamlined investment rules is the date on which the scheme produces the result of its net asset valuation. This date must be the same as the publication date of the net asset valuation for collective investment schemes with streamlined investment rules;

- The payment date is the date on which depositary, acting on behalf of the scheme, gives the order to pay investors who have applied for their units or shares to be redeemed.

3° The prospectus of the collective investment scheme with streamlined investment rules must provide investors with clear and comprehensive information about the schedule of notice periods, valuation dates and delivery and payment dates.

The description of the subscription and redemption procedures in the simplified prospectus, the detailed memorandum and any marketing presentations for collective investment schemes with streamlined investment rules must not mislead investors about the time required for redemptions.

2 > Categories of units hedged against currency risk

The AMF amended Article 411-11 of its General Regulation[9] to allow investment management companies to offer categories of units that are hedged against currency risk, if they so desire.

The Financial Security Act of August 2003 introduced the possibility for French collective investment schemes to create different categories of units.

In 2006, a working group that included industry professionals proposed an amendment to the General Regulation to allow collective investment schemes to create categories of units denominated in different currencies and to hedge the specific currency risk of each category. This amendment helped to eliminate the competitive disadvantage of French collective investment schemes compared to foreign investment funds, since it is now possible to establish systematic currency hedges for each category of unit in several other European countries.

The amendment was implemented in compliance with the principles of clarity of information in scheme prospectuses and equal treatment of investors. Consequently, hedging must be systematic to avoid widely differing descriptions of management objectives, strategies and risk profiles for each category of units in a single prospectus. Furthermore, the financial instruments used must reduce the impact of hedging transactions on the other categories of units in the collective investment scheme to the mini-

[9] *Order of 3 November 2006 by the Minister of the Economy, Finance and Industry approving amendments to the AMF General Regulation.*

mum. For this purpose, the AMF deems that if the instruments used are currency derivatives or any other instrument with similar properties, the presumption shall be that the principle of equal treatment is applied.

The AMF also stipulates that investment management companies are responsible for precisely identifying all of the transactions that should have an impact on a single category of units only. Finally, to prevent any confusion in the orders given, the AMF wants each hedging transaction to concern a single, clearly identified, category of units only.

3 > A new investment ratio for innovation funds

Research Expenditure Act 2006-450 of 18 April 2006 included a "start-up" ratio for innovation funds, requiring funds authorised by the AMF after 31 May 2006 to invest at least 6% of their net assets in companies with share capital of between EUR 100,000 and EUR 2 million.

4 > Procedures for calculating collective investment schemes' commitments in derivatives markets

Working in consultation with industry professionals, the AMF reviewed the regulations on calculating the derivatives commitment of collective investment schemes. It was prompted to do so by the amendments to the definition of collective investment schemes' commitments in Decree 89-623[10] following the transposition of the amended UCITS Directive, by the publication of a European Commission recommendation on the use of derivatives by collective investment schemes, and by the surge in financial innovation.

The new provisions entered into force on 1 January 2007 and are set out in Articles 411-44-1 to 411-44-6 of the AMF General Regulation[11] and Instruction 2006-04.

The aim is to foster financial innovation while eliminating the main shortcomings of the old method[12] and building on the risk measurement systems already in use by many investment management companies. The new system is based on two alternative methods:
- The linear approximation method, a legacy from the old method;
- The probabilistic method, based on Value at Risk (VaR)[13].

Under the terms of these provisions, investment management companies must be able firstly to determine if a scheme's risk profile allows it to use the linear approximation method or whether it has to use the probabilistic method, and secondly to ascertain whether the scheme has adequate resources to use the probabilistic method[14].

If the probabilistic method is used, the investment management company must ensure that the type of VaR used is suited to the strategy implemented by the collective investment scheme. If the VaR is not representative of the scheme's default risk, the investment management company must implement additional measures, such as stress testing.

The decision to use the VaR approach, the definition of the reference portfolio and the commitment calculation must be formalised, traceable and auditable. No authorisation is required for changing methods, unless the investment management company is applying for derogation from the absolute VaR threshold.

The commitment approach mitigates only the additional risk stemming from the use of derivatives and temporary acquisitions and sales of securities, not the overall risk profile of the collective investment

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[10] Now codified in the regulatory section of the Monetary and Financial Code in Article R. 214-12 and the following articles.

[11] Order of 9 March 2006 by the Minister of the Economy, Finance and Industry approving amendments to the AMF General Regulation, published in the French Official Journal on 21 March 2006.

[12] The historical method for calculating commitment is based on a linear model of positions, which translates exposure to derivatives into equivalent exposure to the underlyings. See Title 6 of the COB instruction of 15 December 1998 on procedures for monitoring trading by collective investment schemes on derivatives markets.

[13] The VaR of a collective investment scheme is the maximum loss that the scheme could incur over a given period and subject to a given probability, called a confidence level. The convention is that the value at risk is positive.

[14] See Article 17 of instruction 2006-04.

scheme. Therefore, it does not take the place of the investment management company's internal risk control system, which should be suited to the management strategies implemented. Furthermore, the investment management company is solely responsible for the description of the collective investment scheme's risk profile.

5 > The switch to a free-form prospectus is upheld

In 2005, the AMF amended Instruction 2005-02 to enable some simple collective investment schemes marketed to the general public to compile a simplified prospectus that did not follow the outline stipulated in the instruction. Such documents are called "free form" simplified prospectuses. The intention was to make the simplified prospectus easier to read and to improve investors' understanding of the financial product being offered and the associated risks.

This option of submitting a free-form simplified prospectus for the AMF's approval (or a modified version of a previously approved simplified prospectus) was originally available until 30 June 2006. The AMF Board decided to keep this option open beyond 30 June 2006, since it helps to make financial information easier to read and understand. This is one of the key focuses of the work undertaken in France following the recommendations of the Delmas-Marsalet[15] working group on financial product marketing and the discussions under way at the European level on the contents of the simplified prospectus.

Investment management companies wishing to take up this option are required to include an analytical table showing that the document contains all of the required information[16]. Some issuers have already expressed their interest in this option.

6 > The grandfather clause on the criterion with regard to the supervision and registration requirements for managers of foreign investment funds

Units or shares in foreign investment funds that are eligible assets for a French collective investment scheme must meet the 13 criteria set out in Article 411-34 of the AMF General Regulation. One of these criteria stipulates that foreign investment fund managers must be subject to the supervision of an authority that regulates such activities and with which the managers are registered.

The US Securities and Exchange Commission (SEC) adopted a rule at the end of 2004 that requires all managers to register with it after 1 February 2006 if they have customers resident in the USA. On 23 June 2006, the American courts declared that this requirement was illegal and struck it down. This ruling could encourage some of these hedge funds to eliminate their registration with the SEC, or else to stop registering with it.

Article 411-34 of the AMF General Regulation on the specific investment rules of investment funds that are eligible assets for a French collective investment scheme has been amended[17] to take account of the US ruling, while grandfathering all investments that met the 13 criteria at the time they were made[18]. Under the grandfather clause, compliance with the criterion dealing with the supervision and registration requirement for foreign investment funds will be assessed at the time when the investment in the fund concerned was made.

7 > Collective real-estate investment schemes

Order 2005-1278 establishing the rules for real-estate collective investment schemes (OPCIs) was published on 13 October 2005.

This new vehicle can take two forms: real-estate investment funds (FPI), which are subject to property taxes, and open-ended real-estate investment companies (SPICAVs), which are subject to securities taxes. The new system is intended to modernise the rules on real-estate investment companies (SCPIs).

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[15] See Chapter 7, p. 24.

[16] The table can be downloaded from the AMF website.

[17] Order of 11 December 2006 by the Minister of the Economy, Finance and Industry approving amendments to the AMF General Regulation, published in the French Official Journal on 16 December 2006.

[18] Revue mensuelle de l'Autorité des marchés financiers, No. 32, January 2007.

The Order calls for SCPIs to submit a proposal to the general meeting for a changeover to the new OPCI rules. On the other hand, the Act of 30 December 2006 on developing employee share ownership[19] reinstated the option of maintaining the old SCPI structure, initially abolished by the Order.

The Act made other changes to the rules regarding the other real-estate management activities that asset management companies handling OPCIs may engage in, the confidentiality requirements for the members of the supervisory board of an FPI, the maximum debt ratio for an OPCI and the option for converting real-estate companies used as assets for life insurance contracts into OPCIs.

At the same time, Decree 2006-1542 defined the structure and operations of OPCIs and amended the Insurance Code, along with the Monetary and Financial Code. This decree was published following close consultations with industry associations.

These provisions are to be supplemented by changes to the AMF General Regulation, following public consultations that lasted until 10 November 2006. The General Regulation and the implementing instructions will define the rules governing OPCIs, especially the rules on the subscription and redemption procedures, as well as the rules governing investment management companies, real-estate appraisers, supervisory boards and the contents of offering circulars.

The AMF General Regulation was finalised in consultation with industry professionals. The Ministerial Order approving the AMF General Regulation was published in the Official Journal on 15 May 2007.
When authorising the first OPCIs, the AMF will make special efforts to supervise the prospectus and the marketing literature in order to prevent mis-selling. It is therefore essential to highlight the long-term investment horizon associated with this type of product, along with the associated risks of capital losses and temporary liquidity shortages.

8 > Changes to the notification procedure for authorisation to market UCITS in France

In June 2006, the Committee of European Securities Regulators (CESR) published guidelines to simplify the notification procedure for UCITS.

CESR's work focused on two main areas for improvement:

- Standardising the documents to be included in the application for authorisation to market UCITS, so as to limit the documents that host Member States can require applicants to produce;

- Harmonising the material procedures for marketing authorisation in each of the Member States.
CESR's guidelines were implemented without overturning the registration procedures previously applied by the AMF. However, amendments did have to be made to Articles 42, 43 and 44 of Instruction 2005-01 and Annex III thereto.

The new provisions of the Instruction have been in force since 1 January 2007.

C > Positions taken by the AMF

1 > Frequently-Asked Questions about updating Part B "Statistics" of the simplified prospectus

The simplified prospectus has two parts:

- A "legal" section (Part A) that describes the legal aspects and operation of the collective investment scheme;

- A "statistics" section (Part B) that provides quantified data about the performance, actual fees and charges, portfolio turnover and proportion of transactions carried out with companies in the same group.

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[19] *Act 2006-1770 of 30 December 2006 for the development of employee ownership and shareholding and various economic and social provisions published in the French Official Journal on 31 December 2006.*

The AMF, in consultation with the industry, published a series of questions and answers about updating Part B in order to facilitate the task of industry professionals and ensure greater uniformity and comparability between different collective investment schemes.

Investment management companies can consult this document, which was published on 31 January 2006 and posted to the AMF website[20].

2 > Liquidation procedures for venture capital funds, innovation funds and local investment funds

The primary characteristic of venture capital funds (FCPRs), a category that also includes innovation funds (FCPIs) and local investment funds (FIPs), is that a least half of their assets are invested in unlisted financial instruments. This characteristic entitles investors in venture capital funds to tax advantages in exchange for a mandatory holding period set by the fund rules[21].

The three main stages in the maturing of a venture capital fund are:

- The pre-liquidation period. This stage is optional and has been available to investment management companies since 2003[22]. It can be used to prepare for the sale of the fund's assets with due consideration for the nature of the securities held and the maturity of the investments made;

- The decision to dissolve the fund[23], which means closing it down;

- The liquidation per se, which follows the dissolution of the fund, with the sale of the fund's assets and the repayment of the investors in the fund.

Innovation funds, which are aimed specifically at retail investors, were created in 1997. The AMF, working in consultation with several industry associations, published a series of questions and answers about the procedures for liquidating FCPRs, FCPIs and FIPs in order to prepare for the upcoming maturity of some of these funds and their liquidation. The document, published on 4 December 2006, describes the three stages of the liquidation process, while addressing the most frequently-asked questions about this subject.

3 > Periodic documents published by collective investment schemes

The Instruction on the authorisation procedures and periodic disclosure requirements for French collective investment schemes and foreign schemes marketed in France was amended in 2005. This amendment dealt with the contents of periodic documents, such as half-yearly statements and annual reports.

Compiling these documents substantially increases the workload of investment management companies and requires special, standardised internal structures. Accordingly, and in response to the concerns of investment management companies and their industry association, the AFG, the AMF proposed improvements to the offer documents in order to reconcile regulatory constraints and investors' information needs.

The AMF gave investment management companies more time to prepare for full implementation of the new provisions, pushing the compliance deadline back to 31 December 2007.
This means that the procedures set out in the 5 July 2005 news release will remain in force until that date.

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[20] AMF monthly review, No 22, February 2006.
[21] As a general rule, the holding period is 8 years. It cannot be more than 10 years.
[22] Following the publication of Decree 2003-1103 of 21 November 2003 amending Decree 89-623 of 6 September 1989 implementing Act 88-1201 of 23 December 1988 on undertakings for collective investment in transferable securities and the creation of securitised debt funds. This Decree has now been codified in the regulatory section of the Monetary and Financial Code.
[23] Dissolution usually takes place when the fund reaches maturity, but there are several objective circumstances that may result in early dissolution of the fund.

4 > Questions and answers about the rules applying to financial investment advisers

On 22 September 2006, the AMF published a set of questions and answers about the rules applying to financial investment advisers (FIAs)[24].

The document was intended to publicise the AMF's answers to the most frequently-asked questions on this subject. The rules on FIAs have been phased in since the Financial Security Act of 1 August 2003 was passed.

In particular, this document clarifies the following points:

- The scope of an FIA's authorisation and, more specifically, the mandatory nature of such authorisation, the adviser's right to engage in other regulated activities and activities that do not require authorisation as an FIA (examples of the latter include advice provided exclusively to foreign residents and real-estate appraisal);

- FIAs' obligations with regard to the prevention of money laundering and terrorist financing, their obligation to disclose to customers the identity of any institutions with which the adviser has significant relationships, and the obligation to sign a letter of engagement detailing any new services to be provided to existing customers;

- Direct marketing of financial investment advice services, financial instruments or investment and banking services. The document specifies under which conditions an FIA is entitled to mandate a person for its advice activity, in which cases the adviser must be registered as a direct marketer of banking and financial services, and its obligations towards consumers contacted to sell advice services.

4 > Developments in market infrastructures

Many important developments in the continuing integration of trading and post-trade infrastructures in Europe and the USA occurred in 2006.

The French authorities monitored these developments in close consultation with the Belgian, Dutch, Portuguese and British regulators supervising Euronext, and with the central banks from the same countries supervising LCH.Clearnet and Euroclear.

The highlights of the year included Euronext's failed takeover bid for the London Stock Exchange and its alliance with the New York Stock Exchange, even though these events had no practical impact on Euronext's operations or structures in 2006.

The clearing house LCH.Clearnet SA and the settlement system operator and central depositary Euroclear France rolled out new technical facilities in 2006.

A > Activity and regulation of the market undertaking Euronext

From the outset, Euronext and its subsidiary market undertakings (Euronext Amsterdam, Euronext Brussels, Euronext Lisbon, Euronext Paris and Liffe) have been subject to joint regulation by European authorities in partnership. Joint work by the Chairmen's Committee of the Euronext regulators, the Steering Committee and the specialised working groups is now an integral part of the system for approving the rules for French regulated markets. At the same time, regulatory changes to foster the development of the organised multilateral trading facility Alternext continued with the approval of a set of amended rules.

[24] *AMF monthly review, No 29, October 2006.*

1 > The alliance between Euronext and the New York Stock Exchange

Euronext officially submitted the plans for an alliance with the New York Stock Exchange (NYSE) to the College of Euronext regulators[25] on 4 August 2006 for prior approval under the terms of Article 2.1.3. of the Memorandum of Understanding (MOU) signed by the Euronext regulators, without prejudice to the other national authorisations required.

The College of Regulators set up an internal Task Force in the summer to examine the plans, setting three preliminary requirements for approval of the plans:

- The alliance must not give rise to application of US law to the Euronext markets, the issuers already listed on them and the market members;

- The regulators must be able to exercise some supervision of the NYSE Euronext holding company and to maintain their system for regulating and supervising Euronext markets;

- A memorandum of understanding on cooperation and information sharing must be signed with the US Securities and Exchange Commission (SEC).

The Task Force met several times in the second half of 2006 to analyse the various aspects of the plans and called upon outside legal expertise as needed. As this technical work was going on, a meeting was held between the Chairmen's Committee of the Euronext regulators and SEC Chairman Christopher Cox on 26 September. The meeting was an opportunity to discuss the regulatory issues that the plans raised in the USA and Europe and to draw up the outline of a memorandum of understanding.

On 5 December 2006, the Euronext regulators stated that they had no intention of blocking the planned alliance between NYSE and Euronext, subject to a number of commitments being given by NYSE and Euronext. The regulators deemed that the legal findings and the assurances given by the SEC formed a reasonable response to the risk of extraterritorial enforcement of current US legislation. The regulators also deemed that the formation of the Dutch Foundation could be a response to the risk of extraterritorial enforcement of US legislation or regulations in the future, as a result of the alliance between NYSE and Euronext, while recognising that there could be no absolute and final certainty about the matter.

On 10 January 2007, after receiving the requested reassurances, the College of Regulators confirmed its approval of the plan put forward.

The Euronext regulators and the SEC also signed a consultation, cooperation and information-sharing agreement with regard to market supervision on 25 January 2007. The specific situation created by the alliance between NYSE and Euronext, and the creation of a holding company incorporated under American law, called for a cooperation and information-sharing network that was better-suited to the new situation than the bilateral and multilateral cooperation agreements already in force. The agreement stresses that joint ownership of the exchanges or cross-shareholdings between the two markets do not require one market's regulations with respect to issuers listed on such markets or the members of such markets to be enforced in the other market. It calls for cooperation between the Euronext regulators and the SEC on future developments with regard to the NYSE Euronext holding company that are likely to have consequences in the USA and in Europe, including changes to the articles of association, changes in ownership, alliances, and so on. It also includes a mutual commitment to facilitate the development of operational systems to ensure coordinated responses to issues relating to integrated functions at the level of the NYSE Euronext Group, such as data processing, and calls for a coordinated decision-making process under the assumption that some European and US will be harmonised in future.

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[25] The Chairmen's Committee of the Euronext regulators is made up of:
- AFM (Authority for the Financial Markets), Arthur Docters van Leeuwen, Chairman, Netherlands;
- AMF (Autorité des marchés financiers), Michel Prada, Chairman, France ;
- CBFA (Commission bancaire et Financière et des Assurances), Eddy Wymeersch, Chairman, Belgium;
- CMVM (Comissão do Mercado de Valores Mobiliários), Carlos Tavares, Chairman, Portugal ;
- FSA (Financial Services Authority), Sally Dewar, Director of Markets Division, United Kingdom.

On 9 January 2007, the AMF deemed that, under the terms of Articles 511-5 and 511-6 of its General Regulation, the supervision of Euronext Paris to be carried out indirectly by NYSE Euronext Inc. would not change the recognition of the exchanges operated by Euronext Paris as regulated markets.

2 > Amendments to the Harmonised Market Rules

On 5 September 2006, the AMF approved an amendment submitted by Euronext Paris to its Harmonised Market Rules (Book I). The changes to the market rules of Eurolist, MATIF and MONEP can be broken down into three categories: harmonisation of rules governing the admission of members and their continuing obligations, rules governing trading in shares admitted on an if-and-when-issued/delivered basis, and the rules of conduct for members.

a) Rules on admission of market members

The recasting of the rules on admission of market members did not result in any radical changes to the rules in force. However, it resulted in the adoption of a body of standards that apply both to members of cash markets ("securities market members") and derivatives market members.

With a few minor variations, securities market members and derivatives market members are now required to follow the same admission procedures and meet the same membership requirements.
The remaining differences include the stipulation that natural persons and unincorporated enterprises cannot be securities market members, whereas they are eligible for membership of Euronext derivatives markets.

Furthermore, the concept of "responsible person" in use on the derivatives market has been extended to all Euronext markets. This function has replaced that of "Head of Trading" on Euronext securities markets.

In accordance with Euronext market rule 2202/2 and the following rules, the "Responsible Person" is responsible for trades executed using his identification code ("Individual Trading Mnemonic") and may be a trader himself. The Responsible Person named by a market member must be "adequately trained and fully conversant with the Rules and Trading Procedures".

The purpose of creating the Responsible Person function is to centralise supervision of orders issued by a market member. The market members' Responsible Persons are supposed to be capable of accounting for the orders that the member sends to the Euronext market under their Individual Trading Mnemonic. However, a member may have more than one Responsible Person and it is common practice to name one for each line of business or family of securities.

The changes to the rules have also tightened up Euronext's supervision of the members' redeployment of trading screens within their affiliated entities that are used under the members' Individual Trading Mnemonics and under their responsibility. The alignment of the requirements for securities markets on those applied in the derivatives markets means that the minimum ownership threshold for granting electronic access facilities for affiliates has been raised. The threshold is now 95% ownership on all Euronext markets (as opposed to the previous threshold of 50% on the securities markets).

This change has no effect on the rules in force for customer trading screens, which are covered by a separate notion. The deployment of such screens is still subject to the installation of filters by the member. The principle of the members' full responsibility for orders transmitted to the market under their ITMs has also been maintained, even when such orders are transmitted through screens deployed in affiliates or through customers' trading screens.

b) The rule on trading shares on an if-and-when-issued/delivered basis

Article 6801/1 and the following articles set the requirements for admission to Euronext of "Securities that have not yet been effectively issued and/or delivered, as applicable", and more specifically the rules on the issuers' disclosures to the market and the market undertaking.

It is also stipulated that the securities concerned will be admitted to trading on an if-and-when-issued/delivered basis "for a maximum period not exceeding the standard settlement time calculated from the first date of such admission" and that "In the event that the Securities admitted on a If-and-

When-Issued/Delivered basis are not issued and/or delivered by the last day of the period", which would mean that the transaction was not as successful as expected and had to be withdrawn, "all Transactions made in such Securities shall be cancelled".

It is also stipulated that Euronext cannot be held liable for any losses incurred by investors as a result of the cancellation of the transactions.

In practice, these new clarifications made in Book I of the AMF General Regulation have harmonised and clarified the requirements for trading securities on an if-and-when-issued/delivered basis on the same line as securities that have already been issued as part of initial public offerings.

c) Rules of conduct

Euronext's amendments to the rules of conduct (Chapter VIII) are aimed primarily at clarifying the rights and obligations established by the Market Rules. This concerns the grouping of orders (Article 8201).

Some minor adjustments were also made to the rules to ensure compliance with the Market Abuse Directive.

A new obligation was also introduced to require members to have internal controls to detect fraudulent or misleading conduct (Article 8104).

3 > Amendments to the rules for the Alternext organised multilateral trading facility

On 27 June 2006, the AMF approved amendments to the Alternext rules presented by the Euronext group. The Alternext market opened in May 2005. It is an organised multilateral trading facility and, as such, it is subject to the provisions of Articles 525-1 to 525-8 of Chapter V of Book V of the General Regulation. Article 525-5 stipulates that the managers of such facilities must immediately notify the AMF of any planned amendments to their rules and that such amendments may only be implemented after they have been approved by the AMF.

The amendments submitted by Euronext Paris can be broken down into three categories:

- Establishing a direct listing procedure for any companies wishing to list on Alternext without a capital raising exercise (up until now, the only case that the rules dealt with explicitly was a fast-track access procedure for companies already listed on certain reputed markets);

- Mention of the LCH.Clearnet clearing house, which clears trades on this market;

- Various amendments to take account of the most recent changes in laws and regulations, including those stemming from the transposition of the Market Abuse Directive into French law (special new rules for senior managers' filings with Alternext) and from the broader scope of the standing offer procedure.

The particularly noteworthy changes to the regulatory framework for Alternext include the rules on directors' dealings and the implementation of standing offers.

In the case of companies listed on Alternext as part of a private placement, the working group set up by Euronext prior to the launch of Alternext had concluded that disclosure of directors' dealings in the strictest sense (not including senior executives or persons linked to directors) was desirable. Consequently, Euronext wanted to require Alternext-listed companies to disclose directors' dealings, leaving it up to the companies to incorporate a disclosure requirement into their rules of procedure.

In keeping with changing laws and regulations, which have upheld the requirement for French companies listed on Alternext to implement standing offers, Euronext abolished the transitional system stipulated for this purpose in its rules. Foreign issuers listed on Alternext are not subject to the standing offer system provided for under French regulations. Consequently, Euronext has included a provision in its rules that requires foreign issuers to state in their listing documents whether a similar standing offer exists under the terms of the laws applicable to them.

B > Activity and regulation of LCH.Clearnet SA

In addition to approving a few amendments and updates of the clearing house operating rules over the year, on 30 May 2006, the AMF approved the planned extension of the Settlement Connect technical platform to trades on Euronext Lisbon, so as to integrate these trades into the platforms of Interbolsa, the Portuguese central depositary.

The roll-out of Settlement Connect in Paris, Brussels and Amsterdam to replace the ISB, LCP and CNS platforms that the clearing house used to integrate trades cleared through the central depositary settlement systems of Euroclear France, Euroclear Belgium and Euroclear Nederland had already been successfully completed in 2004.

The extension of Settlement Connect to Portugal enables members clearing trades on Euronext Lisbon to use the same functions already available for clearing trades on Euronext Paris, Euronext Amsterdam and Euronext Brussels, to wit:

- The use of different "delivery accounts" and "settlement addresses" to respond to the need for different settlement treatment for trades by clearing members' customers according to geographic origin (e.g. France or international), customer type (e.g. retail or institutional), or trade type (e.g. own-account trades or customer trades);

- The Continuous Net Settlement function, which makes it possible to reinject failed transactions into subsequent settlement flows automatically.

On 17 October 2006, the AMF also approved:

- Plans by LCH.Clearnet SA and LCH.Clearnet Ltd to harmonise criteria for members clearing OTC transactions;

- Plans to authorise disclosure to the "National Treasury Agency" of information about fails belonging to primary dealers in Treasury securities.

With regard to membership criteria, LCH.Clearnet SA and LCH.Clearnet Ltd proposed that:

- Minimum capital requirements should be aligned on those of LCH.Clearnet Ltd (EUR 100 million for Individual Clearing Members and EUR 400 million for General Clearing Members);

- Letters of credit from credit institutions should be included up to a certain limit when calculating the capital of Clearing Members;

- The minimum rating criterion should be harmonised at BBB and, in exchange, additional margin ranging from 10% to 100% should be required if a member's rating is downgraded to BBB- and BB+, and Clearing Members' memberships will be terminated if their ratings are downgraded below BB+.

With regard to information about net fails, Agence France Trésor (AFT) and its primary dealers that are Clearing Members asked LCH.Clearnet to adjust its operating rules so that it can disclose the identity of the primary dealer Clearing Members behind the fails. This disclosure is subject to the prior consent of the primary dealer Clearing Members concerned. Such consent is implicit in practice, since the AFT charter signed by primary dealers stipulates that disclosure of information about fails is a criterion for assessing and selecting primary dealers.

Furthermore, the AMF, working in conjunction with the other regulators of the LCH.Clearnet group, including the Commission bancaire, which is responsible for consolidated prudential supervision of the holding company LCH.Clearnet Group Ltd, analysed the financial and other consequences of the UK subsidiary's decision to cancel certain IT projects. It was found that this decision would not affect the financial soundness of the group. Internal work on governance procedures at the holding company was also conducted and a new Chairman and a new CEO were appointed at the beginning of the second half of 2006.

C > Activity and regulation of the securities settlement system manager and the Euroclear France central securities depositary

In addition to approving a few amendments to the central securities depositary's operating rules in 2006, the AMF approved amendments to the operating rules of the Relit Grande Vitesse 2 (RGV2) securities settlement system on 2 May 2006. These changes stemmed from the introduction of the definition of the "Local Register" and the replacement of the current technical platform for the RGV2 settlement sub-system with a new technical platform called the Single Settlement Engine (SSE).

After acquiring the French, Dutch, British and Belgian central securities depositaries, the Euroclear SA group started investing in a new technical platform a few years ago to provide harmonised settlement for all of its subsidiaries by 2010.

One of the first steps in this project, which is the most advanced initiative to integrate securities settlement in Europe, is the introduction of the definition of the "Local Register" in the RVG2 operating rules. This is the technical module, which is a sub-system of RGV2, that has the sole function of ensuring the finality of securities movements. Another first step is the replacement of the legacy technical platform of the RVG2 settlement sub-system with the new Single Settlement Engine.

The Single Settlement Engine was rolled out for Euroclear France, the UK central securities depositary CRESTCo and Euroclear Bank in May, August and November 2006 respectively. Its roll-out for the Belgian central securities depositary Euroclear Belgium (formerly CIK) and Euroclear Nederland (formerly NECIGEF) the Single Settlement Engine is slated as part of the roll-out of the Euroclear Settlement for Euronext-zone Securities (ESES) solution, which should take place in these countries in 2007, pending authorisation from the competent authorities.

The Single Settlement Engine implemented in France will remain completely independent from the SSE "clones" being rolled out in the United Kingdom and Belgium through 2009 in order to prevent any risk of contagion between the markets.

Euroclear SA will manage the new SSE technical platform. Euroclear SA provides technical services solely to its subsidiaries, including Euroclear France, under the terms of a service contract. Euroclear France participants have no direct legal ties to the Single Settlement Engine. The roll-out of the SSE does not, in itself, change anything in the legal ties between Euroclear France and its participants. Euroclear France still has the same responsibilities and obligations with regard to its participants, and vice versa.

A second step in the Euroclear SA group's integration project should be implemented in 2007, with the Euroclear Settlement for Euronext-zone Securities solution, which is aimed at harmonising the securities settlement and custody functions of the group's French, Belgian and Dutch depositaries. This second step should enable a participant in one of these subsidiaries to settle its transactions in French, Belgian and Dutch securities through a double connection to the central securities depositary and the central bank of its choice, in contrast to the six connections required today.

The third step of the integration project is called the Single Platform (SP). It should take place between 2009 and 2010 and involves the consolidation of CRESTCo's technical platform and that of Euroclear Bank with the ESES solution mentioned above.