

CHAPTER 5

Market Surveillance and Discipline

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Providers and market Infrastructures
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The AMF carries out daily surveillance with a view to maintaining orderly markets, protecting investors and safeguarding the quality of financial disclosures. For this purpose, the AMF has effective resources of its own and coordinates its efforts with the other authorities in France¹ and abroad that are responsible for overseeing the banking and financial industries.

The AMF conducts inspections and investigations under the authority of its Secretary General. For this, it relies on three staff departments that perform:

- > market surveillance, which includes monitoring trading and trader behaviour to detect market anomalies;
- > documentary audits and on-site inspections of investment services providers (ISPs), including asset management companies, to ensure that they comply with the rules of their profession;
- > investigations, which look at financial disclosures and market abuse.

The AMF can call on external auditing bodies, i.e. the Commission bancaire, Euronext Paris, the central depository, audit firms and independent experts, in order to carry out its duties.

This chapter describes the oversight, surveillance and investigation activities of the AMF in 2008.

Table 1: Market surveillance and discipline in 2008

	2007	2008
On-site inspections of ISPs: begun	105	66*
On-site inspections of ISPs: finished	72	81
Documentary audits of ISPs: begun	97	108
Reports sent following documentary audits	-	17
Investigations opened	92	97
Investigations concluded	96	95

*The number of new on-site inspections fell in 2008 owing to the increase in documentary audits.

Source: AMF

Possible outcomes * of an AMF investigation or inspection

- 1 – The case is closed.
- 2 – The specialised commission of the AMF Board sends comments, which may be published, to the parties concerned. Unless the Board decides otherwise (Art. 143-5 of the General Regulation), inspection and audit reports are sent to the relevant ISP for comment. A follow-up letter is then issued.
- 3 – The AMF issues an injunction, or the presiding judge of the Paris district court (Tribunal de Grande Instance) issues an injunction at the AMF's request.
- 4 – A specialised commission of the AMF Board opens sanction proceedings.
- 5 – The AMF submits a report to the public prosecutor when the facts may constitute an offence.
- 6 – The AMF submits a report to other French or foreign administrative authorities when the matter falls within their jurisdiction.

* A single investigation or inspection report may have several outcomes.

Source: AMF

¹ Banque de France, Commission bancaire, Comité des Établissements de Crédit et des Entreprises d'Investissement, Autorité de Contrôle des Assurances et des Mutuelles (ACAM), Comité des Entreprises d'Assurance.

1 – Market surveillance

The AMF market surveillance department, with a staff of 15, is responsible for monitoring market activity and ISP behaviour. Its aim is to detect abnormal events or behaviours that might constitute prohibited actions or market offences such as price manipulation, insider dealing and dissemination of false information. This department also carries out assessments to make sure those markets are operating in an orderly fashion and that ISP activities comply with regulations. It gathers information that can be used to open administrative investigations.

The department simultaneously monitors all financial instruments traded in the Paris markets, including the equity securities of over 1,000 companies (675 on Eurolist, 119 on Alternext, 285 on the Marché Libre), more than 2,000 fixed-income securities, some 10,000 warrants and certificates, more than 110 classes of options and nearly 1,000 ISPs.

A – An electronic database system

The SESAM system was developed and is used jointly by the various AMF departments in charge of market surveillance, investigations and ISP and market infrastructure supervision. SESAM's screen displays² enable users to retrieve data on all equity and derivatives market trades since 1991, and to access the detailed characteristics of all orders sent to the markets and all reports filed by ISPs through the direct transaction reporting system (RDT).

The volume of data collected increased substantially again in 2008. Euronext Paris, the market operator, reported 824 million orders (on the Euronext Paris cash market excluding warrants, trackers and certificates) and 133 million trades (on the Euronext Paris cash market) to the AMF. This represented an 85% increase in orders and a 25% increase in trades reported compared with 2007. The large increase in orders is attributable to wider use of automated trading systems which, combined with the multiplicity of trading venues, resulted in a large number of order cancellations. It can also be attributed to the exceptional market volatility experienced in 2008, due notably to adjustments prompted by the extent of the fluctuations.

B – Daily market monitoring

Several sources of information are used to carry out daily market monitoring:

> the AMF automatically receives data on trades in French securities, to which it applies a range of 76 automatic tests to detect anomalous transactions. The system generates daily alerts, which the department analyses to determine whether unusual but legitimate activity has occurred or to identify suspicious transactions;

> the AMF also receives alerts from a variety of sources (including Euronext, issuers themselves, letters to the AMF Ombudsman and suspicious transaction reports). The department controls the incoming information and conducts further checks to find out whether the facts in question might constitute a market offence.

Separate mention should be made of suspicious transaction reports (STRs). The STR procedure for ISPs was introduced by the Market Abuse Directive and continues to be a valuable additional source of information for the surveillance department, which centralises and analyses all such reports.

The department received 135 STRs in 2008 concerning 122 transactions, roughly the same as in 2007 (133 reports about 125 transactions).

Most of the reports concerned transactions by retail customers of ISPs. The latter seem reluctant to report suspicious transactions by professional customers to the AMF, probably because of business-related considerations. Yet ISPs have a duty to report all such transactions on the Eurolist regulated market, regardless of the nature of the client.

The AMF uses the SESAM system in both cases to detect and characterise events. SESAM automatically generated around 55,000 alerts in 2008, or more than 200 a day. Following a review process, nearly 470 cases were studied in greater detail, with the AMF asking the financial intermediaries in question to provide additional information, particularly regarding final beneficial owners. Once these analyses were completed, there were

² The system has 30 screens.

sufficiently clear suspicions to warrant proposing investigations in 30 cases. The Secretary General then acted on these proposals, taking the decision to actually open investigations.

Overall, market surveillance is the starting point for the vast majority (73.1%) of investigations opened at the initiative of the AMF.

C – Measures to reflect the international nature of market mechanisms

To ensure that the new order execution venues provided for under MiFID do not create obstacles that could hinder the regulator when fulfilling its surveillance duties, a reporting system has been put in place to inform the AMF of trades in French securities, even when they are executed off Euronext-operated platforms. French ISPs, for example, notify the AMF directly of off-Euronext trades in French securities (under the RDT system), while other European ISPs report to their own regulators, which forward the information to the AMF under the Transaction Reporting Exchange Mechanism (TREM).

In 2008 measures were gradually introduced to enable the AMF's warning system to use these information flows to automatically detect market anomalies, as is also the case for data provided directly by Euronext, notably through SESAM. Thus, 330 French ISPs reported 163 million transactions via RDT. The volume of data collected by the system has been multiplied by five since MiFID came into force in November 2007. The AMF also received 191 million trade notifications from fellow authorities in Europe, and sent 98 million notifications to them.

The increasingly international dimension of markets was visible not just through heavier data flows but also in the number of instances where the AMF had to request information from ISPs from other European jurisdictions. In 2008 the surveillance department sent foreign regulators around 400 information requests concerning one hundred or so separate cases - a sharp increase on 2007, when it issued 110 requests concerning 66 cases. About 100 requests were made in connection with investigations into short selling, conducted because of exceptional conditions in the second half of 2008 (see chapter 4).

However, this task was made much easier by the fact that regulators in the main Member States, in particular the FSA³ accepted the AMF's interpretation of MiFID provisions on dealing with remote members. According to the AMF's interpretation, a national regulator may directly contact an ISP from another Member State operating as a remote member on a regulated market under its supervision. The AMF thus directly sends client identification requests to remote members in Europe, notably to the many firms based in London. It informs the FSA of all such requests.

D – Adjusting to cope with highly unstable market conditions

Market volatility increased greatly from autumn 2007, before intensifying further in 2008. The effectiveness of some tests for detecting anomalous trades was temporarily affected, with increased market volatility setting off the AMF's warning systems more often than usual, even though market abuse did not necessarily occur more frequently.

While adjusting its tests to cope with the bouts of market upheaval, the AMF also responded to the economic and financial context by deploying special surveillance measures:

> instead of waiting for SESAM to process trades and orders, the AMF asked Euronext to provide real-time information to identify the customers who were behind certain trades that caused sharp price swings, particularly in French banking stocks during autumn 2008;

> it conducted investigations into customers that were responsible for settlement fails in sales of banking stocks after 22 September 2007. Naked short selling, i.e. when the seller has not taken steps to ensure the timely delivery of securities, might be behind such fails, even though the AMF reiterated and tightened the ban on this practice.

³ UK Financial Services Authority

E – Participation in international surveillance-related initiatives

Within CESR, the AMF is member of a working group focusing on exchanging best practices and on sharing information of mutual interest. The AMF has initiated discussions within the group on promoting convergence in practices and the legal framework relating to the use of STRs and referrals to other authorities. The AMF also takes part in the group that is working to harmonise reporting formats at the European level and improve the reliability and analysis of TREM data.

Furthermore, the AMF is a driving force in the project aimed at enabling regulators to share information⁴ about trades in OTC derivative financial instruments. Although they are not subject to MiFID reporting requirements, transactions in this type of instrument, whose underlyings are securities traded on a regulated or organised market, may nevertheless lead to the use of insider information, price manipulation or the dissemination of false information. Recording of these transactions varies across countries because of options provided under Community rules. It is therefore important to designate a framework within which to collect and pool information about these trades in order to enhance surveillance. The goal is to reach an agreement in principle about the procedures for sharing information by spring 2009.

2 – Supervision of investment services providers and market infrastructures

To carry out its duties, the AMF department responsible for supervising investment services providers and market infrastructures, CPIM, has a staff of some 20 inspectors.

The department is in charge of ensuring the regulatory compliance of ISPs under the supervision of the AMF⁵.

Supervisory activities currently extend to 976 regulated entities:

- > 571 asset management companies;
- > 103 investment firms,
 - including 41 authorised as custody account keepers;
- > 291 credit institutions that provide investment services,
 - including 255 custody account keepers;
- > 9 custody account keepers;
- > 3 market infrastructure operators.

The market infrastructures supervised by the AMF are:

- > 1 market operator (Euronext Paris), which manages three regulated markets (Eurolist – Monep – Matif) and two multilateral trading facilities (Marché Libre – Alternext);
- > 1 central depository and settlement system operator (Euroclear France);
- > 1 clearing house (LCH.Clearnet), an authorised ISP which also operates a settlement system.

Supervision also extends to 2,648 financial investment advisers and their six authorised professional associations.

A – Documentary audits

The AMF conducts spot and routine audits, analysing the information collected to ensure regulatory compliance.

To provide a framework for ISP and market infrastructure inspections, the AMF reorganised the CPIM in 2008, creating a special remote inspection team. Under Articles 143-1 and 143-2 of its General Regulation, the AMF is allowed to inspect an institution based on documents requested by AMF staff. The main purpose of this reorganisation was to improve the coverage ratio of inspected institutions and to enable the AMF to react more swiftly when necessary. In 2008, 17 reports were sent to ISPs following documentary audits.

⁴ Through the TREM system.

⁵It assesses the effectiveness of the organisation and resources implemented by management companies and investment firms and verifies that AMF rules are properly enforced.

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The AMF gathers a considerable amount of information that, once analysed, may reveal anomalies that ISPs must account for. The documentary audit team is currently working with other AMF departments to develop surveillance tools so as to carry out certain checks on a systematic basis.

Since 2008, for example, the systems in place to detect unusual movements in mutual funds have identified anomalies in fund/benchmark correlations. The same tool is also capable of detecting market timing⁶.

The main sources of information for documentary audits are currently:

- > trade notifications by ISPs and market operators;
- > notifications of net asset values and of the number of fund units/shares (detection of anomalous NAVs);
- > notifications of disciplinary measures taken by ISPs against holders of professional licences⁷ ;
- > annual reports and special reports prepared by management companies and other ISPs;
- > analyses by the market surveillance department;
- > fund prospectuses;
- > the professional licences database;
- > investor complaints and claims;
- > data provided by Euroclear France and LCH.Clearnet on settlement fails;
- > information provided by other supervisors.

Some anomalies are detected by cross-referencing information sources. Documentary audits offer a way to carry out large-scale checks on specific topics and to conduct inspections at many ISPs at the same time. The information collected from standard questionnaires can be analysed and used to establish a common methodology for each of the inspected institutions.

Overall, 108 documentary audits were launched in 2008, as follows:

Table 2: documentary audits launched in 2008

	Documentary audits	108
	Market anomalies	37
	Audits of regulatory disclosures	33
Based on	Complaints and claims	25
	Notifications of disciplinary measures taken against holders of professional licences	10
	Information provided by other authorities	3

The documentary audits conducted in 2008 were partly based on a variety of reports made by ISPs.

1 > Annual supervision reports prepared by investment services compliance officers and compliance and internal control officers

ISPs, the market operator, the clearing house and the central depository are required to provide the AMF with an annual report on their handling of investment services in the previous year⁸. The deadline for filing the reports is the end of April for ISPs, excluding management companies, and 15 May for management companies. These annual reports take stock of the current situation and are used to guide the on-site inspections conducted by the AMF.

As in 2007, the AMF supplied ISPs with a questionnaire for use in preparing their 2008 reports. The questionnaire format means that responses can be standardised, enabling the AMF to analyse them more easily and monitor statistics relating to the supervision of investment services reported by providers.

The collected information is based on disclosures by ISPs. The AMF can use these answers to its questionnaire to gain an overview of compliance with regulatory provisions enacted by the AMF. By identifying anomalies, the AMF can direct its inspections and audits to target a given provider, subject or population. Inspections can also be

⁶ Market timing is a technique that seeks to take advantage of price differentials. See article published in the AMF Monthly Review No. 15, June 2005, page 53.

⁷ In accordance with Article 313-36 of the AMF General Regulation.

⁸ Article 313-7 of the AMF General Regulation.

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launched as a result of consistency checks on answers to the questionnaire, followed by a dialogue with the responding ISPs.

In the main, inspection reports compiled in 2008 for the year 2007 targeted the progress made in implementing measures needed to ensure compliance with MiFID-related professional obligations.

A special helpdesk was set up to answer queries from ISPs and to track the communication of these reports more effectively.

The analysis of these reports revealed that the majority of ISPs had introduced systems, measures and procedures to ensure timely compliance with the regulatory provisions introduced by MiFID.

2 > Special inspections

In 2008 the AMF launched several series of specific topic-focused inspections. A dozen inspections were carried out into the handling of the liquidity crisis affecting money market mutual funds by asset managers. Around 15 inspections were launched into disclosures by ISPs of OTC trades in equity securities admitted to trading on a regulated market of a State party to the European Economic Area agreement.

On the specific issue of conflicts of interest, the AMF asked investment services compliance officers and compliance and internal control officers to submit a special report by 1 November 2007 (i.e. the entry into force of MiFID) including:

- > an inventory of situations that could potentially create conflicts of interest;
- > the broad outlines of their policy for managing such conflicts, in particular oversight procedures for information exchanges, hierarchical reporting and/or pay policies;
- > specific policy provisions for investment analysis;
- > for asset management companies, specific policy provisions for collective investment management.

The summary of these reports⁹ offered the following conclusions:

> most ISPs realise the importance of prevention when it comes to managing conflicts of interest. This is reflected in the introduction of programmes to train staff and build awareness of these issues. ISPs also understand that failing to properly address conflicts of interest could impact their reputation, potentially damaging customer relations and threatening earnings over the long run. Accordingly, some providers have incorporated updated detection and prevention measures into their control programmes;

> most of the reports devote more space to conflicts that have been detected and resolved and for which procedures have been put in place, than to conflicts that remain outstanding following assessments. The AMF therefore urged ISPs to take steps to identify and prevent outstanding conflicts of interest.

The AMF reminded providers of their obligation to disclose outstanding conflicts of interest to non-professional customers before supplying investment services or related services. Disclosures must be sufficiently detailed and clear and should be provided on a durable medium so that customers can make properly informed decisions.

In February 2008 the AMF Board was informed of the findings of a 2007 study¹⁰ into voting policies for securities held by managed mutual funds. The study was conducted using a questionnaire sent out to a dozen medium-sized management companies that managed at least two equity funds in 2006. The results of the study were satisfactory because all the sampled companies possessed the two documents required under the regulations. Voting policy documents¹¹ were deemed to be comprehensive in that they most often provided a clear description of the way in which the company organised the exercise of voting rights. Moreover, the special reports prepared by investment services compliance officers for 2006 concerning the exercise of voting rights were deemed to be satisfactory, even if disparities were noted in the level of detail provided.

The CPIM also provided the Board with a summary of the annual reports¹² compiled by five of the six AMF-authorized FIA professional associations¹³. The AMF received the 2007 reports in October 2008, in accordance with Article 325-23 of the AMF General Regulation. Deeming this activity to be in a prospective phase, the AMF sent letters of comment on organisational aspects to each of the FIA associations.

⁹ Presented to the AMF Board in December 2008 and published in the Monthly Review, January 2009, No. 54.

¹⁰ Published in the Monthly Review, March 2007, No. 34.

¹¹ Articles 314-100 to 314-104 of the AMF General Regulation.

¹² Articles 325-23 and 325-25 of the AMF General Regulation.

¹³ FIA professional associations have a duty to report annually to the AMF. 2007 was the second year of existence for the six AMF-approved FIA associations. The sixth association has a different financial year-end.

3 > Supervision of market infrastructure operators

The market infrastructure inspections department supervises market infrastructure operators and meets regularly for this purpose with representatives of Euronext Paris, LCH.Clearnet and Euroclear France.

Points monitored closely in association with Euronext Paris:

- > insourcing of IT activities via a dedicated subsidiary, NYSE Euronext Technology;
- > preparations to replace the NSC trading system by the Universal Trading Platform (UTP);
- > analysis of incidents that affected market operations and measures taken by the market operator to remedy these incidents;
- > cooperation between the AMF and Euronext on more effective market surveillance tools.

The UTP project is designed to harmonise the European and US trading environments of the NYSE Euronext group. The goal is to provide the group not merely with a single trading platform but also with a single network and connection point for all the markets operated by this group. UTP has led to substantive changes to the format of the daily data transmitted by the market operator to the AMF for entry in the SESAM system. The UTP project was a key issue for AMF staff in 2008, and these efforts will be carried on in 2009.

Cooperation also continued between the AMF and the other regulators of the Euronext group to analyse how the market operator implements certain regulatory requirements, particularly in relation to the Single Order Book. Several working groups were set up to explore a range of issues, including risk mapping and business continuity planning.

As regards the central depository, Euroclear France, and the clearing house, LCH.Clearnet, the AMF focused on the monitoring of fails and the prevention of technical incidents.

With regard to post-trade infrastructures, 2008 saw efforts to deal with fails connected to the Lehman Brothers bankruptcy and the implementation of provisions on short selling of banking stocks. Therefore, the AMF asked Euroclear France to submit daily information to enable it to identify Euroclear France affiliates that were no longer in a position to deliver securities in a timely fashion.

B – On-site inspections

As with investigations, the decision to order an on-site inspection is taken by the AMF Secretary General. A written report of the findings of the inspection is sent to the regulated entity for comment. If the report reveals substantial misconduct, it is forwarded to the AMF Board, which determines whether there are grounds for opening sanction proceedings.

A report is prepared for every on-site inspection or documentary audit. Unless the Board decides otherwise¹⁴, the report is sent to the provider for comment. A follow-up letter¹⁵ is then sent to the inspected entity listing required remedial actions. In 2008 the AMF Board acted on six on-site inspection reports by opening sanction proceedings against six companies, and two management companies had their authorisations withdrawn based on inspection reports.

The AMF may use external auditors to inspect entities under its supervision. Outside auditors handled 28 out of a total of 66 inspections in 2008; auditing firms and the Commission bancaire carried out 19 inspections and 9 inspections respectively.

When the AMF instructs outside auditors to work on its behalf, it first ensures there is no conflict of interest between the auditor and the company being audited. Auditors have the same statutory prerogatives as the regulator, which means that information may not be withheld from them on grounds of professional secrecy¹⁶. In the same way, they are subject to the same professional secrecy requirements as AMF staff. The regulator is liable to third parties for its agents' compliance with laws and regulations and also decides what action needs to be taken following audits. These missions are conducted under the supervision of the CPIM, which is designated as the agent's correspondent.

¹⁴ Article 143-5 of the AMF General Regulation.

¹⁵ In accordance with Article 143-6 of the AMF General Regulation.

¹⁶ Except representatives of the law.

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On-site inspections in 2008 comprised:

- > 26 inspections of ISPs (24 asset management companies and two companies in other ISP categories) that had received authorisation in the preceding eighteen months and were being audited to ensure that the resources devoted to investment services complied with the authorisation applications they had submitted to the AMF;
- > 11 inspections to assess ISP compliance with MiFID-related regulations;
- > 10 inspections of the marketing of financial instruments by ISPs other than asset management companies;
- > 8 general inspections of compliance with professional obligations by ISPs;
- > 1 inspection relating to justification and documentation of declarations made by ISPs in their annual report on the supervision of investment services;
- > 3 inspections into the activities of fund custodians;
- > 1 inspection of compliance with market rules;
- > 1 inspection of a financial investment adviser;
- > 2 inspections of liquidity crisis management by ISPs.

Furthermore, three investigations were also carried out on behalf of the Collective Investment Schemes Supervisory Commission of the Principality of Monaco.

As in 2007, the main problems uncovered during on-site inspections in 2008 involved the overall organisation of investment services activities, customer relations and anti-laundering due diligence.

A number of topical issues were also noted, in connection with the unusual economic context of 2008:

- > regarding discretionary management, shortcomings were found in the documentation of customers' investment objectives and compliance with the terms of management agreements;
- > when marketing fund shares/units, some institutions either failed to check or did not do enough to control their customers' experience and knowledge of risks; also, customers were not always provided with simplified prospectuses before they invested;
- > one ISP failed to exercise adequate supervision in relation to the activities of its direct marketers.

Finally, following on-site inspections of depositories, it was brought to the attention of the AMF that these institutions needed to be reminded to pay closer attention to resources used to supervise the compliance of CIS management decisions.

The exercise of control and compliance functions is one of the themes regularly covered during on-site inspections, since these often reveal insufficient resources and as well as shortcomings in the investment services compliance function. In this regard, the AMF reiterated the need to position the function appropriately and provide it with resources required to fulfil its duties.

Following proposals made by a study group led by Philippe Adhémar¹⁷, which were aimed at giving asset management companies a greater sense of responsibility, the AMF carried out five on-site inspections of multimanager funds in 2007 so as to determine whether appropriate resources and traceable procedures and methods were in place. These inspections showed that:

- > in many cases, underlying funds were selected based on information provided by the managers of these funds. Effective consistency tests were not carried out, due diligence was not updated, and eligibility criteria were not always respected;
- > risk controls included liquidity risk monitoring, although some management companies struggled to achieve exhaustive monitoring;
- > there is room to improve internal control, and special attention needs to be paid to marketing aspects, particularly as regards periodic disclosures and know-your-customer processes.

Furthermore, on-site inspections carried out in 2007 on the truthfulness of information provided by compliance and internal control officers in the supervision reports that they filed with the AMF identified some shortcomings in procedures and also found that some officers did not do enough to formally record controls once they were carried out.

In 2007 the AMF also carried out six inspections to check compliance with professional obligations by ISPs that had entered into liquidity agreements. The summary of these inspections was used to assess this accepted market practice.

In 2008 the AMF inspected the marketing of ordinary and enhanced cash funds by examining prospectuses and information provided to customers prior to investing, as well as phone exchanges and correspondence between sales staff and customers.

¹⁷ Cf. AMF 2007 Annual Report, page 153.

3 – Investigations

If irregularities are suspected, the Secretary General of the AMF may open an investigation into possible market offences, such as insider dealing, price manipulation or dissemination of false information. The nature of investigations is such that they are never predictable; even the sequence of events cannot be ordered in advance contrary to inspections, because each investigation depends greatly on the particulars of each case. On a general basis, investigations are undertaken when a situation raises suspicions of an offence or rule violation, whether by an issuer, an individual or institutional investor, a market professional or any other person or entity.

A written report on every investigation is presented by the Secretary General to one of the specialised commissions of the AMF Board, which may then decide to open sanction proceedings.

In 2008 the Secretary General opened 97 investigations (92 in 2007), and 95 investigations were closed (96 in 2007).

Table 3: Number of investigations opened and closed

	2003	2004	2005	2006	2007	2008
Investigations opened by the AMF	85	83	88	84	92	97
Investigations closed	79	90	91	105	96	95
Investigations giving rise to sanction proceedings	22	30	22	27	26	22

Source: AMF

A – Origin and classification of investigations

Forty-six of the 95 investigations closed in 2008 were opened at the initiative of the AMF. Twenty-two resulted in sanction proceedings, 8 were closed, and 16 resulted in one or more letters of comment¹⁸.

The remaining 55 reports on investigations opened by the AMF following requests for assistance from foreign authorities were sent to the AMF's fellow regulators under international cooperation agreements. The AMF will open an investigation when a fellow regulator from another country requests the assistance of the AMF within the framework of international cooperation.

Three-quarters of the 40 investigations carried out at the initiative of the AMF were opened on the basis of proposals submitted by the market surveillance department.

Other investigations were initiated in response to notifications from other AMF divisions, particularly Corporate Finance, Corporate Accounting and Auditing, and Investment Services and Asset Management.

In addition to investigations opened following requests from foreign regulators¹⁹, some investigations originated from other sources external to the AMF, such as investor complaints and requests for advice from judicial authorities²⁰.

Most of the investigations opened focus on classic market offences or rule violations addressed in Book VI of the AMF General Regulation: insider dealing, dissemination of false information and price manipulation.

¹⁸ One case may give rise to one or more letters of comment.

¹⁹ In accordance with Article L. 621-21 of the Monetary and Financial Code.

²⁰ Referred to in Article L. 466-1 of the Monetary and Financial Code.

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Table 4: Investigations opened in 2008, by subject²¹

Equity and fixed-income securities market (insider dealing or actions impairing orderly markets)	34
Financial disclosure	21
International cooperation	55
Total	110*

* The total is greater than 92 because some investigations concerned both the market in the security (price manipulation and insider dealing) and financial disclosure

Source: AMF

Most investigations have a clear international dimension; they increasingly involve very heavily capitalised issuers. The complexity and diversity of the financial, legal and accounting issues encountered by investigators in 2007 were again prominent in 2008.

B – International cooperation

The AMF amplified its cooperation with foreign regulators on matters involving market surveillance, investigations and exchanges of information on financial intermediaries.

There was an 80% increase in requests sent by the AMF for assistance from fellow regulators, chiefly owing to:

– the entry into force of MiFID, which introduced changes to international cooperation arrangements. In particular, Article 57 of the directive allows regulators to directly contact market operators and remote members of regulated markets, instead of requesting the assistance of the national regulator. In 2008 the AMF frequently used this procedure²², issuing 199 direct requests to British ISPs;

– enhanced surveillance of short selling owing to the exceptional events of September 2008²³. These surveillance activities generated many requests for information from foreign ISPs, either through cooperation arrangements, or directly under MiFID Article 57.

The number of international requests received by the AMF fell slightly, because its fellow regulators used MiFID provisions to contact French ISPs directly.

Overall, 55 investigations were opened at the request of foreign authorities in 2008. These primarily concerned transactions by intermediaries in France in securities listed on foreign markets.

The table below summarises the requests for assistance received by the AMF from foreign authorities in 2008, along with the requests sent by the AMF to foreign authorities.

²¹ The reason indicated relates to the facts that prompted the opening of the investigation and does not prejudice its outcome.

²² Cf. Table 5.

²³ Cf. AMF news releases dated 22 and 24 September 2008, available on the AMF website (www.amf-france.org) under News releases.

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Table 5: Requests for assistance, by country

Country	2007		2008	
	Received by the AMF	Sent by the AMF	Received by the AMF	Sent by the AMF
Germany	11	19	13	32
o/w requests under MiFID Art. 57	-	-	-	21
Belgium	14	18	10	30
o/w requests under MiFID Art. 57	-	-	-	6
Spain	6	12	4	5
o/w requests under MiFID Art. 57	-	-	-	1
USA	6	17	12	23
British Virgin Islands *	-	-	0	9
Ireland *	-	-	8	14
o/w requests under MiFID Art. 57	-	-	-	5
Israel	0	11	0	2
Italy	20	18	13	11
o/w requests under MiFID Art. 57	-	-	-	1
Luxembourg	14	14	13	25
Monaco *	-	-	-	8
Netherlands	32	25	25	39
o/w requests under MiFID Art. 57	-	-	-	15
UK	15	125	15	371
o/w requests under MiFID Art. 57	-	-	-	199
Switzerland	5	71	2	70
Other ²⁴	68	48	67	38
Total	191	378	182	677

* In 2007, these countries were counted under "Other".
Source: AMF

The "Other" item includes requests received from or sent to 25 countries, with numbers of requests ranging from just one for Austria, Denmark, Canada and Jersey, to eight for Sweden.

The increase in the total number of requests sent by the AMF to fellow regulators in 2008 reflects the international dimension of most of the investigations opened.

Given the huge volume of market orders handled in London, more than 50% of the AMF's requests for assistance went to the UK regulator.

As in 2007, the AMF sent numerous requests to the Swiss authorities in 2008. Requests for assistance served a variety of needs, as shown in the table below.

²⁴ This category includes requests from fellow regulators that were not itemised by country because they were so few in number.

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Table 6: Requests for assistance, by type

	2007		2008	
	Received by the AMF	Sent by the AMF	Received by the AMF	Sent by the AMF
Authorisation				
Requests for information on intermediaries	95	37	96	8*
Surveillance and investigation of infringements				
Requests for information on intermediaries, transactions and legislation	14	0	0	0
Use of inside information	67	276	53	471
Dissemination of false information	2	25	4	12
Infringements associated with offers of securities to the public	0	3	0	0
Price manipulation	10	19	10	50
Improper financial solicitation	0	0	2	0
Major shareholdings	1	7	1	15
Surveillance of short selling	0	0	5	116
Other	2	11	11	5
Total	191	378	182	677

* The sharp decline in requests by the AMF between 2008 and 2007 is attributable to regulatory changes conducted under the Better Regulation approach, which modified the fund conversion process. The introduction of outsourcing arrangements for financial management at existing funds is no longer considered to be a conversion requiring the approval of the AMF. As a result, the French or foreign entity to which management has been outsourced does not have to undergo extensive checks.

Source: AMF

Investigations of insider dealing that required international cooperation accounted for most of the information requests.

4 – Cases referred to other authorities

When the AMF finds evidence of acts that could fall under the jurisdiction of other judicial, administrative or self-regulatory authorities, it transmits its findings or reports to them for appropriate action.

A – Referral to the judicial authorities

There are two main legal requirements for referring matters to the judicial authorities: firstly, under Article L.621-20-1 of the Monetary and Financial Code, the AMF must notify the public prosecutor without delay when it obtains knowledge of a crime or offence²⁵; secondly, the AMF Board must submit an investigation or inspection report immediately to the prosecutor for the Paris court if one of the complaints may constitute an offence under Articles L.465-1 (insider dealing) or L.465-2 (false information and price manipulation) of the Monetary and Financial Code²⁶. Referral may also be prompted by a request for advice from the judicial authorities in court cases relating to public companies or offences committed in connection with public offerings²⁷ or when a judicial inquiry has been opened on the same facts. Additionally, a matter may be referred to the competent prosecutor so that it can decide whether to take disciplinary action against one or more statutory auditors for breaches of professional rules revealed by the investigation.

²⁵ Articles 40 of the Criminal Procedure Code and L. 621-20-1 of the Monetary and Financial Code.

²⁶ Article L. 621-15-1 of the Monetary and Financial Code.

²⁷ Article L. 466-1 of the Monetary and Financial Code.

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Furthermore, reports on ISP inspections may be referred to the judicial authorities when there is evidence of possible criminal violations of professional obligations.

In 2008, the AMF referred 20 investigation reports to the judicial authorities. Nineteen of these gave rise to sanction proceedings by the AMF.

A total of 93 reports on investigations of market abuse reviewed by the AMF Board between 1 January 2004 and 31 December 2008 were brought before the Enforcement Committee and simultaneously referred to the public prosecutor. The Enforcement Committee has issued sanctions or dismissals in 70 cases. With regard to judicial authorities, six cases have led to sentencing by a criminal court, with two being subject to rulings by the Court of Appeals, while two cases have been dismissed by the examining magistrate. A further 37 cases have been closed without further action, in accordance with the decision of the AMF Enforcement Committee, if any.

The average length of proceedings, including very complex cases that the AMF has recently had to deal with, is 30 months from the opening of the investigation to the Enforcement Committee's decision.

B – Referrals to supervisory authorities

In 2008 the AMF referred four inspection reports to French supervisory authorities (Banque de France, Comité des établissements de crédit et des entreprises d'investissement, Commission bancaire, Autorité de contrôle des assurances et des mutuelles, Comité des entreprises d'assurance).

Table 7: Summary of investigation and inspection reports referred by the AMF in 2007 and 2008

	AMF 2007	AMF 2008
Administrative and self-regulatory authorities	0	4
Public prosecutor	25	20

Source: AMF