

INTERIM REVIEW and PERSPECTIVES
for the AMF Strategic Plan published in 2009

The purpose of the publication of the AMF Strategic Plan in summer 2009, against a backdrop of financial crisis, was to get the institution into battle order for profound reform of the national and international financial regulation system. Since then, the meetings of the G20 and the European and national regulatory agenda have only gone to confirm the initial orientations of the plan and the pertinence of the three strategies adopted in it:

- enhance investment protection and bolster the confidence of individual investors ,
- improve market supervision and the functioning of enforcement,
- contribute to efforts to increase the attractiveness and functioning of French markets.

Two years on, it seemed useful to the Autorité des Marchés Financiers to conduct a first interim review of the action already taken and the first results, and to seek to outline the perspectives for the last two years of implementation of the plan.

I REVIEW

Strategy 1: enhance investment protection and bolster the confidence of individual investors

=> Closer supervision of financial product distribution and investor communication practices

- Creation in May 2010 of a new Retail Investor Relations Division (DREP) within the Authority.
- Creation of a joint unit between the AMF and the Autorité de Contrôle Prudentiel (ACP) for the purpose of coordinating, within the scope of their respective remits, the action of the two Authorities in the field of retail investment product distribution. Within the framework of this joint unit, the AMF set up a multichannel information platform for retail investors under the name of Investor Information Service ("Epargne Info Service") organised around a call centre set up by the joint unit; the two Authorities have also coordinated joint distribution practice audits and the publication of doctrine on retail investment product distribution.
- Organisation by the Retail Investor Relations Division of mystery visits to gain a better understanding of product distributor practice.
- Creation of a legal obligation to check on the minimum knowledge requirements of financial product sellers to contribute to the quality of advice provided to retail investors.

=> Bolster the confidence of shareholders, and in particular minority shareholders

- The AMF has played an active role in corporate governance, transparency of financial disclosure, and the fight against creeping takeover practices. On the occasion of the publication of its annual reports on corporate governance and internal control, it has come out in favour of greater diversity on boards, clarification of the notion of director independence and increased transparency of directors' pay. It has also contributed to structuring reflection on the marketplace in such key fields as the functioning of audit committees or social and environmental information disclosure.
- The AMF has supported the emergence of a Corporate Governance Code adapted to SMEs and written up by Middlednext.
- In the combat against creeping takeovers and in favour of financial disclosure transparency, the AMF has organised the regulatory implementation of the lowering to 30% of the mandatory bid trigger threshold provided for by the Banking and Financial regulation Act, set up organised cooperation with the Autorité des Normes Comptables (ANC) and the Haut Conseil du Commissariat aux Comptes (H3C), and taken part in the creation of the French association of valuation experts.
- Several decisions of the Enforcement Commission have provided reminders of loyalty and transparency requirements in this field.

Strategy 2: improve market supervision and the functioning of enforcement, from detecting risks through to organising inspection, investigation and enforcement procedures, including supervision of market participants

Over the last 10 months, action has been taken by the Government and Parliament to support the initiatives taken by the AMF and enhance the enforcement process of the Autorité des Marchés Financiers. More particularly, the investigation and enforcement procedures have been modified by the publication of the Banking and Financial Regulation Act to improve their efficiency.

=> Supervision, inspection and investigations

- Extension of the scope of transactions covered by the automated supervision system of the AMF, in particular to OTC markets in shares, and markets in bonds and credit derivatives.
- The AMF has introduced a risk-based approach to its market supervision and financial intermediary control practices. It has set up a risk committee whose role is to identify risky practice and trends on markets and provide all the divisions of the Authority with a coordinated risk policy.
- Finally, the AMF has contributed extensively to defining a national and European framework for CO₂ emissions allowance markets and signed a memorandum of understanding to organise joint supervision of energy markets with the Commission de Régulation de l'Energie.
- Concerning inspection, the AMF has stepped up its enforcement action by carrying out more inspections, and above all inspections that are better targeted on identified risk areas. It may be observed that the number of statements of objections further to inspections has increased significantly.
- Concerning the fight against money laundering and terrorist financing, the AMF has reinforced its service provider control system and participated actively in the evaluation of France by the FATF, which culminated in France being ranked among the three most efficient countries in the world.
- Concerning investigations, an investigation charter has been drawn up and a right of reply has been established for those persons likely to be charged subsequently, with the aim of facilitating the progress of the procedures.
- In order to foster the proper functioning of the market, the AMF has also carried on its efforts to publish doctrine, notably by publishing a guide to preventing breaches of insider dealing rules by directors of listed companies.

=> Enforcement procedure

- The AMF Board as the prosecuting authority has been granted a right of appeal against the decisions of the Enforcement Commission (subject to publication of the application decree) and can now have access to the file during the examination.
- A principle has been established by which the hearings and sanctions of the Enforcement Commission are now public and the legislator has decided to raise the ceiling on sanctions to €100 million to ensure that they are dissuasive.
- The AMF has also been granted transaction agreement powers, limited to matters of breaches by professionals of their obligations, which will enable the resources of the Enforcement Commission to be concentrated on more serious procedures, notably in matters of market abuse.
- Finally, in Q2 2011, the AMF published the final report of the working group on the compensation of prejudice suffered by investors, proposing among other things to reinforce the mediation systems of financial institutions and to take greater account of victim compensation in all the action of the regulator, whether in its daily exchanges with the service providers it regulates, in investigation and enforcement procedures or in the terms of implementation of the new transaction agreement procedure.

Strategy 3: contribute to efforts to increase the attractiveness and functioning of French markets, for the benefit of investors and to finance the country's economy

=> The AMF has conducted a large number of regulatory or organisational projects in close liaison with the industry and under the political impulsion of the High Level Committee

- **Concerning issuers**, the financial securities issuance and listing framework in particular has been the subject of an adjustment and the rules applicable to the listing of securities of SMEs have been significantly streamlined. The approval procedures applicable to bond issues and bond redemption terms have been amended, contributing to repatriating to Paris a significant share of the primary bond market of the main issuers on the Paris marketplace. The AMF has also fostered the emergence of bond trading facilities as part of the Cassiopée project.
- **Concerning asset management**, the AMF set up a marketplace working group on the occasion of the transposition of the UCITS IV Directive, resulting in 14 recommendations being made to enhance the protection of retail investors and competitiveness of the industry. The AMF is supporting professional stakeholders in their application of these recommendations, such as the creation of a marketplace data warehouse for investment funds in particular to favour their exports.
- **Concerning market organisation**, there has been a particularly large amount of European regulatory work. On the European and international levels, for example, the AMF has been active in demanding more robust markets and market infrastructures and fair access to investors. The contributions of the AMF have been based on academic studies or reports, such as the report by the working group on MiFID revision. The AMF has also been active on the regulation of central securities depositories and the harmonisation of the rules governing securities law in Europe. On the industrial level, the AMF, in collaboration with the Banque de France, supported the creation of Clearnet SA, a clearing house for credit derivatives, and set down the foundations for close collaboration with foreign (notably American) regulators in the regulation of this clearing house by signing cooperation agreements.
- In addition to this sector-specific action, the **cross-sector actions** provided for by the Strategic Plan have also been undertaken: establishing a formalised framework for preparing and publishing the doctrine of the AMF, the launch of the AMF website renovation work, continuing the development of bilateral cooperation with the foreign counterparts of the AMF, reinforcing the influence of the AMF by more sustained exchanges with members of the French and European parliaments and the European Commission and growing involvement in international standardisation forums (notably IOSCO).

II PERSPECTIVES

Although the interim review shows both the amount of work carried out over the last two years and the challenge it has represented for the divisions of the AMF, a lot of the action scheduled in the Strategic Plan remains to be done. In addition to this, the first two years of execution of the plan have been marked by intense activity not only of legislators (on the national and European levels and in the US), but also of standardisation organisations (IOSCO and the Financial Stability Board, for instance). In most cases, these reforms correspond to the lines defended by the AMF Strategic Plan, but most importantly they add to it, extend it and refine it. It is of vital importance, however, that the most important of these reforms are listed and examined to define the perspectives for execution of the Strategic Plan through to 2013.

The first category of reforms to be taken into account is institutional in nature: on the European level, there has been the creation of the European Systemic Risk Board (ESRB) and the European Securities and Markets Authority (ESMA); nationally, mention can be made of the creation of a Conseil de la Régulation Financière et du Risque Systémique (COREFRIS), the creation of the ACP, on the Board of which the AMF Chairman has a seat, the very substantial reform of the AMF enforcement procedure provided for by the Banking and Financial Regulation Act and also the consolidation of the budget situation of the AMF allowed by the Finance Act for 2011.

The second category of reforms is of a technical nature: supervision of non-UCITS investment funds (AIFM Directive), the issue of consultations on the regulation of OTC derivatives or functioning of the markets (EMIR and the revision of MiFID), or the determination of the G20 under the French presidency to tackle the regulation of shadow banking and commodities markets.

In the light of these developments in the national, European and international context, and also of the work remaining to be undertaken, the perspectives for implementation of our Strategic Plan can be outlined.

Strategy 1: enhance investment protection and bolster the confidence of individual investors

- **The AMF will be relying** quite naturally on the **Retail Investor Relations Division to step up its pedagogical efforts for the public via all possible channels:** through the new AMF website, by the creation of new pedagogical brochures on priority themes in relation to the issues it helps to pinpoint, such as information on fees. Mystery visits will be continued and extended to independent distribution networks and will contribute to the creation of a Retail Investments Observatory analysing statistical trends in retail investment, and to a better understanding of the individual behaviour of retail investors and those selling retail investment products. The efficiency of this action will be amplified with the support of an increasingly dense network of partners (consumer protection associations, the Autorité de Régulation Professionnelle de la Publicité).
- **The AMF will continue to raise professional standards in financial product distribution** via sustained dialogue with the distributors of financial products and their compliance officers, and by adding to its doctrine relating to financial product distribution.
- **It will also be looking into the regime for “miscellaneous assets” and other “quasi-financial” products** to propose any modifications that might be necessary to protect retail investors more effectively.
- Among the European regulatory projects, **the AMF will be particularly attentive to that relating to the distribution of retail investment products (PRIPs) and will be arguing in favour of a uniform pre-contractual document** for all financial products distributed to retail investors (including for shares or bonds of listed companies).
- **The AMF will continue its action in favour of good governance of listed companies,** by organising a marketplace working group **on the functioning of general meetings and exercise of voting rights,**

by taking an active part in the debates opened on the European level on the governance of listed companies and audits, and by pursuing its efforts to promote electronic voting.

- **Regarding the fight against creeping takeovers, the AMF will be making proposals to reform the threshold crossing transparency regime on the European and national levels.**

Strategy 2: improve market supervision and the functioning of enforcement, from detecting risks through to organising inspection, investigation and enforcement procedures, including supervision of market participants

- The AMF will be building on the organisational reform currently underway in the Authority creating an **Investigations and Inspection Division**.¹ This new division will **coordinate all investigation action including the inspection and investigation departments**, and will carry on its policy to step up the inspections decided upon as part of the Strategic Plan.
- **The AMF will continue to define the terms of implementation of the reforms provided by the Banking and Financial Regulation Act**, some of which are still pending their application decrees: **exercise of the right of appeal of the Board Chairman** against the decisions of the Enforcement Commission; **the terms of involvement of the representative of the Board, as the prosecuting authority, in the procedure conducted by the Enforcement Commission; the possibility for the representative of the Board to propose a sanction**, the introduction of the transaction agreement procedure and the contribution of this new procedure to compensating for the prejudice suffered by investors.
- In parallel with the reorganisation of its enforcement activities, the AMF has also decided to increase the resources currently allocated to monitoring markets and their players and bringing them together within a single entity, the **Asset Management and Markets Division**.² A new action has been added to the Strategic Plan to specify the remit of this new entity: **improving knowledge and monitoring of markets, their participants and infrastructures**. This new division will be the main contact point with the AMF for investment service providers, and will become a centre for skills and expertise in the functioning of the markets, market practices and the organisation of market players (including on emerging themes: OTC derivatives markets, high frequency trading, co-location, ...), thus enhancing the efficiency of the AMF supervision and inspection system. It will therefore be called upon to answer questions from professionals and formalise a doctrine and, conversely, contact them to gain a better understanding of operational issues, a better insight into the risks and to target inspection assignments more effectively. Finally, this new division will take part in implementing any powers given to the ESMA by European directives (e.g. determining which derivatives contracts are subject to clearing requirements) and will work with the Regulatory Policy and International Affairs Division on drawing up application measures for the main European texts relating to the organisation of financial markets (MiFID, EMIR).
- **The AMF automated supervision system will continue to be extended progressively to all markets** (with a view, in time, to integrating the data held by the central trade repositories). It will be adapted to take account of the emergence of new trading techniques (high-frequency trading).
- **The risks committee of the AMF will be working in close collaboration with the Conseil de la Régulation Financière et du Risque Systémique and the European Systemic Risk Board**. It will be the linchpin in building a macro-financial supervision system within the AMF: the purpose of this system will be to assess the impact of prudential and accounting changes on the functioning of the markets, to organise the work of the AMF on shadow banking and systemic non-banking institutions, and will be working in liaison with the ESMA on processing the reports submitted by alternative funds in application of the AIFM Directive with a view to enhancing macro-prudential intelligence activities or detecting those hedge funds that are of systemic importance.

¹ Which will combine the former investigation and inspection departments

² Which will combine the former investment services providers and products and market surveillance departments

Strategy 3: contribute to efforts to increase the attractiveness and functioning of French markets, for the benefit of investors and to finance the country's economy

- **The AMF will continue its very close involvement in technical preparation for the negotiations of all the texts to structure and secure tomorrow's markets:** EMIR, MiFID revision, net short selling.
- **The AMF will pursue its commitment to the implementation of a strict market regulation framework on the European level** because an insufficiently ambitious conclusion to European negotiations on these issues could bring the achievement of some of the objectives in the Strategic Plan into question. The AMF will also be taking part within the ESMA in defining the implementation measures of these directives. The creation of the ESMA can give new impetus to cooperation between regulators on the European level, with clarified decision-making and arbitration rules. Comparative reviews of the regulation systems of member countries must be stepped up to ensure uniform application of European rules throughout the territory of the European Union.
- **In the regulation of market activities, the AMF will carry on its efforts to support the emergence of bond trading platforms, OTC derivatives clearing houses and central trade repositories for derivatives.** In the specific segment of emissions allowance and commodities markets, a point will be added to the Strategic Plan to reflect the importance of the issues and the resources allocated to them: developing the technical skills of the AMF, implementing the tools for efficient daily supervision of markets, supporting the emergence of a European regulatory framework.
- **In asset management, the AMF will be entering into a dialogue with the industry on the future of non-traditional asset management by creating an industry working group in charge of preparing transposition of the AIFM Directive,** and will be working on defining a core of harmonised rules governing the activity of depositaries on the occasion of UCITS Directive revision.
- **Concerning the regulation of disclosure and operations by listed companies, on the occasion of the reform of the Prospectus and Transparency Directives and the preparation of their application measures, the AMF will be providing details of its proposals to facilitate listing of SMEs,** notably by creating a streamlined prospectus for midcaps. The AMF will establish targeted partnerships with emerging marketplaces to promote the attractiveness of the Paris market.
- **Finally, to enhance the legibility of AMF positions and reinforce communication with the marketplace, the AMF will carry on the work undertaken on the two key projects in the Strategic Plan: the creation of the new AMF website and publication on that site of AMF doctrine.** This work should be completed in the course of 2012.

Annexe 1: Resources Allocated to the Strategic Plan

When it published its Strategic Plan, the AMF announced that it would need to increase its headcount and modify the basis of its income to carry out the action being proposed.

The Finance Act 2011 modified the composition and amount of the resources received by the AMF. New taxes based on the market capitalisation of listed companies and on market activities have been introduced, and the scales for certain existing taxes raised. AMF income will now be less reliant on financial operations. The additional resources are estimated to amount to about €25 million and, in the light of the major cost-cutting measures and productivity gains made by the institution,³ should make up the recurring deficit of the AMF and finance the institution sustainably. The application of the 2011 budget will show whether the new AMF income framework matches the requirements of fulfilling its missions, after a loss of €20 million in 2010.

Over the period, the AMF has recruited about 50 staff to cope with the new missions being entrusted to it and to reinforce its supervision and control system. The headcount has thus increased from 384 full-time staff at the end of 2008 to 434 in mid-2011. The number should reach 469 at the end of 2011, by which time the greater part of the recruitment plan should have been completed.

At the same time, the AMF has made considerable efforts to develop its computer systems, with more than €5 million in annual investments being dedicated to the IT systems required for implementation of the action in the Strategic Plan.

³ As an example: concerning the 2010 budget, systematic re-examination of the operating expenses initially posted in the budget resulted in €2.3 million in savings, and the AMF waived or postponed €2.7 million of expenditure to limit the deficit; likewise, optimisation of office space enabled the AMF to limit drastically the impact on property expenses of the increase of more than 10% in the headcount, with the additional staff being accommodated in the existing buildings.

Annexe 2: New Action Added to the Strategic Plan on the occasion of the Interim Review

In order to structure certain actions underway more effectively and make them more visible, the AMF has decided to add two points of action to its Strategic Plan. These two points are described in detail below.

Enhance monitoring of the markets and market participants and infrastructures

The regulation of market participants and infrastructures lies at the heart of efforts to enhance the attractiveness of French financial markets for the benefit of the financial industry and its ecosystem, but most importantly for that of companies which turn to those markets to finance their growth and of retail investor confidence. It comes in a changing industrial context marked by the reorganisation of market and post-trade participants, and more particularly by the merger between NYSE-Euronext and Deutsche Börse. The most symbolic reforms of the financial regulation framework decided on by the G20 and applied on the international (IOSCO) or European levels concern the organisation of the markets. Since the launch of the Strategic Plan, the AMF has increased the resources it allocates to market supervision, through the elaboration of the positions of the AMF in international or European negotiations, the supervision of transactions on markets other than securities markets (bonds, credit derivatives, commodities derivatives) or the monitoring of market participants and infrastructures. To demonstrate the importance it attaches to these missions of supervising markets, their participants and infrastructures, the AMF has decided to create a division dedicated to this theme. The growing weight of the ESMA in market infrastructure regulation and the move towards more collective supervision of these participants on the European level also accentuates this need to organise the AMF's ability to take part in the new European regulation set-up. This new Division will bring together market issue know-how and will become a centre of operational expertise on these issues. It will also be in charge of establishing ongoing relations with investment services providers that have significant market activities, for whom it will be the main AMF contact point, and will be the linchpin in the collaboration between the AMF and the authorities in charge of prudential supervision of these market participants. It will contribute to the efficiency of the supervision and inspection system of the AMF by developing a detailed understanding of the operational functioning of the markets and the conditions and difficulties of implementation of the regulations by the industry. It will be the watch tower keeping track of trends and innovative market practices by monitoring trading room activities and the functioning of trading facilities (impact and regulation of high-frequency trading, functioning of circuit-breaker systems). It will have an increased work force to take charge of daily supervision of the clearing houses set up under the European rules currently being negotiated. Finally, it will steer implementation of any operational powers that might be entrusted to the ESMA in market regulation matters, such as those relating to the obligation to clear certain classes of derivatives contracts, and will work with the Regulatory Policy and International Affairs Division for the negotiation within the ESMA of the technical application measures of MiFID or the EMIR Directive.

The outline of the precise organisation and exact remit given to this new division will however depend to some extent on the final orientation of the regulatory work currently underway on the international and European levels.

Regulate and monitor emissions allowance and commodities markets more effectively

Although the development of a regulation framework adapted to the markets was central to the objectives of the Strategic Plan, the scale and specific nature of the functioning of commodities and emissions allowance markets require the construction of a specific regulation and supervision system. The AMF therefore wishes to build on the existing and future work on these themes and combine it together as a new point in its Strategic Plan.

Concerning the elaboration of the regulation framework, the AMF has taken part in or contributed to the reflection conducted on the marketplace: report of the mission of Michel Prada on CO₂ market regulation, the report of the working group chaired by Jean-Marie Chevalier on oil price volatility and the report by Jean-Pierre Jouyet, Christian de Boissieu and Serge Guillon on "Preventing and managing agricultural market instability". It is also taking part in the studies conducted by IOSCO at the request of the G20 and the Financial Stability Board. The aim now is to use the conclusions of this work to contribute to the reflections of the European Commission on commodities market supervision. Regarding emissions allowance markets, it must be stressed that there is an operational legislative and regulatory framework introduced by the Banking and Financial Regulation Act and integrated by the AMF into its General Regulation. On the occasion of the consultations organised by the European Commission, the AMF will be promoting the French emissions allowance market regulation model.

Concerning commodity derivatives market regulation, similar work to build a regulatory framework must be conducted. Among others, the aim will be to adapt the operational implementation of the measures intended for the regulation of OTC derivatives markets (standardising contracts, developing trading facilities, creating central trade repositories) to these markets, and also to add ad hoc measures (physical market transparency, categorisation of participants and transparency of aggregate positions by category, position limits). The aim will

also be to include within the scope of regulation all those participants on commodities markets, and notably non-financial players whose activities exceed the sole requirements of hedging physical flows of commodities. Finally, the aim will be to clarify the regulatory framework relating to the supervision and enforcement of commodity market abuse.

Parallel to the implementation of this regulation framework, studies of the functioning of commodities markets must be encouraged, because there is still a lack of knowledge of how these markets work. To this effect, the AMF organised a scientific seminar in 2011 on the theme of commodities markets. This could involve, for example, studying the impact of prudential rules or that of the emergence of commodities-based financial products on the functioning of these markets.

Finally, the development of the regulatory framework must go hand in hand with the creation of an emissions allowance and commodities markets supervision system.