

CHAPTER 7

THE AMF AND THE PUBLIC

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's report

A > Ombudsman Service

1 > 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 out-of-court 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 of the 1998 and 2001 recommendations on becoming a full member of the European Consumers Network (or ECC-Net).

Alongside ECC-Net, the Commission set up the FIN-NET network in February 2001 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 education and training activities, contributing to its image and its policy of communicating with consumers – for example, by attending investor forums and meetings.

Being positioned in the middle ground between retail and professional investors, and in view of the latest developments in alternative complaint settlement procedures, the Ombudsman Service 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.

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2 > Organisation

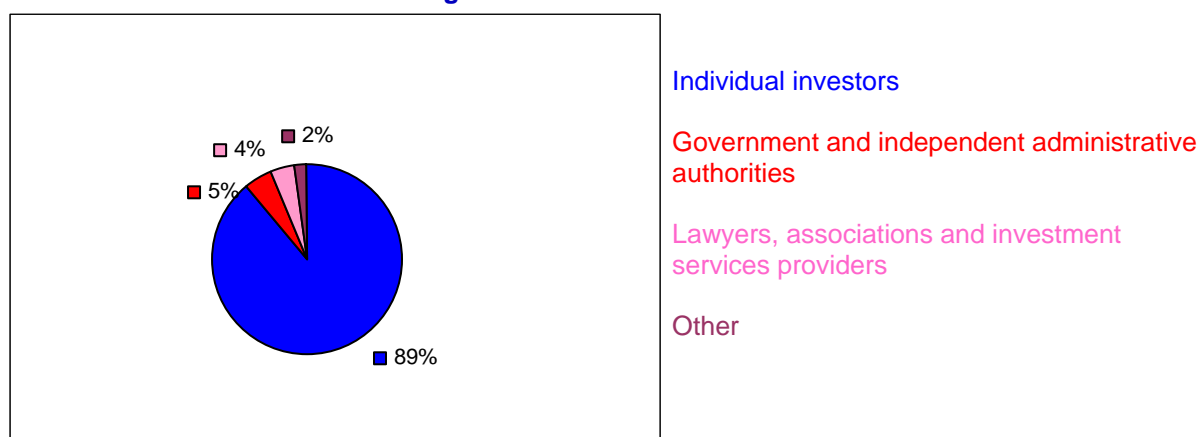
The Ombudsman works with a team of three legal experts and two assistants. The service has two separate roles, consultation and mediation:

- 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 is open on Tuesday and Thursday afternoons to respond to the most urgent queries.

Referrals are made by post, email or fax, and most originate from mainland France and its overseas territories. Very few come from abroad.

Origin of cases handled in 2006



Source: AMF

Some matters are outside the AMF's jurisdiction, for example:

- queries relating to life insurance contracts, even those involving unit-linked policies. 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;
- questions relating purely to banking (e.g. how a current account works or loans are granted) and tax matters.

On this point, the number of queries about the banking aspects of bequests and inheritances increased in 2006.

In each case, the Ombudsman Service steers complainants toward the correspondents or agencies that can best answer their queries or intervene.

B > 2006 in figures

1 > New inquiries and mediation requests

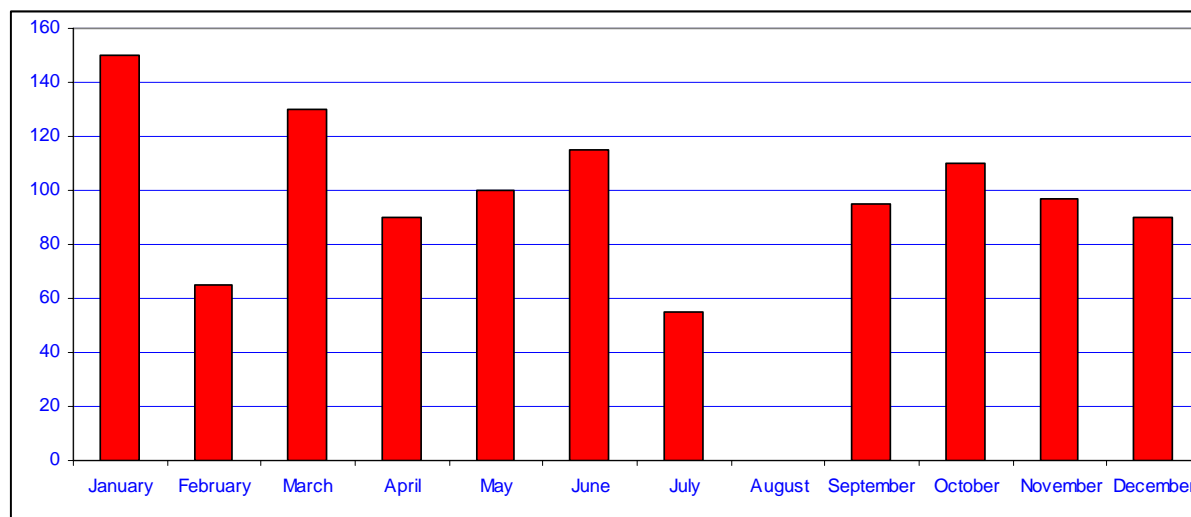
A total of 1,949 cases were handled in 2006, comprising 1,308 inquiries and 641 mediation requests. The annual caseload was higher than the 2005 total of 1,926 (1,391 inquiries and 535 mediation requests).

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The breakdown between the two categories was different to 2005: the proportion of inquiries decreased (66% compared with 74% in 2005) while mediation requests increased (34% versus 26% in 2005). These figures reflect the success of the mediation process and, as regards inquiries, can be seen as a sign that individual investors are now more familiar with the working of securities markets, although progress has still to be made.

The hotline, which operates on Tuesday and Thursday afternoons, took 1,105 calls, fewer than the 2005 figure of 1,441. The difference may be due to the fact that the hotline was open only one day a week instead of two in July and was closed in August.

Telephone inquiries between 1 January and 31 December 2006



Source AMF

2 > Handling

a) Inquiries handled

Situation at 31 December 2006	
No. of inquiries handled	1,264
o/w inquiries received within the month	92%
o/w inquiries received more than one month earlier	8%

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.

The questions naturally depend on what is happening in the markets, but are becoming increasingly complex.

The Ombudsman Services deals with most of the queries on its own. In some cases, however, it has to confer with other AMF departments, which respond through a mediation correspondent appointed specially for the purpose.

In 2006, 92% of inquiries were closed within one month.

From 1 January and 31 December 2006, 1,264 inquiries were answered, 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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b) Handling of mediation cases

	Situation at 31 December 2006
Number of mediation cases closed	667
o/w cases less than six months old	81%
o/w cases more than six months old	19%

Source: AMF

In all, 81% of mediations cases were closed within six months.

It must be stressed that this six-month period begins when the Ombudsman receives the initial letter of complaint, which is never enough on its own to initiate the actual mediation procedure. When acknowledging the letter, the Ombudsman always asks the applicants for additional documents and clarifications, as well as sending them the Mediation Charter, which explains how their case will be examined.

The majority of cases still open after six months involve procedures that have been suspended to allow for an investigation or inspection or pending the opinion of another AMF department.

They may also be cases involving multiple participants, such as an account keeper and an asset management company, or an issuer and a financial intermediary.

Sometimes, the information or documentation requested was hard to obtain for a particular some reason – for example, the events in question occurred a long time ago or the service provider had changed in the meantime.

The Ombudsman dealt with 667 mediation cases, more than the 2005 figure of 591.

Agreements were reached in 66% of the cases that were considered on their merits, i.e. pertaining to issues within the AMF's jurisdiction and backed up by relevant supporting evidence.

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

Regarding cases involving an adversarial process overseen by the Ombudsman, it is especially gratifying to note that more than half of those dealt with in 2006 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.

In 2006, no mediation case was closed because a respondent to a complaint failed to answer the Ombudsman's request for explanations. This goes to show that the mediation process is almost unanimously accepted by the industry.

The success rate in mediation cases was up sharply from 2005's figure of 58%.

Admittedly, "success" is a qualitative factor that should be seen in perspective, firstly because neither of the parties in a mediation procedure can be forced into an agreement and secondly because agreeing to an Ombudsman-led procedure can help improve relations between complainant and respondent, even if no formal agreement is reached. Even so, the success rate shows that the mediation approach is effective.

This is encouraging in view of the regulatory situation, notably the Markets in Financial Instruments Directive (MiFID), which recommends the development of such out-of-court settlements.

C > Legal context

The legal scope of several rules affecting the Ombudsman's activity was clarified in 2006.

- the nature of Ombudsman decisions;
- the scope of confidentiality breaches during mediation;

- statutory limitation.

1 > Conseil d'État ruling, 18 October 2006 – Mr & Mrs A

Mr & Mrs A lodged an appeal with the Conseil d'État on the ground of abuse of powers concerning a decision issued on 17 January 2005 by the AMF Ombudsman, who turned down their request to mediate in a dispute with their bank.

Mr & Mrs A claimed that the bank had mismanaged their portfolio and were demanding compensation for their alleged losses.

Not wishing to bring legal proceedings, they sought to obtain compensation for the alleged losses directly by implicating the mediators to whom they had referred their case. (Mr & Mrs A had also contacted the government ombudsman, who declined jurisdiction.)

The Conseil d'État turned down the couple's appeal, citing the submissions made by the AMF, which argued that the Ombudsman's decision could not be appealed on the ground of abuse of powers since it was not a legally enforceable administrative decision that could have an adverse effect on the applicant.

The AMF Ombudsman had merely sent a letter noting the bank's refusal to accept mediation and informing Mr & Mrs A that, accordingly, it could no longer intervene.

The Conseil d'État stated that:

- "the claims directed against the letter of 17 January 2005, in which the AMF Ombudsman informed Mr & Mrs A that the "establishment" with which they were in dispute had declined to take part in a mediation procedure and that, in consequence, [the Ombudsman] was unable to pursue its action, which is conditional upon the agreement of both parties, are inadmissible. (...);

- "whereas, in their final form, the claims submitted by Mr & Mrs A seek to order the AMF to respond to the questions sent to it previously, it is not for the administrative court to give an order to an administrative authority except as provided in Articles L. 911-1 and L. 911-2 of the code of administrative justice; these claims must therefore be dismissed".

This is the first Conseil d'État decision on the scope of action of the AMF Ombudsman under Article L. 621-19 of the Monetary and Financial Code. The Conseil d'État ruled that "having regard to the nature of [the] mission, which assumes the consent of the parties and which, moreover, the AMF is empowered but not obliged to carry out, [the AMF's] decision to deny a request for conciliation or mediation cannot be appealed on the ground of abuse of powers".

The Conseil d'État thus maintained its earlier ruling on the Assembly order of 10 July 1981, Retail, in a case challenging a decision by the government ombudsman.

2 > Scope of confidentiality breaches

Confidentiality is a central aspect of every mediation procedure and is written into the AMF Charter. Both the Ombudsman and the parties are required to maintain confidentiality throughout the procedure.

As a rule, this requirement does not pose a problem during the preliminary examination of the case. Numerous precautions are taken, such as asking the signatory of a letter or the owner of a personal

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document for permission to send the item as-is to the other party where this is necessary for adversarial purposes.

However, the Ombudsman is sometimes informed that the confidentiality principle has been breached when legal proceedings follow on from a mediation procedure that has failed and, from the AMF's point of view, is considered closed.

In such cases, the Ombudsman sends the respondent of the complaint a written reminder of their Charter obligations. However, when assessing the facts, the Ombudsman must also recognise the rights of the defence. There are legal precedents to support the fact that a breach of secrecy is allowable for defence purposes. Accordingly, the key issue at stake is to prevent a misuse of procedure rather than to ensure strict compliance with formal confidentiality rules.

Confidentiality during mediation assumes that what is divulged within this specific framework, designed to find an out-of-court settlement without seeking to establish guilt or fault, may not be used for any other purpose, either by the Ombudsman or by the parties.

3 > Statutory limitation

The Ombudsman Service saw two illustrative cases of statutory limitation in 2006, involving an analysis of the limitation period for financial product marketing and the transposition of MiFID into French law.

a) Limitation period for financial product marketing

The question of financial product marketing is a key concern for the Ombudsman, since the majority of cases submitted to it relate to inadequate information and advice at the time an investment was made. It therefore pays close attention to the outcome of cases that do not go to mediation and result in administrative or criminal sanction proceedings.

In a decision concerning the marketing of structured funds, the AMF Enforcement Committee ruled that certain facts were time-barred: "Article L. 621-15 of the Monetary and Financial Code applies a limitation period of three years to infringements of AMF regulations. Accordingly, since the decision by the Director General of the Commission des Opérations de Bourse (COB) to open an investigation was made on 5 November 2003, the last two generations of the products, marketed in November and December 2000, cannot be taken into consideration".

Aside from the particular circumstances, which will not be commented on here, the case highlights the potential difficulties that the AMF, or even the legal authorities, may encounter in prosecuting and punishing instances of mis-selling.

On the premise that the limitation period starts with the act of marketing a fund, the breach of the obligations set out in Article 33bis of COB Regulation 89-02 – which was applicable at the time and has since been incorporated into the AMF General Regulation as Article 411-53¹ – is categorised as an "instantaneous offence".

However, because of the nature of the fund, the fact that it may be unsuitable to the client's needs or that the client was ill-informed about its main features may come to light only during the lifetime of the product or when it matures. (This is especially the case with structured funds.)

By that time, the three-year period starting from the marketing act may have elapsed and no administrative sanction procedure may be initiated, even if an investigation is ordered immediately.

¹Article 411-53: *Any person marketing FCP units, SICAV shares, or subfund units or shares shall be subject to the requirements stipulated in Articles 322-63 and 322-64 [...]*".

Article 322-63: *The portfolio management company inquires about the objectives, investment experience and situation of the client for asset management services.*

Services offered under an investment mandate must be appropriate to the client's situation.

All relevant information is provided so that the client can entrust the management of his assets, or make a decision to invest or disinvest, with full knowledge of the facts".

Article 322-64: *The duty to inform and advise includes warning the client about the risks incurred"*

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To prevent this, discussions could be opened to see how case law rules applicable to deception, a very similar area, could be applied to the infringements referred to in Article 411-53 of the General Regulation.

In an authoritative decision handed down on 7 July 2005, the criminal division of the Court of Cassation ruled that "while deception is an instantaneous offence, it is nevertheless by nature a concealed offence insofar as its purpose is to leave the party to the agreement unaware of the true characteristics of the product. Accordingly, the limitation period for prosecuting this offence begins on the day [the offence] becomes apparent and is observable in conditions that allow civil proceedings to be conducted".

In this case, known as the "growth hormone case", the investigating judge had received an application to declare the prosecution time-barred and had rejected petitions to that end. Furthermore, the investigating division the Paris Appeals Court had dismissed an objection that the action for deception and aggravated deception was out of time.

Similar case law seems to exist with regard to abusing a person's ignorance or weakness.

The Ombudsman recommends that the possibility of transposing these legal precedents ought to be examined whenever the case under consideration involves a client's knowledge of essential product features or the quality of advice they receive.

b) Suspending the limitation period during mediation

The suspension of limitation periods, as provided for in the proposal for a directive on mediation in civil and commercial matters, is likely to make mediation more popular. In addition Article 53 MiFID urges Member States to encourage out-of-court settlement of disputes concerning investment services. Consequently, when the directive was written into French law, the Ombudsman proposed that the limitation period be suspended while the mediation procedure is under way, as has always been the case in the banking industry.

As a result, the new Article L. 623-19 of the Monetary and Financial Code, introduced by executive order, states that "making an application to the AMF in connection with the out-of-court settlement of disputes shall suspend civil and administrative proceedings. The limitation period shall re-commence when the AMF declares the mediation procedure to be terminated".

The following paragraph has also been added:

"The AMF shall cooperate with its foreign counterparts with a view to reaching out-of-court settlements of cross-border disputes".

D > Recent developments in mediation

1 > At European level

a) FIN-NET: a network for out-of-court settlement of cross-border disputes

In February 2001, the European Commission set up a network to allow Member States of the European Economic Area to cooperate on the out-of-court settlement of disputes in the field of financial services.

Called FIN-NET (Financial Dispute Resolution Network), the network aims to assist consumers in finding a quick, simple and inexpensive solution – avoiding legal action where possible – to disputes with financial service providers such as banks, insurance companies and investment firms based in a Member State other than their home state.

By helping actively to develop alternative dispute resolution methods, FIN-NET is contributing to the rapid expansion of the European market in retail financial services. At present it has 48 members, including the AMF Ombudsman. Most are either ombudsmen or heads of "dispute commissions" or "consumer arbitration panels", depending on the country. They meet regularly under the auspices of the European Commission in order to share information about the problems encountered regularly by members within their own jurisdictions and to strengthen cooperation with the European Consumer

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Centres Network (ECC-NET). Set up by the European Commission in 2005, ECC-NET deals with cross-border disputes in areas other than financial services.

FIN-NET members also meet at special conferences, like the one being organised by the UK Financial Services Authority in London from 26 to 28 September 2007.

They are linked by a memorandum of understanding (MOU) that sets out the procedures for cross-border cooperation and states the basic principles for out-of-court settlement. The MOU includes a declaration of intent whereby participants undertake to apply the quality standards in Commission Recommendation 98/257/EC of 30 March 1998, which lays down seven principles:

- the independence of the decision-making body is ensured in order to guarantee the impartiality of its actions;
- the procedure is transparent;
- the effectiveness of the procedure is ensured through measures guaranteeing that:
 - the consumer has access to the procedure without being obliged to use a legal representative,
 - the procedure is of moderate costs or free of charges,
 - only short periods elapse between the referral of a matter and the decision,
 - that the competent body is given an active role.
- the procedure is adversarial: all the parties concerned can present their viewpoint before the competent body and hear the arguments and facts put forward by the other party, as well as any experts' statements;
- legality: the decision taken by the body may not result in the consumer being deprived of the protection afforded by the mandatory provisions of the applicable consumer protection law;
- liberty: The decision taken by the body concerned may be binding on the parties only if they were informed of its binding nature in advance and specifically accepted this.
- representation: if they wish, the parties have the right to be assisted or represented at all stages of the procedure.

FIN-NET has set itself the aim firstly of improving the quality of settlements reached within the existing extra-judicial mechanisms in the European Community and secondly to provide consumers with more comprehensive information about methods for out-of-court settlement of cross-border disputes.

These principles have already been incorporated into the AMF Charter and are implemented during the case appraisal process.

b) MiFID

Article 53 MiFID states: "Member States shall encourage the setting-up of efficient and effective complaints and redress procedures for the out-of-court settlement of consumer disputes concerning the provision of investment and ancillary services provided by investment firms, using existing bodies where appropriate.

"Member States shall ensure that those bodies are not prevented by legal or regulatory provisions from cooperating effectively in the resolution of cross-border disputes".

When the directive was transposed through order 2007-544 of 12 April 2007, Article L 621-19 of the Monetary and Financial Code was amended accordingly, as described above.

c) Draft directive on mediation in civil and commercial matters

The European Commission has submitted a proposal for a directive on mediation in civil and commercial matters to the European Parliament and to the Council.

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The aim is to encourage more widespread use of mediation and to ensure that the parties thereto can benefit from a predictable and secure legal framework.

The draft directive is in the process of being adopted by the European Parliament and will then be transposed into national law.

2 > At domestic level

a) Opinion of the national consumer council on mediation

France's national consumer council (CNC) issued an initial opinion on mediation on 7 July 2004. On 27 March 2007, the CNC issued a further opinion intended to encourage and develop the use of mediation in consumer matters.

It recommends that recourse to mediation should be free of charge and that the process itself should be easy to access and understand and should be completed within a reasonable timeframe.

The CNC emphasised that the Ombudsman plays a role in preventing disputes and should therefore be allowed to question the current system and advocate ways of improving and modernising it.

b) Recommendations in the Delmas-Marsalet report

The issue of financial product marketing is central to the cases submitted for mediation.

The Ombudsman will therefore pay close attention to the follow-up given to the recommendations in the report of the Delmas-Marsalet working group, which cover not only information and advice but also better customer support and the development of alternative dispute-settlement methods, particularly mediation. The first principle recommended in the 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".

c) The Better Regulation approach

Among the questions raised by the AMF's Better Regulation approach² was how to improve investor protection.

Among the ideas adopted to achieve that objective, set following discussions by the Consultative Commission on Retail Investors and Minority Shareholders, the AMF Board recommended raising the profile of the AMF Ombudsman.

Consequently, ongoing efforts to communicate with and inform the general public will be pursued. In addition, industry dialogue will be stepped up to make sure that professionals inform their clients about the complaint and dispute settlement procedures used by their firms as well as those employed by the AMF Ombudsman.

Further consideration has also been given to ways of giving retail investors a greater say in the debate on regulation.

The Ombudsman has closely monitored all these projects and will help to ensure that they come to fruition in the coming months.

E > Cases dealt with by the Ombudsman

The caseload is broken down into ten broad subject areas in the department's database:

- collective investment schemes
- discretionary management
- order transmission/execution
- custody account keeping

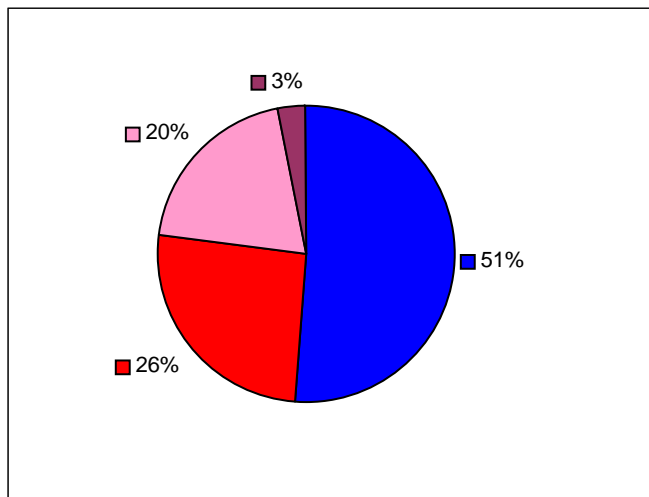
² See Chapter 7, page 16.

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- issuers
- general market matters
- financial instruments (other than collective schemes)
- direct marketing, advice on asset management and financial investment
- supervisory and regulatory agencies
- miscellaneous topics

1 > Inquiries and mediation requests, by subject area

1 January to 31 December 2006



Issuers + general market matters
+ financial instrument

Collective schemes
+ discretionary management

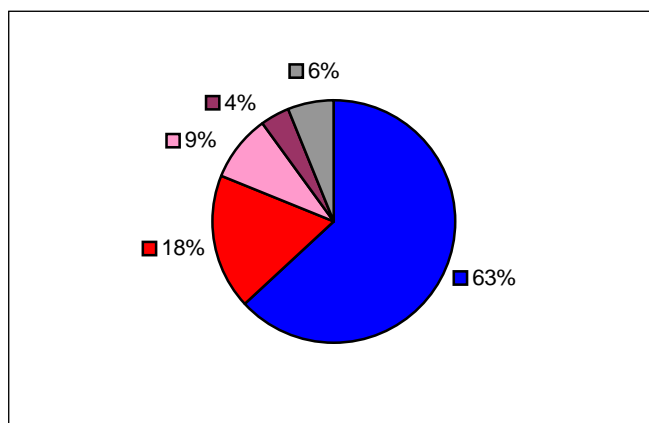
Order reception/transmission

Other

Source: AMF

2 > Analysis by subject area

1 January to 31 December 2006



Issuers + general market matters
+ financial instruments

Collective schemes
+ discretionary management

Order reception/transmission

Regulatory role (direct marketing, asset
management and investment advice,
supervisory/regulatory/defence agencies)

Miscellaneous

Source: AMF

As in 2005, a large proportion of the cases concerned issuers, market anomalies and financial instruments.

a) Corporate financing and market anomalies

As in previous years, the Ombudsman Service had to explain and illustrate the role played by the AMF in corporate financing transactions. 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.

In addition to requests for explanations and criticisms of price setting methods and a purported 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, intermediaries and custody account keepers are often criticised for providing inadequate or imprecise information in a particular area.

Many of the complaints dealt with in 2006, as in 2005, concerned subscription rights. The current regulations state that care must be taken to ensure that shareholders are properly informed about how rights are exercised and what happens if they are not. With this in mind, provisions should be made in 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 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.

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 and call 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 of 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 mailing campaigns in an effort to draw the AMF's attention to a particular security.

The Ombudsman examines these letters before passing them along to the AMF's specialised departments. In 2006, the Investigations and Market Surveillance Division received 126 complaints from retail investors about allegedly suspicious transactions, along with requests for investigations or appraisals of complex price movements.

In 2006, on-site inspections or documentary audits were organised in response to some of these "reports", and warnings were posted on the AMF website.

When the Ombudsman is notified about a matter that may constitute a criminal offence, it offers to alert the legal authorities. If legal proceedings are initiated, it is kept informed of their progress.

b) Malpractice reports

The alert procedure was used in 2006 to issue public warnings following reports of malpractice received by the Ombudsman and dealt with using a rationalised procedure that respects the rights of defence.

Seven warnings were posted on the AMF website and repeated in the press.

- Stein Fitzgerald 14 June 2006
- Oxbridge International Ltd 25 July 2006
- J.-P. Gallien 31 July 2006
- SBI International 20 September 2006
- SouthernCross Mergers & Acquisitions 23 October 2006

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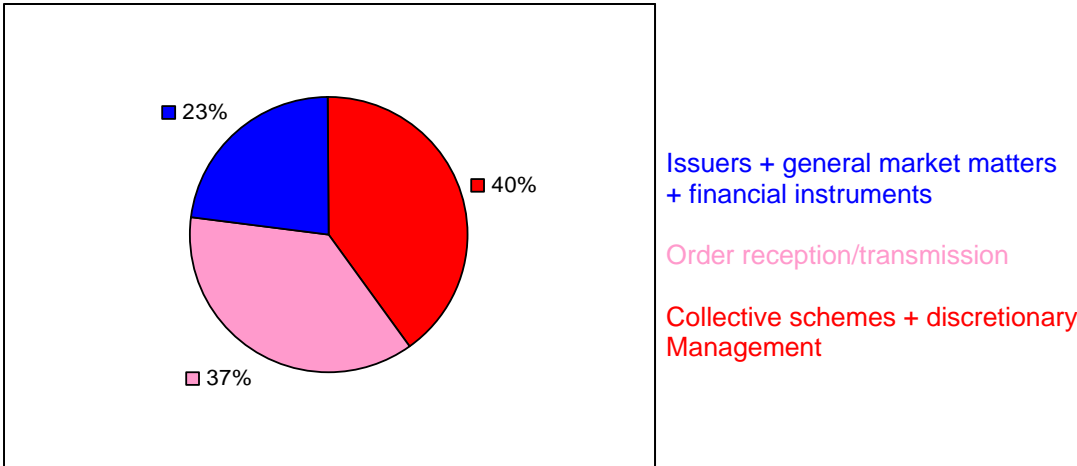
- R. Menard..... 4 December 2006
- CTA Bank 15 December 2006

c) Trading incidents

Pursuant to Article 4404/2 of Book I of the Euronext Rules, the market undertaking may "suspend trading in any Security in order to prevent or halt disorderly market conditions, either on its own initiative, and in its sole discretion, or at the reasoned request of the relevant Issuer". It may also suspend trading at the request of a competent authority. These trading halts are published in a Euronext Paris market notice, which describes the origin of and reasons for the halt and the conditions in which trading may resume. Failing this, it stipulates that trading has been suspended until further notice. There is no maximum time limit for trading halts.

As in 2005, 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, individual shareholders sometimes feel they have been overlooked or taken hostage, and they seek advice on what to do when they learn the outcome of legal action.

3 > Mediation cases, by subject area



Source: AMF

Compared with 2005:

- the number of mediation requests concerning issuers, general market matters and financial instruments rose slightly, from 18% to 23%;
- the number of requests concerning order reception/transmission has declined from 41% to 37%.

a) Mediation of complaints relating to public placement

Shortly after the French power utility EDF was admitting to listing on Eurolist, retail investors phoned or wrote to the Ombudsman to inform it that shares had been bought for their account even though they had given no instructions or signed any orders to that effect³. No such grievances had been received in connection with earlier privatisations, especially GDF.

³See Chapter 5

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In accordance with its task of finding out-of-court settlements for consumer disputes, the Ombudsman sought a solution that would remedy the shortcomings revealed by the complaints and protect the clients' interests.

Two months on, the AMF was still receiving protests, even though the share price had risen, and none of the original complaints had been withdrawn.

The institutions against which the complaints had been brought were questioned in accordance with the usual appraisal approach, in full compliance with the adversarial principle and the rights of the defence.

For greater efficiency and to ensure equal treatment for all clients, the Ombudsman asked the institutions to submit a list of similar situations detected by their in-house procedures, together with supporting documents and information about the action taken in each case.

A total of 527 cases were dealt with and settled.

It must be emphasised that all the institutions in question cooperated with and fully understood the approach, intended to find an amicable solution to conflicts while taking into account the arguments of both parties.

The success and efficiency of this collaboration is commendable.

In substantive terms, the methods used to rectify the anomalies varied from one institution to another. Some chose to cancel the sale and refund the difference between the selling price and the purchase price (inclusive of fees). In this case, the Ombudsman made sure that the operation would have no adverse impact on the complainant's 2005 income tax situation if the annual ceiling on share sales was breached. It noted that to cancel out the impact of unwanted share purchases, some institutions had undertaken to refund any excess income tax payments, while others made sure immediately that there would be no negative tax impact.

Some institutions reported that they had organised training programmes for their networks.

In light of this singular situation, it is useful to recall the rules applicable to the public listing of securities:

- Investment services providers are required under Article L. 533-4 of the Monetary and Financial Code to comply with conduct of business rules "intended to ensure investor protection and the lawfulness of transactions". In particular they must act honestly and fairly in the best interests of their clients and the integrity of the market, while complying with all regulations applicable to their business. These provisions are taken up in Article 321-24 of the AMF General Regulation;
- Advertisements relating to the offering must, among other things, state that a prospectus has been or will be published and tell investors where they can obtain it from (Article 212-28 of the AMF General Regulation);
- Pursuant to Article L. 412-1 of the Monetary and Financial Code, marketing operations may not begin until the AMF has approved the prospectus. Before this, the institutions handling the offering are permitted only to disseminate information of a general nature;
- All information disclosed orally or in writing must be consistent with the information in the prospectus, in accordance with Article 212-29 of the AMF General Regulation.
- Subscriptions for shares are not valid without an express written request from a client. Under Article 332-6 of the AMF General Regulation, custody account keepers are queried to ensure that financial instruments have not been booked on the client's account without an instruction to that effect.

b) Financial product marketing

An analysis of the cases submitted for mediation shows that some issues crop up from one year to the next. This is the case with disputes related to the marketing of collective investment schemes, which once again elicited numerous complaints continued in 2006.

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Along with many other similar protests, the Ombudsman received numerous complaints about a fund that had been structured in such a way that investors would recoup their initial capital, plus or minus the change in the Dow Jones EuroStoxx 50 index, provided that they had reinvested their dividends and tax credits in the fund.

The Ombudsman had to explain the redemption procedures and, in particular, the fact that because the benchmark index had plunged 32.68% and the fund managers had applied the Constant Proportion Portfolio Insurance technique, the invested capital had shrunk by 12.68%. Moreover, the number of additional units allotted in return for the reinvested dividend and tax credits in no way increased the investor's level of protection.

As in 2005, the Ombudsman continued to monitor the handling of complaints relating to the Bénéfic product range. A total of 41 complaints were received in 2006, some of which resulted in a settlement: for example, EUR 14,451 was paid to complainants as compensation for capital losses.

Most of the complaints related to inadequate information and advice during the marketing period or the life of the product, and some of them criticised the advertising campaign.

It should be recalled that an application must be filed with the AMF before a fund or subfund can be formed and that marketing cannot begin until it has been approved.

Article 411-50 of the General Regulation states: "The AMF shall have the right to demand that all the documents compiled or distributed by a collective investment scheme, its [asset] management company and any other person distributing the scheme be submitted to it. It shall have the right to have the presentation and content of the documents modified at any time. "Advertising for collective investment schemes or their subfunds must be consistent with the investment being offered and mention any less favourable characteristics and risks inherent in the options that may be corollaries to the advantages cited. Said advertising must mention the simplified prospectus and say where it is available to investors".

Further, the implementing instruction (no. 2005-01 on authorisation procedures and periodic disclosures by French collective investment schemes and foreign schemes marketed in France) states that applications involving structured funds or funds with streamlined investment rules, covered by Article L. 214-35 of the Monetary and Financial Code, must contain both the marketing programme and the marketing materials.

Likewise, under Article 322-66, the AMF can direct management companies to submit advertising materials to it prior to publication or distribution and can order changes to the substance and presentation of those materials.

On 24 May 2005, the AMF web-posted a communiqué reiterating the rules governing subscriptions to structured funds and funds using a structured investment process.

From experience, the Ombudsman is aware that advertising is inextricably linked to information and advice. The decision to invest in a product is never made solely on the basis of advertisements. Complainants tell the Ombudsman that the advertising literature encouraged them to seek further explanations from their financial advisor. They also say that they examined the materials after the fact to see whether negative or unfavourable scenarios were discussed.

The majority of retail investors are not yet self-sufficient when it comes to choosing, comparing and analysing similar products offered by different financial institutions. (Most products are distributed by major banking networks that offer their propriety vehicles.)

In most cases, they do not even distinguish between the types of literature they receive, mixing up official disclosure documents, prospectuses, information memos and advertising. In advertisements, risks are mentioned in small print in a footnote whereas product benefits are highlighted and presented in a compelling manner.

As a rule, investors do not read the information memo or the prospectus; they simply sign the section of the subscription form stating that they have done so. The decision is based mainly on what they

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have been told by the professional who is assisting them, i.e. his explanation and advice and, in some cases, a strong sales pitch.

The Ombudsman has found that the main grievance expressed by investors is not that they have been taken in by abusive advertising but that an advisor has betrayed their trust.

One of the top priorities, therefore, should be to make prospectuses clearer and ensure that they are given to investors beforehand.

The laws and regulations applicable to the industry doubtless need to be expanded and clarified by conduct of business rules written into professional codes, in accordance with the Delmas-Marsalet report. But in addition, improving the way that financial products are marketed – with advertising being only one of the components – depends on getting investors to take greater responsibility.

Attention should be drawn to the efforts being made to inform and train consumers, such as the formation of the Institute for Public Financial Education, as well as to the educational activities undertaken by various regulators. As regards the AMF, much of the information about products and market participants can be found on its website or obtained from the public hotline.

That considerable progress has still to be made in terms of education is evident in the fact that people readily respond to cold-callers or email messages asking them to buy shares in unknown foreign companies or to invest in schemes that promise extraordinary pay-offs.

As in previous years, the Ombudsman urges investors to proceed with utmost caution.

They should ask as many questions as possible, particularly about capital guarantees, expenses and commissions and recommended investment periods, and they should study product literature carefully.

Professionals should keep a record of each stage of a transaction so that they can substantiate their actions and prove that they have complied with conduct of business to ensure that products are suitable for the investor.

c) Discretionary management

The complaints about discretionary management received in 2006 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. The Ombudsman can only repeat 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.

These recommendations are especially important because professionals rarely respond positively to mediation requests concerning discretionary management. This is because they are committed only to using their best endeavours, and the fact of making a loss is not sufficient grounds for establishing misconduct.

F > Outlook

Although 2006 was a highly encouraging year for the Ombudsman Service, the positive trend has still to be confirmed.

More and more investors must be informed of the Ombudsman's existence, so that they can all have the possibility of seeing their complaints re-examined.

It is worth pointing out that the AMF Ombudsman does not become involved until all internal avenues of redress have been explored. Accordingly, instead of competing with firms' in-house complaint-handling procedures, it actually complements them.

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As far as the industry is concerned, it is heartening to observe the constructive dialogue that already exists, with regard to the amicable settlement of specific cases and to discussions on recommendations for general improvements.

These links will certainly have to be strengthened so that the Ombudsman, who is in a unique position to observe the difficulty of enforcing and interpreting financial regulations, can carry out its investor warning and risk prevention duties to the fullest extent.

2 > Cooperating and consulting with the financial community

The AMF has always given priority to organising a dialogue with stakeholders, especially the organisations that represent the finance industry, and it has made substantial progress in this area. In 2006, in addition to the usual dialogue forums, namely the consultative commissions and working groups, a special consultation exercise was organised for the Better Regulation approach.

The five consultative commissions, which were originally tasked with examining a wide range of draft laws and regulations related to the formation of the AMF and the transposition of European directives, are gradually being repositioned to bring their expertise to bear on operational matters. This evolutionary process will continue throughout 2007.

As in previous years, the projects handled by the consultative commissions were complemented by the activities of ad hoc working groups, created in association with professionals to address a variety of topics with a view to implementing major reforms, particularly in connection with the enforcement of directives.

A > The Better Regulation consultation

In 2006, the AMF embarked on an extensive re-examination of its regulatory model. The first stage of this wide-ranging exercise was an in-depth, detailed consultation aimed at finding out what retail and professional investors actually expected from the regulator. The consultation process took different forms:

1 > "Promoting Better Regulation"

A review and inquiry paper, Promoting Better Regulation, was put out for public consultation from 31 May to 30 September 2006. Drafted in conjunction with the AMF's operational teams, the paper discussed the progress made by the AMF since it was set up in 2003, putting its actions into perspective in order to look at its main strengths. Promoting Better Regulation also invited discussion about the main policies that the AMF intended to adopt or pursue, not only as regards its regulatory model but also its conception of laws and regulations and its handling of individual cases.

The consultation elicited more than 30 responses, many of which were precise, detailed and well argued. Most of the respondents were industry groups, which consulted extensively with their members. Responses were also received from several large – mainly French – corporate groups, sometimes in relation to one of their specialised business lines such as asset management. Some smaller companies, essentially asset managers, also responded on an individual basis. Furthermore, through its Retail Investors and Minority Shareholders consultative commission, the AMF was able to gather the opinions of this constituency.

2 > An industry survey by a consultancy

In addition to the consultation organised for the review and inquiry paper, the AMF commissioned the Accenture consultancy to conduct a survey of industry professionals between April and June 2006. This made it possible to elicit the views, in a highly precise and informal manner, of more than 70 interviewees from some 50 companies and organisations representing AMF-regulated business areas, both at operating and at senior management levels. In addition, a number of interviews were conducted with foreign market participants, firms, regulators and industry groups.

The survey concentrated on the day-to-day relations between regulated entities and the AMF, with particular emphasis on two areas: existing rules, including the procedures used to draw up regulations and pronouncements, and the handling of individual cases. The main aims were firstly to review the

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AMF's strengths and areas for progress from the standpoint of industry professionals and secondly to compare the AMF's procedures with those of its principal counterparts, based on the experience of professionals operating in several financial centres.

Drawing on the findings of the Accenture survey and the responses to the consultation, the AMF was able to establish a clear picture of the financial community's expectations. By and large, professionals expressed appreciation for the progress made to date. Those familiar with the regulatory frameworks of other financial centres did not compare the AMF unfavourably with its foreign counterparts. That said, many of the respondents said they wanted the regulator to be more effective and to respond more appropriately to the central issues at stake. Professionals want the AMF to make its positions and procedures more transparent, rationalise its consultation procedures, and give greater consideration to the real threats to investor protection when drafting and enforcing its regulations. They also attach considerable importance to strict transpositions of European Union (EU) legislation in order to avoid "over-regulation", and they feel that the regulator should analyse the costs and benefits of its measures, both before and after the fact.

3 > Investors survey by a market research firm

Two additional survey were carried out as part of the consultation process. The first was a telephone survey of sample groups of retail investors (900 people divided into three samples: fund investors, shareholders, and workplace savers); the second involved investor focus groups charged with examining decision support literature (7 groups organised according to the type of investment and also to financial literacy).

The following salient features were common to all respondents, regardless of the type of investor or financial product:

- Investors are unfamiliar with AMF-reviewed documents (only 10% of respondents mentioned them without prompting). They rarely receive a copy of these publications, even where this is a legal requirement (e.g. fund prospectuses);
- The publications do not comply with the principles of reader-friendly layout (use of space and colour, highlights for key information) and are therefore considered as legal documents to be kept as a formality rather than as decision aids. The readers' initial reaction is negative, and they show interest only if they are assisted with or talked through the documents;
- Investors are unaware of and misunderstand the role played by the AMF in relation to these (60% of respondents thought that when the AMF approved a document, it was actually endorsing the transaction or the product);
- Investors have to deal much more frequently with marketing literature than with regulatory documents.

In the field of collective investment schemes, investors are not self-reliant and tend to rely on their banking advisor. Apart from the prospectus, very little objective information is available to flesh out the advisor's sales arguments. While the prospectus is vitally important, the AMF is also concerned about the way advisors are trained and about the message they deliver to clients, as the Ombudsman pointed out in its annual report⁴.

Workplace saving is an entirely separate sphere, where investors feel – rightly or wrongly – that they are on top of the issues and are unwilling to consider objective information such that given in the simplified prospectuses of the schemes offered to them. In many cases, however, they receive the prospectus from a financial institution.

With public offerings of securities, information is plentiful and investors are more self-reliant. The documents reviewed by the AMF are scrutinised by market participants who play a linking role in the process of shaping people's opinions. As a result, the fact that the format and layout of the document are unsuitable is less problematic.

⁴See 2005 Annual Report,

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In sum, investors have multiple expectations. They are aware that the information on which they base their decision has serious shortcomings (e.g. an lack of objectivity) but they nonetheless consider themselves to be fairly well informed. Getting them to refer more frequently to AMF-reviewed documents is therefore highly ambitious. They want documents that are exhaustive but, at the same time, concise and straightforward.

The layout of the documents reviewed by the AMF needs to be overhauled. At the same time, steps must be taken to make investors more aware of the existence of these publications and how they are used. This will encourage them to automatically demand the documents and, in the longer term, will narrow the gap between the consumers' financial capability and the knowledge they need to properly understand the products on offer. Work is already in progress in the field of collective investment schemes, under the auspices of the European Commission, and the AMF plans to play a major role in these efforts.

4 > Summary of consultation responses, and the AMF's commitment

At the end of 2006, following on from the consultation, the AMF published a roadmap setting out its principles for action and its commitments for the future⁵. The document outlines a method and a timetable, including the formation in 2007 of several cross-market working groups to address the most important issues, such as how to streamline procedures while giving market participants greater responsibilities, to adapt the AMF's demands to the size of the companies it oversees, and to give more attention in its regulations and pronouncements to the type of clients – institutions or consumers – at which a transaction or a product is aimed.

B > 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 it 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 2006, each consultative commission met nine times on average.

1 > Disclosures and Corporate Finance

The Consultative Commission on Disclosures and Corporate Finance met eight times in 2006. It concentrated mainly on the transposition of the Takeover⁶ and Transparency⁷ Directives. It was also consulted on amendments to the AMF General Regulation on fairness opinions, which implemented the recommendations of an AMF market advisory group⁸, and on the findings of the working group on internal control standards.

For the transposition of the Transparency Directive, the Economic Confidence and Modernisation Act of 26 July 2005 referred to the AMF General Regulation for some of the implementing measures. In first-quarter 2006, the commission therefore examined a draft amendment to the General Regulation on the obligation to declare major holdings; and at end-June 2006 it reviewed another draft

⁵Downloadable from the AMF website at http://www.amf-france.org/documents/general/7480_1.pdf

⁶Directive 2004/25/EC of the Parliament and the Council of 21 April 2004 was transposed by Act 2006-387 of 31 March 2006 on takeovers.

⁷Directive 2004/109/EC of the Parliament and the Council of 15 December 2004 was transposed by Act 2005-842 of 26 July 2005 on economic confidence and modernisation.

⁸The working group on financial valuation and fairness opinions, chaired by Jean-Michel Naulot, issued its conclusions on 13 April 2005 (AMF monthly review No 13). The group's recommendations were put out for public consultation from April to June 2005. A summary of responses was posted on the AMF website on 16 December 2005 (AMF monthly review No 21).

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amendment concerning the other obligations under the directive, particularly those on periodic disclosures and the dissemination of regulated information.

The examination of the regulatory measures for transposing the Takeover Directive began in March 2006 after the market advisory group co-chaired by AMF Board-members Dominique Hoenn and Claire Favre had presented its findings⁹. So important was this issue that the draft amendments to the General Regulation were discussed over three consecutive meetings.

In December 2006, the commission examined the draft of the third AMF report on credit rating agencies, prepared in accordance with Article 544-4 of the Monetary and Financial Code, which states that AMF must publish an annual report on "the role of [...] rating agencies, their ethical rules, the transparency of their methods and the impact of their activities on the issuers and the financial markets". It also reviewed a draft of the third annual report on corporate governance and internal control procedures, prepared on the basis of disclosures by publicly traded companies on these matters¹⁰.

The AMF 2006 report on corporate governance and internal control procedures was particularly important in light of the work done by the market advisory group chaired by Jean Cédelle and Guillaume Gasztowtt, notably its recommendations on internal control standards¹¹.

The commission's meetings over the past three years have dealt mainly with a series of amendments to the AMF General Regulation, largely in connection with the transposition of the directives – on market abuse, prospectuses and transparency – stemming from the Financial Services Action Plan of the European Commission. Accordingly, only a limited number of regulatory modifications are expected in 2007 (i.e. transposition of the implementing measures for the Transparency Directive, and implementation of the recommendations of the market advisory group on independent investment research).

Consequently, the commission decided to start 2007 by examining its own operating procedures and discussing the initiatives that would allow it to:

- assess the impact of the extensive regulatory changes that have taken place in recent years;
- learn more about the uncertainties and difficulties encountered by issuers when implementing the new regulations in order to deliver an appropriate response or to inform the AMF Board;
- identify topics that will have a significant impact on issuers in the near to medium term and that will require the AMF to take a position or adopt a course of action.

Naturally, these initiatives will form part of the AMF's Better Regulation approach. For example, the commission called for the formation of an ad hoc working group to examine how the AMF would put in place a streamlined procedure for examining issuers' prospectuses under certain conditions. A second group was set up to assess the costs and benefits related to the adoption of Extended Business Reporting Language (XBRL).

Commission members

Jean-Michel Naulot (Chairman) – Yves Mansion¹² (Vice-Chairman)
Olivier Azières (Azières Conseil), Claude Baj (Phison Capital), Benoît Bazin (Saint-Gobain), Jean-François Biard (BNP Paribas), Dominique Bompoin (Sullivan & Cromwell), Françoise Bonfante (UBS Securities France), Franck Ceddaha (Oddo Corporate Finance), Jean Cédelle (Calyon), Martine Charbonnier (Euronext), France Drummond (University Paris II), John Glen¹³ (Air Liquide), Philippe Lagayette (JP Morgan), Michel Léger (Léger et Associés), Guy

⁹See p. 24.

¹⁰Pursuant to Article L. 621-18-3 of the Monetary and Financial Code.

¹¹See p. 26.

¹²Replacing Antoine Giscard-d'Estaing (Groupe Danone) from September 2006

¹³Replacing Jean-Pierre Cloiseau (Lafarge) from January 2006

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Mamou-Mani¹⁴ (Groupe Open/MiddleNext), Marie-Christine de Nayer (Freshfields), Helman le Pas de Sécheval (Groupama), Jacques Rossi (Cabinet Rossi), Eliane Rouyer¹⁵ (Accor), Government Commissioner.

2 > Retail Investors and Minority Shareholders

The Consultative Commission on Retail Investors and Minority Shareholders Consultative met nine times in 2006, the same as in the previous two years. It once again divided its time between examining and issuing opinions on amendments to AMF regulations and discussing strategic regulatory issues arising from the changing context within which the authorities operate. Much of its work was devoted to supporting the AMF's Better Regulation approach, initiated in 2006.

The commission was consulted on draft regulations that were of direct interest to investors. In particular, it regularly monitored the construction of a regulatory framework for a new investment product, the real estate collective investment scheme (OPCI). It made sure that the supervisory committee of the OPCIs common-fund variant, the FPI, had effective powers, and it examined the linkage between the presumed liquidity of the product and the illiquidity of its underlying assets. It also gave an opinion on operational issues such as the layout of Section B of the simplified prospectus of collective investment schemes, which deals with fees and performance.

The commission is also tasked with examining the main reports published under the auspices of the AMF or with input from its departments. In 2006, it studied the recommendations of the working group on takeovers, the AMF's work on the qualitative (or "star") rating of investment funds, and the options for implementing the report on independent investment research, presented by the group chaired by AMF Board-member Jean de Demandolx-Dedons. It also monitored follow-up on the report on consumer financial education drafted in 2005 by an AMF working group, in which many of its members took part. It was kept regularly informed about the formation of the Institute for Public Financial Education and reacted to the issues that the institute had to address.

Special attention was paid to the reform of employee investment schemes, further to the reading of draft legislation on the development of and participation in workplace saving¹⁶.

In 2006, the principal changes to the AMF's operating environment became clear, with the implementation of MiFID and the amendments proposed by the European Commission to the UCITS Directive. The consultative commission examined the investor impact of these developments, informing the AMF of its concerns and pointing to areas requiring attention.

The commission contributed actively in several ways to the AMF's work on better regulation. Its view were sought on the kind of survey that would give a clearer picture of how retail investors use AMF-reviewed disclosure documents. And once the survey had been carried out, the commission commented on the findings. It also made a remarkable contribution to the debate initiated by the AMF in the consultation paper Promoting Better Regulation. It gave the Board a series of proposals aimed at enhancing investor information and protection and ensuring that investors' interests are represented in the AMF's decision-making processes. Among its proposals were to enhance the activities of the Ombudsman and publicise them more widely. The commission also proposed a discussion on the organisation of its workload, culminating in a review of its operating methods in 2007. Another project under consideration was the issue of whether to create an "investor panel" or some such body, which would be external to the AMF and have a remit covering all savings products.

Commission members¹⁷:

Jean-Claude Mothié (Chairman), Claire Favre (Vice-Chair)
Jacques Coutance, Vincent Dufloy (CLAS¹⁸), Olivier Eon (Testé pour Vous), Agnès Gaultier de la Ferrière (FAS¹⁹), Marcel Jayr (member of the ANSA and Euronext individual shareholder committees),

¹⁴Replacing Evelynne Deloirie (Middlenext) from October 2006

¹⁵Replacing André Lévy-Lang from January 2006

¹⁶No 2600-1770 of 30 December 2006

¹⁷Many of the commission's members sat on the working on consumer education (see below).

¹⁸Association of Crédit Lyonnais shareholders

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Pierre-Henri Leroy (Proxinvest), Viviane Neiter (APAI²⁰), Colette Neuville (ADAM²¹), François Perrin-Pelletier (FAIDER²²), Fabrice Remon (Demminor), Marie-Claude Robert (first COB Ombudsman), Aldo Sicurani (FFCI²³), Marcel Tixier (ANAF²⁴), François de Witt (journalist), Government Commissioner.

3 > Markets and Exchanges

The Consultative Commission on Markets and Exchanges, chaired by Bernard Field and vice-chaired by Jean-Pierre Pinatton, is composed of 19 personalities from the world of finance, who represent investment services providers, issuers, market undertakings and supervisory authorities. It met 11 times in 2006.

Its agenda was dominated by preparations for the transposition of MiFID and by the examination of draft amendments to the AMF General Regulation.

The members of the commission, who have been working on these issues since late 2005, were asked first of all for input on the main policy proposals drawn up by the AMF's departments concerning market transparency and the authorisation of investment services providers.

The discussions were particularly useful in gaining a better understanding of the competition issues related to the transposition of MiFID and the appropriateness of the resulting regulatory framework. This served as the starting point for drafting the new AMF General Regulation, on which the commission was consulted during the second half of the year.

The commission also gave its opinion on the preparation of the consultation paper published in July 2006 on enforcing the best-execution rule. This input helped the AMF to set out its positions within the Committee of European Securities Regulators and in discussions with the European Commission.

The commission also played a consultative role in examining changes to the rules and plans of the market undertaking, Euronext, which required regulatory approval. The main changes it discussed concerned the operating rules of Alternext, amended to introduce a direct listing procedure for companies wishing to go public without a capital-raising exercise. The commission's views were also sought on the proposal to set up a single central order book serving all the regulated markets operated by Euronext. The commission issued a favourable opinion, which served as a basis for AMF to initiate discussions within the College of Euronext Regulators.

The commission was asked for its opinion on draft amendments to the General Regulation governing independent investment research, following the work done in 2005 by the group²⁵ chaired by Jean de Demandolx-Dedons. In general, the commission reacted positively to the AMF's proposals aimed at encouraging the implementation of a Better Regulation policy.

Commission members

Bernard Field (Chairman), Jean-Pierre Pinatton (Vice-Chairman)
Jean-Pierre Aubin (Viel Tradition), Jean-François Bay (AFII²⁶), Thierry Coste (CASA), Alain Couret (CMS Bureau Francis Lefebvre), Marie-Noëlle Dompé (Darrois & Villey), Jacques Hamon (CEREG), Gérald Harlin (Axa), Alain Kayayan (investment analyst, Exane), Jean-Bernard Laumet (HSBC/CCF), Catherine Langlais (Euronext), Patrice Marteau (Acteo), Jean-Pierre Mattout (cabinet Kramer Levin), Alain Moynot (BNP Paribas), Jean-Pierre Mustier (Société Générale), Yves Nachbaur (Banque de France), Catherine Patou (Ixis), Thierry Simon (CA Indosuez Chevreux), Hubert de Vauplane (Calyon), Government Commissioner.

¹⁹French federation of employee and pensioner shareholders

²⁰Association for the promotion of individual share ownership

²¹Association for the defence of minority shareholders.

²²Federation of independent associations for the defence of retirement savings

²³Federation of investment clubs

²⁴Association of French shareholders

²⁵See p. 25.

²⁶French association of institutional investors.

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4 > Individual and collective asset management

The Consultative Commission on Individual and Collective Asset Management is a forum for dialogue with professionals from all sectors of the asset management industry. It met eight times in 2006.

The commission maintained the strategic focus it adopted in 2005. For example the debate, initiated in 2005 by the European Commission's Green Paper, over modifying the EU asset management framework to build a single Europe-wide market for this activity continued in 2006 with the examination of the stakeholder responses to the paper and the action areas set out by the European Commission in its White Paper. On each occasion, the debate was organised around a presentation by a representative of the competent department at the European Commission, in keeping with consultative commission's desire for greater openness towards outside contributors.

The commission devoted one session to issues arising from the French framework for alternative investing, with contributions from a senior executive of a leading French hedge fund manager and a representative of the national association of institutional investors.

The commission also continued to play a consultative role in the regulatory area by scrutinising and debating the main changes to the AMF's General Regulation. In particular it debated the options for the design of the new collective investment vehicle specialised in real estate (OPCI), which were reviewed over several sessions as work progressed. Other matters addressed by the commission included the changes proposed by the Treasury and Economic Policy Directorate to decree 89-623 of 6 September 1989 with a view to adjusting investment ratios, the amendment to the General Regulation permitting the hedging of currency risk on different categories of fund units, and the implications for the AMF of the decision by the US courts to strike down a requirement for mandatory SEC registration of hedge fund managers. The commission provided input for the Board's decision in all these areas.

Another issue that focused the attention and energies of the commission's members was the transposition of MiFID, which appeared on the agenda of several meetings. The commission examined an interpretative paper on best execution, along with a number of queries about whether some of the directive's provisions should be applied to particular categories of management company. The aim was to strike a balance between possibly limiting the scope of MiFID to some of these categories and the need to apply a uniform set of rules to market participants that are comparable despite falling into separate legal categories.

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 the financial data filed by investment managers. Similarly, it was informed about the work done by CESR in the field of asset management, both on eligible assets and on the simplification of the notification procedure, as well as the main projects handled by the International Organization of Securities Commissions.

Commission members

Philippe Adhémar (Chairman), Monique Bourven (Vice-Chair)
Christian Boisson (Crédit Agricole AM), Dominique Eugène (Macif Gestion), Gilles Glicenstein (BNP Paribas AM), Philippe Goubeault (AGIRC), Guillaume Jalenques de Labeau (SPGC²⁷), Pierre Jolain (Haas Gestion), Jean-Louis Landais (Banque de France), Pierre Lasserre (Exane), Nicolas Moreau (Axa), Éric Mijot (investment analyst, SFAF²⁸), Gérard Pfauwadel (Unigestion AM), Hélène Ploix (Pechel Industries), Roland Portait (Essec/CNAM), Bruno Prigent (Société Générale), Antoine de Salins (FRR²⁹), Patrick Sellam (Cabinet Patrick Sellam), Government Commissioner.

²⁷*Société parisienne de gestion et de conseil.*

²⁸*French financial analysts' society.*

²⁹*Fonds de réserve pour les retraites.*

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5 > Clearing, Custody and Securities Settlement

The Consultative Commission on Clearing, Custody and Securities Settlement, chaired by Dominique Hoenn and vice-chaired by Jean de Demandolx-Dedons, comprises 16 members representing post-trade infrastructures, investment services, industry groups and supervisory authorities.

The commission met six times in 2006 and issued opinions on a series of regulatory initiatives pertaining to post-trade infrastructures and securities law.

Carrying on from the previous year, it examined draft legislation in these areas. Regarding transfer of ownership, the commission reviewed a draft instruction on ownership transfer dates for securities sold outside a regulated market and for trades executed on a multilateral trading facility. It gave its opinion on draft amendments to the AMF General Regulation on the depositary function for collective investment schemes and on the new real estate investment schemes, the OPCI. The commission was also consulted on questions arising from MiFID transposition as regards the protection of client assets. The commission's second area of focus in 2006 was the issue of shareholder voting rights. It worked on improving the exercise of these rights in France and it examined the proposal for an EU directive in this area. It was also questioned as to whether the processing of stock options is regulation-compliant when this service is provided by an agent that does not manage the issuer's share register. Given the highly technical nature of this topic, the commission handed it over to a select working group, which is due to release its findings shortly.

Throughout 2006, the commission kept abreast of developments in the clearing and securities settlement sector in Europe. It monitored work on the ESCB-CESR standards, as well as the European Commission's evaluation report on the Final Settlement Directive. It was also informed about progress on the drafting of a European code of conduct for clearing and settlement. It gave a positive response to initial work on the TARGET2-Securities project, a settlement platform on which the European Central Bank would process securities and cash settlements in euro.

Commission members

Dominique Hoenn (Chairman), Jean de Demandolx Dedons (Vice-Chairman)
Philippe Castelanelli (HSBC/CCF), Xavier Chaillot (Société Générale), Emmanuel de Fournoux (AFEI), Anne Landier Juglar (CACEIS), Michel Germain (Paris II), Pierre Guillemet (Calyon), Christophe Hémon (LCH Clearnet France), Christophe Lepitre (ADI Alternative Investments), Yvon Lucas (Banque de France), Guy Mengin (Crédit Suisse), Philippe Pautzet (Arlis), Pierre Slechten (Euroclear France), Marcel Roncin (AFTI), Government Commissioner.

C > Market advisory groups

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

1 > Industry/regulator cooperation on MiFID

Bearing in mind the wide range of fields and businesses covered by the Markets in Financial Instruments Directive (MiFID) and the extent of the resulting changes, the AMF set up a far-reaching consultation process to discuss the transposition of the directive and the drafting of the corresponding legislation.

As early as March 2004, the AMF organised a series of coordination meetings with industry groups on a monthly or two-monthly basis to report on the progress of CESR's comitology work. Starting on September 2005, the meetings were held every month in order to prepare for the transposition process in a spirit of cooperation on the main policy areas. The meetings were attended by associations representing intermediaries (AFEI, FBF, ASF, AFG) and issuers (AFEP, MEDEF) as well as by Euronext.

In 2006, this coordination and cooperation process was not only stepped up but also expanded, with special working groups being formed to deal with questions arising from a particular aspect or a particularly sensitive interpretational issue.

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A working group of professionals and representatives of industry groups, chiefly compliance officers, was set up in first-half 2006 to make a preliminary analysis of questions related to organisation rules and rules of conduct. The group met four times and was consulted on the initial drafts of Book III of the AMF General Regulation, particularly the planned overall approach, which consisted in restructuring the book to include a set of common provisions for investment services providers, including asset management companies.

To fully appreciate the consequences of best execution, the AMF also sought the opinions of professionals who will be required to comply with the rule on a daily basis. A second working group, chaired by Jean-Pierre Pinatton, a member of the AMF Board, was asked to propose guidance on the main interpretational issues raised by MiFID in this respect. In July 2006 the group issued a consultation paper explaining how the best execution rule would be applied in practice and what the AMF expected from its implementation. The guidance related in particular to enforcement of the rule on non-equity markets and in portfolio management and order reception/transmission services.

A third working group, specialised in asset management issues, was set up on the initiative of the AMF in spring 2006 with the members and full-time staff of the French asset management association, AFG. The group met four times in three months to discuss topics that the AMF had identified as having a potential impact on asset management companies, namely conflict of interest management, inducements, best execution, and pre- and post-contractual disclosure requirements.

In October 2006, a cross-sector working group chaired by Jacques Delmas-Marsalet, an AMF Board member, examined MiFID transposition issues relating to the marketing of financial products³⁰. (Mr Delmas-Marsalet had submitted a general report on product marketing to the finance minister at the end of 2005.) Made up of professionals (financial investment advisors, bank networks, asset management companies and their industry groups), the group dealt with issues such as inducements and the transparency of compensation arrangements as well as their application to fund distribution, the consequences of treating fund subscriptions and redemptions as order reception and transmission services, and the linkage between MiFID provisions on advice and storage. The group provided input for transposing the directive into the General Regulation and for discussions at European level.

In addition, numerous ad hoc meetings were organised with industry groups, either at their request or on the AMF's initiative.

2 > Culmination of the work on takeover bids

The working group on takeover bids, co-chaired by Claire Favre and Dominique Hoenn, was set up on the initiative of the AMF Board in October 2005 for the transposition of the Takeover Directive, scheduled for 20 May 2006 at the latest.

After parliament passed the enabling bill, it was up to the AMF to write the implementing measures for the directive into its General Regulation. The working group focused its attention on the points that were the most awkward to transpose, especially those with several possible interpretations or options. The AMF also wanted to take the opportunity to examine a number of other issues in greater detail. In particular it wanted to revisit the arrangements for combining the procedures for vetting tender offers and approving prospectuses, which were inherited from the CMF and the COB, respectively. When these two regulators merged to form the AMF, the procedures were simply put side by side in the General Regulation published in 2004.

Further to the group's discussions and the work done by the AMF's departments, the following proposals were put forward in April 2006:

- Bids should immediately be made transparent by publicly filing a draft offer document. The participants are free to make public filings of additional documents with the AMF. The draft offer document must contain all the information provided for in Article 6(3) of the Takeover Directive as well as some the disclosures referred to in the AMF General Regulation;

³⁰AMF Annual Report 2005,

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- In parallel, the AMF would issue its decisions on the acceptability of the offer and the approval of the offer document. The group proposed that the decisions be delayed pending the response of the target company, i.e. the reasoned opinion of the board of directors and the fairness opinion issued by an independent appraiser, in cases where such an opinion was necessitated by a potential conflict of interest. The offer would be declared open once these decisions have been published;

- If a conflict of interest arises, a certification from an independent appraiser would be included in the target company's response document. The group proposed that in this case, the draft response document should be made available five business days before the AMF Board examines the acceptability of the offer. The group also mooted that the appraiser should have at least 15 days to prepare his report.

These proposals were put out for public consultation and then incorporated into the AMF General Regulation, published in the Official Journal of the French Republic on 28 September 2006.

3 > Implementing the recommendations of the working group on independent investment research

The AMF organised a public consultation in the third quarter on draft amendments to the General Regulation³¹ and a draft instruction incorporating the recommendations of the report of the working group on independent investment research, chaired by AMF Board member Jean de Demandolx-Dedons.

a) Commission sharing arrangements

Noting that investment research was not always financed in a rational and transparent manner, the working group on independent research recommended that it should be paid for under commission sharing arrangements, as has been the case in the UK since 1 July 2006.

With this model, brokerage commissions can be split and order execution services can be billed separately from investment decision and execution support services (e.g. economic research and financial analysis). Furthermore, a third party such as an independent research boutique can supply investment decision and execution support services under a commission sharing agreement (CSA) between the portfolio management company, the broker authorised to provide the execution service and the third party.

In line with the working group's recommendation, the AMF amended the General Regulation to include the conditions that CSAs must satisfy, as well as the reporting requirements incumbent on asset management companies with respect to their clients (i.e. fund investors and principals). In addition, an AMF instruction gives a non-exhaustive list of services that do not qualify as investment decision and order execution support services and cannot therefore be invoiced as investment research to funds or discretionary portfolios.

Note that CSAs will replace the existing system of soft commissions following a transition period ending on 1 January 2008.

b) Independence of judgement of investment analysts not working for an investment services provider

The amended AMF General Regulation sets out the rules governing the independence of judgement of analysts that do not work for an investment services provider, as well as their compliance obligations and the obligations incumbent on the industry groups that represent them.

³¹The General Regulation was amended by the order of 4 May 2007 published in the Official Journal on 16 May 2007.

c) Principle of equal access for all investment analysts to listed company disclosures

An assessment of the use of commission sharing agreements on the French market will be made in first-half 2009.

4 > Working group on depositaries

See Chapter 4 (Collective investment schemes).

5 > The working group on internal control standards winds up its activities

As announced in January 2005, the AMF formed a working group to prepare a set of internal control standards for companies subject to statutory obligations in this respect. Co-chaired by Jean Cédelle and Guillaume Gasztowtt, the group was composed of a plenary committee with some twenty members.³²

It started by preparing a reference framework composed of general principles applicable to all the internal control processes used by a company. Appended were two questionnaires, one on accounting and financial internal controls, the other on risk analysis and management. This document was published in May 2006. The group then turned its attention specifically to accounting and financial internal controls, under the guidance of Jean Cédelle and Michel Léger. To supplement the reference framework, it issued an application guide to internal control procedures for the preparation and processing of published financial information. The guide, which was put out for public consultation in October 2006, is based on principles and key points of analysis. Its approach differs intentionally from the organisational methods normally used by companies in that it focuses on the elements used to prepare publicly disclosed accounting and financial information.

The reference framework determined by the group can be summarised as follows:

Definition and objectives:

Internal control is a system established by a company and implemented under its responsibility in order to ensure that:

- it complies with prevailing laws and regulations;
- the instructions and guidelines established by its senior management or executive board are duly enforced;
- its internal processes operate smoothly, particularly those that contribute to safeguarding its assets;
- its financial disclosures are reliable.

Overall, this system helps the company to remain in control of its business, operate efficiently and use its resources effectively. It does not, however, provide an absolute guarantee that the company's objectives will be met.

Scope of internal control:

- Each company must put in place an internal control system appropriate to its situation. For corporate groups, the parent company must ensure that its subsidiaries have their own internal control systems;
- These systems must be tailored to the subsidiaries' individual characteristics and to their relations with the parent.

³²Group members: associations representing the corporate sector (AFEP, AMRAE, ANSA, IFACI, MEDEF, Middlednext), accounting institutions (CNCC, CSOEC), experts and associate members with no voting rights (AMF, CCAMIP, CB, FBF, Treasury Department).

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Components of the internal control system:

In accordance with the reference framework prepared by the working group, an internal control system has the following components:

- an organisation structure with clearly defined accountabilities and suitable resources and skills, supported by appropriate information systems, operating methods and procedures, tools and practices;
- a process for disseminating relevant and reliable information within the company so that each member of staff can carry out their duties;
- a system for identifying and analysing the major identifiable risks to the company's objectives and for ensuring that procedures are in place to manage those risks;
- oversight activities proportionate to each process and designed to ensure that appropriate measures are taken to manage the risks that could prevent the company from meeting its objectives;
- ongoing supervision of the internal control system and regular inspections to ensure it is functioning correctly.

Internal control will be all the more relevant if it is based on a set of integrity and conduct of business rules laid down by the company's governance bodies and conveyed to each member of staff. It must not be reduced to a purely formal system, alongside which serious breaches of business ethics could occur.

The AMF recommends that all publicly listed companies in France should use the reference framework and the application guide.

Naturally, the framework and guide will not be made mandatory, particularly for companies obliged by foreign regulations to use a particular set of standards. Nor will they replace the special regulations that apply in certain sectors, such as banking and insurance.

Companies are asked, however, to stipulate in their chairman's report whether they have used the reference framework and application guide when preparing the report. If a firm has used certain aspects of the framework and guide, it must clearly identify the internal control areas or key processes that have been applied, having regard to its businesses, size and organisational methods. Companies must emphasise the factors and information that could have a material impact on their assets and liabilities or results.

The same transparency principles apply to other standards that a company applies or is required to use at international level. In this case, the standards must be clearly identified.

This recommendation applies to chairmen's reports on the internal control procedures applicable to financial years starting on 1 January 2007.

6 > Working group on the instruction on custody account keeping

A working group composed of representatives of intermediaries and issuers/custody account keepers met several times in 2006 to draft an AMF instruction reprising CMF decision 99-10 and its implementing instruction on the organisation and operating rules for financial instrument accounts. The group sought to propose a simplified version of these rules and to address new issues, notably flow-account keeping. It is expected to complete its work in 2007.

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D > Scientific Advisory Board

The AMF Scientific Advisory Board³³ met three times in 2006 to discuss work related to the AMF's medium- and long-term concerns.

At the first meeting, Albert Menkveld of Amsterdam University gave a presentation on equity market microstructure, showing that the introduction of competing trading platforms was beneficial for the market as a whole, particularly in terms of depth and price spreads. Esther Jeffers and Olivier Pastré of Paris-VIII University looked at restructuring in the European banking industry at a time when banks are carrying on an increasingly wide range of businesses. The meeting concluded with a presentation by François Champarnaud from the French government shareholding agency, APE, on the amount of information that should be given to retail investors in an environment where financial intermediaries are transferring substantial risks to individuals.

At the spring session, Edith Ginglinger from Paris Dauphine University presented the findings of a study into share buybacks, which showed that the majority of companies comply with regulatory requirements when implementing these programmes. David Thesmar from the HEC business school looked at the corporate governance role of boards of directors.

The Scientific Advisory Board held its last session of the year on 7 December. Members submitted original research conducted especially to underpin the AMF's activities in the field of financial asset management. Olivier Davanne (DPA Conseil), Olivier Garnier (SGAM) and Thierry Pujol (DPA Conseil) presented the findings of a study on investment fund ratings issued by specialised agencies. One of the authors' most significant conclusions is that these ratings are unstable because large numbers of funds change from one category to another during their lifetime. François Serge Lhabitant (HEC Lausanne) presented the conclusions of his work on hedge fund indices, previously published in an AMF working paper. The study shows that these indices do not meet the requirements of the UCITS III Directive (especially in terms of representativeness) in order to qualify for marketing to the public.

The Scientific Advisory Board held its first conference on 15 May 2006 in Paris on the topic of household financial risk. The morning session examined the major risks affecting financial markets in the short, medium and long term. From a cyclical perspective, the speakers stressed the risk of a price bubble forming for some types of financial asset, amid a sharp increase in global liquidity. A number of risk factors of a more structural nature were also examined. Population ageing is likely to produce major changes in savings rates and economic growth rates, and this will probably have a material impact on financial asset prices. Likewise, owing to the boom in collective investment management and the surge in financial innovation, especially instruments for transferring credit risk, investors are being exposed to unfamiliar risks, even though the benefits in terms of portfolio diversification should not be overlooked. Furthermore, as a result of variable-rate lending practices and new forms of financial intermediation, financial risk is being transferred to households. One telling example of this trend is the fact that defined-benefit pension funds are gradually being abandoned in favour of defined-contribution funds.

The afternoon session provided the opportunity to discuss household investment behaviour and investor protection, which are inextricably linked. The speakers agreed on the need to address the changes to be made to the supply of savings products, as well as the role of market participants such as distributors and asset managers in terms of investment advice and asset allocation. Likewise, major efforts must be made to promote financial education, given that households are not financially literate enough to cope with the investment decisions they have to take. However the speakers noted that for

³³Members: Michel Aglietta (Paris-X Nanterre University), Michel Albouy (Grenoble PMF-ESA University), Noël Amenc (EDHEC), Patrick Artus (IXIS-CIB), Christian De Boissieu (Paris-I University), François Champarnaud (APE), Patricia Charlety (ESSEC), Jean-Michel Charpin (INSEE), Olivier Davanne (Associé DPA Conseil), Thierry Foucault (HEC), Olivier Garnier (Société Générale Asset Management), Edith Ginglinger (Paris-Dauphine University), Christian Gourieroux (Paris-IX University, ENSAE), Ruben Lee (Oxford Finance Group), Jean-François Lepetit (director, BNP Paribas), François-Serge Lhabitant (HEC, Lausanne University), 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 (IESE Business school).

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maximum effectiveness, the action taken by regulators and private-sector practitioners needs to be properly tailored to individuals' needs and characteristics.

The second conference, dealing with stock market reorganisation, was held on 14 May 2007 in Paris in collaboration with the US Securities and Exchange Commission.

3 > Education, training and public information

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. It also organises briefings.

To answer queries from retail and professional investors, the AMF has set up telephone hotlines at:

- the documentation centre³⁴
- the mediation service³⁵
- the Legal Affairs Division (for professionals only)³⁶

AMF representatives also attend a wide variety of public events, such as forums, investment fairs and conferences, both in France and abroad³⁷.

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 regulator and its missions.

A > Industry education

In line with the commitments made under its Better Regulation approach, the AMF pursued in 2006 its efforts to inform professionals about regulatory developments and the transposition of EU directives. It organised a series of instructional initiatives, which included:

- launching a quarterly newsletter covering the latest developments in the field of financial regulation,³⁸
- organising briefings about the transposition on the Transparency and Takeover Directives and MiFID;
- preparing a MiFID presentation guide;³⁹
- updating its guide to EU directives French Regulation in Europe's Future Financial Landscape,⁴⁰ divided into four profile-specific sections: listed companies, investment services providers, asset management companies, and financial investment advisors/direct marketers;
- organising the annual conference, "Les Entretiens de the AMF",⁴¹ which this year examined how the French financial markets were adapting to the new regulatory environment.

The AMF also brought out a collection of instructional publications to provide industry professionals with concise information on important issues. Three issues have so far been published:

- setting up a portfolio management company;
- key information for financial investment advisors (FIAs);
- alternative asset management.⁴²

³⁴Hotline: +33 (0)1 5345 6200 from 9.30am to 12.30 and 2.30pm to 4.30 from Monday to Thursday.

³⁵Hotline: +33 (0)1 5345 6464 from 2pm to 4pm on Tuesdays and Thursdays.

³⁶Hotline: +33 (0)1 5345 6225 from 2pm to 4pm on Tuesdays and Thursdays

³⁷103 events attended in 2006.

³⁸Downloadable from the AMF website [http://www.amf-france.org/rubrique/Publications/Financial Regulation Newsletter](http://www.amf-france.org/rubrique/Publications/Financial%20Regulation%20Newsletter)

³⁹Downloadable from the AMF website <http://www.amf-france.org/Publications/>

⁴⁰Downloadable from the AMF website [http://www.amf-france.org/Publications/Guides/Professional guides](http://www.amf-france.org/Publications/Guides/Professional%20guides).

⁴¹All the materials distributed at the conference are available at <http://www.amf-france.org>

⁴²http://www.amf-france.org/documents/general/7535_1.pdf (in French)

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For a more academically minded readership, the AMF has launched a new series of publications, AMF Working Papers, that present economic research with a bearing on financial regulation.

The purpose of the Working Papers is to lay the groundwork for an open dialogue between financial practitioners and the academic community. They contain research carried out AMF staff and also by outside researchers, for whom the AMF has organised a special cooperation mechanism, notably through the Scientific Advisory Board.

In addition, the AMF organises meetings with compliance officers and investment service supervisors on a yearly basis. These one-day meetings are extremely popular, as witnessed by the answers to the satisfaction survey carried out at the sixth annual event. The meetings are a key component of the ongoing, formalised dialogue between regulator and industry. They give the AMF an opportunity to discuss topical regulatory issues and practices in an educational context.

B> Consumer education: formation of the Institute for Public Financial Education

In addition to its ongoing role of consumer education and in accordance with its investor protection remit, the AMF contributed actively to the formation of the Institute for Public Financial Education (IEFP) in April 2006.

In 2005, a market advisory group led by the AMF identified a clear need for an overarching policy of investor education⁴³. The group based its recommendations on the findings of a TNS Sofres survey highlighting the low level of financial literacy among the French as well as a desire to be better equipped to face up to their responsibilities.

The IEFP aims to enable French people to take better informed investment decisions and to have greater control over collective and individual choices affecting their personal finances. It has a four-pronged mission:

- develop gradually an overall policy for training the public in financial economics and investment. It analyses the public's general needs in order to promote appropriate responses, by encouraging the networking and endorsement of different types of training programmes, both existing and future;
 - conduct nationwide communication campaigns to raise public awareness of economic and financial issues;
 - encourage academic research and contacts with international organisations in the field of consumer financial education;
 - initiate a constructive dialogue with the public authorities, regulators and all other interested parties.
- Organised as an independent not-for-profit body, the IEFP⁴⁴ is run by a board of directors composed of some twenty experts from the worlds of economics, finance, community action, academia and education.

On a broader level, the formation of the IEFP is part of the AMF's Better Regulation approach, one of the aims of which is to engage in a closer dialogue with the general public. This involves:

- stepping up its public outreach initiatives by developing larger-scale information campaigns about its investor protection role, as well as educational and training activities;
- improving the ways in which representatives of retail investors take part in financial regulation processes, in particular by reassessing the role and functioning of the Consultative Commission on Retail Investors and Minority Shareholders;

⁴³AMF Annual Report 2005

⁴⁴contact@lafinancementpourtous.com

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- making a more comprehensive inventory of the complaint-handling and out-of-court settlement procedures used by investment services providers, and improving the linkage between these and the AMF Ombudsman's procedure;
- ensuring that retail investors are formally represented in the regulatory debate via a non-AMF institution, in coordination with other state authorities.

C > 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 if they are contacted by an unknown individual or company, whether by telephone or unsolicited electronic or postal mail, and offered financial products or services that are not authorised for marketing in France.

The AMF reminds investors who may be tempted by these illicit proposals that they will have only limited means of redress if they decide to proceed.

In a dedicated area of its website, the AMF also reminds investors that, before taking a decision to invest in a product, they should check whether it and the company offering it have been duly authorised. On the "Warnings" page of the website, a section entitled "Basic rules of caution" reminds investors of the numerous databases that can be accessed via the site to carry out these checks:

- Geco, to check whether a collective investment scheme or product is authorised;
- the FIA and direct marketer files, to ascertain the identity of professionals that contact the investor or that he or she wishes to use, as well as the services and products they are authorised to offer;
- the CECEI can be contacted to check the identity of other categories of ISP (investment firm, credit institution, etc..).

The AMF warns investors about the most common scams and swindles by publishing a broad description on its website.⁴⁵ For example:

- the Nigerian advance fee scheme
- "Congratulations, you've won the jackpot!"
- "An interesting career opportunity"
- phishing⁴⁶
- 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. In 2006, it issued 11 warnings further to complaints or queries addressed to the Ombudsman Service or incidents detected by the market surveillance division or the Banque de France regional delegates.

2 > Alerts issued by 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

⁴⁵Investor Area > Warnings!

⁴⁶Phishing: identity theft. The word is formed from "fishing" and "phreaking" (hacking into phone networks)

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have not received regulatory approval. The AMF passes on these messages by publishing alerts from CESR members on its website.

In 2006, the AMF web-posted 140⁴⁷ such press releases⁴⁸.

D > The website

The website is one of the most important tools that the AMF makes available to the public. In a survey on better regulation, it was hailed almost unanimously by professionals⁴⁹ as a useful adjunct to their personal relations with AMF officials. In 2006, the site attracted 3.48 million visitors (up 54% in 2005), who appreciate the wealth of information on offer: more than 90,000 documents, including 80,000 in the financial decision and disclosure database.

The AMF comprises three sections:

- general information, including educational guides to financial markets, the golden rules for effective investing, warnings from the AMF and its European counterparts, and files with details of direct marketers and FIAs;
- a database of listed company disclosures (prospectus, new releases, announcements, etc.);
- a database on AMF-approved collective investment schemes (prospectuses, net asset values) and asset management companies (authorisations, products under management, track records, etc.).

The site has dedicated areas for retail and professional investors, accessible from the homepage and containing key information.

- **Retail investors** can find practical advice, warnings, guidebooks, information about mediation, etc.;
- **Professionals** (issuers, service providers, compliance officers and investment supervisors) can go directly to the information that concerns them.

Among the other services and tools available are:

- subscriptions to:
 - mailing lists, which inform subscribers whenever relevant documents are web-posted,
 - AMF newsletters: Financial Regulation Newsletter, Economic and Financial Newsletter, AMF Working Papers.
- tools:
 - the English language website,
 - a semantic search engine with basic and advanced search functions,
 - Really Simple Syndication (RSS) feeds: visitors with an RSS aggregator are informed in real time whenever materials are posted on the website (excluding the CIS and disclosure databases),
 - contact and assistance facilities allowing visitors to get in touch with departments directly or leave messages with the webmaster,
 - an FAQ section,
 - a lexicon of financial terms.

⁴⁷63 in 2005.

⁴⁸Investor Area > Warnings!

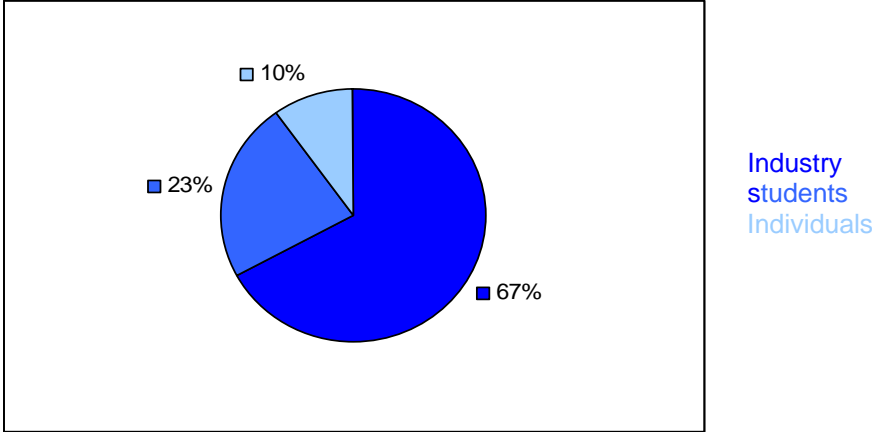
⁴⁹Accenture summary downloadable from http://www.amf-france.org/documents/general/7479_1.pdf

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E > 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.

Requests for information, by source



Source: AMF

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.

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 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.

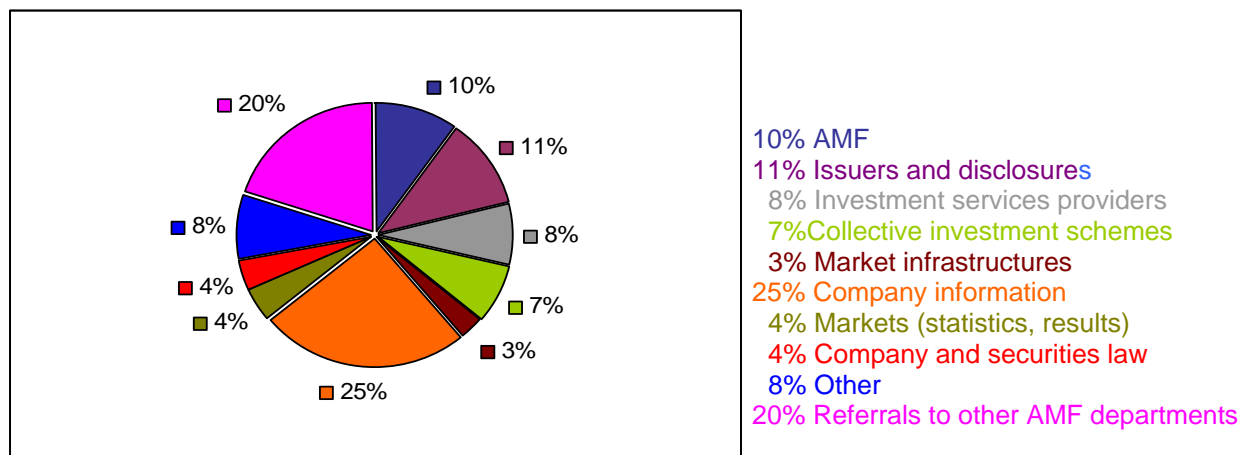
Internet users who have difficulty accessing information can turn to the centre, which provides a guide to using the AMF website.

In 2006, the documentation centre answered 3,443 telephone inquiries. It also dealt with more than 1,600 emails and letters. 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

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Requests for information in 2006, by subject area



Source: AMF

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 1,183 calls in 2006.

F > Cooperation with the Banque de France

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 (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 one other with specialised personnel on secondment. Exchanges of information are governed by statutory provisions on shared secrecy.

The supervisory authorities collaborate in three main areas:

- information sharing;
- local cooperation;
- oversight of investment services providers.

1 > Information sharing

The AMF and the Banque de France share information in a number of areas. The exchanges can either be informal (e.g. with the banking commission on the appointment and re-appointment of statutory auditors of publicly listed credit institutions) or formalised through memoranda, agreements, charters and other such instruments. For example:

- in 1998, an agreement (now being updated) between the Banque de France and the COB on personal data from the judicial records of CISs;
- in 2000, a memorandum of understanding (MOU) establishing the arrangements for using the information file on the directors and shareholders of credit institutions and investment firms (FIDEC);
- in 2004, an agreement on administering the file of information on direct marketers (FIDEM),⁵⁰
- in 2005, a charter on supervisory cooperation with respect to cross-sector financial groups.

⁵⁰<https://www.demarcheurs-financiers.fr>

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Furthermore, the AMF is in the process of signing an agreement with the CECEI and the banking commission on the legal and accounting data it needs to oversee and investigate investment services providers and to collect the fees and contributions they owe.

2 > Local cooperation

Under an 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 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.

In 2006⁵¹, the AMF introduced a new procedure for using the Banque de France's regional delegations to carry out oversight assignments. The procedure was used to conduct 28 assignments relating to the manner in which affiliates of France's leading banking groups marketed EDF shares to the public. In accordance with Article R. 621-32 of the Monetary and Financial Code, the AMF entered into an MOU with the Banque de France, under which a substantial portion of the on-site inspections were carried out by the central bank's employees, particularly where branches in provincial regions were involved.

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. In the course of the meeting, the regional delegates meet the heads of AMF departments and brief them on their activities. The meetings also provide an opportunity to inform them about the year's main events and the work in progress that may have an impact on the cases they are following. The main items on the agenda of the 2006 meeting were the role of the regional delegates in terms of financial reporting and the provision of investment services, direct marketing of financial instruments and the conduct of FIA business.

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
BESANÇON	03 81 65 21 21
CAEN.....	02 31 38 33 00
CHALON-SUR-MARNE.....	03 26 66 71 00
DIJON.....	03 80 40 41 41
LILLE	03 20 40 47 47

⁵¹See Chapter 5

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LIMOGES	05 55 11 53 00
METZ.....	03 87 39 94 00
ORLÉANS	02 38 77 78 78
POITIERS.....	05 49 55 88 00
ROUEN.....	02 35 52 78 78

Joint meetings are also organised in different regions of France, such as the one held in January 2007 in Cannes, the first of a series of meetings aimed at promoting the status of FIAs in France.

3 > Cooperation on the oversight of investment services providers

The AMF shares responsibility for the oversight of investment services providers with the banking commission, Commission bancaire. The AMF is responsible for enforcing the rules on investment service provision, while the role of the Commission bancaire is mainly to monitor the security of public deposits and to ensure that the French banking and financial system is managed profitably and prudently, a remit that includes the prevention of money laundering and terrorist financing in reporting institutions. Like the AMF, the Commission bancaire sanctions breaches of its regulations; it also informs the AMF of any incidents that are likely to breach the General Regulation. The two authorities cooperate closely together and with other financial authorities, especially the CECEI, which is responsible for authorising investment services providers other than asset management firms.

The AMF can call on the Commission bancaire to oversee authorised services providers. In most cases, the team appointed by the General Secretariat of the Commission bancaire to inspect an investment services provider also carries out work for both authorities at the same time. The AMF and the Commission bancaire can also set up joint teams.