

CHAPTER 4

Market Surveillance and Discipline, Enforcement

- 1 - Market surveillance
- 2 - Supervision of investment services providers and market infrastructures
- 3 - Investigations
- 4 - Cases referred to other authorities
- 5 - International cooperation for market surveillance and discipline
- 6 - Enforcement Committee

Important: The following English text is a translation of extracts from the French version of the 2009 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 carries out surveillance to ensure orderly markets, safeguard the quality financial disclosures and monitor financial intermediaries' compliance with their professional obligations.

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 departments that perform:

- > day-to-day 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 and financial investment advisers, to ensure they comply with the rules of their profession;
- > investigations, which look at financial disclosures and market abuse.

To carry out its duties, the AMF can call on external auditing bodies, such as the Commission bancaire, Banque de France, Euronext Paris, the central depository and audit firms.

This chapter describes the oversight, surveillance and investigation activities of the AMF in 2009, along with the independent action of the Enforcement Committee after being notified through the committee's chairman of complaints brought by the AMF Board.

Table 1: Market surveillance and discipline in 2009

	2008	2009
Number of on-site inspections of investment services providers and financial investment advisers begun	66	80
Number of on-site inspections of investment services providers and financial investment advisers finished	81	76
Number of documentary audits of providers begun	108	76
Number of reports submitted following documentary audits	17	7
Number of investigations opened	97	76
Number of investigations concluded	95	80
Number of proceedings referred to the Enforcement Committee	36	29
Number of sanction proceedings completed	40	33

¹ Banque de France, Commission bancaire (CB), Comité des établissements de crédit et des entreprises d'investissement (CECEI), Autorité de contrôle des assurances et des mutuelles (ACAM) and Comité des établissements d'assurance (CEA). The CB, CECEI, ACAM and CEA were merged into the Autorité de contrôle prudentiel (ACP) in 2010

Possible outcomes* of an AMF investigation or inspection

1. The case is closed and the parties are informed that no further action will be taken.
2. Unless the Board decides otherwise, under the terms of Article 143-5 of the General Regulation, the inspection or audit reports are forwarded to the ISP concerned for comment, and a follow-up letter is sent.
3. The specialised commission of the AMF Board sends comments, which it may decide to publish, to the parties concerned.
4. The AMF issues an injunction or petitions the presiding judge of the Paris district court (Tribunal de grande instance) to do so.
5. The AMF Board opens sanction proceedings, sending a statement of complaints to the parties concerned, referring the case to the Enforcement Committee and opening an investigation.
6. The AMF submits the inspection or audit report to the public prosecutor if the facts seem to constitute an offence.
7. The report is submitted to other French or foreign administrative authorities when the matter falls within their jurisdiction.

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

1 – Market surveillance

The AMF Market Surveillance Department has a staff of 15. In accordance with the AMF's New Strategy Proposals², the department's resources were increased very substantially in 2009 to cope with the growing complexity of financial techniques, transactions and products.

The department's main task is to detect any unusual events or behaviours, such as price manipulation, insider dealing and dissemination of false information, that could be constitute breaches of administrative rules or securities offences. The department compiles information that may lead to the opening of an investigation.

It also monitors intermediaries' behaviour using data relating to orders and transactions to detect actions that could constitute breaches of their professional obligations.

Furthermore, the department contributes to the AMF's strategic surveillance by analysing trends in market participants' behaviour.

The department simultaneously monitors all financial instruments traded in the Paris markets, including equity securities of more than 1,000 companies (678 on Euronext Paris, 117 on Alternext Paris, 298 on the Marché Libre³, more than 3,000 fixed-income securities, nearly 22,000 warrants and certificates, and more than 78,000 options, as well as some 1,000 ISPs.

The Market Surveillance Department is a focal point for vast quantities of data and intelligence about investors' behaviour regarding listed securities.

The department uses a database, SESAM, to receive and store comprehensive information about trades in securities listed in Paris, no matter where trading takes place. Information about trades on Euronext is fed directly into the database. Data about trades in an ordinary multilateral trading facility or a dark pool (a platform does not disclose the content of its order book) are reported by the executing intermediaries using standard reporting forms. French intermediaries send their reports directly to the AMF using the RDT direct transaction reporting system. Trades executed outside Euronext by intermediaries reporting to other European regulators are reported to the AMF by those regulators using the Transaction Reporting Exchange Mechanism (TREM) operated by Committee of European Securities Regulators (CESR). TREM provides the AMF with a virtually comprehensive view of all transactions in securities listed in Paris.

² See AMF news releases dated 29 June and 16 December 2009, available on the AMF website (www.amf-france.org) under the heading "News releases".

³ The AMF monitors the behaviour of intermediaries executing transactions on the Marché Libre and tracks the main trends, since the market abuse regulations do not apply to the Marché Libre

Important: The following English text is a translation of extracts from the French version of the 2009 Annual Report. Only the original French text has any legal value. The AMF expressly disclaims all liability for any inaccuracies in the translation

The Market Surveillance Department receives reports of anomalies from various sources. In 2009 it received 128 suspicious transaction reports from intermediaries, who are legally required to file such reports. This figure is in line with the figure of 135 reports filed in 2008. The reports are always a useful complement to the alerts generated by the AMF's internal systems. The department also receives information from Euronext and various other sources, such as issuers, retail investors and institutional investors. Sometimes the information is submitted by other AMF departments, such as the Corporate Finance Division.

To better detect anomalies that may indicate price manipulation or insider dealing, the AMF runs dozens of specific tests to identify atypical movements in trading volumes, intermediaries' market shares, prices and other situations.

The alerts from different internal and external sources are matched and compared to publicly available information about securities. Relying on an assessment of the behaviour of the beneficiaries of trades over an extended period, as well as its in-depth knowledge of securities and their price determinants, the department decides whether the problems identified are suspicious enough to warrant closer scrutiny in an investigation. In the course of its investigations, the Market Surveillance Department often asks the intermediaries that executed the trades to reveal the identity of the clients placing the orders.

SESAM automatically generated nearly 43,000 alerts in 2009, nearly 175 every day. Following a review process, 378 cases were studied in greater detail, with the AMF asking the financial intermediaries in question to provide additional information, particularly regarding beneficial owners. Once these analyses were completed, there were sufficiently clear suspicions to warrant proposing investigations in 28 cases. The Secretary General then acted on these proposals, taking the decision to actually open investigations.

Overall, the Market Surveillance Department triggers the vast majority (77.8%) of investigations opened at the initiative of the AMF.

Trends and recent developments

Market surveillance is being carried out in an increasingly complex environment. The widespread use of program trading and the increasing influence of algorithms have led to steady growth in the mass of data to be analysed. The number of orders rose 57% in one year on the Euronext Paris cash market alone (excluding ETFs and warrants) to 1.29 billion, while the number of transactions declined 16% to 112 million. This means that prices and volumes now depend on the fast-paced interaction of a large number of strategies, which makes it harder to discern whether a given transaction is suspicious with regard to the regulations governing market abuse and professional intermediaries' conduct. The increasing speed of trading algorithms, combined with the many opportunities for switching between execution venues, opens up new possibilities for price manipulation and makes it more difficult to detect insider dealing. The sophistication of financial transactions and products, which often rely on a link between an underlying listed security and another product that may or may not be listed, creates even more opportunities for covert price manipulation or insider dealing. Even though regulations do not require systematic reporting of transactions in OTC derivatives to the regulator, the AMF Market Surveillance Department still monitors such transactions if the underlying assets are listed in Paris. With transactions becoming ever more international in scope, the AMF is filing an increasing number of requests with foreign regulators for assistance in identifying the parties placing orders. The Market Surveillance Department made nearly 140 requests to foreign regulators relating to 68 cases in 2009.

In 2008 the AMF altered its databases to handle information from other European regulators sent through TREM. In 2009 it extended its internal alert system to cover these transactions. This ensures the same quality of detection and alert systems for Paris-listed securities, regardless of the execution venue that European intermediaries use (Euronext, rival trading facilities or OTC markets). The 160 million transactions reported by French intermediaries, plus the 300 million transactions in securities listed in Paris and executed by European intermediaries, are to be compared to the 112 million transactions in the same securities executed on Euronext.

The 57% rise in transaction reports received from the AMF's foreign counterparts underlines once again the increasingly international nature of trading. The increase stems from the arrival of the German regulator, BaFin, in the TREM system and the growing impact of algorithm trading by some market participants.

Important: The following English text is a translation of extracts from the French version of the 2009 Annual Report. Only the original French text has any legal value. The AMF expressly disclaims all liability for any inaccuracies in the translation

The addition of a series of specific alerts now caters to the special features of bond trading. For example, particular attention is paid to trades executed ahead of the announcement of a new bond issue.

In addition, the Market Surveillance Department now takes a more systematic approach to monitoring ISPs' behaviour, especially where the same intermediary executes both buy and sell orders, as well as to anomalies arising from settlement failures, notably when short selling is involved.

In 2009 the department emphasised the surveillance of fraudulent online offers, both for products that are unauthorised for sale on the Internet and for schemes presented as investment vehicles under the market regulator's jurisdiction, especially investment funds, but that are actually scams.

2 – Supervision of ISPs and market infrastructures

The department responsible for supervising ISPs and market infrastructures, CPIM, has a staff of some 15 inspectors.

The department is in charge of ensuring the regulatory compliance of the ISPs under AMF supervision. Its duties include:

- > verifying that ISPs, fund depositaries, asset management companies, financial investment advisers and market infrastructure operators conduct their business in compliance with regulations;
- > overseeing the supervision of financial investment advisers by their representative bodies;
- > ensuring that authorised collective savings products comply with regulations and the constraints laid down when they were authorised;
- > supervising compliance with the rules that market infrastructures adopt subsequent to the AMF's approval;
- > supervising regulated entities' compliance with the professional codes of conduct applying to them;
- > proposing follow-up action for the findings of its supervision;
- > keeping the AMF informed of business conditions in investment services, current practices and the relevance of regulations to new developments;
- > detecting risky behaviours that require implementation of prevention mechanisms or even changes to regulations.

Supervisory activities currently extend to 957 regulated entities:

- > 567 asset management companies;
- > 98 investment firms, including 39 authorised as custody account keepers;
- > 283 credit institutions that provide investment services, including 247 custody account keepers;
- > 9 custody account keepers that are not ISPs, including 1 pure custody account keeper and 3 entities managing market infrastructures.

A distinction is made between market infrastructures in the strictest sense and post-trade infrastructures.

Market infrastructure operators in the strictest sense manage regulated markets and multilateral trading facilities (MTFs).

The regulated markets are Eurolist, MONEP and MATIF, which are managed by the market operator Euronext Paris SA, a member of the NYSE Euronext group.

The MTFs managed by Euronext Paris SA are Marché Libre and Alternext. The other MTFs are MTS France, Powernext Derivatives, Bluenext Derivatives and Alternativa, which are managed by ISPs.

Post-trade infrastructures include the clearing house and the central depository.

LCH.Clearnet SA, the clearing house, and Euroclear France, the central depository, manage securities settlement systems, such as ESES⁴.

⁴ Euroclear Settlement of Euronext-Zone Securities

Important: The following English text is a translation of extracts from the French version of the 2009 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 also supervises the 3,066 registered financial investment advisers.

In connection with implementation of the AMF's New Strategy Proposals in 2009, the department enhanced its risk-based approach to the planning and conduct of its supervision through tighter microeconomic and macroeconomic monitoring of financial firms.

The department continued with its reorganisation for this purpose and prepared for a change in the size of its team. In 2009 its links to other regulatory authorities were reinforced and its exchanges of information with Tracfin⁵ stepped up.

The department created a special position for an anti-money laundering and terrorist financing coordinator, whose duties include overseeing the supervisory methodology in these areas, as well as raising the awareness of market participants and supporting their training efforts.

The department produced a guide⁶ setting out the anti-money laundering and terrorist financing obligations incumbent on financial investment advisers.

In 2009 the department provided operational support for the drafting of the pre-audit report for the FATF mutual evaluations programme⁷.

The department also made a major contribution to a mission – entrusted by the French finance minister to Bruno Delétré, a senior Treasury official – that monitored compliance with professional obligations in dealings with financial sector clients.

A – Documentary audits

To provide a framework for ISP and market infrastructure inspections, the AMF reorganised CPIM in 2008, creating a remote inspection team that carries out audits without visiting the premises of the firm concerned. 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 Documentary Audit Department analyses the information submitted in order to direct the supervisory action of the department. The information sources used are:

- > automated monitoring of ISPs by the Market Surveillance Department;
- > trade reports by ISPs and market infrastructure operators;
- > notifications of net asset values (NAVs) and of the number of fund units/shares (in order to detect anomalous NAVs);
- > notifications of disciplinary measures taken by ISPs against holders of professional licences;
- > annual audit reports and special reports prepared by management companies and other ISPs;
- > fund prospectuses;
- > the database of professional licences⁸;
- > assessments of compliance arrangements when issuing professional licenses to compliance officers;
- > complaints and claims submitted by market professionals;
- > data provided by Euroclear France and LCH.Clearnet on settlement fails;
- > information provided by other supervisors.

In 2009 the Documentary Audit Department continued to develop and rationalise automated tools so that information analysis and anomaly detection could be carried out on a mass scale, together with the process for improving the reliability of data processed by these tools.

⁵ Tracfin: financial intelligence unit for coordinating intelligence and action against unlawful financial circuits under the terms of Articles L. 562-4 and R. 562-3 of the Monetary and Financial Code

⁶ Guide to financial investment advisers' obligations with regard to the fight against money laundering and terrorist financing, available on the AMF website (www.amf-france.org), under the heading "M".

⁷ The Financial Action Task Force (FATF) is an intergovernmental body whose purpose is the development and promotion of national and international policies to combat money laundering and terrorist financing

⁸ Article 313-36 of the AMF General Regulation

Important: The following English text is a translation of extracts from the French version of the 2009 Annual Report. Only the original French text has any legal value. The AMF expressly disclaims all liability for any inaccuracies in the translation

Work in 2009 included analysis of net asset values, action to make ISPs' reports more accurate through the RDT direct transaction reporting system and analysis of alerts passed on by the Market Surveillance Department.

An incident database was created to record and prioritise potential anomalies that cause significant disruption and/or reveal a potential breach of regulations.

The tools are also used to gather information for the asset management company scoring system administered by the Documentary Audit Department, which provides an overview of each company's business, organisational structures and risks, and standardises the assessments of these risks by giving each company a score.

Taken together, these tools improve the effectiveness of the planning and management of supervision, which can then be carried out through on-site inspections and documentary audits.

Documentary audits are 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 institutions inspected.

Documentary audits warranted by the impact of the subprime crisis on the management of enhanced cash funds continued in 2009, using tools to detect valuation differentials.

On-site inspections and documentary audits were carried out systematically following the reports made for the purposes of Article 313-36 of the AMF General Regulation, which deals with disciplinary measures imposed on ISP employees holding professional licenses.

Furthermore, the department conducted four documentary audits on behalf of the Monaco fund-surveillance commission.

Table 2: Documentary audits started in 2009

	2008	2009
Documentary audits of ISPs*	108	76
o/w audits of market anomalies	37	16
o/w audits of regulatory disclosures	33	21
o/w audits based on complaints, claims and allegations	25	25
o/w audits following notification of disciplinary measures against professional licence holders	10	10
o/w audits based on information provided by other authorities	3	4
Documentary audits of financial investment advisers	3	2864 ⁹

* The Board opened a sanction proceeding in light of a report drawn up following a documentary audit of an investment services provider

The documentary audits conducted in 2009 primarily rely on several reports submitted by ISPs.

1 > Annual supervision reports prepared by compliance officers

The reports on supervision of investment services that ISPs, along with market infrastructure operators, the clearing house and the central depository, submit to the AMF each year provide an account of the previous year's situation and are used to plan the on-site inspections carried out by the AMF.

As in 2008 the AMF supplied ISPs with a questionnaire for use in preparing their 2009 reports in order to harmonise processing and facilitate the analysis of the answers. The questionnaires also make it possible to monitor statistics relating to the supervision of investment services reported by ISPs.

The information collected 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, topic or population. Even though the supervision reports prepared by ISPs involve self-assessment of their compliance with professional obligations, they still provide the AMF with valuable information.

⁹ All of the financial investment advisers registered as of 1 March 2009 were audited

Important: The following English text is a translation of extracts from the French version of the 2009 Annual Report. Only the original French text has any legal value. The AMF expressly disclaims all liability for any inaccuracies in the translation

In 2008 there were substantially fewer questions about regulatory compliance, and the topics covered were intended to raise professionals' awareness of the new provisions stemming from the transposition of MiFID. The questionnaire format was used again in 2009.

The descriptive section was expanded to give the AMF more detailed information about ISPs' business.

Specific questionnaires were developed for ISPs managing MTFs.

Introduced at the inception of the AMF, these reports expand the base of information used to track market participants and have now been incorporated into the department's automated processes.

2 > Special inspections

a) Topical surveys

In 2009 the AMF undertook several series of special inspections dealing with specific topics.

The department carried out a survey on the issues raised by websites offering contracts for difference (CfDs). The sites in question were examined and the findings resulted in the publication of a joint statement by CECEI, which oversees credit institutions and investment companies, and the AMF putting the public on its guard and setting out the specific risks related to investment in CfDs and in highly-leveraged spot foreign exchange transactions¹⁰. At the same time, the AMF published a practical guide to CfDs for investors¹¹.

The department incorporated these special verifications into all its future inspections.

A review of the Enforcement Committee's decisions relating to short selling and securities settlement fails was carried out in 2009. The findings were intended to improve the planning and management of audits by preventing the re-occurrence of failings in these areas and by helping to provide information to the AMF Risk Committee.

The AMF asked compliance officers in asset management firms and investment management firms to submit special supervision reports on the performance of their professional obligations with regard to the provision of investment advice in 2008.

The reports revealed major difficulties in defining such services precisely. This led many ISPs to take precautions and pay close attention to ensuring compliance with professional obligations relating to investment advice.

The summary of these reports, posted on the AMF website, clears up a number of the questions raised in the reports.

b) Special inspections of financial investment advisers

For the first time, a comprehensive documentary audit was carried out on all 2,864 financial investment advisers registered as of 1 March 2009 with regard to the requirement to appoint a Tracfin correspondent.

The audit made it possible to compile the list of correspondents.

Following the audit, a letter was sent to the financial investment advisers' industry groups asking them to remind their members of their professional obligations regarding the prevention of money laundering and terrorist financing.

CPIM also reviewed the 2008 activity reports of the six industry groups of financial investment advisers received in October 2009 under the terms of Article 325-23 of the AMF General Regulation.

3 > Supervision of market infrastructure operators

With the help of staff from other AMF departments, CPIM oversees market infrastructure operators and meets regularly with representatives of Euronext Paris, LCH.Clearnet and Euroclear France.

¹⁰ News release dated 14 May 2009, "CECEI and the AMF advise utmost caution on CfDs and highly leveraged foreign exchange transactions". Available on the AMF website (www.amf-france.org), under the heading "News releases".

¹¹ Questions-réponses à destination des épargnants sur les contracts for difference (CFD), available on the AMF website (www.amf-france.org), under the heading "Publications > Guides > Guides pédagogiques".

Important: The following English text is a translation of extracts from the French version of the 2009 Annual Report. Only the original French text has any legal value. The AMF expressly disclaims all liability for any inaccuracies in the translation

Points monitored closely in conjunction with Euronext Paris in 2009 included:

- > deployment of the Universal Trading Platform (UTP) and incorporation of new market data into the AMF's SESAM database: major changes were made to the format of the daily data that the market infrastructure operator transmits to AMF to be entered into the SESAM system. As was the case in 2008, the need to incorporate these data kept the AMF's teams busy in 2009;
- > analysis of incidents that disrupted market operations and the remedial measures taken by the market infrastructure operator: special attention was paid to the stability of the system since the deployment of the UTP and the new functions implemented by the market infrastructure operator;
- > reorganisation of the Euronext technical infrastructures.

Cooperation also continued between the AMF and the other regulators of the Euronext group to analyse how the market infrastructure operator implements certain regulatory requirements. Several working groups are continuing to explore a range of issues, including risk mapping and business continuity plans.

The AMF's supervision of the central depository, Euroclear France, and the clearing house, LCH.Clearnet, includes monitoring of settlement fails and analysis of the measures taken to prevent technical incidents.

The exceptional measures to ban short selling of financial institutions' securities were renewed in 2009 (see Chapter 2). In consequence, the AMF examines the files submitted by Euroclear France to identify members that failed to deliver securities on time.

B – On-site inspections

On-site inspections are initiated by the AMF Secretary General.

The findings of the inspections are written up in a report, which is then submitted to the inspected entity, unless the AMF Board decides otherwise. The entity is then asked to submit its remarks in writing. In each case, a follow-up letter listing the remedial action to be taken is then sent to the entity.

If the report reveals serious misconduct, it is forwarded to the AMF Board, which determines whether there are grounds for initiating sanction proceedings.

In 2009 76 reports were sent.

The findings of six on-site inspection reports led the Board to initiate sanction proceedings¹² against four legal entities (including one independent financial analyst, one ISP and two asset management companies) and against six individuals.

The AMF may outsource on-site inspections of authorised institutions to external auditors. In 2009 60 of the 80 on-site inspections were outsourced:

- > 20 to firms of experts;
- > 8 to the Commission bancaire;
- > 32 to the Banque de France, which carried out on-site inspections of 32 financial investment advisers through its regional offices.

When the AMF delegates an on-site inspection, it first ensures that there are no conflicts of interest between the person acting for it and the entity to be inspected. The persons conducting on-site inspections on its behalf have all the powers granted to the regulator, and information may not be withheld from them on the grounds of professional secrecy. Consequently they are subject to the same confidentiality requirements as AMF staff. The AMF is answerable to third parties for ensuring that persons acting on its behalf comply with legal and regulatory requirements and it decides what action is to be taken following the inspections. On-site inspections are carried out under the supervision of CPIM, which is the interface for the person acting on the AMF's behalf.

On-site inspections in 2009 comprised:

¹² This covers the decisions to open sanction proceedings taken by the Board's specialised commissions between 1 January and 31 December 2009

Important: The following English text is a translation of extracts from the French version of the 2009 Annual Report. Only the original French text has any legal value. The AMF expressly disclaims all liability for any inaccuracies in the translation

- > 18 inspections of ISPs (13 asset management companies and 5 companies in other ISP categories) that had received their authorisation in the 18 preceding months and which were audited to ensure that the resources devoted to investment services complied with the authorisation applications they had submitted to the AMF;
- > 14 inspections (6 asset management companies and 8 ISPs in other categories) to assess compliance with MiFID-related regulations;
- > 4 inspections relating to Madoff risk, including 3 inspections of asset management companies with particularly close attention to compliance with the principle of managing assets solely in the interests of the shareholders and 1 inspection of an ISP in another category with a special focus on the marketing of funds that have not been authorised for sale in France;
- > 4 inspections of asset management companies to examine risk control structures;
- > 1 inspection of an asset management company to examine the management of complex products and the distribution of such products solely in the interest of clients;
- > 1 inspection of direct sales of CfDs to retail investors by ISPs that are not asset management companies;
- > 1 inspection of an ISP following notification of disciplinary action taken against a trader holding a professional licence to the AMF under the terms of Article 313-36 of the AMF General Regulation;
- > 3 inspections of the activities of fund custodians;
- > 1 inspection of an ISP acting as a custody account keeper for employee savings plans;
- > 1 inspection of the clearing house focusing on compliance with the rules applying to it;
- > 32 inspections of financial investment advisers located in 10 regions of metropolitan France focusing on the provision of investment advice.

As was the case in 2008, the main problems revealed by on-site inspections in 2009 relate to the overall organisation of investment services businesses, as well as client relations. In the case of asset management companies and financial investment advisers, there were problems with anti-money laundering measures.

All the on-site inspections of asset management companies and financial investment advisers looked at measures to prevent money laundering and terrorist financing measures.

In the course of these inspections, the AMF verified the consistency of the AML checks with the business activities and the quality of the checks carried out on both assets (transactions and investments) and clients in the case of asset management companies. It also ensured that formalised know-your-customer procedures were in place, along with procedures for unusual, complex or large transactions, or transactions involving foreign or uncoordinated unlisted financial instruments, particularly in offshore financial centres. It used this opportunity to insist that if an ISP does not obtain answers to all its questions about the client's identity, it must not do business with that client.

The on-site inspections of asset management companies focused on training for new hires and subsequent periodic training of personnel to ensure vigilance at all levels of the company in accordance with regulations.

The AMF also audited 14 ISPs (8 asset management companies and 6 ISPs in other categories) for compliance with a limited list of the legislative and regulatory provisions resulting from MiFID in order to make a preliminary assessment of its enforcement.

These audits showed that all the entities audited had taken a positive approach to complying with the new regulations, but the audits also showed that several regulatory issues raised implementation problems for ISPs.

The size of the audit sample means that these findings cannot be applied to the entire population of ISPs, however, so the AMF sent the relevant industry groups a letter asking them to remind regulated institutions that they must comply with all of the regulations.

Other themes covered by previous year's inspections were still topical:

Important: The following English text is a translation of extracts from the French version of the 2009 Annual Report. Only the original French text has any legal value. The AMF expressly disclaims all liability for any inaccuracies in the translation

> Following on-site inspections, custodians were reminded of the critical importance of the resources put in place to monitor the lawfulness of management decisions made by collective investment schemes (CIS). In too many instances custodians settled for a mechanical approach to the monitoring of ratios, which was poorly documented and incomplete, and they neglected to examine the procedures for determining net asset values, in accordance with the CIS prospectuses.

Furthermore, the procedures for entering into relationships and doing business with management companies showed that some custodians had very poor knowledge of the organisation and procedures of the CISs and their management companies.

> Once again, one of the issues dealt with in on-site inspections was the performance of the control and compliance functions. In some cases, inadequate resources and supervision of the compliance function was noted, as well as the persistence of poor practices regarding order traceability.

The AMF once again stressed the need to give this function the status and resources required to perform its tasks.

> Furthermore, it was found that some ISPs' conflict-of-interest mapping exercises were still incomplete, even though in-house custodians of groups with multiple activities need to identify and manage any potential conflicts of interest between the different entities in the group.

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 and, unlike inspections, the sequence of events cannot be set out in advance¹³, because each investigation depends greatly on the particulars of the case. Investigations are undertaken when a situation raises suspicions of market abuse by an issuer, an individual or institutional investor, a market professional or any other person or entity.

The Secretary General presents a written report on every investigation to one of the specialised commissions of the AMF Board, which may then decide to instigate sanction proceedings.

The AMF Secretary General opened 76 investigations in 2009, (97 in 2008), and 80 investigations were closed (95 in 2008).

Table 3: Number of investigations opened and closed¹⁴

Year	2003	2004	2005	2006	2007	2008	2009
Investigations opened by the AMF	85	83	88	84	92	97	76
Investigations concluded	79	90	91	105	96	95	80
Investigations leading to sanction proceedings	22	30	22	27	26	22	20

Source: AMF

A – Origin and classification of investigations

Of the 80 investigations closed in 2009, 36 were opened at the initiative of the AMF. Of these 36, 20 gave rise to sanction proceedings¹⁵, 7 were closed with no sanction and 13 resulted in one or more letters of comment¹⁶.

Furthermore, 40 investigations were opened following a request for assistance from a foreign authority. The relevant findings were submitted to the AMF's foreign counterparts as part of international cooperation arrangements. The AMF will open an investigation when a fellow regulator from another country requests the AMF's assistance within the framework of international cooperation.

¹³ See above

¹⁴ See annexe 4 – « Enquêtes et sanctions », available French only on the AMF website (www.amf-france.org), under the heading "Publications > Rapports annuels > Rapports annuels 2009 > Annexes".

¹⁵ This covers the decisions to open sanction proceedings taken by the Board's specialised commissions between 1 January and 31 December 2009

¹⁶ An investigation may give rise to a notice of complaint as well as one or more letters of comment

Important: The following English text is a translation of extracts from the French version of the 2009 Annual Report. Only the original French text has any legal value. The AMF expressly disclaims all liability for any inaccuracies in the translation

Three quarters of the 36 investigations opened at the initiative of the AMF were requested by the Market Surveillance Department.

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

In addition to those opened following requests from foreign regulators¹⁷, some investigations originated from other sources external to the AMF, such as investor complaints and requests for advice from judicial authorities¹⁸.

Most of the investigations 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.

Table 4: Investigations opened in 2009 by subject¹⁹

Equities and fixed-income securities markets (insider dealing or actions impairing orderly markets)	28
Financial disclosure	14
International cooperation	40
Total	82*

Source: AMF

* The total is greater than 80 (number of investigations opened by the AMF in 2009) because some of the investigations concerned both the market in the security (price manipulation and insider dealing) and financial disclosure

B – International cooperation

The AMF stepped up its cooperation with foreign regulators on investigations, market surveillance and exchanges of information on financial intermediaries.

The AMF made fewer requests for assistance than in 2008. In that year, it had introduced a sophisticated system of surveillance of short selling in response to the difficult economic context. As a result it made a large number of requests to foreign ISPs. This surveillance continued in 2009, but to a lesser extent.

The AMF continued to use the procedure that lets it question remote members of the Euronext Paris regulated market directly pursuant to Article 57 of Directive 2004/39/EC (MiFID)²⁰ and made 48 client-identification requests on the strength of this article.

The AMF received a much smaller number of international requests for assistance in 2009 than in 2008, primarily because of the smaller number of requests directly connected to the consequences of the turmoil on financial markets in 2007 and 2008.

The AMF opened 40 investigations at the request of foreign authorities in 2009. These mainly concerned transactions involving securities admitted to trading on a foreign market carried out by intermediaries located in France.

The table below summarises the requests for assistance received by the AMF from foreign authorities in 2009, along with the requests the AMF sent to foreign authorities.

¹⁷ In accordance with Article L. 621-21 of the Monetary and Financial Code

¹⁸ Mentioned in Article L.466-1 of the Monetary and Financial Code.

¹⁹ The reason indicated relates to the facts that prompted the opening of the investigation and does not prejudice its outcome

²⁰ See 2008 Annual Report, Chapter 5

Important: The following English text is a translation of extracts from the French version of the 2009 Annual Report. Only the original French text has any legal value. The AMF expressly disclaims all liability for any inaccuracies in the translation

Table 5: Requests for assistance, by country

Countries	2008		2009	
	Received by the AMF	Sent by the AMF	Received by the AMF	Sent by the AMF
Germany o/w requests under MiFID Art. 57	13	32 21	11	15 8
Belgium o/w requests under MiFID Art. 57	10	30 6	10	8 2
Bermuda (1)	-	-	0	6
United Arab Emirates (1)	-	-	0	7
United States	12	23	14	26
British Virgin Islands	0	9	0	3
Ireland o/w requests under MiFID Art. 57	8	14 5	2	7 3
Israel	0	2	0	14
Italy o/w requests under MiFID Art. 57	13	11 1	6	3 1
Ireland o/w requests under MiFID Art. 57	8	14 5	2	7 3
Israel	0	2	0	14
Italy o/w requests under MiFID Art. 57	13	11 1	6	3 1
Luxembourg	13	25	3	18
Lebanon (1)	-	-	0	15
Netherlands o/w requests under MiFID Art. 57	25	39 15	22	35 9
United Kingdom o/w requests under MiFID Art. 57	15	371 199	10	171 25
Switzerland	2	70	1	43
Others	71	51	59	37
Total	182	677	138	408

(1) In 2008, these countries were in the "Others" item.

Source: AMF

Important: The following English text is a translation of extracts from the French version of the 2009 Annual Report. Only the original French text has any legal value. The AMF expressly disclaims all liability for any inaccuracies in the translation

The “Other” item includes requests sent to or received from 18 countries. The numbers of requests range to one per country for such countries as Austria, Denmark, Canada and Liechtenstein and six for Sweden²¹.

More than 40% of the requests for assistance from the AMF are sent to the UK regulator. A large number of requests were sent to the Swiss authorities in 2009 as well.

Requests for assistance served a variety of needs, as shown in the table below.

Table 6: Requests for assistance, by type

	2008		2009	
	Received by the AMF	Sent by the AMF	Received by the AMF	Sent by the AMF
Authorisation				
Requests for information on intermediaries	96	8	72	4
Surveillance and investigation of infringements				
Insider dealing	53	471	30	288
Dissemination of false information	4	12	8	10
Price manipulation	10	50	15	75
Improper financial marketing	2	0	0	1
Crossing of shareholdings thresholds	1	15	0	0
Surveillance of short selling	5	116	3	27
Others	11	5	10	3
Total	182	677	138	408

Source: AMF

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

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

The main reason for referring cases to judicial authorities in the course of or after completing an investigation is the AMF's obligation²² to notify the public prosecutor without delay when it obtains knowledge of a crime or offence²³. 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 Code²⁴. Referrals may also be prompted by a request for

²¹ This category includes requests from fellow regulators that were not itemised by country because they were so few in number

²² Article L. 621-20-1 of the Monetary and Financial Code

²³ Article 40 of the Criminal Procedure Code and Article L. 621-20-1 of the Monetary and Financial Code

²⁴ Article L. 621-15-1 of the Monetary and Financial Code

Important: The following English text is a translation of extracts from the French version of the 2009 Annual Report. Only the original French text has any legal value. The AMF expressly disclaims all liability for any inaccuracies in the translation

advice from the judicial authorities in court cases relating to companies making public offerings or offences committed in connection with stock market transactions²⁵ or when a judicial inquiry has been opened on the same facts. Additionally, a matter may be referred to the competent prosecutor's office 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.

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

In 2009 the AMF transmitted 17 investigation reports to the courts, including two passed on to the public prosecutor. The AMF initiated sanction proceedings on the basis of the same 17 reports and two of the reports were also passed on to the accounting regulator, Haut conseil du commissariat aux comptes.

Since 2004 121 investigation reports involving suspected market abuse examined by the AMF Board have been referred to the Enforcement Committee and simultaneously notified to the public prosecutor. To date, the Enforcement Committee has issued sanctions or acquittals in 102 of the 121 cases covered by the reports.

The average length of proceedings, even in the most complex cases handled in 2009, is less than 12 months from the start of the investigation to the referral of the case to the Enforcement Committee.

B – Referrals to supervisory authorities

In 2009 the AMF transmitted two investigation reports to the administrative or professional authorities and two inspection reports to the French supervisory authorities: Banque de France, CECEI, Commission bancaire, Autorité de contrôle des assurances et des mutuelles, Comité des entreprises d'assurance.

Table 7: Investigation and inspection reports referred to other authorities by the AMF in 2008 and 2009

	2008	2009
Administrative and self-regulatory authorities	4	2
Public prosecutor	20	17

5 – International cooperation for market surveillance and discipline

A – Participation in international surveillance initiatives

The AMF belongs to the CESR working group on harmonisation of transaction reporting at the European level, as well as the working group on improving of the accuracy and correct interpretation of data from TREM, which CESR set up to enable regulators to exchange the reports that they receive at the local level. In 2009 this resulted in the implementation of common guidelines to facilitate exchanges. The work on harmonising transaction reporting requirements in Member States continued in 2009, notably for the review of CESR guidelines²⁶ on the definition of transaction execution, despite discrepancies in the interpretation of MiFID rules on what constitutes a reportable transaction.

The AMF has also played a driving role in the project for the exchange of information between regulators²⁷ on transactions in OTC derivatives. Transactions in this type of instrument do not have to be reported under MiFID, but the underlying assets are securities traded on a regulated or organised market and such transactions could be used for insider trading or price manipulation. Following a public consultation organised by CESR, the first technical standards for classification and identification the OTC derivatives concerned by the exchanges of information were validated. In 2010 the regulators wishing to do so are due to start collecting and exchanging transaction reports on OTC derivatives trades from ISPs.

²⁵ Article L. 466-1 of the Monetary and Financial Code

²⁶ CESR Level 3 Guidelines on MiFID Transaction Reporting (CESR/07-301, May 2007), available on the CESR website (www.cesr.eu).

²⁷ Via the TREM system

B – The AMF's participation in CESR-Pol

The primary objective of the CESR-Pol Standing Committee is to facilitate exchanges of information among its 29 members in order to make the surveillance of trading on the markets under their supervision more effective. The CESR-Pol Standing Committee also enables the competent authorities to compile the data they need to perform their investigations and to coordinate their efforts in international investigations. The committee is also a forum for sharing lessons learned from individual cases in order to align the different regulators' market surveillance and investigation approaches and practices as far as possible.

The AMF, working along with its UK and Spanish counterparts in the Surveillance and Intelligence group, conducted a comparative survey that highlights the diversity of regulators' concerns about instances of market abuse committed using OTC derivatives. Nevertheless, the conclusion of the survey is a recommendation that CESR members should take measures to cope with the emergence OTC derivatives, such as options, contracts for difference or credit default swaps, as vehicles for market abuse. The AMF presented different cases of potential market abuse that were of common interest to the committee's members.

1 > CESR-Pol recommendations

As part of its work on operational implementation of the Market Abuse Directive and the enabling measures, the CESR-Pol Standing Committee prepared a third set of recommendations on behalf of CESR, which was made public on 15 May 2009. This work focused on the harmonisation of requirements regarding the compilation and filing of insider lists and suspicious transaction reports. It also involved describing the regulators' position with regard to the financial instrument stabilisation rules that are laid down in European Regulation 2273/2003²⁸ and complement the second set of CESR recommendations, drawn up in July 2007, on issuers' management of rumours.

2 > Review of the Market Abuse Directive

On 20 April 2009 the European Commission issued a call for evidence as part of the review of the Market Abuse Directive²⁹. The Commission's objective, in addition to simplifying and improving the directive, is to ensure that behaviour such as insider dealing and market manipulation is properly deterred and sanctioned.

At the same time as it prepared its own response to the call for evidence, the AMF took an active role, as a member of CESR-Pol, in preparing CESR's response³⁰.

The European Commission's proposals for amendments to European legislation are expected in the second half of 2010.

3 > Work on short selling

The AMF played an active role in the group on short selling set up at the end of September 2008³¹. CESR organised a public consultation that ended on 30 September 2009. The group, working under the responsibility of CESR-Pol, analysed the responses to the consultation document, which proposed a hybrid disclosure model with two tiers, the first being a private disclosure threshold and the second, a public threshold. The disclosure thresholds would apply to net short positions in derivatives and shares of any issuer admitted to trading on a regulated market or an MTF in the European Economic Area. The group's primary objective is to submit a final report to the CESR chairs proposing a permanent disclosure regime for short selling.

²⁸ Commission Regulation (EC) 2273/2003 of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards exemptions for buy-back programmes and stabilisation of financial instruments

²⁹ Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation

³⁰ This response is available on the CESR website at <http://www.cesr.eu/popup2.php?id=5801>

³¹ See the 2008 Annual Report, page 150, and the AMF news releases dated 22 and 24 September 2008, available on the AMF website (www.amf-france.org) under the heading "News releases".

Important: The following English text is a translation of extracts from the French version of the 2009 Annual Report. Only the original French text has any legal value. The AMF expressly disclaims all liability for any inaccuracies in the translation

4 > Other issues addressed by CESR-Pol

At the end of 2009 the common approach to implementation of Article 57 MiFID developed by CESR-Pol at the urging of AMF resulted in the introduction and use of a standard request form. This will facilitate the procedure that allows the competent authority for a regulated market to question remote members of the market directly, without going through the competent authority in their home country, even though the latter will be informed of the procedure.

The dialogue with the regulator in Liechtenstein continued in order to analyse the recent amendments to that country's legislation and to provide advice about future changes to improve the regulator's organisation and capacity for cooperation.

C – Bilateral contacts and training for other regulators

The effectiveness of the procedures established for exchanging helpful information for investigations and surveillance depends in part on the quality and ease of bilateral relationships with officials. In 2009 the Market Surveillance Department stepped up its direct and informal contacts with its main counterparts, including the Financial Services Authority (FSA) in the United Kingdom, the Securities and Exchange Commission (SEC) in the United States, the Commissione Nazionale per le Società e la Borsa (CONSOB) in Italy and the Autoriteit Financiële Markten (AFM) in the Netherlands, in specific cases. It also forged relations with staff responsible for surveillance at the Financial Industry Regulatory Authority (FINRA) in the United States prior to the 19 October 2009 signing of an information exchange agreement with this body that plays a key role in the surveillance of US markets.

The department also continued to follow its policy of hosting and assisting more recently established authorities by presenting its tools and methods to foreign visitors from Morocco, Tunisia and the United Arab Emirates. In the same spirit, the AMF held a two-day staff training seminar designed under the auspices of the European Institute for Financial Regulation (EIFR) for regulators from different Member States and, more specifically, from central and eastern European countries.

As part of the implementation of its 2010 New Strategy Proposals, the AMF stepped up its policy of sharing experiences with its European counterparts by seconding a member of its own staff to the FSA and another staff member to CESR.

D – AMF's contribution to IOSCO's work

1 > Standing Committee on Enforcement and the Exchange of Information

The AMF takes part in the work of Standing Committee 4 of the IOSCO Technical Committee, which is responsible for matters relating to investigations, international cooperation and the exchange of information between regulators³².

The committee continued to work on its most important task in 2009: improving cooperation with regulators that are seen as uncooperative. The IOSCO Technical Committee set this task in 2005. The members of the committee started by identifying regulators that had failed to cooperate adequately. They then initiated an in-depth, confidential dialogue with them with a view to gaining a better understanding of their reluctance to respond to international cooperation requests, then working with them to find solutions to the problems.

Local legislation is usually the main obstacle to adequate cooperation. It often bans exchanges of information with foreign authorities in such important fields as banking secrecy. Another obstacle is a lack of human and material resources. The purpose of this work is to improve cooperation with the regulators through this dialogue and to engage a discussion with the public authorities of the countries concerned and the key players in the financial sphere.

The AMF also plays an active role in the Sub-Committee of Standing Committee 4, which is made up of three other regulators: the UK's FSA, the OSC from Ontario, Canada and the CNMV from Spain. The Sub-Committee has specific responsibility for the discussion with regulators identified as having cooperation problems. It reports on its work to Standing Committee 4 on a regular basis. The Standing

³² Standing Committee 4 of the IOSCO Technical Committee is made up of 19 national or provincial regulators: Australia, Brazil, Ontario/Canada, Quebec/Canada, France, Germany, Greece, Hong Kong, Italy, Japan, Mexico, Netherlands, Poland, Portugal, United Kingdom, CFTC/United States, SEC/United States and Switzerland

Important: The following English text is a translation of extracts from the French version of the 2009 Annual Report. Only the original French text has any legal value. The AMF expressly disclaims all liability for any inaccuracies in the translation

Committee decides on the main issues and the chairwoman personally informs the members of the Technical Committee of progress in the discussions and on the quality of international cooperation.

The first list of problem regulators, drawn up in 2006, had three names on it. After talks, two of the three signed the IOSCO Multilateral Memorandum of Understanding (MMoU) on international cooperation, thus complying with recognised international standards concerning the exchange of information. The third regulator is on track to sign the MMoU in the near future.

The Standing Committee is in talks with three other regulators. Several meetings have been held on site to study the problems involved and examine possible solutions. At least one of the three may be ready to sign the IOSCO MMoU in 2010. Talks have just started with regulators on a third list.

In 2009 the G20 set up the Financial Stability Board (FSB), the successor to the Financial Stability Forum. One of the FSB groups of experts working to improve international cooperation between supervisory and regulatory authorities is chaired by France. It has been in regular contact with IOSCO, since the work of Standing Committee 4 is clearly linked to that of the FSB.

Standing Committee 4 also continued its work on international asset freezes in 2009. This should make it easier to block the accounts of persons suspected of market offences so that the funds involved do not disappear and can be used to compensate victims and/or pay fines once the perpetrators have been convicted. This initiative follows a resolution adopted at the 2006 IOSCO annual conference.

In 2009 IOSCO managed to complete its work on a new public alert system that is centralised and coordinated by IOSCO and relies on information provided by its members on a voluntary basis. The system would improve alerts to investors about entities offering financial services without having obtained the necessary authorisations for such activities. The new system should start operating in 2010.

2 > The Screening Group for regulators applying to be signatories of the Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information

The AMF belongs to the IOSCO Screening Group set up in 2003³³ to examine applications from regulators seeking to become signatories of the IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information (MMoU), which is internationally recognised as setting the minimum standards for international cooperation. The MMoU facilitates the exchange of information between the signatory regulators in their investigations of market offences.

A securities regulator belonging to IOSCO and wanting to become an MMoU signatory must prove to the members of the Screening Group that its legal system allows it to:

- > collect the information that its counterparts request;
- > transmit the requested information without restriction;
- > authorise its counterparts to use such information in the cases stipulated in the MMoU (i.e. for the regulators' own needs, or for transmission to the law enforcement authorities of the requesting regulators' home countries).

Once the Screening Group has examined the applicant's capacity for cooperation in detail, it makes a recommendation that is submitted to the three IOSCO Committee chairs (Technical, Executive and Emerging Markets Committees). These chairs are the ones who decide whether to accept the regulator as a signatory. If they reject the application, the IOSCO Executive Committee may take another look at the application.

In 2005 the IOSCO passed a resolution requiring all its members to apply to sign and/or to sign the MMoU by 1 January 2010, or else to become one of the regulators listed in "Appendix B" to the MMoU

³³ The Screening Group has 28 members, which are the 19 members of Standing Committee 4, plus nine regulators from: South Africa, Belgium, British Columbia/Canada, Isle of Man, India, New Zealand, Sri Lanka and Turkey.

Important: The following English text is a translation of extracts from the French version of the 2009 Annual Report. Only the original French text has any legal value. The AMF expressly disclaims all liability for any inaccuracies in the translation

that cannot be accepted as signatories because of problems with their legislation but that have made a commitment to correct these problems rapidly.

At the end of 2009 all but five³⁴ of the IOSCO members were signatories of the MMoU or listed in Appendix B. There were a total of 65 signatories and 38 regulators listed in Appendix B. Five IOSCO members had yet to submit an application, but three of them were nearly ready to do so.

In 2010 IOSCO plans to focus on the situation of the regulators listed in Appendix B to the MMoU to ensure that they amend their domestic legislation and become signatories. IOSCO intends to develop its technical assistance process, which has enabled many regulators to obtain expert advice on international cooperation in partnership with international and regional bodies, such as the IMF, the World Bank and the Asian Development Bank. The AMF provided technical assistance to five of its counterparts under this process.

In 2009 the AMF continued to represent IOSCO at the meetings of the Financial Action Task Force (FATF), which is responsible for the prevention of money laundering and terrorist financing.

3 > IOSCO's work on short selling

The IOSCO Technical Committee set up a Task Force on Short Selling at the end of 2008 under the chairmanship of the chief executive of the Securities and Futures Commission of Hong Kong. A consultation draft of the group's report was circulated in March 2009 and the final report was published in July. The main principles laid out in the draft were upheld in the final report, which emphasises the need for strict securities settlement requirements to deter abusive practices and for adequate disclosure to either the market as a whole or to the regulator.

6 – Enforcement Committee

The AMF Enforcement Committee hands down decisions on complaints that the AMF Board has notified to the respondents. It is independent from the Board and has 12 members sitting in full session, who are usually divided into two sections of six members each.

The AMF Chairman refers cases to the Chairman of the Enforcement Committee following a decision by the Board or, more frequently, a decision by one of the Board's three specialised commissions, further to an investigation or inspection report. The Chairman of the Enforcement Committee then names one of its members to act as a rapporteur for the case³⁵, with the assistance of the AMF Enforcement Assistance Department. The rapporteur does not have a say in the committee's decision.

A – Membership of the Enforcement Committee

Daniel Labetoulle, the Honorary President of the Litigation Division of the Conseil d'Etat has chaired the Enforcement Committee since 29 May 2006. One section is chaired by the Enforcement Committee Chairman and the other by Claude Nocquet, a judge at the Court of Cassation.

In 2009 the members of the Enforcement Committee were:

> in the first section, Daniel Labetoulle (Chairman), Marielle Cohen-Branche, Jean-Claude Hanus, Guillaume Jalenques de Labeau, Pierre Lasserre and Joseph Thouvenel;

> in the second section, Claude Nocquet (Chairwoman), Antoine Courteault, Alain Ferri, Jean-Claude Hassan, Jean-Pierre Morin and Jean-Jacques Surzur.

B – New rules of procedure

A decree dated 17 November 2009 amended Article R. 621-44 of the Monetary and Financial Code³⁶. The Enforcement Committee's decisions are no longer published in the official gazette, BALO. Instead they are published on the AMF website³⁷. The decisions are also printed in the digest of AMF Enforcement Committee decisions and appeals jurisdictions, which has been published annually since 2008.

³⁴ The five countries that had not applied by the end of 2009 were Bolivia, Honduras, the Kyrgyz Republic, Uzbekistan and the Ukraine

³⁵ Article R. 621-39 of the Monetary and Financial Code

³⁶ Decree 2009-1409 dated 17 November 2009 on the publication of individual decisions by the AMF

³⁷ The decisions of the Enforcement Committee are posted on the AMF website (www.amf-france.org), heading "Sanctions > Decisions"

C – Activity of the Enforcement Committee in 2009

In its sixth year of activity, the Enforcement Committee dealt with a larger number of cases than the number referred to it. Seventeen of the 33 cases examined were dealt with in less than 12 months. Furthermore, at 31 December 2009 only five pending cases had been opened before 1 January 2009. This means that the committee is much closer to its objective of taking an average of one year to deal with referred cases.

Of the 33 cases completed in 2009³⁸, 26³⁹ led to sanctions against individuals or legal entities (see box).

The sanctions⁴⁰ stemmed from breaches of public disclosure rules (22 sanctions), insider dealing (9 sanctions) and price manipulation (1 sanction). The other sanctions stemmed from breaches of the provisions applying to ISPs (11 sanctions).

Sanctions handed down by the Enforcement Committee may be appealed under the terms of the Monetary and Financial Code⁴¹. A total of 46 appeals against the committee's decisions were lodged with the Paris Court of Appeals, the Court of Cassation and/or the Conseil d'Etat.

Number of proceedings referred to the Enforcement Committee in 2009

> 29⁴² proceedings (compared with 36 in 2008, 29 in 2007, 35 in 2006, 34 in 2005 and 24 in 2004).

Number of proceedings completed in 2009

> 33⁴³ including 7 that did not give rise to a sanction.

The 33 proceedings involved 96 persons or entities:

> 39 sanctions (21 legal entities and 18 individuals);

> 57 acquittals (11 legal entities and 46 individuals).

A total of 45 sanctions were handed down, which break down as follows:

> 38 fines ranging from €100 to €1,500,000, making a total of €6,345,100 levied against 21 legal entities (€3,165,000) and 17 individuals (€3,180,100);

> 4 warnings;

> 3 reprimands, including 1 reprimand with no fine for an individual.

³⁸ Several decisions may result from one case. The Committee handed down 36 decisions in 2009:

– One of the Enforcement Committee's decisions was handed down on 8 January 2009, but the meeting at which it was taken had been held on 18 December 2008. This decision was counted in the 2008 figures and not in 2009. This particular decision acquitted four persons, fined one individual €2,500,000 and fined one legal entity €1,500,000. Four appeals (two seeking interim court orders and two seeking to have the sanctions overturned on matters of substance) were lodged against this decision and gave rise to two interim court orders and a ruling by the Paris Court of Appeal in 2009. These appeals are included in the figures below;

– Two decisions by the Enforcement Committee were handed down regarding petitions to have a rapporteur disqualified in one case, and to have the Enforcement Committee members disqualified before handing down their decision on the substance of the case. Only the latter decision has been included in the number of proceedings completed in 2009

³⁹ One of the sanctions was handed down following a meeting held on 21 January 2010 for reasons relating to the procedure for summoning the respondent. However, this decision is counted as part of the main proceedings completed in 2009.

⁴⁰ Proceedings may involve one or more persons and one or more sanctions may be imposed on each of them for one or more breaches of the rules

⁴¹ Article R. 621-44 and the following articles of the Monetary and Financial Code.

⁴²) This is the number of proceedings actually referred to the Enforcement Committee between 1 January and 31 December 2009, including 5 proceedings initiated by the AMF Board in December 2008 and 24 of the 27 proceedings that the Board initiated in 2009. The three remaining proceedings still pending in December 2009 were actually referred to the committee in 2010

⁴³ Eleven of the 33 proceedings in 2009 did not give rise to publication of a notice. Such publications are an additional sanction handed down by the committee in view of the general interest requirements relating to fair trading, transparency of transactions and investor protection that are the basis of its sanction powers, as well as in the interest of the legal security of all market operators, since access to the committee's decisions enables them to understand its interpretation of the rules that they must follow. However, such publications must not disrupt the market or cause the respondent disproportionate harm

Important: The following English text is a translation of extracts from the French version of the 2009 Annual Report. Only the original French text has any legal value. The AMF expressly disclaims all liability for any inaccuracies in the translation

No temporary suspensions were imposed.

Number of sanction proceedings still pending before the Enforcement Committee at 31 December 2009: 29.

Number of interim court orders obtained in 2009

- > from the Paris Court of Appeal: 2 orders concerning 3 persons;
- > from the Conseil d'Etat: 4 orders concerning 6 persons.

Number of rulings handed down by appeal jurisdictions in 2009, after examining the substance of the case

- > from the Paris Court of Appeal: 10 rulings concerning 14 persons. Nine of the 14 appeals lodged against decisions of the Enforcement Committee by persons sanctioned were dismissed. Four resulted in a partial rectification of the amount of the fine being appealed and one appeal was upheld. The AMF lodged an appeal with the Court of Cassation against the latter ruling, which set aside the Enforcement Committee's decision.
- > from the Court of Cassation: 16 rulings, including 13 appeals dismissed, 1 ruling on discontinuance, 1 ruling on forfeiture of remedy and 1 ruling on inadmissibility;
- > from the Conseil d'Etat: 3 decisions. 2 appeals dismissed and 1 decision on the Conseil d'Etat's lack of jurisdiction to hear 2 appeals and noting discontinuance of the appeal of a third petitioner.

Number of appeals lodged against sanctions in 2009

- > 46 (compared with 63 in 2008).

Number of appeals pending before the Paris Court of Appeal, the Court of Cassation and the Conseil d'Etat at 31 December 2009: 56.
