

# CHAPTER 2

## International Cooperation and Regulation

- 1 – Activity of the AMF within International and European Organisations: responses to the crisis
- 2 – International Cooperation on Financial Reporting, Accounting and Audit Issues
- 3 – International Cooperation on Issues relating to Intermediaries and Market Infrastructures
- 4 – International Cooperation on Asset Management
- 5 – International Cooperation on Market Supervision and Discipline
- 6 – International Cooperation on Technical Issues

**Important:** The following English text is a translation of extracts from the French version of the 2008 Annual Report. Only the original French text has any legal value. The AMF expressly disclaims all liability for any inaccuracies in the translation

The AMF maintained its strong involvement in international regulation and regulatory cooperation during 2008. This active stance was made all the more necessary by the year's circumstances, including the 33rd annual conference of the International Organization of Securities Commissions (IOSCO) in Paris in May, France's presidency of the European Union in the second half, not to mention the financial crisis.

The AMF chaired or initiated several IOSCO ad-hoc working groups and standing committees dealing with issues relating to the financial crisis (valuation and due diligence issues for asset managers investing in structured products, role of credit rating agencies, work on hedge funds, etc.), monitoring of corporate finance transactions (exchange of information in market abuse cases) and developments in market infrastructures.

The AMF took an active part in the negotiation process for the European Union's new UCITS Directive in order to help clarify the new mechanisms proposed in the draft. The draft directive introduces new types of cross-border transactions (mergers, master-feeder schemes) and speeds up existing procedures such as the passport allowing products to be marketed throughout the European Union. The Committee of European Securities Regulators (CESR) was tasked with proposing the conditions for the UCITS management company passport that will be incorporated in the final directive.

In parallel, particular attention was paid to investor protection and quality of disclosure, with the recasting of the simplified prospectus. Key information will now be provided to investors in a standard two-page format. The AMF, which contributed actively to this work alongside CESR, welcomes these advances and will be closely monitoring the follow-up in 2009. The AMF also contributed to the European Commission's work on the marketing of substitute products to retail investors. This work tackles the ways in which competition is distorted to the detriment of investment funds by divergent legislative treatment of products that ought to be treated equally. Lastly the AMF, which has been arguing for years for stricter rules on credit rating agencies, supported the initiatives taken by the European Commission in this area.

## **1 – Activity of the AMF in International Organisations and European Bodies: responses to the crisis**

### **A – International Organisations**

In 2008 the AMF continued to participate in international financial regulatory bodies. It hosted the 33rd annual conference of the International Organization of Securities Commissions (IOSCO) in May 2008 and served as chair of IOSCO's Technical Committee up to that date.

#### **1 > Financial Stability Forum**

Established in the wake of the Asian crisis of 1998 the Financial Stability Forum (FSF) has been chaired since 2006 by Mario Draghi, governor of the Bank of Italy. The FSF comprises representatives of finance ministers, central banks governors and chairmen of securities commissions and supervisory agencies from the G8 countries and five other countries<sup>1</sup>. Its members also include representatives of the international financial institutions, the OECD, the Bank for International Settlements, the European Central Bank and the three international organisations of regulators (including IOSCO for securities market regulators).

In keeping with its remit<sup>2</sup> of fostering international financial stability, improving the functioning of capital markets and reducing systemic risks, the FSF focused in 2008 on the handling of the financial crisis. It continued the reviews begun in September 2007 by the Working Group on Market and Institutional Resilience. The group's final report, submitted to G7 finance ministers and central bank governors in April 2008, includes recommendations on:

- > establishing clearing infrastructures for OTC markets in credit derivatives;
- > strengthening quality requirements for financial and accounting disclosures;

---

<sup>1</sup> Australia, Hong Kong, Netherlands, Singapore, Switzerland

<sup>2</sup> Details available on the Forum's website at <http://www.fsforum.org/home/home.html>

**Important:** The following English text is a translation of extracts from the French version of the 2008 Annual Report. Only the original French text has any legal value. The AMF expressly disclaims all liability for any inaccuracies in the translation

- > urging credit rating agencies to comply with the IOSCO code of conduct as amended in May 2008 to ensure greater transparency and higher quality in their rating processes;
- > strengthening international cooperation among supervisors<sup>3</sup>

## 2 > International Organization of Securities Commissions (IOSCO)

Established in 1983 IOSCO had 190 members<sup>4</sup> at the end of 2008. IOSCO's Executive Committee is chaired by the Securities Commission of New Zealand and vice-chaired by the Chinese Securities Regulatory Commission. The Securities and Exchange Commission (SEC) of the United States is chair of the Technical Committee until the organisation's general meeting in 2010, and the Superintendencia de Valores y Seguros of Chile is chair of the Emerging Markets Committee. The member authorities all gathered in Paris in May 2008 for the organisation's 33rd conference.

Extending its dialogue with industry representatives on priority areas for international work, IOSCO organised a gathering in January 2009 to present and discuss the work of the Task Force on the subprime crisis.

### a) Technical Committee and Standing Committees

The Technical Committee is made up of the chairpersons of the 15 authorities representing the most developed and internationalised markets. Its remit covers all the main international regulatory subjects relating to securities and derivatives markets. It draws up standards and makes recommendations on these subjects. It is supported by five Standing Committees, SC1 to SC5, each assigned to a major area of IOSCO's efforts:

- > SC1 for accounting and financial disclosure<sup>5</sup>;
- > SC2 for regulation of secondary markets<sup>6</sup>;
- > SC3 for regulation of market intermediaries<sup>7</sup>;
- > SC4 for enforcement, cooperation and exchange of information between regulators<sup>8</sup>;
- > SC5 for investment management. This committee is currently chaired by the AMF<sup>9</sup>.

### b) Technical Committee and Task Forces

As part of its activity, the Technical Committee may set up task forces on specific topics. In 2008 two task forces reported their conclusions on credit rating agencies. On corporate governance and auditing, work is still in progress. Late in the year, three task forces were formed to contribute findings and recommendations to the G-20: one on unregulated entities, co-chaired by BAFin<sup>10</sup> and the FSA<sup>11</sup>; a second on unregulated markets and products, co-chaired by the AMF and ASIC, the Australian regulatory authority; and a third on short-selling, chaired by the FSC of Hong Kong. Their work, finalised or in progress, is summarised briefly below.

>The Task Force on the Subprime Crisis, formed in November 2007 and chaired by the AMF, devoted its attention in 2008 to issuer transparency, investor due diligence, asset valuation and the credit rating agencies. This last topic led it to work closely with the task force charged specifically with this topic. The final report on the subprime crisis, prepared jointly by the AMF and the SEC, was published in May 2008 at the time of IOSCO's annual conference. It includes a detailed summary of the conclusions of the report on credit rating agencies, which was published at the same time. These reports served as part of the basis of the G-20 statement of November 2008 and resulted in mandates to the various standing committees to pursue work on a number of subjects. SC1 worked with market participants on issuer transparency and investor due diligence with respect to information on securitised products; SC2 worked with players in the secondary market for structured products on

---

3 Proposal for "colleges of supervisors" taken up by the G-20 at its meeting in Washington on 15 November 2008.

4 109 ordinary members and 11 associate members (the same number as last year) plus 70 affiliates, a category that includes exchanges and market operators as well as international financial institutions such as the IMF.

5 On the Multinational Disclosure and Accounting Standing Committee, see page 11

6 On the Regulation of Secondary Markets Standing Committee, see page 14

7 On the Regulation of Market Intermediaries Standing Committee, see page 16

8 On the Enforcement and Exchange of Information Standing Committee, see page 21

9 On the Investment Management Standing Committee, see page 17

10 Bundesanstalt für Finanzdienstleistungsaufsicht

11 Financial Services Authority (UK)

**Important:** The following English text is a translation of extracts from the French version of the 2008 Annual Report. Only the original French text has any legal value. The AMF expressly disclaims all liability for any inaccuracies in the translation

a mechanism for transparency in trading; and SC3 was given the mandates relating to internal control and liquidity risk management within investment firms. Lastly, SC5 worked with asset managers on investment due diligence.

>The Task Force on Credit Rating Agencies was established in 2003. It was the originator of the code of conduct presented to the industry in December 2004 and adopted in 2007 by the main international agencies. In May 2008 the Technical Committee approved an amended version of the code reflecting what had been learned from the financial crisis. In November the G-20 recognised the legitimacy of its efforts, and IOSCO is now considered to be the international standards body for credit rating agencies.

>In March 2007 the Task Force on Corporate Governance published a comparative analysis of the principal financial centres with regard to one key aspect of governance: the principle established by the OECD that every board of directors should be in a position to exercise objective independent judgement on matters affecting the company under its oversight. It was agreed not to issue recommendations immediately but to continue studying the respective situations of the jurisdictions represented on the task force. This work was conducted in 2008 in collaboration with industry participants, which are in favour of further standardisation. A final report will be presented in June 2009<sup>12</sup>.

>The Audit Services Task Force, the impetus for which was given by the AMF in June 2007 at a round table discussion in Paris under the auspices of IOSCO, concentrated on three main topics: transparency, internal organisation and communication channels at audit firms. One of the objectives is to establish greater uniformity within each jurisdiction in relations between audit firms and regulators, in particular in the format and content of supervisory disclosures.

>The Task Force on Commodities Markets, formed in September 2008, is charged with studying the evolving nature of commodity derivatives markets taking into account such factors as technological change, globalisation and product innovation as well as participation in these markets by new types of investors. It will examine current methods of market supervision to determine whether they are still appropriate and whether regulators are cooperating sufficiently to deal with the increasing globalisation of markets.

### 3 > Joint Forum

The Joint Forum was set up in 1996 by three parent bodies: the Basel Committee<sup>13</sup>, IOSCO, and the International Association of Insurance Supervisors. Its task is to deal with cross-sector issues in order to ensure the overall consistency of regulations. Thirteen member countries of these international organisations are represented in the Joint Forum. France is represented by the Commission Bancaire, the AMF and ACAM (Autorité de contrôle des assurances et des mutuelles).

In 2008 the Joint Forum continued its work on credit risk transfer between banks and other financial institutions. This topic was addressed by an ad-hoc working group in the light of the subprime crisis. The Joint Forum analysed the role in the crisis played by bilateral financial contracts such as credit default swaps (CDSs) and especially by securitisation vehicles in general and collateralised debt obligations (CDOs) in particular. Its report<sup>14</sup>, published 31 July 2008, underscores market participants' lack of understanding of securitisation risks, notably liquidity and reputational risks. It also points out failings in the way these risks were managed and the exposures measured. It then draws up a list of recommendations that will lead into a critical analysis of implementation issues during 2009.

In 2008 the Joint Forum finalised reviews undertaken in the past few years by presenting a comprehensive statement of the guiding principles applicable to large enterprises and conglomerates<sup>15</sup>. It also took an interest in customer protection in the marketing of financial products and services<sup>16</sup>.

---

12 In this regard, the AMF noted in November 2008, in its annual report on corporate governance and internal control, that progress had been made by (listed) French companies in communicating about their boards' responsibilities and activities. This report is available on the AMF website ([www.amf-france.org](http://www.amf-france.org)) under Publications > Annual Reports > Report on Internal Control and Corporate Governance.

13 The full name of which is the Basel Committee on Banking Supervision.

14 Available at <http://www.bis.org/publ/joint21.pdf?noframes=1>. France's representatives on the working group were members of the Commission Bancaire and the ACAM.

15 This was the mandate of the Joint Forum Principles Group, a working group set up in late 2006 that put out a report in April 2008 focusing on concentration of risk from the financial crisis angle. This report is available at <http://www.bis.org/publ/joint19.pdf?noframes=1>. France's representatives on the working group were members of the Commission Bancaire and the ACAM.

16 This was the mandate of the Joint Forum Customer Suitability Group, which also published a document in April 2008, available at <http://www.bis.org/publ/joint20.pdf?noframes=1>. France's representatives on the working group were members of the Commission Bancaire and the AMF.

## B – European Bodies

### 1 > Committee of European Securities Regulators (CESR)

The Committee of European Securities Regulators (CESR) is composed of the chairmen of the securities regulatory authorities in the European Union. The full committee meets quarterly. Currently chaired by Eddy Wymeersch, head of Belgium's Commission bancaire, financière et des assurances (CBFA), CESR has some fifteen groups of experts and operating committees (such as CESR-Fin and CESR-Pol<sup>17</sup> working on various implementation aspects of European directives<sup>18</sup>. It carries on an ongoing dialogue with stakeholders through its Market Participants Consultative Panel. Its operating method is to call on regulatory authorities and market participants to contribute information<sup>19</sup> and to conduct consultations with them<sup>20</sup>, as well as to hold public hearings. CESR's five public hearings in 2008 addressed topics such as credit rating agencies (March) and the European passport for fund management companies (October)<sup>21</sup>.

#### a) Future of European financial supervision

In 2007 the Beyond 2007 Task Force on the future of supervision made a number of proposals to the European Commission<sup>22</sup>. In keeping with those proposals, the AMF has been advocating<sup>23</sup> a reform of financial supervision in the EU that would make CESR the hub of a "network of securities regulators in Europe". Among the measures proposed are to make Level 3 measures more binding<sup>24</sup> and to have a common framework for coordinated supervision of financial institutions that do business on a Europe-wide basis. The AMF favours strengthening CESR by clarifying its legal status and granting it staffing and budgetary resources commensurate with the oversight responsibilities that it would be given.

#### b) Harmonisation of national regulations and progress towards a single internal market in Europe

>Financial disclosure by issuers: the AMF chairs the Prospectus expert group, which in 2008 continued work on the practical issues raised by implementation of the directive. It supplemented the Level 3 measures to take account of industry expectations and investor protection imperatives. The joint position paper in this area was expanded to include points relating to financial disclosure by issuers, communication by external auditors and investors' rights<sup>25</sup>.

>Asset management: Within the CESR-IM expert group<sup>26</sup>, the AMF and the UK's Financial Services Authority (FSA) co-chair the subgroup in charge of work on the reformulation of the simplified prospectus for UCITS. The AMF pushed for documents that investors would find more readable and a product passport procedure that the industry would find easier to use<sup>27</sup>. In the second half of 2008 the AMF contributed to the design of tests called for by the European Commission and conducted on a sample of investors.

---

17 See page 6 and 22.

18 The aspects corresponding to putting the implementation measures for Commission directives into practice and harmonising policies on financial supervision through recommendations, guidelines and common standards

19 Call for evidence.

20 In all, some fifteen times in 2008

21 On these points, see CESR's website at <http://www.cesr-eu.org>

22 The final report of this Task Force is available at <http://www.cesr.eu/index.php?docid=4854>

23 In Issue 9 of its Financial Regulation Newsletter, available on the AMF website ([www.amf-france.org](http://www.amf-france.org)) under Publications > Letters and working papers > Financial Regulation Newsletter

24 The "Lamfalussy process" distinguishes three levels of European standards: Level 1: framework directive adopted by the European Parliament and the European Commission. Level 2: implementing directive or technical implementing measures adopted by the Commission alone. Level 3: harmonisation measures or Community standards adopted by specialised European committees, hence the label "level 3 committee" for each of CESR, CEBS (Committee of European Banking Supervisors) and CEIOPS (Committee of European Insurance and Occupational Pensions Supervisors).

25 Available at [http://www.cesr-eu.org/index.php?page=contenu\\_groups&id=40&docmore=1#doc](http://www.cesr-eu.org/index.php?page=contenu_groups&id=40&docmore=1#doc)

26 Or CESR-IMEG, for CESR Investment Management Expert Group.

27 See page 18

**Important:** The following English text is a translation of extracts from the French version of the 2008 Annual Report. Only the original French text has any legal value. The AMF expressly disclaims all liability for any inaccuracies in the translation

>In addition, the AMF was an active participant in discussions within the CESR-IM expert group on the advice that would be transmitted to the Commission as part of the preparation for the new UCITS Directive. In particular, that advice recommended establishing a passport for fund management companies. This recommendation was received favourably by the Commission and by the EU's ECOFIN Council at its meeting of 2 December<sup>28</sup>.

>Credit rating agencies: as part of the actions taken by the European Union following the G-20 meeting in November 2008, the Commission adopted a draft regulation on credit rating agencies and asked CESR to contribute guidance in the form of complementary implementing measures. A Task Force was set up for this purpose with the AMF as a participant.

## 2 > The "3L3"

The task of the Level 3 joint group on regulatory convergence<sup>29</sup>, set up in November 2005, is to develop a shared European culture in the supervision of three allied sectors: banking, insurance and markets securities. The joint group focuses on expanding cooperation and resolving potential jurisdictional conflicts across these sectors. It brings together the corresponding EU-level committees, namely the Committee of European Banking Supervisors (CEBS) for banking, the Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS) for insurance and CESR for securities markets.

Based on the report of a working group set up by CEBS, CEIOPS and CESR and led by Michel Prada, the 3L3 decided in the spring on a number of joint actions to implement convergence programmes for the supervision of these three sectors in Europe. In particular, the 3L3 decided to organise ten or so cross-border collaborative events in partnership with interested European authorities. In the medium term, the objective is to increase the number of these seminars and hold them on a regular basis going forward, with the help of grant funding from European institutions.

## 3 > Cooperation between NYSE Euronext regulators

Operational cooperation between regulators applies in particular to oversight of trading platforms. For the AMF, this involves cooperation at European level with the other authorities responsible for supervising the regulated markets of the Euronext group, as well as transatlantic cooperation regarding the two pillars of NYSE Euronext: on the US side, NYSE Group, regulated by the Securities and Exchange Commission, and on the European side, Euronext. In both cases, European regulators are represented on the body called the Chairmen's Committee.

Concerning the European group, the Chairmen's Committee devoted particular attention to monitoring the migration of Euronext's trading system for debt securities to the new Universal Trading Platform<sup>30</sup>. It also ruled in favour of various changes in the group's market rules.

In keeping with the commitments made in January 2007<sup>31</sup>, the Chairmen's Committee had its say on the various appointments to the NYSE Euronext Management Committee. In 2008 there were no regulatory dimensions of the transatlantic group's development projects that called for particular dialogue between the Chairmen's Committee and the SEC.

---

28 However, in the absence of unanimity both within CESR and among Member States, the technical conditions of implementation of the passport will be the determining factor. These are to be discussed in early 2009.

29 "3L3" for "3 Level 3 Committees".

30 See Chapter 4 of this report.

31 Available on the European Commission website at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A6-2007-0460+0+DOC+PDF+V0//EN>

**Important:** The following English text is a translation of extracts from the French version of the 2008 Annual Report. Only the original French text has any legal value. The AMF expressly disclaims all liability for any inaccuracies in the translation

## 2 – International Cooperation on Financial Reporting, Accounting and Auditing

### A – Credit rating agencies

The IOSCO task force continued its work on credit rating agencies with the active collaboration of the AMF. Its work led to the publication in May 2008 of a report<sup>32</sup> that made recommendations in the following areas:

>Quality and integrity of the rating process: implementation and monitoring of methodologies in general, but particularly for complex structured products; expertise of the persons in charge of rating financial products; etc.

>Rating agency independence and prevention of conflicts of interest: remuneration policies; encouraging issuers and originators to provide broad-based financial information.

>Rating agency responsibilities regarding information intended for investors: provision of verifiable, quantifiable information and comprehensible historical data.

An important milestone was reached in September when the IOSCO Technical Committee approved key conclusions of the task force report. These called for centralised compilation in early 2009 of the results of an international review of codes of conduct and, most importantly, developing effective regulatory coordination mechanisms for the supervision of credit rating agencies<sup>33</sup>.

### B – Accounting information and auditing

#### 1 > The G8, the Financial Stability Forum, and the International Accounting Standards Board

The crisis has had a severe impact on the balance sheets of both financial institutions and commercial and industrial companies. As a result, the issues of determining fair value for certain instruments<sup>34</sup>, measuring other assets and liabilities<sup>35</sup>, classifying debts subject to covenants, and recognising impairment on tangible and intangible assets have taken on particular importance.

In April, in a report titled "Enhancing Market and Institutional Resilience"<sup>36</sup>, the Financial Stability Forum (FSF) presented 67 recommendations, three of which asked for responses from the international accounting standards-setter. National regulators also contributed to the responses. For its part, the G8 called for improved transparency in accounting starting with the interim financial statements at 30 June 2008. These requests, which focused in particular on measuring fair value in illiquid markets, tightening rules for consolidation of special-purpose entities and improving disclosure on financial instruments, led the IASB to establish an Expert Advisory Panel. The panel's remit was to propose responses to the measurement and disclosure issues that could be implemented very quickly. Regulators were stakeholders in these reviews.

#### 2 > CESR-Fin's work on financial reporting

##### a) Organisation of CESR-Fin

CESR-Fin has the task of following regulatory developments across Europe in the areas of accounting and auditing. It coordinates action by regulators within the European Union and identifies emerging issues that will require CESR to get involved<sup>37</sup>. It also provides its expertise to other groups within CESR to help resolve

---

<sup>32</sup> Document titled "The Role of Credit Rating Agencies in Structured Finance Markets", available on the IOSCO website at <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD270.pdf>.

<sup>33</sup> Coordination would take place within a college of regulators with powers covering all financial issues

<sup>34</sup> IAS 39 – Financial Instruments: Recognition and Measurement

<sup>35</sup> IAS 36 – Impairment of Assets or IAS 19 – Employee benefits.

<sup>36</sup> Available on the FSF website at [http://www.fsforum.org/publications/r\\_0804.pdf](http://www.fsforum.org/publications/r_0804.pdf).

<sup>37</sup> For example, by producing or adapting a CESR standard, refining recommendations or publishing implementation guidance

**Important:** The following English text is a translation of extracts from the French version of the 2008 Annual Report. Only the original French text has any legal value. The AMF expressly disclaims all liability for any inaccuracies in the translation

problems with an accounting dimension. And it serves as a point of contact with the principal securities regulators outside Europe for international cooperation on financial disclosure.

CESR-Fin also has close relationships with European bodies:

- > as an observer at the Commission<sup>38</sup>;
- > in bodies within its sphere of influence, such as EFRAG.<sup>39</sup>

A CESR-Fin representative has also attended the meetings of the IASB Standards Advisory Council (SAC) since 2005.

## **b) CESR's work and publications on fair value of financial instruments**

The financial crisis has highlighted certain practical difficulties of the accounting standards dealing with financial instruments. Those standards have often been accused of having played a part in accelerating the crisis. Using market values for instruments when there were no longer any buyers in the market meant that valuations were below what the instruments' holders were expecting on the basis of future cash flows.

CESR released four documents in 2008 dealing with the work of CESR-Fin:

> In October 2008 a report<sup>40</sup> on measuring the fair value of financial instruments when markets have become illiquid and on disclosures to be provided in notes to the financial statements. On this occasion, CESR reiterated the importance of clear and precise disclosure by issuers on the methods they are using to measure financial instruments amid the financial crisis.

> In November 2008 a press release<sup>41</sup> in which CESR affirmed its support for the IASB's initiative to develop and publish guidance on measuring the fair value of financial instruments in markets that are no longer active.

> Lastly, following the IASB's adoption on 13 October 2008 of an amendment to IAS 39 that permits certain financial instruments to be reclassified, and in response to a request from the European Commission, CESR published a report<sup>42</sup> on certain technical aspects of applying the amendment as well as the results of a survey of how the main European financial institutions were implementing it. The survey showed that as of 30 September 2008, few financial institutions had chosen to apply the amendment and reclassify financial instruments on their books. However, CESR expects the amendment to be applied more widely in 2008 financial statements.

## **c) Exchanges between CESR and the SEC**

On 2 August 2006 CESR and the SEC finalised a joint CESR-SEC Work Plan on the development of financial markets between the European Union and the United States, with the intention of working out the problems arising from the coexistence of European IFRS and US GAAP.

The two bodies have met regularly since then, and these meetings have shown that:

> CESR members want to be informed as far in advance as possible when the dialogue between the SEC and a European issuer is likely to affect the financial statements presented in the European Union. More specifically, the idea is to prevent the relevant regulators from taking contradictory decisions;

> Discussions have begun on identifying topics to be dealt with jointly by the SEC and a European regulator, in accordance with the August 2006 Work Plan. Two kinds of situations have been singled out for special attention: those in which the IFRS provide no specific treatment or are ambiguous on the treatment<sup>43</sup>; and those that could require a material change in the financial statements if the SEC's analysis were adopted<sup>44</sup>.

---

38 In particular, its Accounting Regulatory Committee (ARC) and its Audit Regulatory Committee (AuRC).

39 European Financial Reporting Advisory Group. Although established in 2001 at the Commission's initiative, it is functionally independent of the Commission. EFRAG is responsible for providing technical advice to the ARC on new standards and interpretations.

40 Available on the CESR website at <http://www.cesr.eu/popup2.php?id=5285>.

41 News release of 5 November 2008, available on the CESR website at <http://www.cesr.eu/popup2.php?id=5372>.

42 Published 7 January 2009 and available on the CESR website at <http://www.cesr.eu/popup2.php?id=5445>.

43 In this case, CESR is proposing that the SEC consult the relevant European regulator before taking a final decision.

44 In this case, CESR is upholding the principle that some information in the notes to the financial statements ought to be considered material and therefore that information exchange on the subject is needed as far in advance as possible

**Important:** The following English text is a translation of extracts from the French version of the 2008 Annual Report. Only the original French text has any legal value. The AMF expressly disclaims all liability for any inaccuracies in the translation

#### **d) European Enforcers Coordination Sessions (EECS)**

The objective of this group, a sub-committee of CESR-Fin, is to compile and disseminate the main decisions taken on the application of IFRS in order to ensure that European regulators adopt a consistent enforcement approach to the application of IFRS by listed companies. The sessions provide an opportunity to discuss issues encountered by regulators, and the decisions made during these meetings are included in the sub-committee's database. At the end of 2008, the database contained 180 enforcement decisions, as opposed to 120 one year earlier.

CESR has been releasing extracts of its database on a regular basis since 2007. In 2008 it released two supplementary extracts containing a total of 29 decisions, bringing the number of published decisions to 56. In this way, the EECS performs a useful function by presenting specific cases as examples of enforcement in a given national framework. The situations described may provide guidance for other jurisdictions. Publication of the enforcement decisions and the grounds for them is also intended to promote uniform application of IFRS in the European Union.

#### **e) Equivalence project**

Under the terms of the Prospectus Regulation<sup>45</sup> and the Transparency Directive<sup>46</sup>, third-country issuers making a public offering in the EU and issuers whose securities are traded on a regulated market in the EU must present their financial statements in compliance with IFRS or with third-country national accounting standards that are deemed equivalent to the IFRS adopted by the EU.

These requirements have been waived on a transitional basis until 1 January 2009. Accordingly, third-country issuers may continue to use certain national accounting standards for prospectuses filed before 1 January 2009 and for disclosures corresponding to financial years beginning before 1 January 2009, on the following conditions:

>during the transitional period lasting until 1 January 2009, such issuers may use IFRS, US GAAP, Canadian GAAP and Japanese GAAP, or other national accounting standards as long as they meet specific qualitative criteria<sup>47</sup>. It is the responsibility of the host-country regulator to accept these standards as equivalent, but CESR will have to coordinate the EU regulators' work on the equivalence of third country accounting standards.

>After the transitional period, third-country issuers may not use another national accounting standard unless it has been deemed equivalent to IFRS by the European Commission, under a definition of equivalence set forth in a regulation issued 21 December 2007<sup>48</sup>, or has been accepted by the European Commission for a further transitional period ending no later than 31 December 2011, under Article 4 of the regulation.

The development of this Regulation, which opens up the possibility of further extending the deadline until year-end 2011 to accommodate countries that need more time to adopt IFRS, is in line with the SEC's November 2007 proposal to exempt third-country issuers that use IFRS, such as EU companies, from having to reconcile their financial statements with US GAAP.

In 2008 the European Commission again turned to CESR-Fin for its expertise, which CESR-Fin provided in three new submissions:

- >technical advice published in March 2008 on the IFRS equivalence of US, Chinese and Japanese accounting standards;
- >technical advice published in May 2008 on the Canadian and Korean accounting standards;
- >technical advice published in November 2008 on Indian accounting standards.

---

45 Commission Regulation (EC) 809/2004 of 29 April 2004. This Regulation implements Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 as regards information contained in prospectuses as well as the format, incorporation by reference and publication of such prospectuses and dissemination of advertisements.

46 Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC

47 These are listed in the amended Article 35.5A (c) of the Prospectus Regulation (and the similar provisions of the Transparency Directive). The accounting standard-setter of the third country must have publicly committed, before the first day of the financial year in question, to converge its accounting standards with IFRS; it must have established a work programme to achieve convergence by 31 December 2008; and the issuer must provide proof to the host country authority that these conditions have been met.

48 Commission Regulation 1569/2007/EC of 21 December 2007 establishing a mechanism for the determination of equivalence of accounting standards applied by third country issuers of securities pursuant to Directives 2003/71/EC (Prospectus Directive) and 2004/109/EC (Transparency Directive) of the European Parliament and of the Council

**Important:** The following English text is a translation of extracts from the French version of the 2008 Annual Report. Only the original French text has any legal value. The AMF expressly disclaims all liability for any inaccuracies in the translation

## **f) CESR's contribution to the work of the IASB and the IFRIC<sup>49</sup>**

As part of its contribution to the work of the IASB and IFRIC, CESR sent comments to EFRAG<sup>50</sup> on the following subjects:

- >Exposure Draft ED 9 on Joint Arrangements, published by the IASB;
- >Exposure Draft on the annual standards improvement project for 2007, published by the IASB;
- >Exposure Draft on proposed revisions of IFRS 1 and IAS 27, published by the IASB;
- >Exposure Draft ED 24 on Customer Contributions, published by IFRIC;
- >Discussion paper on financial instruments with characteristics of equity, published by the IASB;
- >EFRAG consultation on strengthening the European contribution to the work of the IASB and IFRIC;
- >International Accounting Standards Committee Foundation consultation on revision of its constitution;
- >Exposure Draft on the Conceptual Framework, published by the IASB.

## **3 > New directives to be transposed**

In 2008 Directives 2006/43/EC and 2006/46/EC<sup>51</sup>, amending the eighth directive on statutory audits as well as the fourth and seventh directives on annual and consolidated accounts of banks, insurance companies and financial institutions, were transposed into French law.

> Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC (Text with EEA relevance).

> Directive 2006/46/EC of the European Parliament and of the Council of 14 June 2006 amending Council Directives 78/660/EEC on the annual accounts of certain types of companies, 83/349/EEC on consolidated accounts, 86/635/EEC on the annual accounts and consolidated accounts of banks and other financial institutions and 91/674/EEC on the annual accounts and consolidated accounts of insurance undertakings (Text with EEA relevance).

### **a) Transposition of the directive on statutory audits**

Directive 2006/43/EC of 17 May 2006 on statutory audits reformed the rules set forth in the eighth directive governing the activities of statutory auditors. To enhance the credibility of the audit function, the directive lays down clear principles of independence based on separation of auditing and advisory functions. It imposes heightened requirements regarding auditors of "public-interest entities" – i.e. entities which, because of their activities, present greater risks to financial security (issuers listed on a regulated market, credit institutions, insurance undertakings). The directive also requires all Member States to have a public supervisory body whose principal function is to supervise auditors.

French law was already largely in compliance with the requirements of this directive. The Financial Security Act of 1 August 2003 and its implementing provisions had modernised France's rules governing statutory audits. The Act brought sweeping reforms to the statutory audit profession, with rules to protect independence and a public oversight body, the Haut conseil du commissariat aux comptes (H3C), charged with supervising the profession and monitoring compliance with its members' independence and conduct of business.

The Executive Order of 8 December 2008, issued on the basis of Article 32 of the Act of 3 July 2008 adapting French company law to European law, amended the Commercial Code to introduce the legislative elements needed to put the finishing touches to the transposition.

---

49 IFRIC: International Financial Reporting Interpretation Committee

50 These letters are available on CESR's website at [www.cesr.eu](http://www.cesr.eu)

51 Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC (Text with EEA relevance) and Directive 2006/46/EC of the European Parliament and of the Council of 14 June 2006 amending Council Directives 78/660/EEC on the annual accounts of certain types of companies, 83/349/EEC on consolidated accounts, 86/635/EEC on the annual accounts and consolidated accounts of banks and other financial institutions and 91/674/EEC on the annual accounts and consolidated accounts of insurance undertakings (Text with EEA relevance).

**Important:** The following English text is a translation of extracts from the French version of the 2008 Annual Report. Only the original French text has any legal value. The AMF expressly disclaims all liability for any inaccuracies in the translation

The order's notable main provisions include:

- >enhancing the H3C's powers for periodic and special-purpose audits and setting up a body of auditors to assist it;
- >implementing procedures for cooperation between the H3C and its foreign counterparts;
- >establishing principles for admission and recognition of statutory auditors from third countries;
- >setting rules for the capital structure and management bodies of statutory audit firms;
- >requiring a two-year interval for rotation of audit partners between engagements;
- >specifying the role and composition of the specialised committee on issues relating to the preparation and verification of accounting information.

## **b) Amendments to other accounting directives**

Directive 2006/46/EC<sup>52</sup> of 14 June 2006 strengthens the transparency obligations of commercial companies, in particular regarding their corporate governance practices and internal control procedures. French law<sup>53</sup> already provided for disclosure in these areas via the chairman's report. Some adjustments were still needed, however, so that the obligations specified in the directive would be perfectly reflected in French law.

The Act of 3 July 2008<sup>54</sup> added provisions to Articles L225-37 and L225-68 of the Commercial Code to extend the scope of the chairman's report to cover the company's risk management procedures by describing in detail how accounting and financial information is prepared and processed for the company's statutory accounts and, if applicable, its consolidated financial statements. The Act also sought to make the part of the chairman's report relating to corporate governance more informative with provisions such as:

- >A description of the composition of the board;
- >A "comply or explain" stance regarding the corporate governance code developed by trade groups. Thus, where a company voluntarily adheres to a corporate governance code, the report must specify any code provisions that the company has set aside and give its reasons for doing so. It must also indicate where the code can be viewed. If a company does not adhere to a relevant corporate governance code, the report must explain why the company has decided not to apply any of the code provisions and indicate what rules it does follow in addition to those required by law;
- >A description of the company's procedures relating to shareholder participation at general meetings, or a reference to the provisions of its articles of association regarding such procedures;
- >Specific reference to the publication of the information required by Article L225-100-3 (items likely to have an impact in the event of a takeover bid,
- >Approval of the chairman's report by the board and publication of the report;

Article 28<sup>55</sup> of the Act also amends the Commercial Code to specify that limited partnerships with shares (*sociétés en commandite par actions*) must also produce a report containing the same information.

---

52 Directive 2006/46/EC of the European Parliament and of the Council of 14 June 2006 amending Council Directives 78/660/EEC on the annual accounts of certain types of companies, 83/349/EEC on consolidated accounts, 86/635/EEC on the annual accounts and consolidated accounts of banks and other financial institutions and 91/674/EEC on the annual accounts and consolidated accounts of insurance undertakings (Text with EEA relevance).

53 Articles L225-37 and L225-68 of the Commercial Code and Article L621-18-3 of the Monetary and Financial Code

54 Loi portant diverses dispositions d'adaptation au droit communautaire (DDAC).

This Act inserts the following article into the Code:

"Art L. 226-10-1. If securities issued by the company are held by or offered to the public, the chairman of the supervisory Board shall prepare a report, attached to the report provided for in Articles L225-102, L225-102-1 and L233-26, which contains the information referred to in the seventh, eighth and ninth indents of Article L225-68." However, the tenth indent of Article L225-68 of the Commercial Code, stating that the chairman's report shall present the principles and rules used by the supervisory board in determining remuneration and benefits of any kind awarded to officers and directors, is not covered.

55 "This report shall be approved by the supervisory board and made public."

**Important:** The following English text is a translation of extracts from the French version of the 2008 Annual Report. Only the original French text has any legal value. The AMF expressly disclaims all liability for any inaccuracies in the translation

#### 4 > IOSCO's work on multinational disclosure and accounting

IOSCO's Standing Committee 1 (SC1), whose remit is to improve standards relating to accounting and financial disclosure at the international level<sup>56</sup>, pursued its efforts through four sub-committees: the Accounting Committee, the IFRS Interpretation & Enforcement Committee, the Audit Committee and the Non-financial Information Committee.

##### a) Accounting Committee

Through this sub-committee, SC1 continued its work on projects of the accounting standards and interpretations bodies, the IASB<sup>57</sup> and IFRIC<sup>58</sup>. Its representatives participated in IASB working groups on a variety of issues, such as performance presentation, financial instruments, insurance contracts, leases, extraction of natural resources, and employee benefits. SC1 has two observers on IFRIC, one from the SEC and the other from the AMF.

SC1 is represented on SAC<sup>59</sup>, the body that advises the IASB on priorities for its work programme, and since September 2008 has also been part of the IASCF XBRL Advisory Council. The latter is a consultative body set up by the IASCF to keep it abreast of the development of XBRL, an electronic language designed to facilitate the filing and dissemination of companies' financial information.

The SC1 Accounting Committee played a leading role in preparing and publishing the May 2008 report of IOSCO's Task Force on the subprime crisis<sup>60</sup>. In addition, SC1 took part in the various tasks of the Expert Advisory Panel that the IASB set up on 13 June 2008. The panel's remit was to propose improvements and clarifications for IAS 39, Financial Instruments: Recognition and Measurement, and IFRS 7, Financial Instruments: Disclosures.

In 2008 the Accounting Committee commented on numerous draft standards, including:

- >the exposure draft on joint control<sup>61</sup> called for in Exposure Draft 9 (ED 9) amending IAS 31 on interests in joint ventures;
- >the exposure draft on annual improvements to IFRS;
- >the exposure draft on Simplifying Earnings per Share, aimed at achieving convergence between IAS 33 on determining earnings per share and the equivalent standard in US GAAP;
- >the amendment of IFRS 7, Financial Instruments: Disclosures, proposed in October 2008 to address the main weaknesses identified by the Expert Advisory Panel in the area of disclosures about fair value and liquidity risk.

Lastly, SC1 contributed at an earlier stage of the international standard-setter's work programme by making known its views on:

>its positions regarding the IASB's discussion papers on the distinction between debt and equity<sup>62</sup>, harmonisation of measurement methods for financial instruments<sup>63</sup>, employee benefits<sup>64</sup> and the first two subject areas in the renovation of the conceptual framework, namely the reporting entity issue and the question of the objectives of financial reporting and the information relevant for decision-making<sup>65</sup>;

>the revision of the IASB's constitution, the first phase of which was launched in June 2008. The first phase addressed improved governance of the IASCF with two measures: establishing a Monitoring Group intended to represent the international regulatory bodies at the IASCF, and increasing the number of members of the IASB Board from 14 to 16 to achieve better geographic representation.

---

56 Standing Committee 1 on Multinational Disclosure and Accounting.

57 IASB: International Accounting Standards Board

58 IFRIC: International Financial Reporting Interpretation Committee

59 SAC: Standards Advisory Council

60 See page 2

61 Joint arrangements.

62 Financial Instruments with Characteristics of Equity.

63 Reducing Complexity in Reporting Financial Instruments

64 Preliminary Views on Amendments to IAS 19, Employee Benefits

65 The Objective of Financial Reporting and Decision-Useful Financial Reporting Information.

**Important:** The following English text is a translation of extracts from the French version of the 2008 Annual Report. Only the original French text has any legal value. The AMF expressly disclaims all liability for any inaccuracies in the translation

## **b) Interpretation and Enforcement Committee**

SC1's Interpretation & Enforcement Committee for IFRS is a recent creation. Its purpose is to facilitate consistent enforcement of IFRS in each jurisdiction. The committee decided to compile a database of national authorities' interpretations of the standards. Data for this database is provided under signed agreements with 47 members.

## **c) International harmonisation of rules on auditors**

SC1 is also responsible for promoting international quality standards for audits and auditor independence. To this end, it monitors the activities of the IAASB<sup>66</sup> and the IESBA<sup>67</sup>. Three of the SC1 members sit on the Consultative Advisory Group of the IAASB and four others on the Consultative Advisory Group of the IESBA.

SC1 continued its work on audit issues in 2008, including:

- >the review begun in 2007 on evolution of auditing and adoption of the ISA<sup>68</sup>;
- >the review being conducted by the Audit Services Task Force of the IOSCO Technical Committee on concentration in the worldwide audit market, content of the audit report and audit firm transparency;
- >the work of the IAASB on fair value, in particular the October 2008 guidance on auditing the measurement of fair value during an economic crisis;
- >the preparation of letters commenting on the clarified draft audit standards (Clarity Project) that the IAASB was releasing at a brisk pace throughout 2008;
- >the preparation of a response to the IAASB's consultation on a procedure for translation of the IFAC standards<sup>69</sup>;
- >the preparation of a letter commenting on the second phase of the project to amend the IFAC code of ethics published by IESBA;
- >the monitoring of the work being done by the PIOB<sup>70</sup>.

## **d) Committee on Nonfinancial Disclosure**

SC1's Committee on Nonfinancial Disclosure finalised a draft document establishing general principles for periodic information that companies listed on a regulated market ought to disclose. A public consultation on this draft is scheduled to be held in the first half of 2009. This draft is motivated by IOSCO's objective of covering all disclosure obligations of companies listed on regulated markets and publicly traded companies, especially those making cross-border public offers of securities, at the time of an issue and subsequently over the life of the securities issued. It will complement previous IOSCO work concerning:

- >in 1998 and again in 2007, the content of the prospectus of companies seeking admission of their equity or debt securities on a regulated market or making an offer to the public, especially a cross-border offer;
- >in 2002, principles for ongoing disclosure.

In this regard, the SC1 work specifies that, besides publishing an annual report including annual financial statements, a management report and interim accounts, issuers should disclose certain other important information at least annually (unless this information is already required by law in the company's financial statements or its management report). Thus, in addition to the financial statements and the management report, SC1's work suggests that information should be provided on:

- >transactions with affiliates;
- >executive compensation;
- >equity compensation plan disclosure;
- >corporate governance (independent directors, audit committee, code of ethics, etc.);
- >market risk;
- >shareholders (principal shareholders, shareholder pacts, if any, etc.);
- >internal control of financial and accounting procedures.

---

66 International Auditing and Assurance Standards Board (IAASB), the standard-setting body for internal auditing. It is an entity of IFAC, the International Federation of Accountants.

67 International Ethics Standards Setting Board of Accountants (IESBA), responsible for setting ethical standards for auditing. It is likewise an entity of IFAC.

68 International Standards on Auditing (ISA). The ISA are developed by the IAASB

69 IFAC: International Federation of Accountants.

70 Public Interest Oversight Board (PIOB) established in 2005 to oversee the activities of IFAC

**Important:** The following English text is a translation of extracts from the French version of the 2008 Annual Report. Only the original French text has any legal value. The AMF expressly disclaims all liability for any inaccuracies in the translation

Although the report does not set publication deadlines, it does say that deadlines should reflect the size of the reporting entity.

As a follow-on to the IOSCO report on the crisis, the SC1 Nonfinancial Disclosure Committee will be finalising a document on information that ought to appear in the prospectus for an issue or a listing of asset-backed securities (ABSs). This document is due to be released by the summer of 2009.

## C – CESR’s work and the Prospectus Directive

In 2008 the AMF continued to chair the regulators’ contact group at CESR. This group was set up in September 2005 to facilitate the operation of the single European passport for issuers’ prospectuses and to oversee harmonised implementation of the directive in Member States. The group devoted most of its efforts to defining a streamlined prospectus for offers of securities reserved for employees when the offer is not exempt from the prospectus requirement and to determining equivalence for prospectuses drawn up according to third-country standards.

### 1 > Defining a streamlined prospectus for non-exempt reserved offers

Companies listed on a regulated market in the EEA are exempt from the prospectus requirement when they offer securities exclusively to their employees. Companies from third countries, in particular US companies not listed anywhere in the EEA, cannot qualify for this exemption and must therefore draw up a prospectus. Some of these companies that routinely offer share ownership plans to employees of their European subsidiaries have considered dropping this practice owing to the costs of preparing a prospectus. In order not to disadvantage employees of these companies’ European subsidiaries, the European Commission asked CESR to assist it in devising a streamlined prospectus, pending amendment of the Prospectus Directive<sup>71</sup>. The streamlined prospectus would apply only to reserved offers for employees of third-country issuers not listed on an regulated market.

In response, the prospectus working group reached a common position on the content of the prospectus for a reserved offer by a company not listed on a regulated market. Noting that non-exemption from the prospectus requirement was an issue not just for third-country companies but also for European companies not listed on a regulated market, the group wanted to include the latter in its proposed solution. Building on the European regulation<sup>72</sup> that already permits a competent authority to authorise a company to omit non-relevant information, the group drew up a list of disclosure items that need not be presented. Accordingly, a company listed on a non-regulated market and subject to disclosure obligations may leave some items out of its prospectus for an offer of shares to its employees or the employees of its subsidiaries. Items that can be omitted include the description of the company’s business and organisation, its financial statements for the past three years, and certain information on offer procedures that does not apply to offers of this kind.

### 2 > Assessing the equivalence of prospectuses prepared according to third-country law

The Prospectus Directive permits a competent authority to approve prospectuses drawn up under third-country law if they have been prepared in accordance with international standards and if the required information is equivalent to that called for by the Directive. CESR referred to these provisions in a December 2008 news release in which it pointed out that no Member State had yet taken a decision along these lines. The release announced that the Prospectus group would undertake to assess equivalence with respect to relevant legislation in third countries, in particular Israel and the United States.

---

71 The draft amended prospectus directive was released by the Commission in January 2009

72 Article 23.4 of Commission Regulation (EC)809/2004 of 29 April 2004 implementing Directive 2003/71/EC.

**Important:** The following English text is a translation of extracts from the French version of the 2008 Annual Report. Only the original French text has any legal value. The AMF expressly disclaims all liability for any inaccuracies in the translation

### 3 > Other work of the Prospectus group

The Prospectus group continued to hold discussions of issues raised by the industry on the subject of implementation. Based on these discussions, the group made updates in stages to the Frequently Asked Questions webpage on the Prospectus Directive<sup>73</sup>. These updates related primarily to:

- >voluntary presentation of pro forma financial information in a prospectus, in which case the presentation must be consistent with Annex II of the Prospectus Regulation;
- >the information to be presented in the prospectus when an issuer voluntarily chooses to prepare a prospectus for an offer that is unconditionally and irrevocably guaranteed by a Member State.

## D – CESR’s work and the Transparency Directive

The Transparency Expert Group (TEG) is charged with reviewing the state of convergence within Europe with respect to the Transparency Directive, its implementing measures and related texts<sup>74</sup>. It conducted the following work in 2008:

>A status report on transposition in the various Member States. The authorities’ individual responses and a summary of them were posted publicly on the CESR website on 17 October 2008<sup>75</sup>;

>Development of common positions across all the authorities on eliminating the obstacles to harmonised implementation of the Transparency Directive. A draft document containing the first set of harmonised positions will be published in question-and-answer form in early 2009. This document will address subjects such as the possibility of including additional information in annual financial reports, disclosure issues relating to major shareholding notification thresholds, netting of long and short positions, and implementation of the public disclosure obligation for regulated information;

>The TEG also worked on preparation of a standard European form for notification of major holdings and on the European storage network for financial information.

## 3 – International Cooperation on Issues Relating to Intermediaries and Market Infrastructures

### A – Work by IOSCO (SC2) and CESR on financial markets

#### 1 > IOSCO (SC2)

In 2008 SC2, the IOSCO standing committee that focuses on regulation of secondary markets, worked mainly on the questions posed by direct market access, that is, the conditions under which some intermediaries give a client "direct" access to trading systems of which they are members. Such direct access may take the form of either an order routing system or so-called "sponsored" access, under which the client enters orders into the trading system using the market member’s identifier, but without otherwise going through the member’s infrastructure. (The member remains accountable for orders entered this way.) SC2 worked closely with SC3 on a draft report on direct access. The report sought to compile an inventory of regulatory regimes setting rules for the various modes of direct market access. SC2 and SC3 endeavoured to identify the risks associated with this practice in all its forms, in particular sponsored access, which arose in United States as a way of reducing latency in order execution. They then compared existing supervisory arrangements with those that would be necessary to deal with the risks. The draft report, which contains proposed recommendations, is scheduled to be put out for public consultation after approval by the IOSCO Technical Committee in February 2009.

---

73 Available on the CESR website at [www.CESR?eu/index.PHP?page=groupSdMAC=Ojid=40](http://www.CESR?eu/index.PHP?page=groupSdMAC=Ojid=40).

74 Directive 2004/109/EC of the European Parliament and of the Council du 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC (EU Official Journal of 31 December 2004); Commission Directive 2007/14/EC of 8 March 2007 laying down detailed rules for the implementation of Directive 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market (EU Official Journal of March 2007); Commission Recommendation of 11 October 2007 on the electronic network of officially appointed mechanisms for the central storage of regulated information referred to in Directive 2004/109/EC of the European Parliament and of the Council (EU Official Journal of 12 October 2007)

75 They are available on the CESR website at <http://www.cesr.eu/index.php?page=groups&mac=0&id=41>.

**Important:** The following English text is a translation of extracts from the French version of the 2008 Annual Report. Only the original French text has any legal value. The AMF expressly disclaims all liability for any inaccuracies in the translation

SC2 also finalised a draft report with recommendations on principles governing the terms on which a regulated market may outsource some of its activities, either to other regulated entities or to non-regulated entities. The recommendations in this report draw heavily on the work done under the umbrella of the Joint Forum on outsourcing by financial intermediaries. They focus more particularly on the special characteristics of regulated markets, notably the regulatory functions that some of them continue to perform. This draft report is likewise due to be submitted for public consultation in the first quarter of 2009.

Lastly, following its report on the subprime crisis in May 2008, the IOSCO Technical Committee gave SC2 a mandate on transparency in the secondary market for structured products. In liaison with the industry, SC2 is to look into the possibility of a system for publication of trades in structured products, taking due account of the inherent characteristics of these products. SC2 envisages developing non-prescriptive recommendations for implementing such a system. A final report is expected in autumn 2009.

## 2 > CESR: the CESR MiFID Markets subgroup

Much of the work of the CESR- MiFID Markets subgroup was devoted to re-examining the conclusions of CESR's August 2007 report on transparency of non-equity markets, taking into consideration both the recent events and the May 2008 recommendations of the Financial Stability Forum. The document put out for consultation in December 2008 analyses the role of post-trade transparency in the corporate bond market as well as the market for structured products and credit derivatives. The consultation paper envisages several paths to improved transparency on which the various stakeholders are invited to comment: self-regulation; an industry initiative within a framework set by regulators; and a regulatory process.

CESR-MiFID Markets also played an important role in coordination and exchange of information between CESR members on transposition of MiFID as it applies to regulated markets and multilateral trading facilities. In this area, the subgroup took a particular interest in Article 40 of the Directive on suspension of trading in a financial instrument and in the waivers of the pre-trade transparency obligation actually put into practice in various Member States.

One year after MiFID came into force<sup>76</sup>, the Markets subgroup, in liaison with the industry, also undertook to examine its impact on organisation of the secondary markets in equities. This work will continue in 2009. In view of the concrete difficulties encountered in 2008 in applying the CESR guidance on the definition of a transaction, that document will also be re-examined.

Lastly, in response to a joint mandate from two European Commission directorates, DG Internal Market and DG Transport and Energy, in connection with the proposed directives of the Third Energy Package<sup>77</sup> (77), CESR and ERGEG<sup>78</sup>, the European energy regulators group, issued two technical advices, in September and December 2008. The first recommended a sector-specific directive to cover abusive practices in the spot<sup>79</sup> and derivatives markets for gas and electricity that are not now covered by the Market Abuse Directive. The second provided recommendations on the following points: record keeping by supply undertakings<sup>80</sup>, transparency of trades made on trading platforms, exchange of information between members of CESR and European energy regulators.

---

76 In November 2007

77 Amending Directives 2003/54/EC and 2003/55/EC

78 For Energy Regulators Group for Electricity and Gas

79 Spot: for same-day delivery; derivatives: forwards and futures

80 Which are among the entities covered by the "Third Energy Package".

**Important:** The following English text is a translation of extracts from the French version of the 2008 Annual Report. Only the original French text has any legal value. The AMF expressly disclaims all liability for any inaccuracies in the translation

## B – Work of IOSCO (SC3) and CESR on market intermediaries

### 1 > IOSCO (SC3)

SC3, the IOSCO standing committee on regulation of market intermediaries, had five work mandates in progress during 2008.

> Direct market access<sup>81</sup>, conducted jointly with SC3.

> Point-of-sale disclosures to retail investors<sup>82</sup>, conducted in partnership with SC2.

#### > Regulatory supervision of intermediaries' compliance with rules of conduct

As part of this mandate, IOSCO is examining the various approaches and methods used by regulators to enforce market intermediaries' compliance with rules of conduct. The Technical Committee will decide in 2009 on whether to expand the existing approaches by adding general recommendations to help regulators deal with the challenges they face.

#### >Risk management and prudential supervision

The urgency of the financial crisis brought its share of additional work for IOSCO during 2008. The following projects stemming from the Task Force on the subprime crisis were on SC3's agenda:

- Study of internal control systems at financial intermediaries, including fund management companies (under a joint mandate with SC5) and development of principles to address problems identified in the study. In carrying out this mandate, SC3 was instructed to take into account the work of the Senior Supervisors Group in this area<sup>83</sup>.

- Management of liquidity risk: SC3 is asked to contribute to the work of the Basel Committee on managing liquidity risk. To avoid overlaps, SC3 is coming at the subject from the specific angle of market liquidity: identifying methods of valuing financial instruments and calculating haircuts, classifying financial instruments according to major risks revealed by the crisis, etc.

#### >Record keeping

IOSCO continues to be attentive to the evolving use of the internet in financial market activities. SC3 has examined the technological questions raised by record keeping and put one of them on its agenda for further work: the question of intermediaries' capacity to store certain data in electronic form and retrieve it on demand, in particular upon request from regulators. After gathering the points of view of intermediaries and technology suppliers in 2007 and 2008, SC3 is to report on its work to the Technical Committee in 2009.

### 2 > CESR: the CESR-MiFID Intermediaries subgroup

During 2008 the CESR-MiFID Intermediaries subgroup held hearings with representatives of investment service providers across Europe to gauge the practical consequences of MiFID in countries of the Union. The hearings covered key areas such as best execution, conflicts of interest and investment advice from the perspective of both wholesale and retail activities.

Discussions were also held on the methods used by various authorities to supervise intermediaries. These were useful in achieving better understanding between regulators and improving communication with the market. A guide to MiFID for retail investors was prepared and disseminated, as were three supervisory briefings for regulatory authority staff on best execution, inducements and conflicts of interest. The subgroup also answered more than a dozen questions on practical application of the directive<sup>84</sup> and sent out a questionnaire to 200

---

81 See page

82 See page

83 The SSG, which brings together seven supervisors from five countries (Germany, United States, France, Switzerland, United Kingdom), published two reports in the spring of 2008 at the request of the Financial Stability Forum (FSF). One report analysed different practices in risk management across a range of large financial institutions doing business internationally. The other looked at practices of financial entities on disclosing their exposures to a number of financial instruments considered to present high risk (CDOs, RMBs, LBO debt, etc.).

84 The responses have either been posted on the CESR website ([www.cesr.eu](http://www.cesr.eu)) or transmitted to the European Commission for posting on its website ([www.europa.eu](http://www.europa.eu)).

**Important:** The following English text is a translation of extracts from the French version of the 2008 Annual Report. Only the original French text has any legal value. The AMF expressly disclaims all liability for any inaccuracies in the translation

investment service providers in Europe on their practices regarding inducements. The purpose of this survey was to gather information on existing practices and prepare the way for improvement and convergence measures.

In response to a mandate given by the European Commission to CESR and to CEBS regarding the appropriateness of changing the regime for commodity derivatives, a joint CESR-CEBS group was set up in early 2008. The task of the Commodities Task Force was to review points on which the banking prudential directives and MiFID might need to be amended. The AMF and the Banque de France participated in the work of this group, which focused in particular on exemptions for entities specialised in the trading of commodities and commodity derivatives. Such entities are exempt from the MiFID authorisation requirements and from the capital requirements of the CRD<sup>85</sup>. A public consultation was organised, and in October 2008 CESR and CEBS proposed to the Commission that some of the exemptions in question, especially those in MiFID, be made more restrictive.

## 4 – International Cooperation on Asset Management

### A – IOSCO's work on asset management (SC5)

The pace of work at SC5, the IOSCO Standing Committee on asset management issues, was particularly brisk in 2008. Chaired by the AMF, SC5 continued its work on funds of hedge funds and on the information to be provided to retail investors before or at the point of sale of funds or similar financial products<sup>86</sup>. It also pursued its work on the regulatory issues raised by exchange-traded index funds and real estate funds. Moreover, at the request of the Technical Committee, SC5 undertook work on topical subjects such as due diligence by managers of retail funds and conflicts of interest involving private equity.

#### 1 > Dossiers opened before 2008

##### a) General principles for funds of hedge funds

The SC5 report on funds of hedge funds, published in June 2008, identified two areas likely to raise investor protection issues of concern to regulators: fund managers' handling of liquidity risk, and the nature and extent of their due diligence before and during an investment. In accordance with the conclusions of this report, and based on numerous organised exchanges with the industry going back to 2007, SC5 drew up general principles that were put out for public consultation in October 2008. In light of the comments received in this consultation, the principles will be finalised in early 2009 and submitted to the Technical Committee in June for publication. These SC5 proposals round out the principles for hedge funds approved by the Technical Committee in 2007, notably regarding disclosure of their basic valuation principles, and underscore the breadth of work on the subject accomplished by SC5 in just a few years.

##### b) Information to be provided to retail clients before or at the time of sale of UCITS or similar products

Following a data-gathering phase in 2007, a joint SC5 - SC3 working group made a study of essential information to be given to retail investors before or at the point of sale of funds or financial products. The group prepared a reference document in 2008 and submitted it for written consultation with various industry and investor associations with a view to clearly identifying the issues. Based on the responses, the working group will draw up general principles for enhancing the effectiveness of the information provided by the industry. Once finalised, these principles will be submitted to the Technical Committee, probably during the first half of 2009.

---

<sup>85</sup> For Capital Requirements Directive, the EC directive on capital adequacy

<sup>86</sup> An arrangement was put in place during 2008-2009 to monitor regulatory developments in the area of soft commissions in investment funds

**Important:** The following English text is a translation of extracts from the French version of the 2008 Annual Report. Only the original French text has any legal value. The AMF expressly disclaims all liability for any inaccuracies in the translation

## **2 > New dossiers**

The main new dossiers opened by SC5 in 2008 concern investment managers' due diligence and conflicts of interest involving private equity.

### **a) Due diligence by investment managers**

The issue of due diligence on the part of investment managers has been a priority concern for SC5 since May 2008 owing to the need to tighten standards in this area. SC5's remit relates more specifically to the obligations of managers of retail funds that invest in structured finance products. Work on this issue in 2008 proceeded in several phases. First, two consultations were organised, one with industry representatives and one with SC5 member regulators. Following these consultations, a combined regulator/industry working group, chaired by the AMF, was established in October. Its task is to develop a framework set of good practices by the end of 2009.

### **b) Conflicts of interest in private equity**

A combined regulator/industry working group chaired by the UK Financial Services Authority was set up in June 2008. Its task is to draw up measures to prevent conflicts of interest in private equity firms. It is scheduled to submit a report to the Technical Committee during the second half of 2009.

## **3 > Other medium-term dossiers**

In 2009 SC5 and SC3 will be addressing two dossiers opened in May 2008 on topics brought up by the conclusions of the task force report on the subprime crisis:

- >valuation methods and investment managers' expertise in this area,
- >quality of internal control systems at financial intermediaries including portfolio managers.

In accordance with its work programme, SC5 will continue preliminary work on valuation of real estate funds and on regulation of two structured products: index funds and ETFs.

SC5 and SC3 will work together on the issues relating to valuation<sup>87</sup> and manager expertise as well as on those relating to internal control system quality.

## **B – Work at Community level and bilateral exchanges: the CESR-IM expert group, cooperation with the European Commission and bilateral cooperation**

### **1 > The CESR-IM expert group and cooperation with the European Commission**

In 2008 the AMF stepped up its involvement in CESR's work on collective investment management, which is conducted by the CESR-IM (Investment Management) expert group.

#### **a) Reform of the simplified prospectus**

The AMF and the UK Financial Services Authority co-chair the CESR-IM subgroup in charge of work on the reform of the simplified prospectus for UCITS. The aims of this reform are to have both a simplified prospectus that is more comprehensible to investors and a simplified passport procedure for the fund management industry, given a truly standardised vehicle for this purpose. As it stands, the forthcoming UCITS IV directive calls for a key information disclosure document to replace the simplified prospectus starting in July 2011.

---

<sup>87</sup> In the medium term, SC5 intends to update the measurement principles promulgated by IOSCO in 1999.

**Important:** The following English text is a translation of extracts from the French version of the 2008 Annual Report. Only the original French text has any legal value. The AMF expressly disclaims all liability for any inaccuracies in the translation

The European Commission has decided to run tests with investors on possible options for a simplified summary presentation of a fund's characteristics. In late 2007 CESR was given a mandate to round up the information needed to perform these tests in 2008. CESR will submit advice on the content and format of the new document in autumn 2009.

On 15 February 2008 CESR submitted a preliminary opinion to the Commission stating that the document should not exceed two pages and should contain a standard list of key information. The length of the list and the presentation could be varied according to the case (except as regards information on risks and fees, which should be subject to standards that are more prescriptive). CESR proposes that key information be presented in the following order: strategy of the fund, risk/return profile, past performance, fees borne by the investor.

These proposals were tested with individual investors in various European Union countries, and the CESR-IM expert group took the results of this first phase into account in developing model key information documents for different types of UCITS. The expert group found, however, that more work would be necessary on the technical details of certain recommendations. Further tests would be needed, as well as another round of consultation, before CESR could submit its final advice to the Commission incorporating the conclusions from the second round of testing.

## **b) Management company passport**

The draft amended UCITS Directive issued by the European Commission on 16 July 2008<sup>88</sup> made no provisions for the management company passport. The Commission gave CESR a mandate to submit an advice by 1 November 2008 on the provisions that would be needed to put the management company passport into effect while maintaining a high level of investor protection and regulatory supervision, notwithstanding the cross-border dimension of such a mechanism.

CESR issued a call for evidence, and the CESR-IM expert group prepared an advice that gave support in particular to recommendations intended to organise the respective jurisdictions of the regulator of the fund and the regulator of the management company. This draft was put out for consultation in September, and CESR's final advice was submitted on 31 October.

The majority of CESR's recommendations were taken up by the French presidency of the European Union and adopted by the European Council, which, in consultation with the Parliament, introduced provisions for the management company passport in the compromise text that was finally approved.

## **c) Other subjects dealt with by the CESR-IM expert group**

Other issues addressed by the CESR-IM expert group in 2008 included the risk control procedures that management companies must put in place.

Also, an operational task force was set up within the expert group at the end of 2006. Spearheaded by the AMF, the task force acts as a forum where regulators can exchange views on practical examples of enforcement of the UCITS Directive and discuss ways of achieving greater convergence in routine practices. The task force continued its work in 2008 and dealt with practical matters such as enforcement of EU legislation, certain consequences of the financial crisis, and the Madoff fraud that was discovered at year-end in the United States. As soon as the impact of that fraud on European asset management had been identified, the task force drew up a report on the fallout in the various Member States and the measures taken in response by the regulators concerned. Because the fraud brought to light divergent interpretations in national laws implementing the UCITS Directive as regards the duties and liability of depositaries, the task force also compiled a survey of national transpositions to inform the debate.

In addition, CESR published its Level 3 recommendations on financial instruments eligible to be held UCITS, following the entry into force of the relevant measures of the implementing directive.

---

<sup>88</sup> See paragraph C on reform of the UCITS Directive

**Important:** The following English text is a translation of extracts from the French version of the 2008 Annual Report. Only the original French text has any legal value. The AMF expressly disclaims all liability for any inaccuracies in the translation

## 2 > Bilateral cooperation

In 2008 the AMF's bilateral exchanges with its main partners on the regulation of collective investment schemes continued at a particularly brisk pace. The AMF worked with its British counterpart on co-chairing the CESR-IM working group. It also pursued talks with its key counterparts in an effort to establish common positions ahead of important meetings on the calendar for multilateral negotiations. To maximise the AMF's influence in the decision-making process, the positions it adopted in its exchanges with CESR-IM and the European Commission were always discussed beforehand with other regulators.

In addition, the AMF responded to requests for technical assistance from other regulators, notably from emerging countries, through informal cooperation. In particular, the AMF gave presentations to the Brazilian, Indian and Chinese regulators on its regulatory model for investment management providers and products.

## C – Reform of the UCITS Directive

The European Commission sent its proposals to modify the UCITS Directive to the European Parliament and the Council on 16 July 2008. The main changes relate to the notification (authorisation) procedure for funds, introducing mechanisms for cross-border fund mergers, the cross-border master/feeder fund framework, recasting the simplified prospectus into one key disclosure document and mechanisms for enhanced cooperation and supervision between regulators. The draft did not include provisions to put the passport for UCITS management companies into effect. In the explanatory preamble, however, the Commission did commit to presenting an appropriate proposal to this end, based on an advice to be provided by CESR, so that the necessary provisions could be adopted before the end of the current legislative session.

In parallel, under the leadership of France's presidency of the Union during the second half of 2008, the technical groups of the European Council introduced provisions to bring in a passport for management companies. At the end 2008, close cooperation between the Parliament, the Council and the Commission led to a compromise bill that will be put to vote in the two EU legislative bodies.

The AMF was consulted by the French EU presidency throughout the second half. AMF staff departments assisted the presidency in the Council's technical groups, thereby giving the AMF an opportunity to present and defend its positions. While affirming its adherence to the principle of allowing new possibilities for pan-European organisation of management companies, including those relating to the passport, the AMF advocated a clear, pragmatic division of responsibilities between regulators as well as measures to strengthen supervision in the matter of investor protection.

Responding to the Commission's consultation on the report of the expert group on open-end funds investing in real estate, the AMF reiterated its support for a regime allowing such funds to be marketed throughout the EU with appropriate investor protection measures. Similarly, the AMF participated in the debate on creating a harmonised private placement regime for non-UCITS in Europe. Lastly, responding to the Commission's consultation on so-called "substitute" products<sup>89</sup>, the AMF took a lead position in the debate on the terms of competition among promoters of such products and protection of retail investors who buy them. This topic gave rise to a report by a working group chaired by Jacques Delmas-Marsalet, a member of the AMF's Board and vice-chairman of its Retail Investors Consultative Commission. The working group's report was forwarded to the European Commission

---

89 That is, those in competition with investment funds for retail investors' savings

## 5 – International Cooperation on Supervision and Discipline

### A – AMF's involvement in the work of IOSCO (SC4 and Screening Group)

Throughout 2008 the AMF once again made an active contribution to the work of IOSCO's Standing Committee 4 (SC4), which deals with enforcement, cooperation and exchanges of information between regulators<sup>90</sup>. It likewise continued to provide technical assistance to the Screening Group, the IOSCO unit in charge of reviewing the applications of regulators seeking to become signatories to the Multilateral Memorandum of Understanding (MMoU) on information exchange.

#### 1 > SC4 and relations with uncooperative jurisdictions

In addition to the three meetings of SC4 during 2008, a subgroup of four regulators (the UK's FSA, Ontario's OSC, Spain's CNMV and the AMF) worked to complete the lengthy task of analysing the problems encountered with some regulators considered to be uncooperative or insufficiently cooperative.

In an earlier phase, three of them were identified as not cooperating in satisfactory fashion in investigations with an international component: not responding, or taking an abnormally long time to respond, or providing incomplete or unusable information. They were invited to dialogue with IOSCO in an effort to understand why these difficulties were being encountered and find solutions for them. It should be noted that obstacles of this kind can have several origins, in some case at the same time: legislation that limits or prevents cooperation; insufficient powers on the regulator's part to obtain the necessary information; lack of human and/or financial resources, and in some case lack of willingness to respond to requests in a satisfactory manner. The objective of these discussions is to convince the local supervisory authorities, which in some cases may be part of the central bank, as well as representatives of the executive, legislative and judicial powers to take the necessary measures to join the "virtuous circle"<sup>91</sup> of the world's regulators.

The results of the subgroup's first series of dialogues was favourable: one of the three regulators concerned signed the IOSCO MMoU in 2007, resulting in increased information exchange between this regulator and its counterparts; while the other two, which took the time needed to amend their national legislation, are expected to become signatories during 2009.

It was therefore decided to step up the process, and in 2008 a second series of contacts was initiated with three regulators whose cooperativeness had been deemed disappointing based on past experience. It was also decided to draw up a list for subsequent years so that the subgroup could pursue this fruitful dialogue with other jurisdictions in 2009.

In 2008 SC4 also continued its work on international asset freezes. The goal of this effort is to facilitate the freezing of accounts of persons suspected of having committed securities fraud and to prevent the funds involved from disappearing once sanctions have been imposed.

In other work, SC4 began a study on the issue of public warnings posted on regulators' websites and undertook to consider what role IOSCO might play in coordinating such disclosures.

---

90 At year-end 2008, the SC4 brought together 19 regulators from the following countries or provinces: Germany, Australia, Brazil, Canada-Ontario, Canada-Quebec, Spain, United States-CFTC, United States-SEC, France, Greece, Hong Kong, Italy, Japan, Mexico, Netherlands, Poland, Portugal, United Kingdom, Switzerland.

91 As put by Michel Prada, who had in mind regulators exchanging information on a regular basis as needed to carry out their duties.

**Important:** The following English text is a translation of extracts from the French version of the 2008 Annual Report. Only the original French text has any legal value. The AMF expressly disclaims all liability for any inaccuracies in the translation

## 2 > Multilateral Memorandum of Understanding (MMoU) on information exchange and the Screening Group

The AMF is a participant in the activities of the IOSCO Screening Group<sup>92</sup> charged with reviewing the applications of regulators seeking to become signatories to the Multilateral Memorandum of Understanding (MMoU) on information exchange. The MMoU<sup>93</sup> establishes well-defined criteria for the terms of consultation, cooperation and information exchange between member countries, especially as regards supervision and enforcement action. At year-end 2008, 49 regulators among the 109 ordinary members of the organisation were signatories of the MMoU, or five more jurisdictions than in 2007<sup>94</sup>. Thirty other regulators had filed applications to join the MMoU, raising the total of regulators in the screening queue to 95 at year-end 2008. IOSCO said it wanted all its members to take this step by 1 January 2010<sup>95</sup>.

As a member of the Screening Group, the AMF reviews applications to join the MMoU<sup>96</sup> as part of a collective examination process with its counterparts, taking care to ensure that the legal systems of the jurisdictions concerned will enable the candidate regulatory authorities to gather the desired information and transmit it without restriction for the purposes stated by the requesting regulatory authority or the relevant judicial authorities. For IOSCO members who need technical assistance in preparing the necessary documents for joining the MMoU, the AMF is an important player in the assistance programme that IOSCO has set up in partnership with the IMF and the World Bank. The AMF has provided its expertise to four counterparts in recent years (one in 2006, two in 2007 and one in 2008).

In 2008 the AMF also continued to represent IOSCO at meetings of the Financial Action Task Force (FATF), which works to prevent money laundering and financing of terrorism.

## B – AMF's involvement in the work of CESR-Pol

The primary goal of CESR-Pol, a CESR standing group, is to make it easier for its 29 members to share information and thus be more effective when monitoring transactions executed in the securities markets under their jurisdiction. The group enables authorities to amass the data they need to conduct their enquiries more effectively and to coordinate their efforts during international investigations. Lastly, it provides a forum for exchanging experiences in actual cases with a view to achieving the greatest possible convergence in the approaches and practices of the different regulators, including those of third countries. During 2008 CESR-Pol met with the Financial Industry Regulatory Authority (FINRA), the US self-regulatory organisation, and pursued a dialogue with the Liechtenstein regulator to foster mutual understanding of each side's legal frameworks and constraints and to improve cooperation practices where necessary.

### 1 > CESR-Pol recommendations

In connection with its work on operational implementation of the Market Abuse Directive, the CESR-Pol group, acting on behalf of CESR, prepared a third set of draft recommendations in two stages. In accordance with the work programme announced by CESR in July 2007, the first stage, dealing with harmonisation of requirements for compiling and transmitting insiders lists and suspicious transaction reports, was the subject of a public consultation. The second stage of the project, relating to the price stabilisation regime for financial instruments and also including a proposal on issuers' handling of rumours, was likewise submitted for public consultation.

---

92 At year-end 2008 the Screening Group had 28 members: the 19 members of Standing Committee 4 plus the regulators from South Africa, Belgium, Canada-British Columbia, Isle of Man, India, Israel (new member in 2007), New Zealand, Sri Lanka and Turkey.

93 Available on the IOSCO website at <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD126-French.pdf>

94 Namely, South Africa, Canada-Alberta, Germany, Australia, Bahrain\*, Belgium, Bermuda, Canada-British Columbia, China, Denmark, Dubai, Spain, United States-CFTC, United States-SEC, Finland, France, Greece, Hong Kong, Hungary, Isle of Man, British Virgin Islands, India, Israel, Italy, Japan\*, Jersey, Jordan\*, Lithuania, Luxembourg, Malaysia, Malta, Morocco, Mexico, New Zealand, Nigeria, Norway, Canada-Ontario, Netherlands, Poland, Portugal, Canada-Quebec, Czech Republic, Romania\*, United Kingdom, Singapore, Slovakia, Sri Lanka, Thailand\*, Turkey. NB: New signatories in 2008 are identified by an asterisk (\*).

95 Regulators that cannot be party to the agreement because of legal obstacles but have commitment to cure them in the near future are listed in Annex B of the MMoU. Among the 16 authorities concerned, some have already pushed their national governments to change the legislation so that they can become full signatories of the agreement.

96 Applications to join the MMoU are scrutinised by one of the verification teams, each consisting of representatives of four authorities. The team then submits a report to the full Screening Group for examination at a plenary session and discussion of the candidates on the merits

**Important:** The following English text is a translation of extracts from the French version of the 2008 Annual Report. Only the original French text has any legal value. The AMF expressly disclaims all liability for any inaccuracies in the translation

## 2 > Warnings

In 2008 CESR member regulators continued to exchange warnings about people or companies offering unauthorised investment services or products. Through the network of CESR-Pol members, the AMF sent the warnings posted on its website in 2008 to its fellow regulators. For its part, the AMF received 138<sup>97</sup> warnings passed along by its counterparts in 2008, compared with 90 in 2007. The AMF relayed these warnings on its website with links to the source regulator's site<sup>98</sup>.

## 3 > Other issues addressed by CESR-IM

At the urging of the AMF, CESR-Pol developed a common approach on implementing Article 57 of MiFID<sup>99</sup>. Article 57 permits the competent authority overseeing a regulated market to go directly to remote members of that market for answers to its questions, without passing through the home country authority, although the latter must still be informed.

CESR-Pol also maintained regular contacts with IOSCO's SC4, in particular on the subject of uncooperative jurisdictions.

Lastly, the AMF participated in the working group on short-selling set up in late September 2008 under CESR-Pol. This group is tasked with comparing different national regulations, assessing the effectiveness of measures taken recently by some members and making an effort to promote converging approaches to this issue.

# 6 – International Cooperation on Technical Issues and Training

As part of the technical support it provides to European and international financial markets regulation, the AMF continued its bilateral and multilateral cooperation with foreign counterparts in 2008. This activity is an element of its "better regulation" policy. The 2008-2009 work programme for this initiative has three components, one of which is furthering the process of mutual recognition with countries outside the European Union. One of the underlying objectives is to promote the French model of financial regulation, with its separation between prudential supervision and market regulation, and give prominence to the special features of the French system.

## A – Bilateral cooperation

### 1 > Cooperation and partnership agreements

The agreement for closer cooperation with the China Securities Regulatory Commission (CSRC), signed in December 2006, and the subsequent organisation of training seminars in 2007, laid the foundations for a new type of bilateral relationship tailored to the specific needs of each signatory regulatory authority. An AMF delegation travelled to Beijing in October 2008 to take part in a conference on challenges and opportunities for the finance industry in China and France. The success of this event, organised by Paris Europlace under the sponsorship of the AMF and the CSRC, confirmed the interest on both sides in this form of partnership.

In the same spirit, an agreement for closer cooperation was formalised in February 2008 with the AMF's Indian counterpart, the Securities and Exchange Board of India (SEBI). One of the main provisions of the agreement covers training seminars to be organised in France and in India on regulation of capital markets and asset management, as well as visits of staff delegations. Discussions on the terms of reference of the agreement continued during the year, and the first exchanges are scheduled for 2009.

---

97 90 press releases relating to 138 warnings

98 Available on the AMF's website in the Investor Area under the heading "Warnings".

99 Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:145:0001:0044:EN:PDF>.

**Important:** The following English text is a translation of extracts from the French version of the 2008 Annual Report. Only the original French text has any legal value. The AMF expressly disclaims all liability for any inaccuracies in the translation

The signing of an agreement with the Israel Securities Authority (ISA) in January came as part of a different – and still relatively new – initiative aimed at recognising equivalence of prospectus requirements in France and Israel for the purpose of admitting securities to trading on a regulated market in either country. The two authorities have set up a joint committee to monitor implementation of this agreement.

Lastly, contacts were established with regulatory authorities in the Middle East, and agreements are on track to be finalised in 2009. In all, 39 agreements and conventions with foreign counterparts have been signed by the AMF or its predecessor, the COB.

## **2 > Exchanges with foreign delegations**

The AMF organised nine group visits for staff members of regulatory authorities in Central Africa, West Africa, Egypt, Morocco, Romania and Tunisia. For each of these occasions, the AMF made several of its managers and staffers available for presentations on its expertise in areas such as collective investment management, listing and supervision of certain types of companies (venture capital, holding companies), market surveillance and enforcement, accounting and financial information, and the scope and practice of its enforcement powers.

## **B – Multilateral cooperation**

In addition to its bilateral exchanges, the AMF has mobilised to support the operation of the Institut francophone de la régulation financière (IFREFI), the emerging European Institute for Financial Regulation (EIFR), and the Mediterranean Partnership, which seeks to encourage business relations between the partners and better mutual acquaintance between their regulatory authorities.

### **1 > Institut Francophone de la Régulation Financière (IFREFI)**

The Institut Francophone de la Régulation Financière (IFREFI) was set up by the COB beginning in 2000 as a flexible framework for dialogue and cooperation. The IFREFI brings together financial market regulators that use French as a working language. As it has done each year since its founding charter was signed in 2002, IFREFI held its 2008 meeting in two stages: a gathering of the chairmen of each member authority, and a gathering of authority staff for training seminars.

#### **a) Chairmen's meeting**

The meeting of regulatory authority chairmen provides an occasion for high-level exchanges on topical matters in international finance and an opportunity to focus on a theme of common interest. In 2008 it was held in Monaco on 4 April at the invitation of the Principality's Commission de contrôle des activités financières (CCAF). In attendance were 15 participants representing 27 jurisdictions<sup>100</sup>. Three topics in particular were discussed: the resources of regulatory authorities in terms of staffing and funding; the subprime crisis and the regulators' response to it; the role of regulators in evaluating bid and ask prices of financial instruments. Elected to lead IFREFI in 2008-2010 were Jean-Paul Servais, representing the Commission bancaire, financière et des assurances (Belgium), as chairman and Edoh Kossi Amenounvé, representing the Conseil régional de l'épargne publique et des marchés financiers (West African Monetary Union), as vice-chairman.

---

<sup>100</sup> The following countries and authorities were represented: Algeria (COSOB), Belgium (CBFA), Bulgaria (FSC), Cameroon (CMF), Central African Economic and Monetary Community (CEMAC, whose regulator, COSUMAF, covers six countries: Cameroon, Central African Republic, Congo, Gabon, Equatorial Guinea, Chad), France (AMF), Guinea (PBVGC), Luxembourg (CSSF), Morocco (CDVM), Monaco (CCAF), Quebec (AMF), Romania (CNVM), Switzerland (CFB), West African Monetary Union (UMOA, whose regulator, CREPMF, covers eight countries: Benin, Burkina Faso, Côte d'Ivoire, Guinea-Bissau, Mali, Niger, Senegal et Togo), Tunisia (CMF). Moldova was excused

**Important:** The following English text is a translation of extracts from the French version of the 2008 Annual Report. Only the original French text has any legal value. The AMF expressly disclaims all liability for any inaccuracies in the translation

## **b) Training seminars for staff of market authorities**

These training seminars provide an opportunity to address in concrete and educational terms emerging or recurring technical issues which concern staff from market authorities. The seminar in Monaco on 2-3 April 2008 dealt with disclosure regarding collective investment products. On the programme were eight workshops in the form of three panels (on the content of the prospectus, observed deficiencies in communicating information, and cooperation between regulators) and five individual presentations (on codes of conduct for investment funds, reform of the simplified prospectus, regulatory review of fund advertising, IOSCO's work on point-of-sale disclosure to investors, and investor education). Speakers included representatives of the CBFA (Belgium), the AMF (France), the AMF (Quebec), the CSSF (Luxembourg), the CDVM (Morocco) and the CMF (Tunisia). The communications director of France's Institute for Public Financial Education, IEFP, described the initiatives taken on this topic in France.

## **2 > European Institute of Financial Regulation**

Also in the area of training, the AMF supported the first steps of the European Institute of Financial Regulation (EIFR) to foster a shared financial culture. Through this institute, which is oriented mainly towards EU member countries in central and Eastern Europe<sup>101</sup>, the AMF seeks to provide added value in developing a broader community of views and working methods among regulators.

In April 2008, in cooperation with the Commission Bancaire and ACAM in France and the Financial Services Authority in the UK, the AMF organised a three-day seminar under the EIFR banner for European supervisors of the banking, insurance and securities market sectors on the topic of credit risk transfer. The 39 regulators who took part, representing 25 supervisory authorities from 19 countries, had an opportunity to share their experience with their counterparts and also to interact with some thirty representatives from industry, academia and the European Commission. The success of this event demonstrates the added value of an approach of this kind focusing directly on creating a community of views and working methods among European supervisors. Concurrently with the annual meeting of IOSCO that the AMF hosted in Paris in May, the AMF organised a seminar on the same topic for more than 150 representatives of regulators.

## **3 > Mediterranean Partnership**

A new initiative in 2008, the Mediterranean Partnership is part of the France's efforts during its presidency of the European Union to bring into being a Mediterranean Union. Its main objective is to facilitate exchanges between the partners' regulatory authorities by fostering convergence of existing financial tools (in the area of collective investment management, for example) as well as a shared culture of supervision and, at a time of rapid growth in the emerging economies of the Near East and North Africa, a stronger foundation for increased business and capital flows between the countries involved.

In the first phase of building this partnership, a meeting of the chairmen of the Algerian, Egyptian, French, Italian, Moroccan, Portuguese and Tunisian authorities was held in Madrid on the fringe of an IOSCO Technical Committee meeting. This was followed in October by a working meeting on the occasion of an IOSCO Emerging Markets Committee session in Marrakesh. A charter was signed in March 2009. Training seminars will be organised in 2009 on subjects of common interest.

---

101 IERF internships are open to regulatory authorities of emerging countries