

# CHAPTER 1

## The AMF and Retail Investors

- 1 - Consultative Commission on Retail Investors
- 3 - Regulatory alerts
- 4 - Educating the general public

The financial crisis has undermined the confidence of retail investors. They need reassurance so that they will once again make the long-term investments that are needed to fund pensions and long-term care but that also benefit the productive economy. Going forward, therefore, one of the main areas of focus for the AMF will be to safeguard savings and strengthen investor confidence. This will be evidenced, among other things, by the creation of a division to handle all the AMF's activities aimed at retail investors: consultations, mediation and financial literacy. In addition, the website will be overhauled to include content aimed specifically at individuals. The new division will also play a role in coordinating supervision of financial product marketing, monitoring product trends and exercising joint oversight of advertising. This will be done through a joint unit set up by the AMF and the new Autorité de contrôle prudentiel<sup>1</sup> to serve as a single point of contact for retail investors seeking information and mediation services.

## 1 – Consultative Commission on Retail Investors

### Membership

- > **Jean-Claude Mothié**, chairman
- > **Jacques Delmas-Marsalet**, vice-chairman

Jean Berthon (FAIDER<sup>2</sup>), Bernard Camblain (Association française du Family Office), Bernard Coupez (ASRAS<sup>3</sup>), Vincent Duffoy (CLAS and ADSACA<sup>4</sup>), Olivier Eon (Testé pour vous), Agnès Gaultier de La Ferrière (specialist in employee share ownership), Marcel Jayr (member of the "retail investor" committees of ANSA and Euronext), Pierre-Henri Leroy (Proxinvest), Viviane Neiter (APAI<sup>5</sup>), Colette Neuville (ADAM<sup>6</sup>), Guillaume Prache (ARCAF<sup>7</sup>), Martine Ract-Madoux (AMF Board member), Fabrice Rémon (Deminor), Daniel Richard (lawyer), Marie-Claude Robert-Hawes (first COB ombudsman), Maurice Rouillet (UFC Que choisir), Aldo Sicurani (FFCI<sup>8</sup>), François de Witt (journalist).

In 2009 the Consultative Commission on Retail Investors pursued its work at the same pace as in previous years, meeting eleven times in all. It gave opinions both on practical matters of AMF policy and on strategic issues relating to regulation, thus further strengthening its role in representing retail investors vis-à-vis the AMF.

This year the commission took a closer look at questions of investor protection at international level, notably in Europe.

In the area of asset management, the Consultative Commission on Retail Investors responded to the consultation organised by the Committee of European Securities Regulators (CESR) on the latter's draft technical advice to the European Commission on Level 2 measures for reforming the simplified UCITS prospectus. It supported CESR's suggested approach of focusing on key investor information, in line with the recommendations of the report on financial product marketing, which Jacques Delmas-Marsalet submitted to the French finance minister in November 2005. The format of the document to replace the simplified prospectus will not exceed two pages (three pages for structured funds, which will have to use performance scenarios). The commission also expressed its opinion that all collective investment schemes should be required to specify a minimum recommended investment period and use a synthetic risk and reward indicator, accompanied by standardised commentary on risks not captured by the indicator's methodology. For funds of funds, it recommended that subscription fees and redemption fees for the underlying funds should be clearly stated. On the issue of performance

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<sup>1</sup> Pursuant to Executive Order 2010-76 of 21 January 2010 on the merger of the banking and insurance licensing and supervision authorities, published in the official journal on 22 January 2010.

<sup>2</sup> Fédération des associations indépendantes de défense des épargnants pour la retraite

<sup>3</sup> Association des actionnaires salariés et anciens salariés du groupe BNP Paribas

<sup>4</sup> Association des actionnaires salariés de LCL et du groupe Crédit Agricole

<sup>5</sup> Association pour la promotion de l'actionariat individuel

<sup>6</sup> Association de défense des actionnaires minoritaires

<sup>7</sup> Association nationale des fonctionnaires épargnants pour la retraite

<sup>8</sup> Fédération française des clubs d'investissement

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presentation for structured funds, the commission's opinion was divided between performance scenarios and a presentation of probable returns.

The Consultative Commission on Retail Investors was also consulted on CESR's draft technical advice to the European Commission on Level 2 measures for the UCITS IV Directive in the areas of fund mergers, master-feeder structures and the new notification procedure for UCITS marketing. On the question of converting a feeder fund into an ordinary fund following the winding-up, merger or division of the master fund, the commission stressed the importance, for investor protection purposes, of informing unit holders about the conversion and obtaining authorisation from the feeder fund's regulator.

The commission also gave its opinion on the responses made by the French authorities to the European Commission consultations on UCITS depositaries and the proposal for a directive on investor compensation schemes. In view of the glaring lack of harmonisation in regulations governing UCITS depositaries, which became evident in the aftermath of the Madoff affair and the Lehman Brothers bankruptcy, the commission recommended that these depositaries should be under an absolute obligation to return investors' assets, at least in the case of retail investors. In cases where safekeeping is delegated, the commission gave its support to a specific requirement that assets under custody be segregated from the depositary's own assets, as well as to restrictions on the re-use of assets by custodians and a harmonised Europe-wide definition of safekeeping. On the draft directive on investor compensation schemes, the commission argued that the guarantee mechanism should not be extended to depositaries and sub-custodians or to money market funds, on the grounds that this might expose these institutions to moral hazard when performing their duties.

The Consultative Commission on Retail Investors also took part in the consultation held by CESR on post-trade transparency for corporate bonds, structured products and credit derivatives. It called for greater pre-trade and post-trade transparency, urging CESR not to confine its work solely to corporate debt, in order to encourage individuals to participate more actively in European bond markets. In addition, based on the findings of its working group on substitute products<sup>9</sup>, the commission responded to the European Commission's consultation on the review of the Prospectus Directive with regard to the format of the prospectus and its summary. It recommended the introduction of a key information document accommodating the specific characteristics of structured investment products.

The commission was also consulted on CESR's draft recommendations on the regulation of inducements and on the concept of "investment advice" under the Markets in Financial Instruments Directive (MiFID). Concerning inducements, it stressed the need to revisit the issue of distributor compensation, and the transparency of these payments, within the context of open-architecture distribution. On investment advice, the commission advocated a broad-based view of advice, defined as a recommendation made individually to a specific person. Adopting this broader view, which admittedly expands on the MiFID concept, is warranted; but in return, the sole objective in terms of client assessment must be to avoid blatant errors that could result in investors being offered products that are clearly unsuited to their needs.

Regarding policy settings for the MiFID review, the Consultative Commission on Retail Investors stressed that it was in investors' interest to have a centralised, transparent market rather than a multitude of fragmented markets whose costs and prices are hard to compare. In particular, it emphasised the need for research to measure how MiFID-induced market fragmentation is affecting liquidity and the real cost of trading (i.e. pricing structures), taking into account the costs engendered by the search for best execution in this fragmented context. The study's findings will inform the AMF's positions on the MiFID review, due to take place at European level in 2010.

In 2009 the Consultative Commission on Retail Investors continued with its practice of hearings. In particular, representatives of the Internal Market and Services Directorate General presented the European Commission's communication on marketing rules for retail investment products. The Consultative Commission on Retail Investors also arranged a hearing for the CFA Institute, which presented the findings of a study on distribution of retail investment products in the European Union. The institute's research showed that the main issues to be tackled were the conditions in which products are sold (particularly as regards advice for investors) and the remuneration and liability of their distributors.

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<sup>9</sup> Available on the AMF website ([www.amf-france.org](http://www.amf-france.org)), "Publications > Working group reports

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The commission pursued its regular dialogue with the consultative committee for the financial sector, CCSF, and endorsed the objective of providing equivalent information for all retail investment products across the banking, financial and insurance sectors and supervising them in a more closely coordinated manner.

The Consultative Commission on Retail Investors was also consulted on the consequences for retail investors, and the associations representing them, of changes to laws and regulations on corporate governance and the exercise of shareholders' voting rights. It gave the AMF's chairman its opinion on a bill prepared by the justice ministry to implement Europe directive 2007/36/EC on the exercise of certain rights of shareholders in listed companies; it called for an examination of the conditions in which employee shareholders exercise their rights.

Other matters related to the latest work of the AMF's staff and Board were also referred to the commission, including:

- > work on money market funds;
- > changes to the fund classification system (other than money market funds);
- > work on fund administration;
- > amendments to rules on major holding notifications and declarations of intent;
- > the regulatory framework for short selling;
- > the possibility of drafting fund documentation in a language other than French that is customary in the sphere of finance;
- > fees, expenses and the handling of conflicts of interest in companies that manage real-estate investment schemes;
- > the AMF's requirements for marketing bonds to retail investors;
- > adapting prospectus requirements for share issues by mutual banks and cooperatives;
- > the executive order<sup>10</sup> on the merger of the banking and insurance supervisory and licensing authorities, specifically the section on coordinated supervision and monitoring of marketing operations (with the formation of a joint unit involving the AMF and the new supervisory authority). On this issue, the commission reiterated its call for greater representation of retail investors on colleges of regulators;
- > the possibilities and methods for companies to transfer their listing from Euronext to Alternext.

The Consultative Commission on Retail Investors also formed a working group to make proposals on various matters connected with workplace savings and employee stock ownership, including training and information for stakeholders, advisory services, and governance of employee profit sharing funds. The group, composed of members of the commission, representatives of industry groups, representatives of employee shareholders or savers, and business experts, is due to complete its work in autumn 2010.

The commission also expressed the wish to take part in working groups dealing with retail investment issues and to be consulted systematically on sending one or several representatives to sit on these groups. It called for the formation of a working group on the compensation of investors affected by a dereliction of duty by financial market participants. On this point, the commission requested that the AMF's powers and procedures be extended to include the indemnification of affected parties, notably through a negotiated settlement procedure (known as an administrative arrangement).

As part of the AMF's New Strategy Proposals, the commission suggested changes to its operating procedures, aimed in particular at enhancing its remit to represent and protect retail investors. It strongly endorsed the decision by the AMF to create a retail investor relations division endowed both with new powers, particularly to monitor the marketing of savings products, and with the corresponding resources. As a result, the position and representation of retail investors in the AMF's overall architecture will become more prominent and their interests and views will be taken into greater account in the areas under the regulator's jurisdiction.

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<sup>10</sup> Executive Order 2010-76 of 21 January 2010 on the merger of the banking and insurance licensing and supervision authorities, published in the official journal on 22 January 2010

### 3 – Regulatory alerts

Another aspect of investor protection is the warnings issued by the AMF and its European counterparts when they detect products and services that infringe statutory and regulatory requirements.

#### A – AMF alerts

In general the AMF recommends investors living in France to avoid financial products or services that have not been authorised for marketing in France, as well as those offered by unlicensed persons or entities, regardless of the medium – phone, email or postal mail – through which they are offered. This is mainly because investors have very little recourse in such cases.

In the "Warnings!" section of the Investor Area of its website, the AMF sets out some basic cautionary rules and encourages investors to check systematically before taking a decision that the intermediary in question is duly licensed and that the product it is offering has been authorised for sale. For this, the AMF provides free access to several databases in the "Check for an authorisation" section of the site:

- > the Geco database, which contains information about French collective investment schemes (SICAVs FCPs, OPCIs and SCPIs), European products authorised for sale in France, and management companies (portfolio, collective, SCPI). Investors can check whether a company or product is authorised and access a file containing a list of financial investment advisors;
- > a list of direct marketers, enabling investors to check the identity of the professional who has contacted them, or whose services they wish to use, as well as the activities or products the professional is authorised to offer;
- > a link to the website of the Banque de France<sup>11</sup>, allowing an investor who has been contacted by a service provider in a category not under AMF supervision (e.g. an investment firm or credit institutions) to ensure that the provider has been authorised by CECEI.

As soon as the AMF learns that unauthorised products or services are being offered or that unlicensed persons or entities are canvassing for business, it issues a news release to alert French investors. It issued three such warnings in 2009<sup>12</sup>.

These alerts are also passed onto other European regulators as part of the cooperation between members of CESR.

#### B – European alerts

As part of the cooperation between CESR members on market monitoring, the AMF posts a list of its European counterparts on its website, with links enabling access to the pages where they post their warnings.

### 4 – Educating the general public

One of the AMF's main duties is to ensure that investments made by the general public in financial products are properly protected. This duty has an educational component. The AMF thus provides investors – both professional and retail – and the industry with a range of tools such as its website and educational publications (factsheets, guidebooks and FAQs).

It has also set up helplines for retail investors and professionals at:

- > the documentation and information centre
- > the mediation department
- > the Legal Affairs Division.

AMF representatives also attend a wide variety of public events and debates within and outside France, including forums, investment fairs and conferences.

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<sup>11</sup> <http://www.banque-france.fr/fr/supervi/agrement/popetscred/1i.htm>

<sup>12</sup> 25 February 2009: warning about HSC or HCS Worldwide; 20 November 2009: warning about the Eternity Funds foundation and 26 November 2009: warning Euowork Ltd. The alerts are available on the AMF website ([www.amf-france.org](http://www.amf-france.org)) in the Investor area under Warnings! > Warnings issued by the AMF and the COB".

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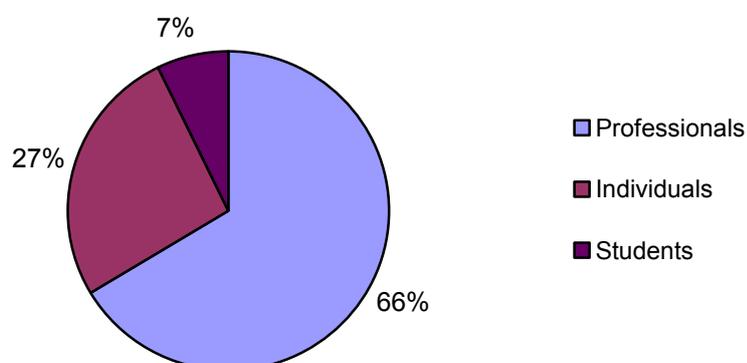
In addition, the AMF runs a decentralised nationwide network through the Banque de France's regional delegations, where people can go for information and literature about the regulator and its duties.

## A – The Documentation and Information Centre (CDI)

In addition to its regular tasks as an in-house documentation centre, the CDI assists the general public with requests for information in the areas under the AMF's jurisdiction, including listed companies, investment services providers, and regulated markets.

Two-thirds of the external queries submitted to the CDI come from professionals (issuers, management companies and, above all, law firms). Queries from individuals are on the increase, from 27% of the total in 2007 to 31% in 2008 and 34% in 2009 (7% of whom were students). They relate chiefly to collective investment schemes (information about funds), investment services providers (verification of authorisation) and shares (prices, trading halts, etc.). Some 11% of phone calls from individuals concerning disputes with an intermediary, notably over the marketing of financial products, were redirected to the mediation department.

**Chart 1: Analysis by type of enquirer**



### 1 > Remit of the CDI

Aside from serving the AMF itself, the CDI deals with requests for information received by phone, email or letter. People can also make an appointment to visit the centre to look for information that is not available on the AMF website, such as old regulations, COB and CMF archives, and prospectuses approved by the COB before 1999 and not posted online. A total of 54 people (two-thirds of whom were professionals) visited the CDI in 2009.

Where necessary, the CDI refers people to the AMF's operational divisions and to the Legal Affairs and Ombudsman helplines.

### 2 > Services

The documentation centre helps the public to find information about investment regulation and financial markets. It also provides URLs and contact details for a wide variety of organisations. If necessary, the centre refers calls to other external specialised documentation centres. And it provides details of articles and publications on financial topics to help students and professionals in their research or business activities.

Copies of offer documents, notices, net asset values, stock prices and educational publications can also be sent on request by email. They can be faxed or posted to people without internet access.

In 2009 the CDI answered 2,609 telephone enquiries and 1,270 emails and letters.

In terms of topics, the breakdown was very similar to 2008. The impact of the financial crisis was once again evident in the types of questions asked by retail investors on matters such as investment

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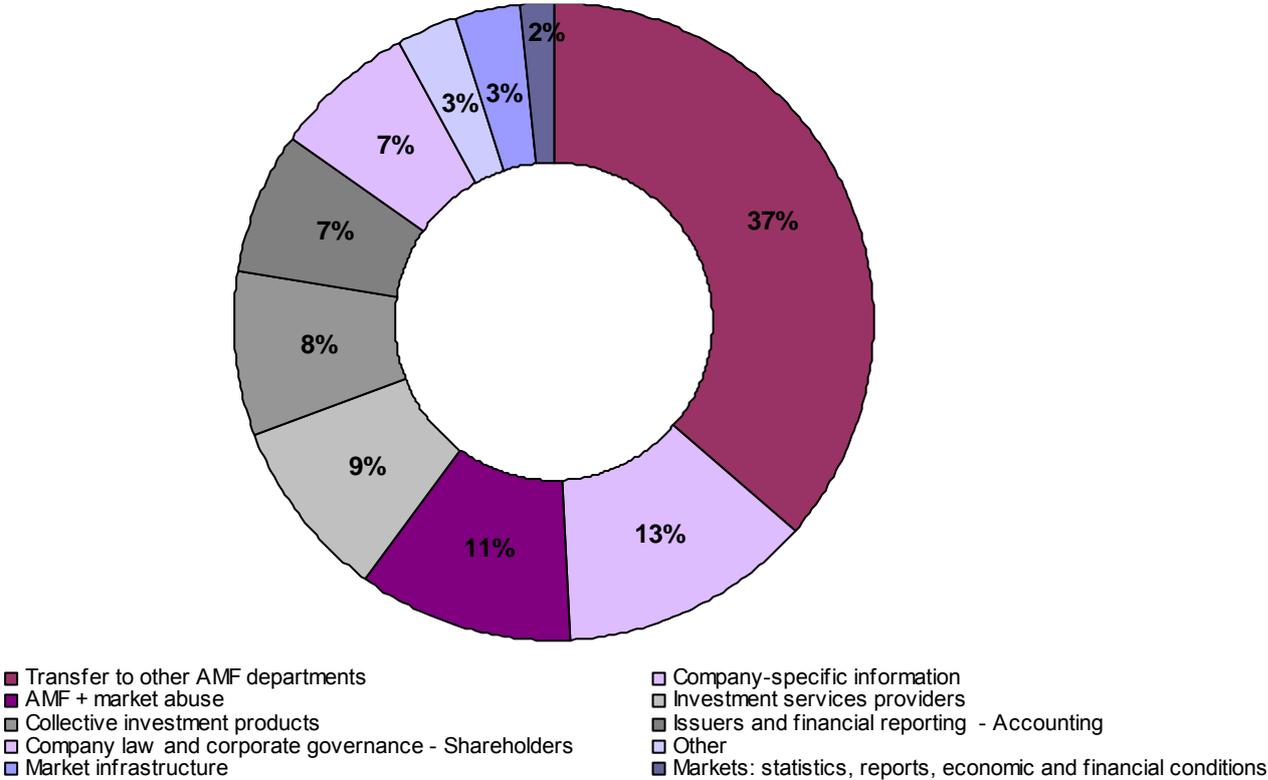
guarantees, short selling and the reliability of intermediaries. Broadly speaking, individuals find it hard to ascertain the status of the person or entity that has contacted them about an investment and to determine whether it is a management company, stockbroker, financial investment advisor, legal and tax adviser, or an insurance or property broker. The same applies to the products being offered (funds, listed securities, life insurance policies). Ongoing securities offerings continued to arouse interest in 2009, as did tax-advantaged products offering rebates on wealth tax or income tax.

Some of the queries concerned documents that were unavailable on the AMF website because they were too old or out of date. These include regulations, sanction decisions, back issues of the COB monthly bulletin, corporate brochures and prospectus.

Most visitors to the centre come to read prospectuses and offer documents that were approved between 1968 and 1999 and are not available in full on the AMF's website.

And given the many amendments to the AMF's General Regulation, there were numerous requests from professionals about current regulations.

**Chart 2: Analysis by topic of enquiries handled by the CDI in 2009**



**B – Educational guides**

The AMF publishes a collection of factsheets and guidebooks on a range of issues to help the general public understand the workings of the stockmarket, the management of their savings and investments, and their rights. In 2009 the AMF added six new titles to its collection of guides:

- > bonds;
- > AMF investigations;
- > private equity: retail venture capital funds;
- > protection of financial securities if an intermediary goes out of business;
- > tax-advantaged investments offering rebates in income tax and wealth tax;
- > the AMF Enforcement Committee.

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These guides are available free of charge on request, and can be downloaded from the website<sup>13</sup>.

To inform consumers quickly about specific topical issues, the AMF also publishes information in question-and-answer format on its website. In December 2008 it released a Q&A about the Madoff affair<sup>14</sup>. It repeated the experience in May 2009 with a Q&A about contracts for difference (CfDs)<sup>15</sup>, at a time when these products were being marketed increasingly widely, to ensure that retail investors were thoroughly informed about the risks involved in purchasing CfDs.

An updated set of instructions for using the Geco fund database was also posted online.

## C – The website: [www.amf-france.org](http://www.amf-france.org)

The AMF's website is the main channel for informing both the general public and industry professionals. The English version, intended for professionals, is a key tool for communicating with an international audience.

In 2009 the number of visitors to the site declined by around 3% compared with 2008, to 4.7 million.

Despite this decrease, 11% more documents were downloaded than in the previous year, not only regulations but also educational guides, news releases and in-depth articles.

The homepage provides individuals and professionals with access to four dedicated areas containing useful information intended specially for them.

Retail investors can obtain key information such as practical advice, warnings, educational guides and information about mediation.

Professionals, including issuers, ISPs and compliance officers, can access areas from the homepage that focus on the information and materials, such as regulations and forms, they need to carry on their business.

The press room was updated at the end of 2009 with the publication of a series of backgrounders that provide journalists with information about specific topics.

The AMF will continue enhancing the website to provide visitors with more comprehensive information. In June 2009, for example, all the COB monthly bulletins were posted on the site<sup>16</sup>.

The project to overhaul the website, announced when the AMF presented its New Strategy Proposals in June 2009, will get underway in 2010. The aim is to make the site more accessible and present the AMF's policies and actions in greater detail by adapting the content to the needs of both user communities: retail investors and professionals.

## D – Attendance at forums and investment fairs

Every year, the AMF attends the Forum de l'Investissement, an annual event dedicated to personal finance, the stock market and wealth management. The AMF also takes part in Actionaria, a shareholder fair. These events attracted some 24,200 and 32,200 visitors, respectively, in 2009, giving the AMF a chance to meet the public, talk about its role, field questions from investors, and give guidance on investing directly in stocks or through funds.

## E – Institute for Public Financial Education

The Institute for Public Financial Education (IEFP)<sup>17</sup> was set up in April 2006 in response to the recommendations of a working group of the AMF's Consultative Commission on Retail Investors and an AMF-sponsored study by TNS Sofres. This research highlighted the lack of financial literacy among French investors as well as their desire to be better equipped to face up to their responsibilities.

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<sup>13</sup> [www.amf-france.org](http://www.amf-france.org), "Publications > Guides > Educational guides".

<sup>14</sup> Q&A on the Madoff affair, available on the AMF website ([www.amf-france.org](http://www.amf-france.org)), "Publications > Guides > Educational guides".

<sup>15</sup> Q&A for retail investors on contracts for difference (CFD). Available on the AMF website ([www.amf-france.org](http://www.amf-france.org)), "Publications > Guides > Educational guides".

<sup>16</sup> [www.amf-france.org](http://www.amf-france.org), "Publications > COM monthly bulletins".

<sup>17</sup> [www.lafinancepourtous.org](http://www.lafinancepourtous.org)

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The AMF is a de facto member of the IEFP and hence of its board of directors and executive committee. Its representative attends meetings of the two bodies, which are held on the AMF's premises. The AMF also contributes each year to the IEFP's funding and has a say in its budget.

The AMF's support for the IEFP is part of its effort to step up its dialogue with consumers.