OMBUDSMAN'S REPORT 2011

AUTORITÉ DES MARCHÉS FINANCIERS

AMF

Contents

Editorial

The ombudsman's editorial presenting the highlights of the past year is something of a ritual. But this one is unusual because I did not take up my duties as the AMF's new ombudsman until mid-November 2011. Nevertheless, it is up to me to review the year's events and I do so with great pleasure, paying tribute to the work of my predecessor, Madeleine Guidoni.

In 2010 the AMF set up the Retail Investor Relations Division, prompted by heightened concern for investor protection. It continued in 2011 by seeking to strengthen the mediation function, in line with the recommendations made in May 2011 by the working group on investor compensation, co-chaired by Jacques Delmas-Marsalet and Martine Ract-Madoux.

The function has indeed been strengthened, as I discovered. The new AMF ombudsman now reports directly to the chairman and is appointed for a renewable three-year term. As a result, the independence inherent in the mediation function is reflected in its status and positioning. Furthermore, to carry out my duties I can rely on the skills of a highly motivated team of four legal advisers and two assistants, led by François Denis du Péage, at the Retail Investor Relations Division.

Among the first changes I wanted to make was to refocus the mediation unit on its core activity – out-of-court dispute settlement – and to rationalise the way it handles enquiries. Until 2011, queries from the public were the responsibility of the mediation unit; going forward, they will be dealt with by the AMF Épargne Info Service platform, which already plays an effective role in providing information on a daily basis.

A total of 518 mediation requests were received in 2011. And 578 requests were processed during the year, thus reducing the number of ongoing cases. Of the cases examined on the merits of the request, 46% resulted in an agreement. However, the effects of the financial crisis continued to be felt. Since 2009 the parties to disputes have tended to make tougher demands and propose less generous settlements, while disputes have become more complex and protracted. Nevertheless, the mediation unit was able to bring these cases to a conclusion in the same timeframes as the previous year, with 78% being dealt with in under six months.

The main topics handled by the unit in 2011 continued to revolve around a few key themes.

One of these was the marketing of financial instruments. In each case, the mediation unit made every effort to ensure that the distributor or investment adviser had indeed made a personalised and appropriate recommendation to the client. In the event of a shortcoming, compensation was obtained. There was also an increase in complaints about excessive time being taken to transfer securities accounts. The involvement of the mediation function helped bring these procedures to a speedier conclusion. In other cases, potentially misleading information about the procedures for corporate actions was corrected and compensation offered. Furthermore, to ensure orderly execution of individual discretionary mandates and proper management of collective investment schemes, each mandate needs to be assessed separately to ensure it matches the customer's goals, remembering that simply incurring a loss is not proof of mismanagement.

Looking ahead I have identified three new policy areas, which have been agreed to and supported by the AMF Board:

– work in conjunction with the Autorité de Contrôle Prudentiel and the finance ministry ombudsman to ensure that retail investors can find out more swiftly which ombudsman to contact, since the banking, financial and insurance ombudsmen all have limited jurisdiction. The AMF ombudsman has no authority over tax matters, for example;

– establish appropriate tools to promote wider awareness of the existence, role and contact details of the AMF ombudsman;

– promote the ombudsman's advisory role. That the ombudsman must act as a neutral and impartial third party need not, in my view, prevent him or her from making suggestions during negotiations with the parties to disputes.

My work as ombudsman in 2012 will be shaped by these three issues, which are designed to ensure that retail investors get the best possible benefits from our service.

Marielle Cohen-Branche,
AMF ombudsman

Ombudsman's report

A | TASKS OF THE OMBUDSMAN AND AMF MEDIATION ACTIVITIES

1 – Statutory tasks, jurisdiction and procedures for contacting the ombudsman

a | Statutory tasks

The AMF's mediation function is a free public service that provides a final opportunity for the out-of-court settlement of individual disputes in the financial field.

Pursuant to Article L. 621-19 of the Monetary and Financial Code, "the AMF is authorised to receive claims relating to matters within its jurisdiction from any interested party and to deal with them appropriately. When appropriate, it proposes out-of-court resolution of the disputes brought to its attention, via conciliation or mediation.

Referral to the AMF in connection with out-of-court dispute settlement suspends the limitation period for civil and administrative action. The period resumes when the AMF announces that mediation is finished.

The AMF cooperates with its foreign counterparts with a view to settling cross-border disputes out of court.

It may formulate proposals for amendments to the laws and regulations concerning the information provided to holders of financial instruments and the public, the financial instruments markets and the status of investment service providers".

The AMF ombudsman now operates directly within a European regulatory framework. Directive 2008/52/EC of 21 May 2008 on certain aspects of mediation in civil and commercial matters was transposed into French law by the Executive Order of 16 November 2011. These mechanisms are described below in the section on regulatory developments.

b | Jurisdiction and mediation charter

The AMF ombudsman may be contacted by any retail saver or investor, whether an individual consumer or a legal entity, such as a pension fund or an non-profit organisation, that is in an individual dispute with a financial market participant.

The AMF ombudsman may thus examine disputes where the customer is a legal entity or a natural person acting in a professional capacity. The AMF ombudsman therefore has a wider jurisdiction than bank ombudsmen, which, aside from a handful of institutions that have voluntarily expanded their scope, handle only disputes involving private individuals.

Furthermore, following the adoption of the Act of 3 January 2008, individual consumers may, in the event of a dispute with a credit institution involving a financial instrument, choose to refer the matter either to the AMF ombudsman or to the bank ombudsman named by the credit institution.

AMF mediation is based on the principle that both parties must voluntarily take part in the procedure. The ombudsman may be contacted only in the case of an individual dispute that falls within the AMF's jurisdiction, i.e. between a customer and an investment services provider, a financial investment adviser or a listed company.

The parties are free to halt the process at any time or to continue and complete – or not – the ombudsman-led mediation process.

The AMF ombudsman will redirect a complainant to the appropriate bodies if the case does not come within her jurisdiction. This applies notably to complaints involving life insurance, or cases that relate to purely banking matters, such as the operation of deposit accounts, passbooks, term deposits or the provision of credit. The AMF is also not competent to consider questions relating to the application and interpretation of tax legislation.

The AMF mediation charter, which was updated in 2010, states the main principles of mediation, including:

– impartiality of the ombudsman: the ombudsman is endowed with the necessary means to carry out mediation in a neutral and impartial manner. She cannot receive orders concerning the individual cases under her responsibility;

– confidentiality of the mediation procedure: unless the parties agree otherwise, information exchanged during the mediation procedure may not be produced or referred to in court proceedings;

– the ombudsman proposes but does not impose: mediation is based on the principle that the two parties voluntarily agree to take part at every stage in the procedure.

c | Procedures for contacting the AMF ombudsman

Direct access to the AMF ombudsman is guaranteed and free, and contact details are easy to obtain.

A claim may be brought to the attention of the ombudsman only after a prior written complaint has been submitted to the investment services provider or issuer, and the complaint has been rejected either totally or partially, or a response has not been provided within a reasonable time.

Queries may be filed using an online form available on the ombudsman page of the AMF website (www.amf-france.org). Alternatively, they may be sent by post.

Of the 1,399 queries received in 2011, 1,094 (65%) were made using online forms, showing a continued rise in use of this method for submitting queries (49% in 2010 and 35% in 2009).

2 – Organisation

a | Appointment of Marielle Cohen-Branche as ombudsman and changes to the organisation of the mediation function

Marielle Cohen-Branche was appointed as AMF ombudsman on 16 November 2011, replacing Madeleine Guidoni.

Changes were introduced at that time, reflecting the determination to strengthen the mediation function, in line with the recommendations made in May 2011 by the working group on investor compensation, co-chaired by Jacques Delmas-Marsalet and Martine Ract-Madoux. In accordance with the group's recommendation, which was consistent with the strategy proposals adopted by the AMF in 2009, the ombudsman now reports directly to the chairman and is appointed for a renewable three-year term. To help her perform her duties, Ms Cohen-Branche has a team of four legal advisers and two assistants, led François Denis du Péage, at the AMF Retail Investor Relations Division.

Ms Cohen-Branche served as Extraordinary Judge at the Court of Cassation in charge of banking and financial law from March 2003 to January 2011, and was also a member of the AMF Enforcement Committee from November 2003. Her term of office in this position ended in January 2011, at the same time as her term as judge at the Court of Cassation. Ms Cohen-Branche had previously served for 25 years as a legal expert in banking, notably as Legal Affairs and Litigation Director for Crédit Agricole Île-de-France from 1993 to 2003. Ms Cohen-Branche was also, from 2003 to 2011, a member of the Banking Mediation Committee led by the Governor of the Banque de France, which was responsible for supervising the independence of bank ombudsmen.

b | Changes to the activities of the mediation unit following its integration within the Retail Investor Relations Division

Mediation is now one of the three units that make up the Retail Investor Relations Division.

Previously, the mediation function had two main tasks: answering enquiries and responding to mediation requests.

In addition to handling mediation requests, the mediation unit used to field enquiries from retail investors with technical questions about areas within the AMF's jurisdiction. It also received reports and accusations submitted to the AMF and took part in the public warnings issued by the Retail Investor Relations Division about improper marketing.

With the creation in 2010 of the AMF Épargne Info Service platform within the Retail Investor Relations Division, which operates a daily helpline to answer the public's queries, the mediation unit no longer needs to field enquiries. AMF Épargne Info Service will take over these duties in 2012.

c | Promoting AMF mediation

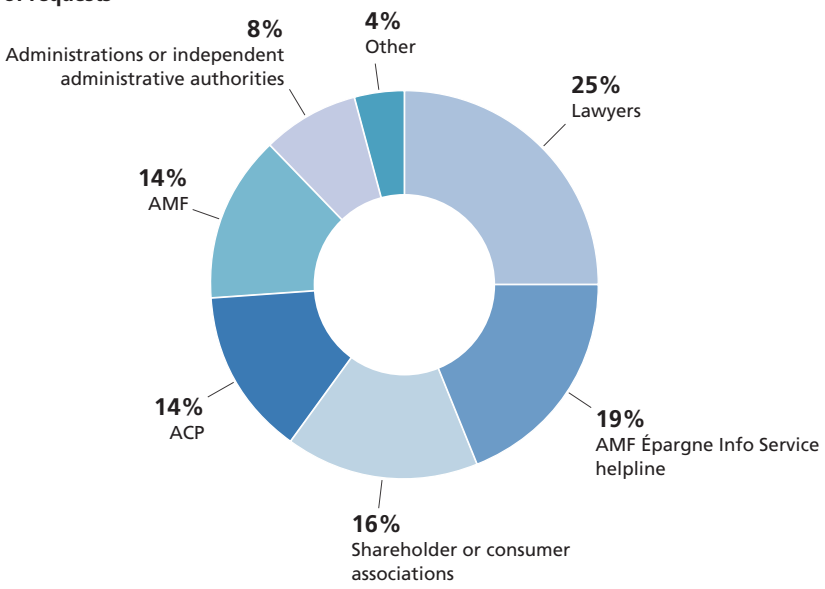
Mediation requests still come mainly from retail investors acting alone.

The mediation unit took part in meetings organised by the Retail Investor Relations Division as part of a training partnership with consumer associations. The aim of these sessions is to help the local directors of these associations to more effectively handle investment-related questions and complaints brought to their attention. Six training sessions were held at the regional branches of the Banque de France, in Strasbourg, Toulouse, Clermont-Ferrand, Montpellier, Marseilles and Nantes, as well as one in Paris. And, as it does every year, the mediation unit attended the Investment Forum and Actionaria shareholder fair.

B | 2011 IN FIGURES

1 – Requests received in 2011

Source of requests



Source: AMF

The mediation unit received 1,399 requests in 2011, compared with 1,397 in 2010, comprising 881 enquiries and 518 mediation requests.

The overall stability masks a decline in the number of enquiries, from 1,001 in 2010 and 1,294 in 2009, attributable to the creation of the AMF Épargne Info Service helpline. By contrast, the number of mediation requests picked up again, from 396 in 2010 (735 in 2009[1]).

However, this increase was almost certainly tempered by the fact that bank ombudsmen have been legally allowed since 2008 to handle complaints relating to financial products. Since that time, retail investors seeking mediation in a dispute relating to the marketing or management of financial products may, after exhausting the means of redress within their bank, contact either the bank's ombudsman or the AMF ombudsman.

A helpline was operated twice a week throughout the year, including during the July/August holiday season. Following an organisational change in September, the AMF Épargne Info Service helpline now accepts calls on weekdays from 9 am to 5 pm.

(1) Some 25% of these mediation requests involved one structured fund.

2 – Caseload in 2011

The mediation unit handled 1,531 cases in 2011, including 953 enquiries and 578 mediation requests.

a | Enquiries

Situation at 31 December 2011

Number of enquiries handled	953
Enquiries received within the last month	86%
Enquiries received more than one month previously	14%

Source: AMF

b | Mediation requests

Situation at 31 December 2011

Number of mediation cases closed	578
Requests received within the last six months	78%
Requests received more than six months previously	22%

Source: AMF

Between 1 January and 31 December 2011, 578 mediation requests were handled, compared with 520 in 2010 and 887 in 2009. Of these, 78% of cases were closed within six months of the start of the procedure. The time taken reflects the fact that the mediation unit usually asks complainants to provide further documents and clarification when acknowledging receipt of the first letter. In its acknowledgement, the unit also includes a copy of the mediation charter, which explains how the case will be examined.

The cases that the mediation unit does not close within six months are more complex or involve several parties, such as an investment services provider / account keeper and a management company, or an issuer and a financial intermediary. Sometimes the information or documentation requested is hard to obtain for some reason – for example, the events in question occurred a long time ago or the service provider has changed in the meantime.

Of the 578 mediation cases closed in 2011, agreements were reached in 46% of the cases that were considered on their merits.

Out-of-court settlements may take the form of a rectification (i.e. the contested transaction or the account transfer is cancelled), total or partial compensation for losses incurred or the payment of a sum of money to the customer. In each case, the settlement is a conciliatory gesture on the part of the company in question; it does not imply any acknowledgement of liability.

Even if a formal settlement is not reached, the mediator-led procedure may improve the relationship between the complainant and the respondent. By simply asking the company to provide explanations or to state its position on an issue, the ombudsman can often help to restore an interrupted business relationship between two parties.

The effects of the financial crisis have persisted, however, and the parties to disputes continued to follow the same trend observed in 2009, often making tougher demands and less generous settlement proposals, while disputes have become more complex and protracted.

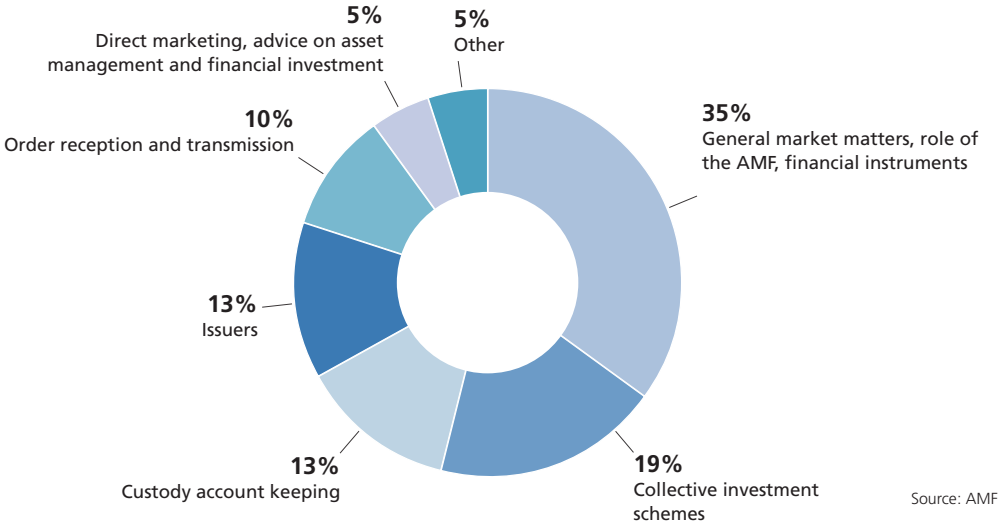
C | GENERAL TOPICS COVERED BY THE OMBUDSMAN

The cases that come in are recorded in the unit's own database and broken down into ten general topics:

– collective investment schemes
– discretionary management
– order transmission and execution
– custody account keeping
– issuers and corporate finance
– general market matters
– financial instruments (other than collective investment schemes)
– direct marketing, advice on asset management and financial investment
– role of the AMF
– miscellaneous topics.

a | Enquiries and mediation requests by subject area

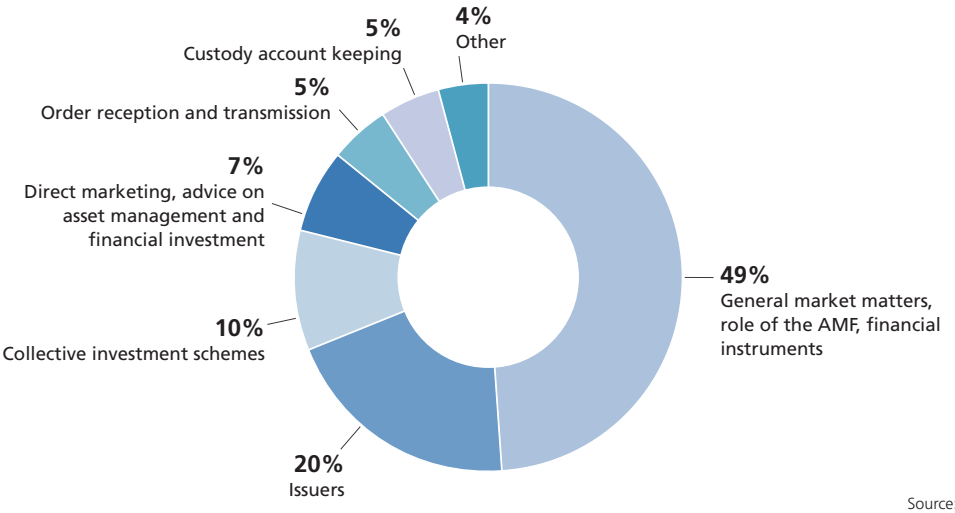
Enquiries and mediation requests, 1 January to 31 December 2011



Source: AMF

b | Enquiries by subject area

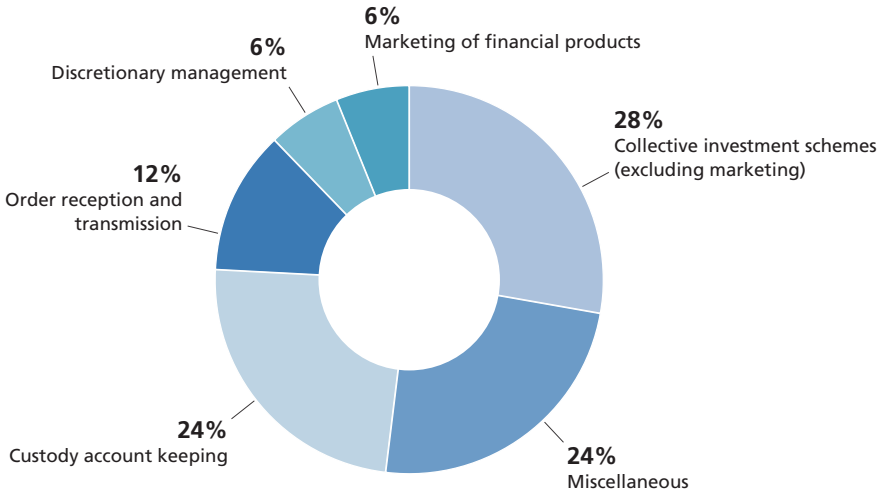
Enquiries, 1 January to 31 December 2011



Source: AMF

c | Mediation requests by subject area

Mediation requests, 1 January to 31 December 2011



Source: AMF

D | MAIN TOPICS HANDLED BY THE AMF MEDIATION UNIT

1 – Management of collective investment schemes

As in previous years, the mediation unit received many complaints from retail investors about the management of collective investment schemes (CIS), particularly innovation funds, after the value of their investments fell sharply.

Some cases raise no particular problems for mediation, such as those where there is only one unitholder. In one such case, a dedicated investment fund was created for a pension fund. The customer filed a complaint about mismanagement based not on poor performance but rather on a single incident. This type of dispute can be addressed through mediation.

In other cases, however, where under-performance is the only evidence for the complaint, and where the mediation unit is contacted by just one holder of a CIS that is open to the public, management companies usually reject requests for compensation.

The mediation unit is generally restricted in such circumstances by technical or legal constraints.

The technical constraints relate to the fact that the AMF mediation unit cannot assess whether a CIS has been poorly managed or actually mismanaged. To do this, it is necessary to carry out investigations and inspections, which are the responsibility of the AMF's specialised departments.

The legal constraints relate to the fact that retail investors who contact the mediation unit are complaining about losses that may be treated as collective damages or that, at the very least, raise the question of the equal treatment of holders. If an investor disputes the way the CIS was managed, the losses resulting from impairment of the product's assets could be considered as neither personal nor direct, but as a collective loss suffered by all investors holding units in the CIS. Compensating one holder could conflict with the rule of fair treatment for all holders. Moreover, the ombudsman may be contacted only to encourage out-of-court settlements in individual disputes.

However, since this type of request from retail investors cannot go unanswered, discussions are underway on the most effective guidance for such cases.

From time to time, the mediation unit is also contacted by savers about issues relating to the life of innovation funds (FCPI).

The life of a private equity product, such as an FCPR, FCPI or FIP[2], is determined in the product's bylaws. The invested capital must be returned to holders no later than at the end of that period, in accordance with Article L. 214-28 of the Monetary and Financial Code.

The management company is required to dissolve the FCPI before the end of its life. This leads to the opening of a liquidation procedure, which must receive prior approval from the AMF. The liquidation procedure must be closed no later than at the maturity of the FCPI: all the assets held in the FCPI must be liquidated by the end of the product's life.

(2) FCPR: Venture capital fund.
FIP: Local investment fund.

This has two consequences for retail savers investing in FCPIs:

– investments may be blocked until the end of the fund's life, i.e. up to ten years;

– the decision to dissolve the fund is just one stage in winding up the product. The fund continues to exist legally until all the assets in the portfolio have been totally liquidated. Accordingly, the account holder will maintain the holdings corresponding to the FCPI units in the books of its customers until the product is totally liquidated. As a result, custody fees may be charged.

Some FCPIs calculate net asset values every half, but these do not necessarily follow the calendar year. In one case, for example, a customer whose portfolio at 31 December included an FCPI holding that was calculated on 30 September of the year. Because the statement did not explain this, the customer was unable to reconcile the data, in view of the redemptions made in the intervening period.

2 – Custody account keeping and order placement

a | Account transfers

The mediation unit noted an increase in cases relating to problems with securities account transfers, with many investors complaining that they took too long.

Certain factors may mean that the transfer procedure automatically takes longer. For example, a corporate finance transaction that affects a security held in a portfolio (corporate action, ex-dividend, etc.) will block the transfer of the holding for the duration of the transaction. However, poor dialogue between the institutions involved may also delay the process.

The problem is exacerbated in the case of equity savings plans, insofar as the regulations prohibit individuals from holding more than one plan. As a result, an institution that receives an equity savings plan may not grant access to the plan until it has received confirmation that the plan held in the books of the original institution has been duly closed, meaning that the holder cannot access the account during the transfer period. Any hold-up in the transfer may result in losses for the holder, especially during periods of high volatility, when investments need to be closely monitored.

Mediation promotes better dialogue between institutions, speeding up the execution of requests by facilitating information-sharing. Even so, retail investors must expect longer processing times during transfers of equity savings plans.

b | Corporate actions

Corporate actions are events that take place during the life of a security, such as rights issues, dividend payouts and takeover bids.

Some corporate actions are imposed on investors, while others require a choice to made, such as whether to take part in a rights issue or tender securities to a bid. In such cases, the financial intermediary informs the customer of the procedures for conducting the corporate action and asks for a response.

The mediation unit was approached by retail investors with complaints about how their financial intermediaries had handled corporate actions, citing problems in the information provided by the intermediary about the corporate action procedure.

• Failure to provide timely information on corporate action procedures

In one case, an intermediary informed a customer through the email service of the customer's online account about a rights issue by a foreign company. However, the information was provided so late that the customer did not learn about the corporate action until after it was finished. The intermediary offered to deliver securities under the terms of the rights issue.

In this instance, the customer did not wish to take part in the rights issue but had planned to sell pre-emptive subscription rights. The institution refused to offer compensation for the injury resulting from the customer's inability to sell the rights, because it considered that, in this case, the pre-emptive rights could not have been traded on the market.

In another case, a customer was telephoned by his branch and asked to urgently sign documents to allow him to exchange foreign bonds, which had lost all their value, for equities. The next day, the branch contacted the customer again, asking him to sign a different set of documents, since the ones he had filled out the previous day contained mistakes. As a result, the customer's request could not be executed. The customer initially contacted the bank's customer service department, which informed him that because the offer in question had a very limited term, it was impossible to send out a notice by post, and that the correct documents were filled out after the end of the corporate action.

The mediation unit pointed out that the customer had filled out the first set of documents in the presence, and on the advice, of the branch manager, and that any mistakes in these documents could not therefore be attributed to the customer. After the unit intervened, the institution agreed to compensate the customer.

• Misleading information about a corporate action procedure

The mediation unit was contacted by a holder of redeemable equity warrants maturing on 31 December 2010. This customer had received a corporate action notice relating to the warrants that stated clearly: "If you wish to take part in this corporate action or sell your warrants, market conditions permitting, please contact your branch before 31 December 2010 at 2 pm (the market closing time on that day) and specify the quantity of warrants that you wish to exercise and/or sell".

However, the customer was unable to sell the warrants on 29 December 2010. A close examination of the terms of the transaction revealed that the warrants could be exercised up to 31 December 2010 but were only tradable until 28 December 2010 inclusive and were to be delisted the following day.

The mediation unit pointed out to the account keeper that the corporate action notice had misled the warrant holder, preventing him from selling the warrants in a timely fashion.

The account keeper acknowledged that the lack of clarity about the warrant trading deadline in the notice could have created confusion. As a result, a memorandum of understanding was signed in which the holder received compensation calculated on the basis of the number of warrants held on 28 December 2010 multiplied by the average price of the warrants on the same day on NYSE Euronext Paris, namely €4,215.

c | Formalities for attending general meetings of shareholders

The mediation unit is regularly contacted by people who are not provided in a timely fashion with the documents needed to take part in, or cast postal votes at, the general meetings of companies in which they are shareholders.

The mediation unit reminds financial intermediaries that requests to attend general meetings or to cast postal or proxy votes should be dealt with promptly, to ensure that customers are able to exercise their shareholder rights.

d | Information about placing orders

The mediation unit was contacted by one investor about a market order relating to a foreign stock that was not executed because customers were not allowed to use the broker's website to place orders in foreign stocks. Beyond a certain amount, orders were blocked and investors were required to contact customer service by telephone.

The customer, however, was unaware of this practice and was unable to find a reference to it on the website or in the broker's general terms and conditions. The mediation unit questioned the broker about the lack of information provided to customers about these restrictions, particularly about the fact that orders beyond a certain amount were blocked, and suggested that it take steps to provide customers with clear and complete information. The unit also drew the investment services provider's attention to the fact that placing orders through customer service could create significant additional costs for customers who had chosen a broker offering online order reception and transmission.

The broker agreed to follow the ombudsman's suggestions by quickly making the necessary changes to the information provided to its customers.

3 – Marketing

In 2011, the mediation unit once again received complaints about the marketing of financial products, such as CIS, bond products and equities.

a | CIS

The mediation unit is regularly contacted by retail investors who are unhappy about CIS investments made on the advice of their financial intermediary. These cases are examined in light of the provisions governing the obligations of financial intermediaries that market CIS.

The mediation unit reminds financial intermediaries that advise their customers on CIS investments that they must, in accordance with the provisions of Article 314-44 of the AMF General Regulation, make sure that the product offered meets the customer's investment goals. To do that, the intermediary must first ask the customer about his or her investment goals, including the purpose of the investment, the investment horizon, and risk tolerance.

The mediation unit once again received 23 mediation requests about a structured fund marketed in 2001 and 2002. A total of 446 cases were received between 2006 and the end of 2011, of which 375 have been closed. The institution in question offered compensation in 247 cases, ranging from a refund of subscription costs to the equivalent of the returns that would have been earned on a secure investment, such as a passbook savings account. In all, 78 customers refused their compensation offers, considering the amount insufficient and preferring to take the case to court.

The mediation success rate in these cases is 45%.

In one case involving the transfer of an equity savings plan, a retail investor sold the financial products in the plan's portfolio and invested in six in-house funds of the institution to which the plan was moved. This investment was made on the advice – followed up with marketing proposals – of the customer adviser of the institution in question. However, the make-up of the plan was completely changed by the sale of the financial products and purchase of in-house fund units. The appropriateness of these trades was challenged on the grounds of a failure to provide information and advice and the provision of an unsuitable service.

The mediation unit contacted the institution, citing the provisions governing the obligations of intermediaries that market CIS. The institution offered to pay compensation for the financial loss incurred when the CIS were sold. This offer led to the signature of a memorandum of understanding between the customer and the institution.

b | Redeemable subordinated notes

The mediation unit once again received requests relating to investments in redeemable subordinated notes. In one case, a couple followed the recommendations of their bank and invested in redeemable subordinated notes with a 12-year maturity, thinking that their capital was protected and could be accessed at any time without penalty. They said that they received no information about the specific details of the investment, particularly concerning the risks of capital loss in the event of early redemption.

On discovering the exact nature of their investment, they asked for the principal to be refunded, which their bank refused to do.

Following the mediation procedure, the complainants were reimbursed their investment, less the difference between the amount of interest received from the notes and the amount of interest that would have been received had they invested the amount in a passbook, namely €82,500.

4 – Discretionary mandates

A discretionary mandate is defined as a written agreement by which an investor gives full powers to a financial intermediary to manage a portfolio according to the terms of the agreement. A discretionary mandate is different from advisory management, which consists of order reception/transmission combined with investment advice that the investor is free to follow or ignore.

The AMF mediation unit is regularly contacted by retail investors on mandate-related issues, including questions about setting up, executing and terminating discretionary mandates.

a | Setting up discretionary mandates: ensuring a suitable service

In 2011, the mediation unit examined a number of cases pertaining to the unsuitability of proposed discretionary mandates (dynamic management, protected, etc.) relative to customer goals. A discretionary mandate must comply with the risk level indicated by the customer in the MiFID questionnaire and propose a strategic allocation consistent with the customer's expectations.

According to Article L. 533-13 of the Monetary and Financial Code, to provide the service of "discretionary portfolio management, [financial intermediaries] must ask their customers, and especially potential customers, about their investment knowledge and experience, financial situation and investment goals, in order to recommend suitable financial instruments or to manage their portfolio in a manner that is suited to their situation".

b | Executing discretionary mandates: the agent's responsibility

When they execute discretionary mandates, professionals are under a best-effort obligation and must therefore conduct management transactions in accordance with the objectives of the mandate, while ensuring that the customer's best interests are served. It is not enough for a managed portfolio merely to incur losses for a customer to claim that it has been mismanaged. A mediation process may be begun if other factors combined with incompetent management, negligent management or mismanagement to cause the losses, such as:

– failure to comply with the management objectives set out in the mandate;

– changes in the portfolio that are inconsistent with changes in benchmark market indicators;

– unwarranted portfolio turnover that does not serve the customer's interests and that is conducted solely to generate commissions.

For example, a manager cannot disregard a dynamic discretionary mandate for a long period. If he takes no action, then the existence of the service being offered and charged to the customer could be called into question.

c | Terminating discretionary mandates

In several cases submitted to the mediation unit, retail investors asked about the ability of their financial intermediaries to unilaterally terminate discretionary mandates on the grounds of customer interference in the management of the discretionary portfolio.

In a discretionary investment setting, financial intermediaries need considerable freedom to act because they are implementing an overall strategy whose balance could be threatened if customers are able to interfere at will. Investors who sign discretionary mandates must refrain from intervening regularly in the management of the portfolio covered by the mandate.

If customers do interfere in management, intermediaries may terminate the mandate on the grounds of Article 314-61 of the AMF General Regulation, which states that the mandate "may be terminated at any time by the client or the portfolio management company [financial intermediary]".

If the mandate is terminated by the customer, this does not necessarily lead to the closure of the securities account covered by the mandate. Retail investors should acquaint themselves with the procedures for closing accounts.

5 – Forex

Investors tell the regulator, through enquiries or reports, about suspicious direct marketing practices and dubious offers of investment services. These reports are filed by the victims of such practices, by investors seeking further information before buying products or by investors who merely wish to report their suspicions to the AMF to contribute to investor protection.

If the reported practices reach a certain scale and/or have caused other European regulators to issue alerts concerning activities conducted in their respective countries, the AMF publishes warnings on its website that are then picked up by the press.

A growing number of investors are tempted to invest in foreign exchange (forex), particularly influenced by the aggressive advertising methods used by the market players in question

The mediation unit systematically recommends that, before making contact, investors check that the ACP has authorised the company in question to provide the proposed services. Investors can go to www.regafi.fr to check whether a credit institution or investment firm has been approved. Information about approvals is available on the ACP website.

If the checks confirm that the company is engaged in unlawful practices, the mediation unit urges investors, in all circumstances – and particularly when it receives enquiries on this topic – not to respond to these investment proposals.

Similarly, the mediation unit urges investors to be on their guard and to keep abreast of news releases on this topic that are posted on the AMF website. It recommends that investors take care when using their trading accounts on the forex market. The mediation unit also stresses that, in the case of foreign firms operating on the forex market, contractual provisions often require that mediation requests be sent to the ombudsman of the company's home country.

Many other topics were also addressed alongside these key themes in 2011. For example, the mediation unit received queries about real estate investment companies, notably on the approval from holders for the acquisition of units in the secondary market and on GM resolutions covering proposed conversions into real estate CIS. Questions about the securities and deposit guarantee system also resurfaced with the resurgence of the financial crisis. In France, compensation is capped at €70,000 per person for lost securities and cash deposits linked to a securities account. The mediation unit told retail investors that they could consult the website of the *Fonds de garantie des dépôts et des titres* (Deposit and Securities Guarantee Fund) for more information.

E | REGULATORY DEVELOPMENTS IN MEDIATION IN 2011

1 – Domestic developments

At the end of 2011, Directive 2008/52/EC of 21 May 2008 on certain aspects of mediation in civil and commercial matters was transposed into French law by Executive Order 2011-1540 of 16 November 2011. Decree 2012-66 of 20 January 2012 created a book on out-of-court dispute settlement within the Code of Civil Procedure (Articles 1531 et seq.).

It is worth noting firstly that although the purpose of the directive was to establish a framework for cross-border mediation in civil and commercial matters only, France's authorities took the option provided of extending the regime to cover all mediation, internal as well as cross-border.

Furthermore, for the most part, the new provisions merely enshrine France's existing non-judicial mediation practices. They also give a very broad definition for the mediation process, calling it "any structured process, however named, whereby two or more parties attempt to reach an agreement on amicable settlement of their dispute, with the assistance of a third party, the mediator, chosen by them or appointed, with their agreement, by the judge seised to settle the dispute". The new definition thus captures a variety of practices governed by a wide range of legislation, including court-ordered and non-judicial mediation, family mediation and legal conciliation.

The main shared requirements that apply to these different arrangements are that, to ensure effectiveness, the ombudsman should carry out his duties in an impartial, competent and diligent way (Article 21-2 of the Executive Order). In addition, the mediation process should be confidential.

Article 21-3 of the Executive Order, to which the new Article 1531 of the Code of Civil Procedure makes express reference, restates the principle of confidentiality, which should provide assurance to the parties to disputes that the findings of the ombudsman or statements gathered during the mediation process "may not be disclosed to third parties; nor may they be raised or produced in connection with judicial proceedings or arbitration". This rule does however allow two exceptions: first, if the existence or contents of the mediation-brokered agreement need to be revealed to implement or enforce the agreement; second, if there are overriding considerations of public policy.

However, in the event that mediation fails, this wording will not prevent the parties from presenting evidence in court that they would have produced had mediation not taken place. In other words, the right of access to the courts is maintained(3).

The new legislation expressly provides for an additional benefit that will be helpful to mediation agreements that include, for example, staggered execution over time. Specifically, the parties to disputes can ask a judge to approve an agreement and make it enforceable. The approved agreement will thus become an "enforceable title", within the meaning of the Act of 9 July 1991 reforming civil enforcement procedures, i.e. a title that a creditor may use to enforce claims over the debtor's assets.

Some commentators were disappointed that neither the new directive nor the Executive Order retained the notion that mediators should be independent, instead requiring them only to be impartial. As a former French Justice Minister once remarked, "impartiality is a virtue, but independence is a status". Plainly, the main concern of the public authorities in this respect, as illustrated in the report submitted to the President of the Republic, was to maintain flexibility in the exercise of mediation, deeming that the requirement to have no preference for one or other party would be sufficient guarantee for the parties to a dispute.

Finally, since the government wanted to use the transposition of the directive as an opportunity to improve the mediation regime, the first article of the Executive Order provides for a complete overhaul of the rules in the Code of Civil Procedure taken from Act 95-125 of 8 February 1995, which previously applied only to court-ordered mediation and judicial conciliators. The new regulations will also cover mediation and conciliation not conducted by a judge in charge of settling a dispute. In other words, the provisions will cover all mediation in disputes under private law (civil, commercial, welfare) or non-sovereign administrative law. In the latter area, however, and for some labour law disputes, only cross-border mediation is concerned.

2 – European developments

a | Resolution on implementation of Directive 2008/52/EC

On 13 September 2011, the European Parliament adopted a resolution on the implementation of Directive 2008/52/EC of 21 May 2008 on mediation in Member States, citing the need, in particular, to improve awareness and understanding of mediation.

(3) To guarantee the right of access to the courts, Article L. 621-19 of the Monetary and Financial Code, which governs AMF mediation, provides expressly that referring a case to the ombudsman suspends the limitation period for civil and administrative action and that the limitation period resumes when the ombudsman announces that mediation is finished. This suspension rule has been adopted generally for all mediation conducted under Article 2238 of the Civil Code, which is taken from the Act of 17 June 2008.

The European Commission has twice in the past adopted recommendations on out-of-court settlement of consumer disputes:

– Recommendation 98/257/EC of 30 March 1998, which established the principles applicable to the bodies responsible for the out-of-court settlement of consumer disputes, namely independence, confidentiality, transparency, the adversarial principle, effectiveness (unrestricted access to the procedure, no charge, swift processing), legality and liberty. Mediation should be a voluntary process that the two parties are free to leave at any time. This recommendation concerned only procedures that lead to dispute settlement through the active involvement of a third party who proposes or imposes a solution;

– Recommendation 2001/310/EC of 4 April 2001 on the principles for out-of-court bodies involved in the consensual resolution of disputes, which covered procedures that merely involve an attempt to bring the parties together to convince them to find a solution by common consent.

b | Creation of networks for out-of-court dispute settlement

At EU level, the European Commission has set up two networks for out-of-court dispute settlement: the European Consumer Centres Network (ECC-NET) and the Financial Dispute Resolution Network (FIN-NET), which comprises out-of-court settlement bodies that handle cross-border disputes between financial services providers and their customers.

FIN-NET was created by a European Council Resolution on 25 May 2000. Under this mechanism, the Commission is notified of all national bodies responsible for out-of-court settlement and mediation that comply with the principles of the 1998 and 2001 Recommendations

Following notification to the Commission, the AMF ombudsman participates regularly in FIN-NET, where she is a member of the steering committee.

c | Promoting mediation through the Club of Public Service Ombudsmen

Since February 2007, the AMF ombudsman has been a member of this informal club, created in April 2002 to discuss practices, reflect on issues and make proposals for promoting mediation both in France and at European level, since some of the Club members are also FIN-NET members.

It participated in the debate on transposing the directive on certain aspects of civil and commercial mediation and also contributed to the creation of the Consumer Mediation Commission.

Appendices

Executive Order 2011-1540 of 16 November 2011 transposing Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters

NOR: JUSC1117339R

The President of the Republic

Acting on a report from the Prime Minister and the Keeper of the Seals, Minister of Justice and Liberties,

Having regard the Constitution, particularly Article 38;

Having regard to Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters;

Having regard to the administrative justice code;

Having regard to Act 68-1250 of 31 December 1968, as amended, on the limitation period for claims on central government, départements, communes and public corporations;

Having regard to Act 91-647 of 10 July 1991, as amended, on legal aid;

Having regard to Act 91-650 of 9 July 1991, as amended, relating to the reform of civil execution proceedings, particularly Article 3;

Having regard to Act 95-125 of 8 February 1995, as amended, relating to the organisation of the courts and to criminal, civil and administrative procedure;

Having regard to Act 2011-525 of 17 May 2011 relating to simplifying and improving the quality of the law, particularly Article 198;

Having regard to the opinion of Conseil supérieur de la prud'homie issued on 9 September 2011;

Having consulted the Conseil d'État;

Having consulted the council of ministers,

Hereby orders:

ARTICLE 1

Chapter I, Title II of the aforementioned Act of 8 February 1995 shall be replaced with the following chapter:

"Chapter I

Mediation

• Section 1: general provisions

Art. 21.- For the purposes of this chapter, mediation is any structured process, however named, whereby two or more parties attempt to reach an agreement on amicable settlement of their dispute, with the assistance of a third party, the mediator, chosen by them or appointed, with their agreement, by the judge seised to settle the dispute.

Art. 21-1.- Mediation is subject to general rules, which are the subject of this section, without prejudice to supplemental rules specific to some types of mediation or to some ombudsmen.

Art. 21-2.- The mediator carries out his duties in an impartial, competent and diligent way.

Art. 21-3.- Unless the parties agree otherwise, mediation is subject to the principle of confidentiality.

The observations of the mediator and the statements taken during mediation may not be disclosed to third parties; nor may they be raised or produced in connection with judicial proceedings or arbitration without the consent of the parties.

An exception to the previous paragraphs shall be made in the following two cases:

a) In the event of overriding considerations of public policy or motives relating to the protection of the best interests of children or a person's physical or psychological integrity;

b) Where revealing the existence or disclosing the content of the agreement resulting from mediation is necessary in order to implement or enforce that agreement.

Where the mediator is appointed by a judge, he informs the judge as to whether the parties have or have not reached an agreement.

Art. 21-4.- The agreement reached by the parties may not affect any rights that they may not freely alienate.

Art. 21-5.- The agreement reached by the parties may be subject to the approval of the judge, which makes it enforceable.

• Section 2: court-related mediation

Art. 22.- The judge may, with the consent of the parties, appoint a judicial mediator to proceed with mediation at any state of the procedure, including proceedings for interim measures. Such consent shall be obtained as set forth in a decree issued following consultation with the Conseil d'État.

Art. 22-1.- A mediator cannot be appointed by the judge to make the preliminary attempts at settlement specified by law in the matter of divorce and judicial separation.

In the other cases of preliminary attempts at settlement specified by law, the judge may, if he has not obtained the consent of the parties, order them to meet with a mediator whom he appoints and who meets the conditions set forth in a decree issued following consultation with the Conseil d'État. The mediator informs the parties of the purpose and execution of events in a mediation measure.

Art. 22-2.- Where the parties bear the costs of mediation, they shall freely determine between themselves how those costs should be broken down.

Failing an agreement, the costs will be shared equally, unless the judge considers that such a breakdown is unfair in light of the parties' economic situation.

Where one of the parties has been awarded legal aid, the breakdown of mediation costs is established according to the rules in the above paragraph. The costs falling to the legal aid recipient are borne by the State, subject to the provisions of Article 50 of the Act of 10 July 1991 on legal aid.

The judge sets the amount of the advance on the mediator's remuneration and designates the party or parties that will deposit the advance with the court within a time period he determines. The appointment of the mediator is null and void if the advance is not deposited in accordance with the given time period and arrangements. The proceeding is then resumed.

Art. 22-3.- The length of the mediation assignment is set by judge, but cannot exceed a period determined in a decree issued following consultation with the Conseil d'État.

The judge may, however, renew the mediation assignment. He may also terminate it before the end of the period he has set, on his own initiative or at the request of the mediator or one of the parties.

- **Section 3: final provisions**

Art. 23.- The provisions of this chapter do not apply to criminal proceedings.

Art. 24.- The provisions of Articles 21 to 21-5 do not apply to non-judicial mediation used in disputes arising in connection with an employment contract, unless these disputes are of a cross-border nature.

For the purposes of this article, a cross-border dispute is one in which, on the date that mediation is used, at least one of the parties is domiciled or habitually resident in a Member State of the European Union other than France and at least one other party is domiciled or habitually resident in France.

A cross-border dispute also includes the case where judicial proceedings or arbitration are initiated in France between parties having previously used mediation, all of whom are domiciled or reside habitually in another Member State of the European Union on the date when they used mediation.

Art. 25.- A decree issued following consultation with the Conseil d'État shall determine how the conditions of this chapter are to be implemented."

ARTICLE 2

The following Chapter I(b) has been inserted into Title VII, Book VII, of the legislative sections of the administrative justice code:

"Chapter I(b)

Mediation

Art. L. 771-3.- Cross-border disputes coming within the jurisdiction of the administrative courts, excluding those where one of the parties wields a prerogative of State authority, may be subject to mediation as provided for in Articles 21, 21- 2 to 21- 4 of Act 95- 125 of 8 February 1995 relating to the organisation of the courts and to criminal, civil and administrative procedure.

For the purposes of this article, a cross-border dispute is one in which, on the date that mediation is used, at least one of the parties is domiciled or habitually resident in a Member State of the European Union other than France and at least one other party is domiciled or habitually resident in France.

A cross-border dispute also includes the case where judicial proceedings or arbitration are initiated in France between parties having previously used mediation, all of whom are domiciled or reside habitually in another Member State of the European Union on the date when they used mediation.

Art. L. 771-3-1.- The courts governed by this code, seised of a dispute as provided in Article L. 771-3 and having obtained the consent of the parties, may order mediation in an attempt to reach an agreement between them.

Art. L. 771-3-2.- When asked to make a finding in this regard, the court may, whenever a mediation process has been initiated pursuant to this chapter, approve the agreement resulting from mediation and make it enforceable".

ARTICLE 3

An Article 2-1 is inserted after Article 2 of the Act of 31 December 1968 on the limitation period for claims on central government, départements, communes and public corporations:

"Art. 2-1.- The limitation period is suspended as from the day when, after a dispute has arisen, the parties agree to use mediation or, failing a written agreement, as from the first mediation meeting.

The limitation period may not be suspended for more than six months.

The limitation period recommences, for no less than six months, as from the date on which either at least one of the parties or the mediator declares that mediation is terminated.

This article applies only to mediation taking place in the cases provided for in Article L. 771- 3 of the administrative justice code."

ARTICLE 4

Point 1 of Article 3 of the Act of 9 July 1991 is replaced by the following provisions:

"1° Enforceable decisions of courts within the judicial branch or the administrative branch, as well as the agreements these courts have made enforceable".

ARTICLE 5

Agreements reached following mediation initiated between 21 May 2011 and the entry into force of Order 2011-1540 of 16 November 2011 transposing Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters, and that meet the conditions of Articles 21-2 to 21-4 of the Act of 8 February 1995, in the drafting resulting from this Order, may be approved.

ARTICLE 6

The Prime Minister and the Keeper of the Seals, Minister of Justice and Liberties are responsible, each for their own part, for application of this Order, which will be published in the Official Journal of the French Republic.

Done on 16 November 2011

Nicolas Sarkozy

By the President of the Republic

The Prime Minister,

François Fillon

the Keeper of the Seals, Minister of Justice and Liberties

Michel Mercier

Extract

Decree 2012- 66 of 20 January 2012 on amicable settlement(1)

CHAPTER I: PROVISIONS ON AMICABLE SETTLEMENT

Section 1: Provisions amending the civil procedure code

ARTICLE 1

The civil procedure code is amended in accordance with Articles 2 to 6.

ARTICLE 2

A Book V, worded as below, has been reinstated:

"BOOK V – AMICABLE SETTLEMENT OF DISPUTES

Art. 1528.- The parties to a dispute may, on their initiative and in accordance with the conditions of this Book, seek to settle the dispute amicably with the assistance of a mediator, a judicial conciliator or, in the case of participative proceedings, their lawyers.

Art. 1529.- The provisions of this Book apply to disputes coming within the jurisdiction of courts within the judicial branch ruling on civil, commercial, social or rural matters, subject to the special rules applicable to each matter and the provisions specific to each court.

These provisions apply to industrial tribunals subject to the exceptions provided for in Article 2064 of the civil code and Article 24 of the Act of 8 February 1995 relating to the organisation of the courts and to criminal, civil and administrative procedure.

TITLE I – NON-JUDICIAL MEDIATION AND CONCILIATION

Art. 1530.- Non-judicial mediation and conciliation, as governed by this title, pursuant to Articles 21 and 21-2 of the aforementioned Act of 8 February 1995, mean a structured process whereby two or more parties attempt to reach an agreement, outside any legal proceedings with a view to amicable settlement of their disputes, with the assistance of a third party chosen by them who carries out his duties in an impartial, competent and diligent way.

Art. 1531.- Non-judicial mediation and conciliation are subject to the principle of confidentiality under the terms and in accordance with the procedures set forth in Article 21- 3 of the aforementioned Act of 8 February 1995.

Chapter I – Non-judicial mediation

Art. 1532.- The mediator may be a natural or legal person.

Where the mediator is a legal person, he appoints, with the consent of the parties, the natural person in charge of conducting the mediation assignment.

(1) Available in full in French at:
http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000025179010&dateTexte=&categorieLien=id

Art. 1533.- The mediator and, where such is the case, the person referred to in the second paragraph of Article 1532, must meet the following conditions:

1° Not have been convicted, disqualified or barred, as referred to in Section 3 of the criminal record sheet;

2° Possess, by virtue of present or past activity, the skill needed with regard to the nature of the dispute, or provide evidence of training or experience, as the case may be, that is appropriate to mediation.

Art. 1534.- The request to approve the agreement resulting from mediation is presented to the judge by application from all the parties to the mediation or by one of them, with the specific consent of the others.

Art. 1535.- Where the agreement resulting from mediation has been made enforceable by a court or an authority of another Member State of the European Union in accordance with Article 6 of Directive 2008/52/EC of 21 May 2008 of the European Parliament and of the Council on certain aspects of mediation in civil and commercial matters, it is recognised and declared enforceable in France as provided in Articles 509- 2 to 509- 7.

Chapter II
Conciliation conducted by a judicial conciliator

Art. 1536.- Any natural or legal person can go informally to the judicial conciliator instituted by the decree of 20 March 1978 on judicial conciliators.

Art. 1537.- The judicial conciliator invites the parties concerned, where appropriate, to appear before him.
They may be accompanied by a person of full age, who provides proof of his identity.

Art. 1538.- The judicial conciliator, with the consent of the parties concerned, may go to interview any persons whom he considers ought to be heard, provided they accept.

Art. 1539.- The judicial conciliator, with the consent of the parties, may seek the assistance of another judicial conciliator under the jurisdiction of the appeal court. When the parties meet, the judicial conciliators may exchange information on the requests that have been referred to them. The instrument in which the parties' agreement is recorded is signed by both judicial conciliators.

Art. 1540.- In the event of conciliation, even partial, a memorandum of agreement may be drawn up and signed by the parties and the judicial conciliator. The conciliation may also be written into a memorandum signed by one or several of the parties where one or several of them have formalised the terms of the agreement to which they have consented in an instrument they sign and draw up outside the presence of the judicial conciliator. In this case, it is up to the judicial conciliator to sign the instrument in the memorandum and append it thereto.

It is mandatory to draw up a memorandum when the effect of the conciliation is to waive a right.

A copy of the memorandum is given to each party concerned. The judicial conciliator also files a copy with the clerk of the district court without delay.

Art. 1541.- The request to approve the memorandum of agreement is presented to the district court judge by application from one of the parties unless one of them opposes approval in the instrument recording his consent.

However, when conciliation puts an end to a cross-border dispute, the application is presented by all the parties or by one of them, upon evidence of the express consent of the other parties. That consent may be contained in the memorandum of agreement.

A cross-border dispute is one in which, on the date that conciliation is used, at least one of the parties is domiciled or habitually resident in a Member State of the European Union other than France and at least one other party is domiciled or habitually resident in France."

OFFICIAL JOURNAL L 115 , 17/04/1998 P. 0031 - 0034

98/257/EC: Commission Recommendation of 30 March 1998 on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes (Text with EEA relevance)[1]

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community and in particular Article 155 thereof,

Whereas the Council, in its conclusions approved by the Consumer Affairs Council of 25 November 1996, emphasised the need to boost consumer confidence in the functioning of the internal market and consumers' scope for taking full advantage of the possibilities offered by the internal market, including the possibility for consumers to settle disputes in an efficient and appropriate manner through out-of-court or other comparable procedures;

Whereas the European Parliament, in its resolution of 14 November 1996[2], stressed the need for such procedures to meet minimum criteria guaranteeing the impartiality of the body, the efficiency of the procedure and the publicising and transparency of proceedings and called on the Commission to draft proposals on this matter;

Whereas most consumer disputes, by their nature, are characterised by a disproportion between the economic value at stake and the cost of its judicial settlement; whereas the difficulties that court procedures may involve may, notably in the case of cross-border conflicts, discourage consumers from exercising their rights in practice;

Whereas the "Green Paper on the access of consumers to justice and the settlement of consumer disputes in the single market"[3] was the subject of wide-ranging consultations whose results have confirmed the urgent need for Community action with a view to improving the current situation;

Whereas the experience gained by several Member States shows that alternative mechanisms for the out-of-court settlement of consumer disputes - provided certain essential principles are respected - have had good results, both for consumers and firms, by reducing the cost of settling consumer disputes and the duration of the procedure;

Whereas the adoption of such principles at European level would facilitate the implementation of out-of-court procedures for settling consumer disputes; whereas, in the case of cross-border conflicts, this would enhance mutual confidence between existing out-of-court bodies in the different Member States and strengthen consumer confidence in the existing national procedures; whereas these criteria will make it easier for parties providing out-of-court settlement services established in one Member State to offer their services in other Member States;

Whereas one of the conclusions of the Green Paper concerned the adoption of a Commission recommendation with a view to improving the functioning of the ombudsman systems responsible for handling consumer disputes;

Whereas the need for such a recommendation was stressed during the consultations on the Green Paper and was confirmed during the consultation on the "Action Plan" communication[4] by a very large majority of the parties concerned;

(1) A communication on the out-of-court settlement of consumer disputes was adopted by the Commission on 30 March 1998. This communication, which includes this recommendation and the European consumer complaint form, is available on the Internet (http://europa.eu.int/comm/dg24).

(2) European Parliament resolution on the Commission communication "Action plan on consumer access to justice and the settlement of consumer disputes in the internal market" of 14 November 1996 (OJ C 362, 2. 12. 1996, p. 275).

(3) COM(93) 576 final of 16 November 1993.

(4) Action Plan on consumer access to justice and the settlement of consumer disputes in the internal market, COM(96) 13 final of 14 February 1996.

OFFICIAL JOURNAL L 115 , 17/04/1998 P. 0031 - 0034

Whereas this recommendation must be limited to procedures which, no matter what they are called, lead to the settling of a dispute through the active intervention of a third party, who proposes or imposes a solution; whereas, therefore, it does not concern procedures that merely involve an attempt to bring the parties together to convince them to find a solution by common consent;

Whereas the decisions taken by out-of-court bodies may be binding on the parties, may be mere recommendations or may constitute settlement proposals which have to be accepted by the parties; whereas for the purposes of this recommendation these various cases are covered by the term "decision";

Whereas the decision-making body's impartiality and objectivity are essential for safeguarding the protection of consumer rights and for strengthening consumer confidence in alternative mechanisms for resolving consumer disputes;

Whereas a body can only be impartial if, in exercising its functions, it is not subject to pressures that might sway its decision; whereas, therefore, its independence must be guaranteed without this implying the need for guarantees that are as strict as those designed to ensure the independence of judges in the judicial system;

Whereas, when the decision is taken by an individual, the decision-maker's impartiality can only be assured if he can demonstrate that he possesses the necessary independence and qualifications and works in an environment which allows him to decide on an autonomous basis; whereas this requires the person to be granted a mandate of sufficient duration, in the course of which he cannot be relieved of his duties without just cause;

Whereas, when the decision is taken by a group, equal participation of representatives of consumers and professionals is an appropriate way of ensuring this independence;

Whereas, in order to ensure that the persons concerned receive the information they need, the transparency of the procedure and of the activities of the bodies responsible for resolving the disputes must be guaranteed; whereas the absence of transparency may adversely affect the rights of the parties and cause misgivings as to out-of-court procedures for resolving consumer disputes;

Whereas certain interests of the parties can only be safeguarded if the procedure allows them to express their viewpoints before the competent body and to acquaint themselves with the facts presented by the opposing party and, where applicable, the experts' statements; whereas this does not necessarily necessitate oral hearings of the parties;

Whereas out-of-court procedures are designed to facilitate consumer access to justice; whereas, therefore, if they are to be effective, they must remedy certain problems associated with court procedures, such as high fees, long delays and cumbersome procedures;

Whereas, in order to enhance the effectiveness and equity of the procedure, the competent body must play an active role which allows it to take into consideration any element useful in resolving the dispute; whereas this active role is all the more important when, in the framework of out-of-court procedures, the parties in many cases do not have the benefit of legal advice;

Whereas the out-of-court bodies may decide not only on the basis of legal rules but also in equity and on the basis of codes of conduct; whereas, however, this flexibility as regards the grounds for their decisions should not lead to a reduction in the level of consumer protection by comparison with the protection consumers would enjoy, under Community law, through the application of the law by the courts;

Whereas the parties are entitled to be informed of the decisions handed down and of grounds for these decisions; whereas the grounds for decisions are a prerequisite for transparency and the parties' confidence in the operation of out-of-court procedures;

OFFICIAL JOURNAL L 115 , 17/04/1998 P. 0031 - 0034

Whereas in accordance with Article 6 of the European Human Rights Convention, access to the courts is a fundamental right that knows no exceptions; whereas since Community law guarantees free movement of goods and services in the common market, it is a corollary of those freedoms that operators, including consumers, must be able, in order to resolve any disputes arising from their economic activities, to bring actions in the courts of a Member State in the same way as nationals of that State; whereas out-of-court procedures cannot be designed to replace court procedures; whereas, therefore, use of the out-of-court alternative may not deprive consumers of their right to bring the matter before the courts unless they expressly agree to do so, in full awareness of the facts and only after the dispute has materialised;

Whereas in some cases, and independently of the subject and value of the dispute, the parties and in particular the consumer, as the party who is regarded as economically weaker and less experienced in legal matters than the other party to the contract, may require the legal advice of a third party to defend and protect their rights more effectively;

Whereas, in order to ensure a level of transparency and dissemination of information on out-of-court procedures in line with the principles set out in the recommendation and to facilitate networking, the Commission intends to create a database of the out-of-court bodies responsible for resolving consumer disputes that offer these safeguards; whereas the database will contain particulars communicated to the Commission by the Member States that wish to participate in this initiative; whereas, to ensure standardised information and to simplify the transmission of these data, a standard information form will be made available to the Member States;

Whereas, finally, the establishment of minimum principles governing the creation and operation of out-of-court procedures for resolving consumer disputes seems, in these circumstances, necessary at Community level to support and supplement, in an essential area, the initiatives taken by the Member States in order to realise, in accordance with Article 129a of the Treaty, a high level of consumer protection; whereas it does not go beyond what is necessary to ensure the smooth operation of out-of-court procedures; whereas it is therefore consistent with the principle of subsidiarity,

RECOMMENDS:

that all existing bodies and bodies to be created with responsibility for the out-of-court settlement of consumer disputes respect the following principles:

I | Principle of independence

The independence of the decision-making body is ensured in order to guarantee the impartiality of its actions.

When the decision is taken by an individual, this independence is in particular guaranteed by the following measures:

– the person appointed possesses the abilities, experience and competence, particularly in the field of law, required to carry out his function,

– the person appointed is granted a period of office of sufficient duration to ensure the independence of his action and shall not be liable to be relieved of his duties without just cause,

– if the person concerned is appointed or remunerated by a professional association or an enterprise, he must not, during the three years prior to assuming his present function, have worked for this professional association or for one of its members or for the enterprise concerned.

When the decision is taken by a collegiate body, the independence of the body responsible for taking the decision must be ensured by giving equal representation to consumers and professionals or by complying with the criteria set out above.

OFFICIAL JOURNAL L 115 , 17/04/1998 P. 0031 - 0034

II | Principle of transparency

Appropriate measures are taken to ensure the transparency of the procedure. These include:

1. provision of the following information, in writing or any other suitable form, to any persons requesting it:

– a precise description of the types of dispute which may be referred to the body concerned, as well as any existing restrictions in regard to territorial coverage and the value of the dispute,

– the rules governing the referral of the matter to the body, including any preliminary requirements that the consumer may have to meet, as well as other procedural rules, notably those concerning the written or oral nature of the procedure, attendance in person and the languages of the procedure,

– the possible cost of the procedure for the parties, including rules on the award of costs at the end of the procedure,

– the type of rules serving as the basis for the body's decisions (legal provisions, considerations of equity, codes of conduct, etc.),

– the decision-making arrangements within the body,

– the legal force of the decision taken, whereby it shall be stated clearly whether it is binding on the professional or on both parties. If the decision is binding, the penalties to be imposed in the event of non-compliance shall be stated, as shall the means of obtaining redress available to the losing party.

2. Publication by the competent body of an annual report setting out the decisions taken, enabling the results obtained to be assessed and the nature of the disputes referred to it to be identified.

III | Adversarial principle

The procedure to be followed allows all the parties concerned to present their viewpoint before the competent body and to hear the arguments and facts put forward by the other party, and any experts' statements.

IV | Principle of effectiveness

The effectiveness of the procedure is ensured through measures guaranteeing:

– that the consumer has access to the procedure without being obliged to use a legal representative,

– that the procedure is free of charges or of moderate costs,

– that only short periods elapse between the referral of a matter and the decision,

– that the competent body is given an active role, thus enabling it to take into consideration any factors conducive to a settlement of the dispute.

V | Principle of legality

The decision taken by the body may not result in the consumer being deprived of the protection afforded by the mandatory provisions of the law of the State in whose territory the body is established. In the case of cross-border disputes, the decision taken by the body may not result in the consumer being deprived of the protection afforded by the mandatory provisions applying under the law of the Member State in which he is normally resident in the instances provided for under Article 5 of the Rome Convention of 19 June 1980 on the law applicable to contractual obligations.

OFFICIAL JOURNAL L 115 , 17/04/1998 P. 0031 - 0034

All decisions are communicated to the parties concerned as soon as possible, in writing or any other suitable form, stating the grounds on which they are based.

VI | Principle of liberty

The decision taken by the body concerned may be binding on the parties only if they were informed of its binding nature in advance and specifically accepted this.

The consumer's recourse to the out-of-court procedure may not be the result of a commitment prior to the materialisation of the dispute, where such commitment has the effect of depriving the consumer of his right to bring an action before the courts for the settlement of the dispute.

VII | Principle of representation

The procedure does not deprive the parties of the right to be represented or assisted by a third party at all stages of the procedure.

THIS RECOMMENDATION is addressed to the bodies responsible for the out-of-court settlement of consumer disputes, to any natural or legal person responsible for the creation or operation of such bodies, as well as to the Member States, to the extent that they are involved.

Done at Brussels, 30 March 1998.

For the Commission

Emma Bonino

Member of the Commission

Monetary and Financial Code

Article L. 621-19

The Autorité des marchés financiers is authorised to deal with claims from any interested party relating to matters within its competence and to resolve them appropriately. Where the conditions so permit, it proposes a friendly settlement of the disputes submitted to it, via arbitration or mediation.

A referral to the Autorité des marchés financiers seeking extrajudicial settlement of a dispute shall suspend limitation of any civil or administrative action. Said limitation shall resume when the Autorité des Marchés Financiers announces the close of the mediation procedure.

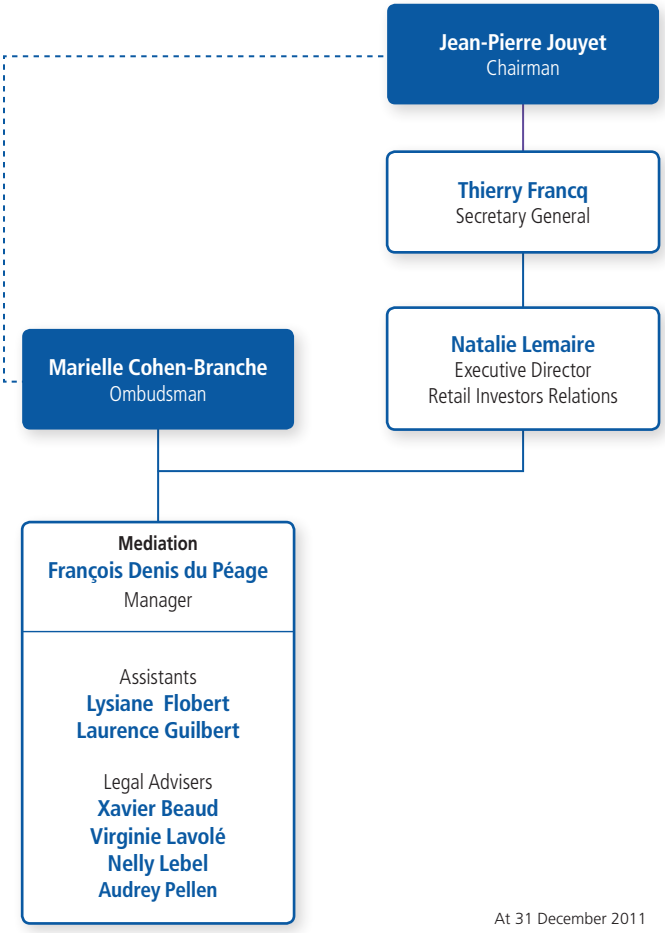
The Autorité des marchés financiers cooperates with its foreign counterparts to facilitate extrajudicial settlement of cross-border disputes.

It may formulate proposals for amendments to the laws and regulations concerning the information provided to the holders of financial instruments and to the public, the markets in financial instruments and in assets referred to in paragraph II of Article 421-1 and the status of the investment service providers.

Each year, it draws up a report to the President of the Republic and to Parliament which is published in the Official Journal of the French Republic. Said report presents, in particular, the changes to the regulatory framework of the European Union applicable to the financial markets and reviews the cooperation with the regulatory authorities of the European Union and of the other Member States.

The Chairman of the Autorité de contrôle prudentiel shall be heard by the Finance Commissions of the two Assemblies if they so request and may ask to be heard by them.

Mediation Unit Chart



At 31 December 2011

Mediation Charter

Article L. 621-19 of the Monetary and Financial Code states: "The Autorité des marchés financiers is authorised to receive claims relating to matters that fall within its jurisdiction from any interested party, and to deal with them appropriately.

When relevant, it proposes an out-of-court settlement of the disputes brought to its attention, via conciliation or mediation.

Submitting a dispute to the Autorité des marchés financiers (AMF) to find an out-of-court settlement shall entail suspension of the statute of limitations for civil and administrative proceedings. It starts to run again when the Autorité des marchés financiers declares the mediation as ended.

The Autorité des marchés financiers cooperates with foreign stock market regulators in the resolution of cross-border disputes."

Under this text, the Ombudsman receives and examines mediation requests submitted to the Autorité des marchés financiers.

Impartiality of the ombudsman

As part of the Autorité des marchés financiers, an independent public authority, the ombudsman is endowed with the necessary means to carry out mediation in a neutral and impartial manner. The ombudsman has its own budget. It cannot receive orders concerning the individual cases handled under its responsibility.

Contacting the ombudsman

Direct access to the ombudsman is guaranteed and contact information is easy to obtain. The ombudsman may be contacted by any individual or legal entity disputing an individual claim that comes under the jurisdiction of the Autorité des marchés financiers. The mediation process is free of charge.

Prior action

A claim may only be brought to the attention of the ombudsman when a prior action has been taken against the investment services provider or issuer, and the complaint has remained unanswered or has been rejected either totally or partially.

The mediation process

The ombudsman may only undertake the mediation procedure with the consent of both parties.

In principle, mediation lasts three months from the time when all useful evidence has been supplied to the ombudsman by the parties.

The mediation procedure is an adversarial procedure. It is carried out in writing, but the ombudsman may decide to hear the parties separately or together.

The ombudsman and the parties are bound by the strictest obligations of confidentiality.

Legal action

Both parties retain the right to bring the dispute in front of the courts at any time. Should this be the case, any exchange that has taken place during the mediation procedure may not be used or submitted to the courts.

End of the mediation procedure

The mediation procedure ends either by an out-of-court settlement, or by the statement of a persistent disagreement, or the withdrawal of one of the parties. Whatever the outcome of the procedure, the ombudsman informs the parties, in writing, of the end of its intervention.

Public notice and annual report

AMF media publications provide the public with the opportunity to learn about the mediation process and provide instructions on how to contact the ombudsman. An annual report reviewing the ombudsman's mediation activities is submitted to the AMF Board for publication.

Contacts

How to contact the ombudsman?

Madame Marielle Cohen-Branche
Autorité des marchés financiers
17, place de la Bourse – 75082 Paris Cedex 02
www.amf-france.org – Ombudsman Section

ISBN : 978-2-11-129720-3 – Conception et réalisation : POLYNOME – +33 (0)1 41 49 04 04

AUTORITÉ
DES MARCHÉS FINANCIERS
AMF

17, place de la Bourse
75082 Paris Cedex 02 - France
Tél. : 01 53 45 60 00
Fax : 01 53 45 61 00