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CONTRÔLES SPOT

Summary of the SPOT inspection campaign conducted
on market abuse prevention systems in asset
management companies

AUTORITÉ
DES MARCHÉS FINANCIERS



INTRODUCTION

The SPOT inspection campaign on market abuse prevention systems in asset management companies (“AMCs”) was part of the AMF’s supervisory priorities for 2021.

Market abuse can be defined as any “[...] *unlawful behaviour in the financial markets and [...] should be understood to consist of insider dealing, unlawful disclosure of inside information and market manipulation*”.¹ The purpose of the SPOT campaign was to inspect the systems for preventing, monitoring, detecting and reporting of market abuse² in AMCs.

This campaign was preceded by an internal AMF study of market abuse reports issued by AMCs since the entry into force on 3 July 2016 of most of the provisions³ of Regulation 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (“**MAR**”), which was supplemented by Commission Delegated Regulation (EU) 2016/957 of 9 March 2016 (“**STOR Delegated Regulation**”). This study led to the selection of a sample of five AMCs (managing between €0.2 billion and €40 billion at the end of 2021) that includes companies:

- that are independent and belong to a group;
- whose size, activity and assets under management vary;
- that have and have not yet issued suspicious transaction and order reports (STORs).

The inspections were carried out between October 2021 and February 2022 and covered the period from January 2018 to October 2021. The work focused on:

- the organisation and governance of the market abuse prevention system (human resources and training programs);
- the procedural framework for preventing market abuse;
- the systems and measures for monitoring and detecting suspicious transactions (tools used, configuration and reporting of alerts);
- the practical implementation of the market abuse prevention system (watch lists, restricted lists, market soundings, analysis and reporting of suspicious transactions);
- the internal (permanent and periodic) control system implemented upon the process for preventing market abuse.

This document is **neither a position nor a recommendation**. The practices identified as either “good” or “poor” highlight approaches identified during the inspections that may facilitate, or complicate, compliance with the regulations on preventing market abuse.

¹ Source: Recital 7 of Regulation 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse. The various cases of market abuse are listed in section 5.3.1 of this document below with reference to Articles 7, 8, 9, 10, 12, 14 and 15 of the aforementioned Regulation.

² In this document, all these processes are included in the term “prevent market abuse”.

³ The provisions that entered into force on 2 July 2014 are specified in Article 39.2 of the MAR.”

CONTENTS

| | | |
|-----------|--|-----------|
| 1. | KEY CONCEPTS..... | 4 |
| 2. | SAMPLE SELECTED AND WORK CARRIED OUT..... | 4 |
| 3. | SUMMARY OF THE MAIN FINDINGS..... | 5 |
| 4. | APPLICABLE REGULATIONS..... | 8 |
| 4.1. | Dual nature of market abuse in French law and related procedures..... | 8 |
| 4.2. | Regulations used by the inspection task force in the course of their work..... | 8 |
| 5. | OBSERVATIONS AND ANALYSES..... | 12 |
| 5.1. | ORGANISATION AND GOVERNANCE OF THE MARKET ABUSE PREVENTION SYSTEM..... | 12 |
| 5.1.1. | Governance and human resources..... | 12 |
| 5.1.2. | Employee training..... | 13 |
| 5.2. | PROCEDURAL CORPUS FOR PREVENTING MARKET ABUSE..... | 14 |
| 5.2.1. | Investment and order placement processes..... | 14 |
| 5.2.2. | Prevention and detection of market abuse..... | 15 |
| 5.2.3. | Transaction monitoring..... | 15 |
| 5.2.4. | Suspicious transaction and order reports (STORs) | 17 |
| 5.3. | SYSTEMS AND MEASURES FOR MONITORING AND DETECTING SUSPICIOUS TRANSACTIONS..... | 19 |
| 5.3.1. | Selection, security and configuration of applications..... | 29 |
| 5.3.2. | Operational implementation of monitoring of inside information..... | 25 |
| 5.3.3. | Operational implementation of transaction monitoring..... | 26 |
| 5.4 | TESTS CONDUCTED BY THE INSPECTION TASK FORCE..... | 29 |
| 5.4.1. | Test on a sample of potentially suspicious transactions..... | 29 |
| 5.4.2. | Checks on potential suspicious transactions in the securities of issuers with which the AMC’s senior managers/asset managers may have had contact..... | 31 |
| 5.4.3. | Checks on major shareholding threshold notifications..... | 31 |
| 5.4.4. | Checks on suspicious transaction and order reports (STORs)..... | 32 |
| 5.5. | INTERNAL CONTROL SYSTEM IN PLACE ON THE MARKET ABUSE PREVENTION SYSTEM..... | 34 |
| 5.5.1. | Mapping of risks related to market abuse..... | 34 |
| 5.5.2. | Permanent control work carried out on the system..... | 35 |
| 5.5.3. | Periodical control work carried out on the system..... | 36 |
| 5.5.4. | Reporting the results of internal control work to senior management..... | 36 |

1. KEY CONCEPTS

The key concepts referred to in this summary are listed in the table below, in alphabetical order. Although most of these definitions are taken from regulations, they do not repeat *verbatim* the wording of those regulations. Their only purpose is to provide a brief description, in the context of AMCs, the key principles associated with these concepts and how they are interrelated.

| Concept | Summary description |
|--|--|
| Inside information | Information of a precise nature, which is not public, relating (directly or indirectly) to one or more issuers/financial instruments, and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments. |
| Insider list | List (physical or electronic) on which the AMC records (and keeps up to date) employees who have access to inside information, for example in connection with a market sounding. When they are placed on such a list, employees must be informed that (i) they are strictly prohibited from buying or selling any financial instruments related to that issuer on their own behalf or on behalf of the portfolios they manage until the information is made public and that (ii) they are strictly prohibited from disclosing that information to colleagues or other persons. |
| Watch list | List (physical or electronic) on which the AMC records (and keeps up to date) issuers and financial instruments on which it has inside information. |
| Restricted list/restricted securities list | List (physical or electronic) on which the AMC records (and keeps up to date) restrictions applicable to transactions in financial instruments carried out (i) on behalf of third parties, (ii) on the AMC's own account and (iii) on employees' own personal accounts. |
| Investment recommendation | Information recommending or suggesting an investment strategy, either explicitly or implicitly, for one or more financial instruments or associated issuers. |
| Market sounding | Communication of (potentially inside) information (on an issuer) by an investment service provider ("ISP") used to assess the interest of potential investors in a possible transaction and the conditions attached to it (e.g. volume, financial conditions). |
| STOR | Suspicious Transaction and Order Report, used to report a suspicious transaction relating to potential market abuse. |

In addition, a suggested classification of the main types of market abuse is provided in section 5.3 below on systems and measures for monitoring/detecting suspicious transactions.

2. SAMPLE SELECTED AND WORK CARRIED OUT

A sample of five AMCs was selected for the campaign with the aim of providing a representative sample of activities and practices:

- AMC 1 is authorised to provide collective management of UCITS and AIFs.⁴ It uses a stock-picking strategy for equities based on a bottom-up analysis that includes non-financial criteria;
- AMC 2 is authorised to provide collective management of UCITS and AIFs and portfolio management services for third parties (or discretionary management). Its authorisation has been extended to include the investment service of reception and transmission of orders for third parties ("RTO");
- AMC 3 is authorised to provide collective management of UCITS and AIFs. Its authorisation has been extended to include investment advisory and RTO services. It also manages unit-linked arbitrage mandates;
- AMC 4 is authorised to provide collective management of UCITS and AIFs. Its authorisation has been extended to include discretionary management;
- AMC 5 is authorised to provide collective management of UCITS and AIFs and discretionary management services. It specialises in event-driven and merger-arbitrage investment strategies.

⁴ The five AMCs in the sample have full AIFM authorisation.

AMCs 1 and 2 have assets under management of around €40 billion. AMCs 3 and 4 have between €7 billion and €8 billion and AMC 5 has less than €1 billion. AMCs 1 to 4 cater to professional and retail clients. AMC 5's clients are exclusively professional.

AMCs 1 and 2 have around 150 employees, AMCs 3 and 4 have more than 50 employees and AMC 5 has fewer than 20.

3. SUMMARY OF THE MAIN FINDINGS

While, in general, the work carried out by the inspection task force did not identify any particularly serious breaches (because it was unable to identify cases of failure to report proven market abuse to the AMF), this summary document highlights several shortcomings that may be regarded as regulatory breaches that need to be corrected quickly.

With regard to the organisation and governance of the market abuse prevention system, the inspection task force found that the compliance and internal control officer is responsible for the market abuse prevention system in most of the AMCs inspected (four of the five). He has a backup within the compliance and internal control team. Although the configuration of alert rules and thresholds (referred to below as “scenarios”) used for automated transaction monitoring may be delegated to an external service provider (as is the case for AMCs 2 and 5), the compliance and internal control officer is still responsible for defining these scenarios and reporting suspicious transactions to the AMF. The only exception is the smallest AMC in the sample (AMC 5), which segregates the functions of following up alerts (the responsibility of the chief operating officer) and reporting (the responsibility of the managing director/compliance and internal control officer).

Lastly, four of the five AMCs inspected have set up a regular formal training programme for their employees responsible for identifying and investigating market abuse alerts. **However, AMC 5 was unable to demonstrate that this programme was actually in place.**

The procedural corpus for preventing market abuse can be broken down into three categories of documents: (i) a master document describing the overall system, (ii) targeted procedures detailing the steps to be taken at the various stages of efforts to prevent market abuse, and (iii) ancillary procedures relating to the investment and order placement processes.⁵

The inspection task force found many shortcomings in the master documents. For example, only AMC 2's procedure refers to complete and up-to-date regulatory articles. In addition, only AMC 2 and AMC 4's procedures correctly describe the process for updating watch lists. Lastly, only AMC 4's procedure adequately describes the process for updating the restricted securities list and how it relates to the watch list.

However, most of the AMCs inspected (three of the five) do have operational procedures for monitoring transactions, reporting major shareholdings⁶ or reporting suspicious transactions (STORs).

Lastly four of the five AMCs have incomplete or non-existent documentation on investment and order placement processes.

The systems and measures for monitoring and detecting suspicious transactions primarily rely on an external software application for monitoring transactions and issuing market abuse that those responsible for controls subsequently investigate (manually).

⁵ These procedures are linked to the market abuse prevention system insofar as they provide a framework for the processes and stages of the transactions that the market abuse prevention system analyses and investigates. They may include *ex ante* controls that are helpful to the market abuse prevention system (e.g. automated blocking of orders placed outside the pre-approved investment universe).

⁶ This procedure is linked to the market abuse prevention system insofar as major shareholding notifications, which are produced in accordance with the conditions and controls of this procedure, are likely to be included among the weak signals that can be helpful when investigating market abuse alerts produced automatically by transaction monitoring systems.

The inspection task force found that the selection process for this application was not documented for most of the AMCs inspected (three of the five). Furthermore, only AMC 1 carried out formal “back-testing”⁷ of the preselected application to justify its final selection. **This raises questions about the suitability of the tools chosen by the other four AMCs for the management activities and risks associated with these companies.** Only AMC 4 has implemented a robust system for securing the data collected and processed by the market abuse prevention application. The access rights to the application were found to be too generous for AMCs 2 and 5 at the time of the inspections. Furthermore, AMCs 1, 2 and 5 did not regularly review the quality of the services provided by the software company.⁸ Lastly, neither AMC 1 nor AMC 3 included the application in their business continuity plan. However, all of the tools analysed provide an adequate data archiving function.

The inspection task force found that the configurations applied to the tools used prioritised cases of (i) a concentration of unusual transactions in a given financial instrument, (ii) unusual repetition of a transaction over a targeted period, and (iii) unusual transactions prior to information being made public. However, **because the reasons for prioritising these rules were not adequately documented** (as was the case for all AMCs in the sample except AMC 4), it was not possible for the inspection task force to assess their relevance without further analysis. A sample test was therefore conducted, as described below. **In addition, only AMCs 2 and 4 have implemented a formal process for updating the rules and thresholds for configured alerts, based on a periodic review of how relevant and appropriate they are to changes in the AMC’s business and associated risks.**

The operational management of inside information uses three types of list: one for closely watched securities, one for restricted securities and one for insiders within the AMC. The AMC found that the audit trail explaining changes to the first two types of lists and how they interrelate was inadequate for three of the five AMCs inspected. AMCs 3 and 5 do not have a formal audit trail of updates to their watch lists and restricted lists. Furthermore, AMC 2 does not maintain a restricted securities list (contrary to what is stated in its procedural corpus). Lastly, only the two AMCs in the sample with the largest amounts of assets under management (AMCs 1 and 2) use an insider list since they are the only ones asked to take part in market soundings.

Transaction monitoring is automated for transactions executed on behalf of third parties for the five AMCs in the sample. Most of the AMCs (1, 3 and 4) were able to generate a reliable audit trail of the alerts produced. However, AMC 2 had only a partial audit trail (it did not include reasons for triggering the alert for equity fund management and only began to include alerts for bond and convertible fund management in 2019) and AMC 5 had no audit trail. Similarly, four of the five AMCs were able to provide detailed statistics for this processing (with the exception of AMC 5).

For personal transactions by AMC employees, the *ex ante* control process (via the mandatory preliminary declaration of planned transactions) and the *ex post* control process (via check on portfolio statements) are operational for three of the five AMCs (1, 3 and 4). However, these controls are only partially documented for AMC 2 (the content of the anomalies identified *ex post* is not described in the documents analysed) and not documented at all for AMC 5.

Lastly, the inspection task force found that own-account transactions carried out by AMCs 1, 2, 3 and 4 did not present any problems (AMC 5 carried out no own-account transactions). An examination of the accounting records did not reveal any investment of own funds by these AMCs other than in bank current accounts, fixed-term accounts and money market UCITS.

With regard to the practical implementation of the market abuse prevention system, the inspection task force found that the alert rules and thresholds set by the AMCs in the sample could be improved. It conducted a test on a sample of transactions representing an average of 5% of the trades executed during the period under review that were potentially suspicious based on the market abuse risk indicators used by the five AMCs. This showed that the

⁷ Back-testing involves verifying that the application(s) used to prevent, monitor and detect market abuse is/are working properly by testing all the transactions executed by the AMC over a period prior to the tool’s implementation. The results produced by the application(s) implemented are compared with those obtained using the previous method (manual or automatic) to gauge the effectiveness of the new application(s).

⁸ AMC 4 only implemented such a review from the 2021 financial year.

rate of undetected suspicious transactions (whose non-detection AMCs 2 and 5 did not justify based on the configuration of their monitoring tools)⁹ was significant for two of the five AMCs, at 9% (for AMC 2's equity fund management) and 23% for AMC 5. Furthermore, the inspection task force found that only two of the five AMCs have set up specific detection algorithms for changed, cancelled or closing-fixing orders, even though the recurrent use of such orders is a potential market abuse signal. These findings make it clear that the **configured alert scenarios must be reviewed on a regular basis to ensure that the monitoring system is continuously updated to take account of changes in (i) management activity and (ii) market abuse risks. This review must also ensure that the flow of alerts produced can still be dealt with effectively by the teams responsible for investigating them.**

Four of the five AMCs take into account appointments made by asset managers with issuers or corporate clients' senior managers in their process for investigating market abuse alerts. Since the system used by AMC 2 to monitor these meetings (its email system) does not allow it to extract lists of meetings held in the past, the inspection task force was unable to verify that this information was used as part of its process to investigate market abuse alerts.

Only three of the five AMCs submitted major shareholding notifications during the period under review, ranging from eight (AMC 5) to 27 (AMC 1). The inspection task force checked that the contents of the internal files for monitoring major shareholdings corresponded to the notifications actually sent to the AMF. The format of these notifications was consistent with the regulations and inspected AMCs' procedures. However, only AMCs 2 and 5 confirmed that they use information about repeated instances of shareholding thresholds being exceeded as one of the sources of information used to investigate market abuse alerts.

All the AMCs in the sample except AMC 5 issued suspicious transaction and order reports (STORs). Although the average volume of alerts produced was 5.8% of the transactions analysed, the proportion of STORs sent to the regulator was virtually nil compared with the total number of alerts produced. During the period under review, AMCs 2 and 4 issued two STORs, while AMC 3 issued only one. This highlights the need for **regular second- and third-level controls on the manual investigation of alerts to ensure that they are properly closed.**

Lastly, specifically with regard to the control system, the inspection task force found it to be inadequate for four of the five AMCs because they consider the involvement of their compliance and internal control officers in analysing the automatic alerts produced to be a second-level control. The inspection task force takes a different view: it considers the compliance and internal control officer's involvement to be a first-level control, since it is applied on an ongoing basis and directly to the target process.¹⁰ **The lack of a sample review of alerts that have already been closed affects the ability of the four AMCs concerned to continuously improve their investigation process, a shortcoming that the periodic control can only partially address because of its broad scope and approach and its very low frequency.**

⁹ AMCs 1, 3 and 4 justified the non-detections identified by the inspection task force by demonstrating, for example, that some of the cases tested related to transactions below the thresholds for triggering alerts.

¹⁰ In other words, the involvement of the compliance and internal control officer takes place outside of a control event planned in advance in the compliance and internal control plan. Under this arrangement, the compliance officer is not checking whether the process of investigating market abuse alerts is working properly but participates directly in the execution of this process.

4. APPLICABLE REGULATIONS

4.1. DUAL NATURE OF MARKET ABUSE IN FRENCH LAW AND RELATED PROCEDURES

In French law, market abuse is an administrative breach but may also qualify as a criminal offence,¹¹ which explains the dual nature of legal action:

- either the AMF Enforcement Committee prosecutes administrative breaches;¹²
- or the French National Financial Prosecutor's Office ("PNF") prosecutes stock market offences through the judicial court.

At the European level, there are two pillars of regulation: Regulation 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse ("**MAR**") and Directive 2014/57/EU of 16 April 2014 on criminal sanctions for market abuse ("**MAD**").

The MAR's objective is to prohibit transactions that allow (or could have allowed) an undue advantage to be gained (directly or indirectly) from price manipulation, the dissemination of false/misleading information or the use of inside information. This behaviour is sanctioned because **it undermines investor confidence in the financial markets and interferes with fair pricing.**

The MAD's provisions have been transposed into the Monetary and Financial Code. In addition to the MAR and MAD, there are delegated¹³ and implementing¹⁴ regulations that set out technical standards (regulatory technical standards (RTS) and implementing technical standards (ITS)). ESMA also publishes opinions in relation to the MAR.¹⁵

In 2016, there were two notable developments relating to market abuse:

- Firstly, **Law 2016-819 of 21 June 2016 reformed the system for curbing market abuse** by introducing a so-called referral system that addresses the ban on bringing both criminal and administrative proceedings. From now on, the AMF must notify the PNF in advance of any intention to issue a statement of objections following a market abuse investigation, and the PNF may or may not decide to initiate criminal proceedings in cases where the facts may be considered criminal;¹⁶
- Secondly, **Law 2016-1691 of 9 December 2016 on transparency, anti-corruption and economic modernisation** (known as the "Sapin 2 Law") extended the scope of administrative settlement to market abuse.¹⁷ The AMF Board may now propose an alternative, namely a settlement, when it issues a statement of objections.

4.2. REGULATIONS USED BY THE INSPECTION TASK FORCE IN THE COURSE OF THEIR WORK

The work of the inspection task force was based on:

- the French Monetary and Financial Code (**MFC**);
- the AMF General Regulation (**AMF GR**);
- Delegated Regulation (EU) 2013/213 (**DR 2013/213**);

¹¹ Articles L. 465-1 and following of the Monetary and Financial Code.

¹² Under the MAR and Articles L. 621-15 (II) (c) to (e) and (III) of the Monetary and Financial Code. The sanctions imposed under these provisions are available via: <https://www.amf-france.org/fr/sanctions-transactions/sanctions-et-transactions-accueil>.

¹³ Delegated Regulations on exemptions and indicators (2016/522); content of notifications (2016/909); buy-back programmes and stabilisation measures (2016/1052); the system for detecting market abuse ("STOR DR") (2016/957); market soundings (2016/960); accepted market practices (2016/908); investment recommendations (2016/958).

¹⁴ Implementing Regulations adopted by the Commission, relating to insider lists (2016/347); format of notifications (2016/378); procedures for inside information (2016/1055); market soundings (2016/959); transactions by managers (2016/523).

¹⁵ <https://www.esma.europa.eu/policy-activities/market-abuse>.

¹⁶ Refer to Article L. 465-3-6 of the Monetary and Financial Code. The PNF must also inform the AMF if it decides to initiate criminal proceedings.

¹⁷ Refer to Article L. 621-14-1 of the Monetary and Financial Code.

- Delegated Regulation (EU) 2017/565 (**DR 2017/565**);
- the aforementioned **MAR** and Commission Delegated Regulation of 9 March 2016 2016/957 (**STOR DR**), both of which entered into force on 3 July 2016 (for most of its provisions in the case of the MAR);
- publications issued by ESMA on:
 - 13 July 2016 on the MAR (ESMA/2016/1130,¹⁸ supplemented by AMF Position DOC-2018-13 on whistleblowers);¹⁹
 - 11 October 2016 on how the MAR applies to persons dealing with market soundings (ESMA/2016/1477,²⁰ supplemented by AMF position DOC-2017-02²¹);
 - 23 March 2018²² and 6 August 2021²³ on MAR-related Q&A.

The table below lists the regulations that the AMF used in its work. It specifies, where applicable, the types of AMCs or activities to which the articles apply (**UCITS** – AMCs managing UCITS or AIFs under the AIFM Directive’s thresholds,²⁴ **AIFs** – AMCs managing AIFs subject to the AIFM Directive in its entirety, or AMCs providing investment services (**IS**) – discretionary management (**DM**), investment advice or reception and transmission of orders (**RTO**)). However, the regulatory articles listed in the shaded boxes at the end of each sub-section of section 5 below correspond to the regulatory articles specifically used to describe the findings of the inspections conducted during the SPOT campaign.

| DEFINITION AND PROHIBITION OF MARKET ABUSE |
|---|
| <p>Articles 7 and 10 of the MAR on the definition and framework of inside information.</p> <p>Articles 8, 9 and 14 of the MAR on the definition, prohibition and control of insider dealing.</p> <p>Articles 12 and 15 of the MAR on the definition and prohibition of price manipulation.</p> <p>Article L. 533-1 of the MFC on the obligation of investment services providers to act honestly, fairly and professionally, which supports market integrity.</p> <p>Articles 321-100 (UCITS), 314-3 (IS) and 319-3 (1) (AIFs) of the AMF GR on the obligation of AMCs to act honestly and loyally, with the due skill, care and diligence in carrying out their activities.</p> |
| REGARDING THE ORGANISATION AND GOVERNANCE OF THE MARKET ABUSE PREVENTION SYSTEM (HUMAN RESOURCES AND TRAINING): |
| <p>Articles 321-23 (I) of the AMF GR (UCITS), 318-1 of the AMF GR and 22(1) of DR 231/2013 (AIFs) (IS) on the implementation of appropriate and sufficient material, financial and human resources.</p> <p>Articles 321-23 (III) and (V) of the AMF GR (UCITS), 57(1)(b) of DR 231/2013 (AIFs), 21(1)(b) and (d) of DR 2017/565 (IS) on informing staff of the procedures to be applied and employing staff with the qualifications, knowledge and expertise required to perform their responsibilities.</p> <p>Article 4 of the STOR DR on the implementation of effective and comprehensive training for staff responsible for monitoring, detecting and identifying orders and transactions that may constitute</p> |

¹⁸ https://www.esma.europa.eu/sites/default/files/library/2016-1130_final_report_on_mar_guidelines.pdf

¹⁹ <https://www.amf-france.org/sites/default/files/doctrine/fr/Instruction/DOC-2018-13/1.0/Procedures%20permettant%20le%20signalement%20a%20l%27AMF%20des%20violations%20de%20la%20reglementation%20par%20les%20lanceurs%20d%27alerte.pdf>

²⁰ https://www.esma.europa.eu/system/files_force/library/2016-1477_mar_guidelines_-_market_soundings.pdf?download=1

²¹ <https://www.amf-france.org/sites/default/files/doctrine/fr/Position/DOC-2017-02/1.0/Personnes%20visees%20par%20les%20sondages%20de%20marche.pdf>

²² https://www.amf-france.org/sites/default/files/2020-02/esma70-145-111_qa_on_mar-3.pdf

²³ https://www.esma.europa.eu/sites/default/files/library/esma70-145-111_qa_on_mar.pdf

²⁴ Directive 2011/611/EU of the European Parliament and of the Council of 8 June 2011 on managers of alternative investment funds.

market abuse.

Paragraph 10 of the guidelines on the Market Abuse Regulation (ESMA/2016/1477 EN) on providing appropriate and sufficient training for staff involved in market soundings.

REGARDING THE PROCEDURAL CORPUS FOR PREVENTING MARKET ABUSE:

Articles 321-30 of the AMF GR (UCITS), 61(1) of DR 231/2013 (AIFs) and 22(1) of DR 2017/565 (IS) on the establishment and operational maintenance of appropriate policies, procedures and measures designed to detect any non-compliance risk.

Articles 320-2 (AIFs and IS) and 321-136 (UCITS and IS) of the AMF GR on the establishment and operational maintenance of procedures for controlling the circulation and use of inside information.

Articles 320-3 (AIFs and IS) and 321-137 (UCITS and IS) of the AMF GR on the establishment and operational maintenance of a procedure for monitoring issuers and financial instruments about which the AMC has inside information.

Articles 320-5, 320-6 (AIFs) and 321-139, 321-140 (UCITS) of the AMF GR on the establishment and operational maintenance of an appropriate procedure to manage restrictions and on the establishment of a restricted list.

Article 16 of the MAR on the implementation of effective procedures to prevent and detect insider dealing, market manipulation and attempted insider dealing and market manipulation.

REGARDING THE SYSTEMS AND MEASURES FOR MONITORING AND DETECTING SUSPICIOUS TRANSACTIONS (TOOLS USED, CONFIGURATION AND REPORTING OF ALERTS) AND THEIR PRACTICAL IMPLEMENTATION:

Recording orders and retaining records

Article 321-69 of the AMF GR (UCITS), Articles 64 and 65 of DR 231/2013 (AIFs) and Article 67 of DR 2017/565 (IS) on the process of recording orders.

Articles 321-70 to 73 of the AMF GR (UCITS), Article 66 of DR 231/2013 (AIFs), Articles 72 to 76 of DR 2017/565 (IS) relating to record keeping.

Application for preventing and detecting market abuse

Articles 320-4 (AIFs and IS) and 321-138 (UCITS and IS) of the AMF GR on performing adequate monitoring, dealing with detected anomalies and maintaining an audit trail of the remedial measures taken.

Automated and manual transaction monitoring

Articles 2, 3 and 5 of the STOR DR on monitoring transactions.

Articles 321-11 (I), 321-137, 321-139 (UCITS and IS), 317-3 (I), 320-3 and 320-5 (AIFs and IS) of the AMF GR on investing an AMC's own funds (and, by extension, on monitoring own-account transactions).

Articles 321-42 to 45, 321-137, 321-139 of the AMF GR (UCITS), Articles 63 of DR 231/2013, 320-3 and 320-5 of the AMF GR (AIFs), Article 29 of DR 2017/565 (IS) on monitoring employees' personal transactions.

Managing inside information using watch lists, restricted securities lists and insider lists

Articles 321-137 (UCITS and IS) and 320-3 (AIFs and IS) of the AMF GR on monitoring inside information using watch lists.

Articles 321-139, 321-140 (UCITS and IS) and 320-5, 320-6 (AIFs and IS) of the AMF GR on managing inside information using restricted securities lists.

Paragraph 16(e) of the ESMA’s MAR guidelines “Persons receiving market soundings” (ESMA/2016/1477 EN) regarding keeping records in durable media of the list of persons with access to information communicated in the course of market soundings.

Market soundings

Article 11 of the MAR, paragraphs 9-16 of ESMA’s MAR guidelines (ESMA/2016/1477 EN) on the procedures for taking part in market soundings.

Whistleblowing process²⁵

Article 32(1)(2)(3) of the MAR providing for the setting up of (i) mechanisms for reporting infringements and (ii) procedures ensuring the protection of personal data (of the person reporting the infringement and of the person who is the subject of the report) and its **implementing directive 2015/2392 of 17 December 2015**.²⁶

Articles L. 634-1 to L. 634-4 of the MFC, which reproduce most of the requirements set out in the MAR article mentioned above.

AMF Instruction of 14 December 2018 (DOC-2018-13) providing details on the whistleblowing procedure.

REGARDING REPORTING TO THE REGULATOR:

Article 16(2)(3) of the MAR, Articles 2(1)(b), 5(2)(3)(4)(5), 6, 7 and 8 of the STOR DR on the definition, content and process for reporting suspected market abuse.

Articles L. 233-7 and following of the Commercial Code, 223-11-1, 223-12-1, 223-13, 223-14 and 223-15 of the AMF GR on the major shareholding notification process and the content of these notifications.

REGARDING THE COMPLIANCE AND INTERNAL (PERMANENT AND PERIODIC) CONTROL SYSTEM AS PART OF THE PROCESS FOR PREVENTING MARKET ABUSE:

Article 321-30 of the AMF GR (UCITS), Article 61(1) of DR 231/2013 (AIFs) and Article 22(1) of DR 2017/565 (IS) on establishing, implementing and maintaining appropriate and operational policies and procedures to detect any risk of non-compliance by AMCs.

Articles 321-23 (IV) of the AMF GR, 57(1)(c) of DR 231/2013 (AIFs) and 21(1)(c) of DR 2017/565 (IS) on implementing appropriate internal control mechanisms.

Articles 321-31 of the AMF GR (UCITS), Article 61(2) of DR 231/2013 (AIFs) and Article 22(2) of DR 2017/565 (IS) on setting up an effective compliance function that operates independently.

Articles 321-27 and 321-83 of the AMF GR (UCITS), 57(6) and 62 of DR 231/2013 (AIFs), 21(5) and 24 of DR 2017/565 (IS) on setting up a periodic control function.

²⁵ The AMF has set up a dedicated page that provides all the necessary information for submitting anonymous reports: <https://www.amf-france.org/en/forms-and-declarations/whistleblowing>.

²⁶ This directive includes the appointment of specialised staff (trained in data protection) and the setting up of (i) mechanisms for anonymous reporting, (ii) channels for written/verbal/electronic/non-electronic communication, and (iii) protection of the personal data of the informant and the subject of the report. As it is a directive, it is not automatically applicable; its provisions have been transposed into French law, mainly in the Monetary and Financial Code.

Article 2(5)(b) of the STOR DR on assessing, at least annually, the measures, systems and procedures used to prevent market abuse.

Article 321-36 of the AMF GR (UCITS), Articles 60(4) and 61(3b) of DR 231/2013 (AIFs), Articles 22(2c) and 25(2) of DR 2017/565 (IS) on the compliance, internal audit and risk management reports submitted to senior management.

5. OBSERVATIONS AND ANALYSES

5.1. ORGANISATION AND GOVERNANCE OF THE MARKET ABUSE PREVENTION SYSTEM

5.1.1. Governance and human resources

The general organisational arrangements put in place to prevent market abuse in the five AMCs inspected are presented in the table below.

| Function | AMC 1 | AMC 2 | AMC 3 | AMC 4 | AMC 5 |
|---|---|--|---|---|--|
| Person in charge of the market abuse prevention system | | AMC's chairman | | | |
| Person responsible for reporting suspicious transactions (STORs) to the AMF | Compliance and internal control officer | The compliance director of the parent company (bank), ²⁷ as delegated by the chairman | Compliance and internal control officer | Compliance and internal control officer | CEO/Compliance and internal control officer |
| Backup to the person responsible for reporting | Compliance and internal control team | Compliance and internal control team of the parent company | Compliance and internal control team | Compliance and internal control team | Chief Operating Officer (COO) and Risk Manager |

The inspection task force found that **most of the AMCs (four of the five) put the compliance and internal control officer in charge of the system for preventing market abuse**. All of the AMCs inspected also have a backup for the suspicious transaction reporting function.

The operational organisation structure can be summarised as follows.

| Function | AMC 1 | AMC 2 | AMC 3 | AMC 4 | AMC 5 |
|---|---|---|---|-------|--|
| Person responsible for defining and reviewing alert rules (scenarios and thresholds) | | Compliance director of the parent company | | | COO |
| Person responsible for configuring alert rules in the market abuse prevention tool | Compliance and internal control officer | AMC's IT department or ²⁸ an external provider | Compliance and internal control officer | | External software publisher of the monitoring application used |
| Person responsible for investigating automated alerts related to potential market abuse | | Compliance director of the parent company | | | COO and middle-office manager |

²⁷ The AMC's compliance and internal control officer has a functional reporting line to the parent company's compliance director.

²⁸ This distinction is due to the fact that AMC 2 uses two different market abuse prevention tools depending on the type of management. For equity fund management, the tool used was developed in-house and is therefore configured by the IT department. For bond and convertible fund management, the tool is external and a dedicated external service provider is responsible for its configuration, in collaboration with the software publisher.

The compliance and internal control officer is also the focal point of the system in most cases (three of the five AMCs). For all AMCs, the inspection task force was satisfied that the in-house compliance and internal control departments were responsible for defining the alert rules (only the technical configuration of these rules in the tools used was delegated to in-house or external technicians²⁹).

5.1.2. Employee market abuse prevention training

The inspection task force found that **four of the five AMCs have set up a training programme focusing on the risks of market abuse**. This training is geared towards both existing employees and new starters. It is delivered in several formats, including e-learning, the distribution of dedicated materials, face-to-face training and the publication of alerts based on regulatory news.

The training courses include an overview of the in-house people, tools and processes involved in preventing market abuse. They also recap the regulatory framework for preventing market abuse, explain the sanctions that may be imposed (citing examples from actual cases handled by the AMF Enforcement Committee), describe typical cases of price manipulation and insider dealing, and include a list of signals that employees can use to identify suspicious transactions. There are also practical exercises based on fictitious transactions and market situations to test employees' understanding of weak signals.

The AMCs formally track the progress of all employees taking these training courses,³⁰ for example by recording the results of the test at the end of each online course. The inspection task force's analysis of the tracking logs confirmed that all relevant employees received market abuse prevention training on an annual basis during the period under review in four of the five AMCs.

AMC 5 did not provide the inspection task force with any training materials or records of employees who had taken training courses.

Regulatory reminders

- **Articles 321-23 (III) and (V) of the AMF GR (UCITS), 22(1), 57(1)(b) of DR 231/2013 (AIFs) and 21(1)(b), (d) of DR 2017/565 (IS):** “[AMCs] shall ensure that their relevant persons are aware of the procedures which must be followed for the proper discharge of their responsibilities. [...] They shall employ personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them.”
- **Article 4 of the STOR DR:** “1. Persons professionally arranging or executing transactions and market operators and investment firms operating a trading venue shall organise and provide effective and comprehensive training to the staff involved in the monitoring, detection and identification of orders and transactions that could constitute insider dealing, market manipulation or attempted insider dealing or market manipulation, including the staff involved in the processing of orders and transactions. Such training shall take place on a regular basis and shall be appropriate and proportionate in relation to the scale, size and nature of the business. 2. Market operators and investment firms operating a trading venue shall in addition provide the training referred to in paragraph 1 to staff involved in the prevention of insider dealing, market manipulation or attempted insider dealing or market manipulation.”

²⁹ These were specialist external consultants or staff from the software companies used.

³⁰ Employees required to take this training are primarily staff involved in order processing (“front office”) and also financial analysts. In addition, staff specifically responsible for monitoring/detecting/identifying market abuse (usually from the control and compliance teams) also take this training.

Good practices

- Setting up an annual training programme on the prevention of market abuse for all employees involved in identifying and investigating alerts of potential market abuse, and regularly and formally tracking participation in these training courses so that reminders can be sent to those employees who still need to take the training.
- Including in this annual training programme a recap of the regulatory framework for preventing market abuse (including an overview of the sanctions that may be imposed), a presentation of the typical cases of price manipulation, wrongful disclosure of inside information and insider dealing (including real-life examples), and a list of weak signals that can be used to identify suspicious transactions.

5.2. PROCEDURAL CORPUS FOR PREVENTING MARKET ABUSE

5.2.1. Reference procedures for the investment and order placement processes

These procedures are linked to the market abuse prevention system insofar as they provide a framework for the processing of transactions that this system monitors. They may include *ex ante* controls that are helpful to the market abuse prevention system (e.g. automated blocking of orders that asset managers wish to execute even though they are outside the investment universe approved in advance by the AMC's management team).

Only AMC 1 has an investment procedure and an order placement procedure tailored to its business. By contrast:

- The investment procedures for AMCs 2 and 3 are out of date (AMC 2's in terms of regulatory references and AMC 3's has not been updated since 2017). AMCs 4 and 5 have no documented investment procedure;
- The order placement procedures for AMCs 2 and 3 are out of date (AMC 2's in terms of regulatory references and AMC 3's has not been updated since 2010). AMC 5 has no documented order placement procedure.³¹

5.2.2. Reference procedures for preventing and detecting market abuse

All AMCs in the sample have a formal master procedural document on the market abuse prevention system. This document takes the form of either a dedicated procedure, a dedicated section of the AMC's internal code of ethics, or a set of two procedures.³² However, **all the procedures examined revealed shortcomings** in their descriptions of the system. Specifically:

- **Only AMC 2's procedure refers to the main (and up-to-date) regulatory articles on market abuse.** By contrast, for example, AMC 1's procedure does not refer to the STOR DR, AMC 3 and AMC 5's procedures refer to Book VI of the AMF GR (which has been repealed and replaced by the MAR), and AMC 4's procedure fails to mention Articles 320-2 to 320-9 of the AMF GR (on the process for controlling the circulation and use of inside information);
- **Only AMC 2 and AMC 4's procedures adequately describe the process for creating and updating watch lists.** They state that inclusion on the watch list is linked to knowledge of inside information that warrants heightened vigilance and possible restrictions on trading in the security to which the inside information relates;
- **Only AMC 4's procedure adequately describes the process for creating and updating the restricted securities list and how it relates to the watch list.** It states that inclusion on the restricted securities list is conditional either on whether the transaction disclosed in the inside information is imminent (i.e. when its main characteristics, such as price, have been determined) or on whether there is a significant risk of

³¹ AMC 4 has an order placement procedure tailored to its business.

³² In this case, the first procedure defines the key concepts and the indicators implemented for detecting suspicious transactions and describes the general process. The second procedure specifies how the process of monitoring, detecting and reporting suspicious transactions is implemented operationally.

a conflict of interest (e.g. if different departments of the entity or group are involved in the same transaction);

- Only AMCs 1 and 2 (which have the largest volume of assets under management in the sample) participate in market soundings. However, **their respective procedures are unclear about how to compile, update and disseminate insider lists related to this type of sounding.** AMC 1's procedure states that it manages the risks associated with its asset managers taking part in market soundings using the restricted list alone.³³ AMC 2's procedure sets out the process for building an insider list but does not mention that it is typically triggered by a market sounding.

5.2.3. Procedures for monitoring transactions

The inspection task force also analysed the AMCs' procedural corpus from the perspective of the recommended operational framework for monitoring transactions and shareholding thresholds.

➤ Monitoring third-party transactions

The process for monitoring third-party transactions is **described adequately in the procedural corpus examined for AMCs 1, 2 and 4.** These corpus include a list of weak signals indicating potential market abuse (e.g. order cancellations, buy/sell transactions, unusually large movements and/or movements that occur before the publication of price-sensitive information), the scope of the tools used to detect suspicious transactions, and the list of rules and thresholds for triggering alerts. However:

- AMC 3's procedure lacks any details of the controls in place (it describes neither the staff responsible, nor the frequency of controls, nor the tools used);
- AMC 5's procedure lacks a procedural document specific to the AMC.³⁴

➤ Monitoring the AMC's own-account transactions

AMCs 1, 2 and 3 have implemented a regulatory capital monitoring procedure that restricts the investment of the AMC's own funds to non-risky assets.³⁵ This *ex ante* control on the nature of the assets significantly reduces the risk of market abuse arising from the potential use of inside information when investing the AMC's own funds. However, the inspection task force found that **there was no such procedure for AMC 4 and that the procedure provided by AMC 5 was not sufficiently detailed.** While AMC 5 specifies the procedures for monitoring and reviewing the level of capital, it does not mention the restrictions on the types of securities in which the AMC's capital can be invested.

➤ Monitoring employees' personal transactions

The procedural corpus of AMCs 1 and 2 describe the controls in place in the areas of employees' personal transactions. This description includes:

- the obligation to report the financial instrument accounts held by employees and the list of prohibited transactions (including securities that the AMC's managed funds have invested in) and those that employees are authorised to carry out;
- the mandatory formal approval process carried out by the compliance and internal control officer for authorised transactions (liquidations of existing lines in employees' portfolios);
- the compliance and internal control officer's comparison of the consistency of successive reports submitted by employees.

However, the inspection task force found that the descriptions of the controls in place over employees' personal transactions were unclear in the procedural corpus of AMCs 3, 4 and 5. The procedures of AMCs 2 and 3 do not

³³ The restricted list is used to monitor the security involved in the market sounding but not the asset manager(s) involved in it.

³⁴ The document provided by AMC 5 to the inspection task force relating to the monitoring of third-party transactions was the user manual for the external tool used by the AMC to carry out this monitoring.

³⁵ These include bank current accounts, fixed-term accounts or money market UCITS.

specify the type and nature of the controls carried out by the compliance and internal control officer in this area. AMC 5's procedure fails to describe the mandatory formal approval process used by the compliance and internal control officer for liquidations of existing portfolio lines.

However, the conflict of interest management system in each of the five AMCs (dedicated procedure, mapping and register), despite some shortcomings,³⁶ **adequately addresses the risk of unauthorised use of inside information (obtained in the course of business) by an employee in connection with transactions on their personal account.** By contrast, AMC 1's conflict of interest risk mapping mentions the risk of market abuse without specifically mentioning the risks associated with employees' personal transactions.

➤ Monitoring of shareholding thresholds crossings

The procedural corpus of AMCs 1, 2 and 3 include a procedure that provides an appropriate framework for detecting and reporting when shareholding thresholds have been exceeded for the funds they manage. This procedure specifies (i) the automated process for monitoring potential threshold breaches, (ii) the rules for issuing an alert, (iii) the process for investigating alerts and (iv) the procedures for reporting alerts to the supervisory authorities (format, time limit, internal approvals). However, **AMCs 4 and 5 do not have a documented procedure in this area.**

5.2.4. Suspicious transaction (STOR) reporting procedure

The regulation³⁷ requires AMCs to report transactions that they suspect may constitute market abuse to the AMF using a specific reporting format. The required format and the procedures for sending the report to the supervisory authority are described on the AMF website.³⁸

The procedural corpus of all the AMCs in the sample describe the STOR reporting process. **However, this description is incomplete for AMCs 2 and 3.** The process described for AMC 2 does not explicitly mention the STOR DR. AMC 3's description fails to make the link between the process of investigating the automatic alerts produced and the reporting process itself.

Regulatory reminders

- **Article 321-30 of the AMF GR (UCITS), 61(1) of DR 231/2013 (AIFs) and 22(1) of DR 2017/565 (IS):** “[AMCs] shall establish and maintain appropriate operational policies, procedures and measures to detect any risk of non-compliance with the professional obligations [...]”³⁹
- **Article 16(1) of the MAR:** “(1.) Market operators and investment firms that operate a trading venue shall establish and maintain effective arrangements, systems and procedures aimed at preventing and detecting insider dealing, market manipulation and attempted insider dealing and market manipulation [...]. A person referred to in the first subparagraph shall report orders and transactions, including any cancellation or modification thereof, that could constitute insider dealing, market manipulation or attempted insider dealing or market manipulation to the competent authority of the trading venue without delay.”
- **Article 2(1) and (2) of the STOR DR:** “1. Persons professionally arranging or executing transactions shall establish and maintain arrangements, systems and procedures that ensure: (a) effective and ongoing monitoring, for the purposes of detecting and identifying orders and transactions that could constitute

³⁶ These shortcomings, which are not related to the market abuse prevention system, concern AMC 2 (which did not provide its conflict of interest register on the grounds that it was empty and only available in paper format) and AMC 5 (whose conflict of interest management procedure is out of date in terms of regulatory references).

³⁷ Article 16(2) of the MAR, Articles 2 to 7 of the STOR DR.

³⁸ <https://www.amf-france.org/fr/formulaires-et-declarations/responsables-de-la-conformite/operations-suspectes>

³⁹ Provisions of Article 321-30 of the AMF GR, replicated in substance by Articles 61(1) and 22(1) of the DRs mentioned above. In the remainder of this document, only the texts relating to UCITS AMCs will be cited in the same way, for the sake of brevity.

insider dealing, market manipulation or attempted [...]; (b) the transmission of STORs to competent authorities [...]. 2. The obligations referred to in paragraph 1 shall apply to orders and transactions relating to any financial instrument and shall apply irrespective of: (a) the capacity in which the order is placed or the transaction is executed; (b) the types of clients concerned; (c) whether the orders were placed or transactions executed on or outside a trading venue.”

- **Article 3 of the STOR DR:** “1. The arrangements, systems and procedures referred to in Article 2(1) and (3) shall: (a) allow for the analysis, individually and comparatively, of each and every transaction executed and order placed, modified, cancelled or rejected in the systems of the trading venue and, in the case of persons professionally arranging or executing transactions, also outside a trading venue; (b) produce alerts indicating activities requiring further analysis for [...]; (c) cover the full range of trading activities undertaken by the persons concerned. 2. Persons professionally executing or arranging transactions and market operators and investment firms operating trading venues shall, upon request, provide the competent authority with the information to demonstrate the appropriateness and proportionality of their systems in relation to the scale, size and nature of their business activity, including the information on the level of automation put in place in such systems. 3. Market operators and investment firms operating trading venues shall, to a degree which is appropriate and proportionate in relation to the scale, size and nature of their business activity, employ software systems and have in place procedures which assist the prevention and detection of insider dealing, market manipulation or attempted insider dealing or market manipulation. The systems and procedures referred to in the first subparagraph shall include software capable of deferred automated reading, replaying and analysis of order book data, [...]. 4. Persons professionally arranging or executing transactions and market operators and investment firms operating a trading venue shall put in place and maintain arrangements and procedures that ensure an appropriate level of human analysis in the monitoring, detection and identification of transactions and orders that could constitute insider dealing, market manipulation or attempted insider dealing or market manipulation. 5. Market operators and investment firms operating a trading venue shall put in place and maintain arrangements and procedures that ensure an appropriate level of human analysis also in the prevention of insider dealing, market manipulation or attempted insider dealing or market manipulation. [...]”
- **Article 5(1) and (5) of the STOR DR:** “1. Persons professionally arranging or executing transactions and market operators and investment firms operating a trading venue shall establish and maintain effective arrangements, systems and procedures that enable them to assess, for the purpose of submitting a STOR, whether an order or transaction could constitute insider dealing, market manipulation or attempted insider dealing or market manipulation. Those arrangements, systems and procedures shall take due account of the elements constituting the actual or attempted insider dealing or market manipulation [...]. 4. Persons referred to in paragraph 1 shall have in place procedures to ensure that the person in respect of which the STOR was submitted and anyone who is not required to know about the submission of a STOR by virtue of their function or position within the reporting person, is not informed of the fact that a STOR has been or will or is intended to be submitted to the competent authority. [...]”
- **Articles 321-137 (UCITS and IS) and 320-3 (AIFs and IS) of the AMF GR:** “To ensure compliance with the abstention requirement set out in Articles 8, 10 and 14 of the [MAR], [AMCs] shall establish and maintain an appropriate procedure for supervising the issuers and financial instruments on which they have inside information. Such supervision shall cover: 1. Transactions in financial instruments by the asset management company for its own account; 2. Personal transactions [...]. To this end, the compliance and internal control officer shall draw up a watch list of the issuers and financial instruments on which the asset management company has inside information. The relevant entities shall inform the

compliance and internal control officer at once when they believe they possess inside information. [...]. The watch list shall indicate the reason for adding an issuer or financial instrument to the list and the names of the persons who have access to the inside information. [...]. The relevant entities shall inform the compliance and internal control officer when they believe that information they had previously reported [...] has ceased to be inside information. The contents of the watch list are confidential. Dissemination of items on the watch list is restricted to the persons designated by name in the procedures referred to in the first subparagraph of Article 321-136/320-2.”

- **Articles 321-139 (UCITS and IS) and 320-5 (AIFs and IS) of the AMF GR:** “I. - [AMCs] shall establish and maintain an appropriate procedure for monitoring compliance with any restrictions that apply to: 1. Transactions in financial instruments by the asset management companies for its own account; 2. Personal transactions [...] made by or on behalf of the relevant persons [...]; II. - To this end, [AMCs] shall establish a restricted list. This list includes those issuers or financial instruments in which the [AMC] must restrict its activities, or the activities of relevant persons, because of: 1. Legal or regulatory provisions to which the [AMC] is subject, other than those resulting from the abstention requirements set out in Articles 8, 10 and 14 of the [MAR]; 2. The application of undertakings given on the occasion of a financial transaction. When an [AMC] deems it necessary to prohibit or restrict the performance of an investment service, an investment activity or an ancillary service in respect of certain issuers or financial instruments, those issuers and financial instruments shall also be included on the restricted list.”
- **Point 9 of the ESMA/2016/1477 EN guidelines for persons receiving market soundings:** “9. The MSR⁴⁰ should establish, implement and maintain internal procedures that are appropriate and proportionate to the scale, size and nature of their business activity, to: a. ensure that, where the MSR designates a specific person or a contact point to receive market soundings, that information is made available [...]; b. ensure that the information received in the course of the market sounding is internally communicated only through pre-determined reporting channels and on a need-to-know basis; c. ensure that the individual(s), function or body entrusted to assess whether the MSR is in possession of inside information as a result of the market sounding are clearly identified and properly trained to that purpose; d. manage and control the flow of inside information arising from the market sounding within the MSR and its staff [...].”
- **Articles 321-43 of the AMF GR (UCITS), 63 of DR 231/2013 (AIFs) and 29 of DR 2017/565 (IS):** “[AMCs] shall establish and maintain effective and adequate arrangements aimed at preventing the following activities in the case of any relevant person, or person acting on behalf of a relevant person, who is involved in activities that may give rise to a conflict of interest, or who has access to inside information [...] or to other confidential information relating to clients or transactions with or for clients by virtue of the performance of his functions within the [AMC]: 1. Entering into a personal transaction [...].”

Good practices

- Including and regularly updating in the procedural corpus relating to monitoring transactions executed on behalf of third parties the list (and types) of weak signals indicating potential market abuse, the scope of the tools used to detect suspicious transactions and the list of rules and thresholds for triggering alerts set in these tools.
- Providing a list of only those risk-free financial instruments in which investment of own funds is authorised as part of the description, within the procedural corpus, of the *ex ante* controls in place to limit the risk of market abuse with own-account trading.

⁴⁰ Person receiving the market sounding.

- Including the matter of employees' personal transactions in the scope of the conflict of interest management system (procedure, mapping and register).

Poor practice

- Not explicitly documenting, in the procedure for preventing market abuse, the list of specific criteria for updating the watch list (e.g. knowledge of inside information, whether expected or proven) and restricted securities list, particularly with regard to the relationship between the watch list and the restricted securities list (e.g. imminence of the transaction to which the inside information relates, risk of conflict of interest in the potential use of the inside information).

5.3. SYSTEMS AND MEASURES FOR MONITORING AND DETECTING SUSPICIOUS TRANSACTIONS

5.3.1. Selection, security and configuration of IT applications used to prevent market abuse

- Analysis of the robustness of the information systems used to prevent market abuse

The summary mapping of the applications used to **execute, record and retain orders** is presented below.

| Type of tool | AMC 1 | AMC 2 | AMC 3 | AMC 4 | AMC 5 |
|---------------------------------|-------|---|-------|-----------------------------------|-------|
| Developed in-house (group tool) | | X (equity fund management) | | X (DM, advisory and RTO) | |
| Purchased externally | X | X (bond and convertible fund management) | X | X (collective fund management) | X |

A further mapping is provided below covering the applications used in **preventing market abuse that monitor executed transactions and send out alerts depending on the settings configured and the type of market abuse**.⁴¹

| Type of tool | AMC 1 | AMC 2 | AMC 3 | AMC 4 | AMC 5 |
|---------------------------------|-------|---|-----------------|-------|-----------------|
| Developed in-house (group tool) | | X (equity fund management) | | | |
| Purchased externally | X | X (bond and convertible fund management) | X ⁴² | X | X ⁴³ |

The inspection task force found that most of the AMCs inspected (four of the five) had not sufficiently documented, or had not documented at all, the selection process for the market abuse prevention application. Specifically:

- AMCs 2, 3 and 5 were unable to provide a documented selection report showing that several solutions had been put out to tender before the final tool was selected (AMCs 1 and 4 did provide such a report);

⁴¹ This classification is based on all or some of the types of market abuse presented in the table below.

⁴² AMC 3 uses several applications to prevent market abuse. These applications differ depending on the funds' depositary and the mandates managed.

⁴³ This external solution was only implemented in March 2020. In the previous period, transaction monitoring was carried out manually by the AMC's COO.

- AMCs 3, 4 and 5 did not conduct any formal “back-testing”⁴⁴ before selecting their market abuse tool. AMC 1 did conduct back-testing. AMC 2 did so only for the application covering bond and convertible fund management.⁴⁵

However, **only a minority of the AMCs in the sample (AMCs 3 and 4) have implemented a relatively⁴⁶ robust system for securing the data collected and processed by their market abuse prevention application.** By contrast, at the time of the inspection:

- AMC 2 and AMC 5 had not sufficiently restricted logical access to their respective applications,⁴⁷ which creates a risk that unscrupulous employees could bypass or modify the alert rules;
- AMCs 1, 2 and 5 had not implemented a documented process for monitoring the quality of the services provided by the software publisher of the (external) market abuse prevention application;
- AMC 1 had not implemented a documented, tested business continuity plan for its computer-based market abuse prevention system.

However, all the tools analysed provide an adequate data backup and retention function, which meant that the inspection task force was able to test alerts produced and subsequently investigated over a period of up to three years before the inspection began.

➤ Configuration of computer applications used to prevent, monitor and detect market abuse

As explained above, the AMCs in the sample monitor transactions using an automated tool that has been properly configured. This configuration has two components:

- the first is an alert rule;⁴⁸
- the second is variable alert thresholds that can be adjusted to the estimated level of risk.⁴⁹

The combination of these two components is referred to by the AMCs in the sample as an alert “algorithm” or “scenario”.

The alert rules are based on a classification of existing types of market abuse and associated indicators. The table below provides examples based on the findings of the systems of the five AMCs inspected.⁵⁰

Although the concepts presented below are mainly taken from examples given in the AMCs’ documentation, this table has no regulatory value and is not intended to be exhaustive. The terminology used in the examples is written in French or English, depending on the usage in the policies and procedures of the AMCs inspected.

⁴⁴ Back-testing involves verifying that the application(s) used to prevent, monitor and detect market abuse is/are working properly by testing all the transactions executed by the AMC over a period prior to the tool’s implementation. The results produced by the application(s) implemented are compared with those obtained using the previous method to gauge the effectiveness of the new application(s).

⁴⁵ AMC 2 justified this approach by explaining that the application covering its other type of fund management (equity) is a sub-module of the application used for placing orders in this same area.

⁴⁶ Although ostensibly more robust than those of the other three AMCs, the respective systems implemented by AMCs 3 and 4 do have shortcomings. For AMC 3, these shortcomings relate to the lack of a business continuity plan for the market abuse prevention application used and, for AMC 4, to the inadequate monitoring of the quality of the services provided by the software publisher of the application used (the AMC requested only one report from the software publisher on application data restoration testing between January 2018 and October 2021).

⁴⁷ For AMC 2, 24.5% (13/53) of active market abuse prevention application users in the equity fund management area have permanent read/write permissions but are employees who are not involved in investigating market abuse alerts. In the bond and convertible fund area, this percentage increases to 90% (29 out of 32 users). For AMC 5, this percentage, which was 50% at the beginning of the inspection (i.e. two out of four users), was reduced to 0% in 2022 when the AMC eliminated unauthorised accounts.

⁴⁸ The rule may involve, for example, when monitoring for insider trading, issuing an alert if a transaction executed by an asset manager is followed in time by a significant change in the price of the target equity.

⁴⁹ In the previous example, the alert threshold would involve the change in share price above which the AMC wants an alert to be triggered and the period between the execution date and the alert date. For example, AMC 1 has requested that its system generate an alert if the share price of an equity managed by its asset managers increases by more than (i) 400 bps in one day, (ii) 600 bps in three days or (iii) 1,000 bps in one week.

⁵⁰ To develop the classifications specified in their market abuse prevention policies, procedures and manuals, the AMCs stated that they drew on the guides published by the French Association of Financial Markets (AMAFI) and the French Banking Federation (FBF) in June 2017 and by the French Asset Management Association (AFG) in March 2021.

In the table below, the inspection task force has highlighted:

- in **blue square brackets** (e.g. [AMC x]), the indicators that the inspected AMCs selected to use when configuring their market abuse prevention applications;
- in **red**, the indicators that the inspection task force used to identify samples of executed orders – from the transaction files of the inspected AMCs – that were relevant for testing from the perspective of the associated potential risk of market abuse.⁵¹

| Family | Type | Suggested summary definition | Examples and/or detection indicators (non-exhaustive list) | |
|--|----------------------------------|---|--|--|
| Market manipulation <i>(Articles 12.2, 12.3 and 15 of the MAR⁵²)</i> | Price manipulation ⁵³ | A transaction or activity that is likely to affect the price of one or more financial products through the use of fictitious devices or any other form of deception or contrivance. | <ul style="list-style-type: none"> - transaction at a specific reference point⁵⁴ - placing orders without the intention of executing them⁵⁵ - abuse of a dominant position⁵⁶ - improper price support⁵⁷ - advancing the bid⁵⁸ - giving a false impression to the market⁵⁹ - fraudulent holdings⁶⁰ - pump and dump⁶¹ - phishing⁶² - order stuffing⁶³ - momentum ignition⁶⁴ [AMC 2, 4] | <ul style="list-style-type: none"> - Unusual concentration of orders for a given financial instrument [AMC 1, 2, 3, 4] - Unusual repetition of similar transactions over the same period [AMC 1] - Orders that account for a significant proportion of the daily volume of transactions in a given financial instrument and that have led to a significant change in its price [AMC 1, 2, 3] - Orders issued at the best prices and then cancelled before execution [AMC 2, 3] - Reversals of positions over a short period - Transactions carried out near a trading day reference point (e.g. opening, closing, closing fixing) [AMC 3, 4] |
| | Dissemination of false or | Disseminating information by any means that gives, or is likely to give, false or | <ul style="list-style-type: none"> - Deception or contrivance through (i) dissemination of false/misleading information or (ii) false/biased investment recommendations - Dissemination of false/misleading information in the media | |

⁵¹ See section 5.4.1 below.

⁵² Article 15 prohibits both market manipulation and attempted market manipulation.

⁵³ Annexes (I)(B) of the MAR and (II) of Delegated Regulation (EU) 2016/522 of 17 December 2015 (applicable as of 3 July 2016) provide a non-exhaustive list of indicators for detecting manipulative behaviour.

⁵⁴ Deliberately buying or selling a financial instrument at a specific reference point in the trading session (opening, closing, settlement, fixing) to increase, decrease or maintain the reference price at a specific level.

⁵⁵ Placing orders that are withdrawn prior to execution and have the effect, or are likely to have the effect, of giving a misleading impression of the level of supply or demand at a given price for a financial instrument.

⁵⁶ Taking advantage of the significant influence that a dominant position has on the supply of or demand for a financial instrument in such a way as to materially distort, or potentially distort, the prices at which other market participants are required to deliver, receive or defer delivery of such instruments to meet their obligations.

⁵⁷ Transactions carried out in a way that prevents the price from rising or falling above a certain level to avoid any negative consequences from changes in the price of a financial instrument.

⁵⁸ Placing orders to increase the demand for (or decrease the supply of) a financial instrument with the aim of increasing (or decreasing) its price.

⁵⁹ Placing orders that are displayed publicly on screens to give an impression of activity or price movement in a financial instrument.

⁶⁰ Transaction or series of transactions designed to conceal ownership of a financial product through failure to comply with disclosure requirements by holding the financial instrument in the name of one or more colluding parties.

⁶¹ Taking a long or short position in a financial instrument and then engaging in other buying or selling activities and/or disseminating misleading information (positive or negative) about the instrument with the aim of driving the price up or down by attracting other buyers or sellers. When the price is at an artificially high or low level, the position held is closed out.

⁶² Executing orders to discover the orders of other market participants, and then placing an order to take advantage of the information obtained.

⁶³ Placing a large number of orders and/or cancellations in a way that creates uncertainty for other market participants.

⁶⁴ Placing orders that may create or exacerbate a trend and encourage other market participants to accelerate or extend the trend with the aim of opening or closing a position at a favourable price.

| Family | Type | Suggested summary definition | Examples and/or detection indicators (non-exhaustive list) |
|--|--------------------------------------|---|--|
| | misleading information ⁶⁵ | misleading signals about the supply of, demand for, or price of a financial instrument, or fixes, or is likely to fix, the price of one or more financial instruments at an abnormal or artificial level. | <ul style="list-style-type: none"> - front running⁶⁶ [AMC 2, 4] - Issuing advice on a financial instrument without having disclosed a conflict of interest - Opening a position, then closing it immediately after publication⁶⁷ |
| Insider trading (Articles 8, 9, 10 and 14 of the MAR) | | Using inside information in connection with a transaction (on own account or on behalf of a third party) targeting the financial instrument to which the information relates. | <ul style="list-style-type: none"> - Unusual concentration of transactions in a given financial instrument [AMC 1, 2, 3, 4] - Unusual repetition of a transaction during a targeted period [AMC 1, 2] - Unusual transactions prior to information being made public [AMC 1, 2, 3, 4, 5] - Client interference with a mandate |

The table above shows two main patterns in the configurations used by the AMCs in the sample, targeting respectively:

- unusual concentrations of orders over a given period (to identify potential market manipulation);
- the cross-referencing of executed transactions with market information made public shortly before or after execution (to identify potential insider misconduct).⁶⁸

However, the configuration rules chosen by the AMCs in the sample vary widely because they are based on each AMC's management activity and its analysis of the main risks of market abuse to which it believes it is exposed. The inspection task force did not therefore examine whether the configurations implemented were likely to cover all the potential market abuse risks affecting the AMCs in the sample. However, the task force did want to verify that the configuration in place at the time of the inspection was justified by a documented preliminary risk analysis that could be modified as needed in accordance with an established review procedure.

However, the inspection task force found that **only AMC 4 had adequately documented the reasons for implementing the market abuse scenarios in its tool and only AMCs 2 and 4 had implemented an adequate process for reviewing these scenarios.** Specifically, AMCs 1, 3 and 5:

- have not documented the reasons for choosing the scenarios configured in their respective tools; and
- have not set up a formal process for modifying these scenarios that includes approval by the person responsible for the market abuse prevention system and that provides a usable audit trail.⁶⁹

The situation for AMC 2 is more mixed. Firstly, this AMC has documented the reasons for selecting these scenarios only for the tool used in the bond and convertible fund management area. This is the tool that AMC 2 implemented most recently, in 2019. No such documentation is in place for the internal group tool used in the equity fund management area. This is a sub-module of the group's internal order placement tool (in use since AMC 2 received its authorisation). However, in this second area, **AMC 2 has implemented two types of preliminary alert**

⁶⁵ Annexes (I)(A) of the MAR and (II) of Delegated Regulation 2016/522 of 17 December 2015 provide a non-exhaustive list of indicators for detecting manipulation based on the communication of false or misleading information.

⁶⁶ Placing orders before or shortly after the market participant or related persons publish conflicting research or investment recommendations.

⁶⁷ Opening a position in a financial instrument and then closing that position immediately after making public and highlighting the long holding period of the investment.

⁶⁸ This second configuration pattern led all the AMCs in the sample to select a market abuse prevention tool that is fed directly by a fee-based market information source so that executed transactions can be easily cross-referenced with the regularly issued newsletters that are targeted at issuers.

⁶⁹ AMC 2 has put such a process in place.

thresholds aimed at reducing the volume of “false positives”⁷⁰ by targeting only transactions whose volume (or performance) exceeds predefined values. These types of thresholds are defined by geographical area of investment (Europe, US, Japan) and by capitalisation of the target company.⁷¹ For example, a volume threshold of 15% has been set for small caps. This means that the monitoring application will not produce alerts for transactions targeting small cap issuers where the daily volume is less than 15% of the market volume for that security, even if the transaction in question meets the criteria of a configured test scenario. The various theme-specific alert rules configured in the automated transaction monitoring system only apply to small caps transactions whose volume exceeds this preliminary threshold. **Although this system of preliminary thresholds has the advantage of laying the groundwork for the (manual) investigation process by flagging only those alerts that are deemed “significant” in terms of the AMC’s day-to-day activities, there is a risk that market abuse transactions may not be identified if they are smoothed out over several days or involve low volumes.**

Lastly, AMC2 has implemented an appropriate process for regularly reviewing these market abuse detection scenarios.

- Mechanism in place specifically targeting orders that are cancelled/modified/placed at the closing fixing

The inspection task force found that **most of the AMCs in the sample (three of the five) have not set up an automatic or manual control system that specifically targets orders that are modified, cancelled or placed at the closing fixing,**⁷² even though the repeated use of these types of orders carries a risk of potential market abuse.⁷³ Only AMCs 3 and 4 have set up specific algorithms for these types of orders in their market abuse prevention tools.

5.3.2. Operational implementation of automated and manual monitoring of inside information

- Operational implementation of the watch list

The AMCs in the inspected sample manually manage additions to and removals from this type of list. These lists are not integrated into their respective market abuse prevention applications.

Most of the AMCs inspected (three of the five) do not keep a complete audit trail supporting changes to securities on their watch list. Only AMCs 1 and 2 (which have the highest assets under management and most staff) were able to provide an audit trail (in addition to the watch list with its content at the time of the inspection). In terms of the number of changes to watch lists, AMC 1 added/removed three securities on its watch list during the period under review, whereas AMC 2 added/removed 26.

However, **all AMCs in the sample confirmed that the watch list was a control tool that was not circulated** to all or some of their employees⁷⁴ and was used exclusively by the employee responsible for preventing market abuse.

- Operational implementation of the restricted securities list

The process for managing, using and circulating the restricted securities list is a manual one in all five AMCs inspected. The number of securities included on this type of list ranged from two (AMC 4) to 50 (AMC 5) over the period under review.

However, **this process is not operational for most of the AMCs in the sample (4/5).** Specifically:

⁷⁰ These are alerts targeting potential market abuse that subsequent investigation reveals were triggered because of the rules and thresholds configured but have no real risk of associated market abuse.

⁷¹ Large caps where capitalisation exceeds €2 billion, mid caps where capitalisation exceeds €150 million and is less than €2 billion, and small caps where capitalisation is less than €150 million.

⁷² The regulations point to the repeated use of these orders as potential signals of attempted market manipulation (see Article 12(2)(b)(c) of the MAR outlined below in the Regulatory Reminders section).

⁷³ As shown in the table of potential market abuse indicators provided in section 5.3.1.

⁷⁴ This is in contrast to restricted lists and insider lists, which are in theory circulated to employees (see the following sub-sections).

- Contrary to what is stated in its procedural corpus,⁷⁵ AMC 2 has no formal restricted securities list;⁷⁶
- AMCs 2, 3 and 5 do not keep a formal audit trail of successive updates to the restricted list, related to the watch list, and did not provide evidence that the updated lists are regularly distributed to relevant employees;
- AMC 1 does not formally communicate successive updates of the restricted securities list to all relevant employees.

The process described above is operational for AMC 4.

➤ Operational implementation of the insider list

Only the two AMCs with the largest amounts of assets under management in the sample (AMCs 1 and 2) use this type of list since they are the only ones taking part in market soundings. The inspection task force checked that the lists produced included the full names of the employees in question, the date the names were added to/removed from the insider list and the name of the issuer targeted by the market sounding. The task force also checked that these employees had been informed of their inclusion on (or removal from) the insider list by means of an e-mail (with reasons) from the compliance and internal control officer.

5.3.3. Operational implementation of automated and manual transaction monitoring

➤ Operational monitoring of transactions executed on behalf of third parties

This process is identical for all five AMCs in the sample. All transactions executed by the front office are analysed by the algorithms used in the market abuse prevention application. When one or more transactions have characteristics that match the rules and thresholds of one of the configured algorithms, the tool produces an alert. This alert remains open until it has been processed, in other words, until an AMC employee⁷⁷ has added a comment after completing their analysis. The alert then moves to “resolved” status. If the alert indicates potential market abuse, the person responsible for first-level controls carries out further analysis before initiating the process of drafting and approving any STOR.

The inspection task force found that **the process for investigating the alerts produced included a clear audit trail with documented entries for most of the AMCs in the sample** (three of the five). However, this audit trail did not include documented entries for AMC 5 (the 12 alerts produced during the period under review were closed without any explanatory comments in the tool). AMC 2’s audit trail is only partially implemented:

- For equity fund management (excluding RTO⁷⁸), the audit trail does not include the scenario type that triggered the alert (which makes it difficult to understand the comments added after investigation);
- For bond and convertible fund management, there was no audit trail for the 2018 financial year. As AMC 2 confirmed to the inspection task force, this type of management was not covered by its market abuse prevention system until the 2019 financial year.

In addition, the inspection task force found that **all AMCs in the sample were able to produce detailed statistics on the processing of alerts generated from the date** their market abuse prevention application was implemented. These statistics are shown in a consolidated form in the table below.

⁷⁵ See section 5.2.2 above.

⁷⁶ When interviewed about this by the inspection task force, AMC 2 defended the absence of this list by stating that the risk of trading in an unauthorised security was covered (i) for own-account transactions, by the *ex ante* controls mentioned above, and (ii) for third-party transactions, by the “Chinese walls” (information barriers) that exist between it and its parent company’s banking business.

⁷⁷ A person responsible for internal controls for AMCs 1 to 4 and a middle-officer for AMC 5.

⁷⁸ The inspection task force did not identify any anomalies in the investigation of potential market abuse alerts produced in the RTO area. The audit trail in this case is documented in a summary table that includes the resolution date and the name of the employee involved in investigating the alert.

| Control period | AMC 1 | AMC 2 | AMC 3 | AMC 4 | AMC 5 |
|--|-----------------------|-----------------------|-----------------------|-----------------------|-------|
| Total volume of transactions executed (a) | 104,821 ⁷⁹ | 261,276 ⁸⁰ | 163,990 ⁸¹ | 476,089 ⁸² | 5,198 |
| Total volume of alerts generated by the market abuse prevention system (b) | 2,152 | 4,678 | 881 | 31,196 | 959 |
| % (b)/(a) | 2.05% | 1.79% | 0.54% | 6.5% | 18.4% |

The average number of alerts triggered as a percentage of transactions executed was 5.8%. The high alerts-to-transactions ratio observed for AMC 5 (which has the smallest number of staff) raises questions about the AMC's ability to consistently process all the alerts generated and do so to a high standard. This highlights the importance of regularly reviewing the scenarios configured in the monitoring tools, not only to ensure that they are regularly updated to reflect changes in the AMC's business and risk environment, but also to ensure that the teams involved can effectively process the flow of alerts generated.

➤ Operational monitoring of employees' personal transactions

These transactions are subject to controls performed by the compliance and internal control officer and are described in the procedural corpus of the AMCs in the sample, as explained above.⁸³ **The inspection task force checked that most of the AMCs inspected (AMCs 1, 3 and 4) had documented these controls and that they were operational.** However, the task force found that:

- AMC 2 has not documented the content and procedures for dealing with any anomalies it identifies during its ex post controls;
- AMC 5 has not documented execution of these controls.⁸⁴

➤ Operational monitoring of transactions executed on the AMC's own-account

The inspection task force checked the accounting records of AMCs 1 to 4⁸⁵ to ensure that their respective own funds were invested in non-risky assets (bank current accounts, fixed-term accounts, money market UCITS), which is consistent with the procedural corpus of AMCs 1 to 3 and indicates that these four AMCs have adequate controls in place for transactions involving their own funds.

Regulatory reminders

- **Articles 321-30 of the AMF GR (UCITS), 61(1) of DR 231/2013 (AIFs) and 22(1) of DR 2017/565 (IS):** see previous section.
- **Articles 321-137 (UCITS and IS) and 320-3 (AIFs and IS) of the AMF GR on watch lists:** see previous section.
- **Articles 321-138 (UCITS and IS) and 320-4 (AIFs and IS) of the AMF GR:** *"The [AMC] shall exercise supervision in accordance with the procedures set forth in Article 321-137. It shall take appropriate measures if it detects an anomaly. The asset management company shall keep a record on a durable medium of the measures it has taken in the event of an anomaly or, if it takes no measures, of the reasons for so doing."*
- **Articles 321-139 (UCITS and IS) and 320-5 (AIFs and IS) of the AMF GR on restricted securities lists:** see previous section.

⁷⁹ 95,292 for collective management and 9,529 for DM.

⁸⁰ 95,727 for equity fund management excluding RTO, 136,120 for equity fund management including RTO and 29,429 for bond and convertible fund management.

⁸¹ 42,436 for collective management and 121,554 for DM.

⁸² 16,711 for collective management and 459,378 for DM.

⁸³ See section 5.2.3.

⁸⁴ This means that (ex ante) email exchanges relating to the pre-authorisations required before a personal transaction is executed are not kept and (ex post) the actual comparison between the securities account statements issued by employees and the securities processed by the AMC's funds is not traced.

⁸⁵ AMC 5 does not carry out any own-account transactions.

- **Articles 321-140 (UCITS and IS) and 320-6 (AIFs and IS) of the AMF GR:** “[AMCs] shall determine, based on the restricted list, which entities are subject to the restrictions referred to in Article 321-139 and how those restrictions shall apply. They shall inform the relevant persons affected by the restrictions of the list and the nature of the restrictions.”
- **Article 12(2)(b)(c) of the MAR:** “The following behaviour shall, inter alia, be considered as market manipulation: [...] (b) the buying or selling of financial instruments, at the opening **or closing of the market**, which has or is likely to have the effect of misleading investors acting on the basis of the prices displayed, including the opening or closing prices; (c) the placing of orders to a trading venue, **including any cancellation or modification thereof**, by any available means of trading, including by electronic means, such as algorithmic and high-frequency trading strategies [...]”.
- **Article 16(2) of the MAR:** “2. Any person professionally arranging or executing transactions shall establish and maintain effective arrangements, systems and procedures to detect and report suspicious orders and transactions. Where such a person has a reasonable suspicion that an order or transaction in any financial instrument, whether placed or executed on or outside a trading venue, could constitute insider dealing, market manipulation or attempted insider dealing or market manipulation, the person shall notify the competent authority as referred to in paragraph 3 without delay.”
- **Article 2(1)(a) and (5)(a)(c) of the STOR DR:** “1. Persons professionally arranging or executing transactions shall establish and maintain arrangements, systems and procedures that ensure: (a) effective and ongoing monitoring, for the purposes of detecting and identifying orders and transactions that could constitute insider dealing, market manipulation or attempted insider dealing or market manipulation, of all orders received and transmitted and all transactions executed; [...] 5. Persons professionally arranging or executing transactions, market operators and investment firms operating a trading venue shall ensure that the arrangements, systems and procedures referred to in paragraphs 1 and 3: (a) are appropriate and proportionate in relation to the scale, size and nature of their business activity; [...] (c) are clearly documented in writing, including any changes or updates to them, for the purposes of complying with this Regulation, and that the documented information is maintained for a period of **five years.**”
- **Article 3(4) and (8) of the STOR DR:** “4. Persons professionally arranging or executing transactions and market operators and investment firms operating a trading venue shall put in place and maintain arrangements and procedures that ensure an appropriate level of human analysis in the monitoring, detection and identification of transactions and orders that could constitute insider dealing, market manipulation or attempted insider dealing or market manipulation. [...] 8. As part of the arrangements and procedures referred to [...], persons professionally arranging or executing transactions and market operators and investment firms operating a trading venue shall maintain for a period of five years the information documenting the analysis carried out with regard to orders and transactions that could constitute insider dealing, market manipulation or attempted insider dealing or market manipulation which have been examined and the reasons for submitting or not submitting a STOR. That information shall be provided to the competent authority upon request. The persons referred to in the first subparagraph shall ensure that the arrangements and procedures referred to in Article 2(1) and (3) guarantee and maintain the confidentiality of the information referred to in the first subparagraph.”
- **Article 5 of the STOR DR:** see previous section.
- **Article 318-1 (AIFs) of the AMF GR:** “Given the nature of the AIFs it manages, [the AMC] shall have sound administrative and accounting procedures, control and safeguard arrangements for electronic data processing and adequate internal control mechanisms including, in particular, rules for personal transactions by its employees or for the holding or management of investments in order to invest on its own account and ensuring, at least, that each transaction involving the AIFs may be reconstructed according to its origin, the parties to it, its nature, and the time and place at which it was effected [...]”.

- **Articles 321-44 (2), (3) of AMF GR (UCITS), 63 of DR 231/2013 (AIFs) and 29(1)(2)(5)(c) of DR 2017/565:** “[...] [AMCs] must specifically ensure that: [...] (2) The [AMC] is informed promptly of any personal transaction entered into [...], either by notification of any such transaction or by other procedures enabling the [AMC] to identify such transactions; If the [AMC] has entered into an outsourcing contract, it must ensure that the service provider to which the task or function has been outsourced keeps a record of personal transactions entered into by any relevant person and is able to provide such information to the [AMC] promptly on request; (3) A record is kept of the personal transaction notified to the [AMC] or identified by it. The record shall also mention any authorisation or prohibition in connection with the transaction.”
- **Articles 321-96 (II) (UCITS), 318-61 (II) (AIFs) of the AMF GR and 31(2) of DR 2017/565 (IS):** “[AMCs] shall exercise due skill, care and diligence when entering into, managing or terminating an outsourcing contract for critical or important operational tasks or functions. In particular, [AMCs] must take the necessary steps to ensure that the following conditions are satisfied: [...] 2. The service provider must carry out the outsourced services effectively. To this end, the [AMC] must establish methods for assessing the standard of performance of the service provider. 3. The service provider must properly supervise the carrying out of the outsourced tasks or functions, and adequately manage the risks stemming from outsourcing. [...] 5. [AMCs] must retain the necessary expertise to supervise the outsourced tasks or functions effectively and manage the risks stemming from outsourcing and must supervise those tasks and manage those risks. [...] 9. The [AMC], its auditors and the relevant competent authorities must have effective access to data related to the outsourced tasks or functions, as well as to the business premises of the service provider. 10. The service provider must protect any confidential information relating to the [AMC] and its clients. 11. The [AMC] and the service provider must establish and maintain an effective contingency plan for disaster recovery and periodic testing of backup facilities, where that is necessary having regard to the nature of the outsourced task or function.”

Good practices

- Basing the selection of the transaction monitoring tool (used to detect potential market abuse) on back-testing, which involves comparing the alerts that would have been generated by the tool being reviewed with those actually generated by the current monitoring method over an elapsed period of time.
- Implementing a process to regularly review the suspicious transaction detection scenarios configured in the monitoring tools, not only to ensure that they are regularly updated to reflect changes in the AMC’s business and risk environment, but also to ensure that the teams involved can effectively process the flow of alerts generated.

Poor practices

- Failing to ensure that the contents of the watch list (and updates to it) are regularly taken into account in the processes related to (i) configuring the transaction monitoring tools and (ii) investigating the alerts produced by these tools.
- Failing to configure specific controls on orders that are modified, cancelled or placed at the closing fixing in the transaction monitoring system used to prevent market abuse.

5.4. TESTS CONDUCTED BY THE INSPECTION TASK FORCE

5.4.1. Test on a sample of potentially suspicious transactions

The inspection task force decided to check how effective the five AMCs’ automated market abuse prevention systems were in detecting potentially suspicious transactions. The task force therefore conducted a test.

From the file of transactions executed between 1 January 2018 and 1 October 2021, the inspection task force selected a sample of transactions meeting one of the following criteria:

- purchases (or sales) whose amount is significantly different from the rest of the transactions carried out before and after this transaction;
- back-to-back purchases and sales (or vice versa) for similar amounts over a short period of time (i.e. zero or near-zero sum transactions).

The task force selected these types of transactions for testing based on the most commonly used detection indicators in the sample of AMCs inspected.⁸⁶

The results of the test conducted are shown in the table below.

| | AMC 1 | AMC 2 | AMC 3 | AMC 4 | AMC 5 |
|--|------------------|---|------------------|------------------|---------------------|
| Number of transactions executed during the period under review ⁸⁷ | 104,821 | 261,276 | 163,990 | 476,089 | 5,198 ⁸⁸ |
| Selected sample size (= number of test cases) | 20 | Equity fund management: 21 Bond and convertible fund management: 22 | 20 | 20 | 26 ⁸⁹ |
| % of test case transactions (of total volume executed ⁹⁰) | 9% | <1% | 8% | 7% | 2% |
| Gross failure % ⁹¹ | 60% | Equity fund management: 9% Bond and convertible fund management: 81% | 75% | 35% | 81% |
| Net failure % ⁹² | 0% ⁹³ | Equity fund management: 9% Bond and convertible fund management: 20% ⁹⁴ | 0% ⁹⁵ | 0% ⁹⁶ | 23% |

Note: The size of the test sample (on average 5.4%⁹⁷ of the total volume of transactions executed) was chosen to be consistent with the average percentage of the total number of alerts generated over the test period in relation to the total volume of transactions executed (5.8%⁹⁸).

⁸⁶ Refer to the indicators listed in red in the table in section 5.3.1 above.

⁸⁷ The figures given here relate to all types of fund management.

⁸⁸ Amount extrapolated for a period of 46 months (January 2018 to October 2021) based on an average observed volume (between January 2018 and December 2020) of 113 monthly transactions. This volume is consistent with the investment strategy of AMC 5, which favours long-term positions (2 years on average) across some thirty securities in the portfolio.

⁸⁹ Half of the test cases (50%) selected relate to transactions executed before implementation of the automated market abuse prevention system at AMC 5. The other 50% of test cases relate to transactions executed after implementation.

⁹⁰ There are several transactions in each test case to reflect the objective of the detection indicators studied, which target, for example, unusual repetition of transactions of the same type.

⁹¹ This is the number of test cases that did not receive an automatic alert divided by the total number of test cases, expressed as a percentage.

⁹² This is the number of test cases for which non-detection was not conclusively justified by the AMC divided by the total number of test cases, expressed as a percentage.

⁹³ The AMC explained that the cases for which no alerts were produced corresponded to share price movements that remained below the thresholds configured in the system.

⁹⁴ The net failure rate takes into account the fact that the market abuse prevention system did not cover bond and convertible fund management in 2018.

⁹⁵ The AMC mentioned that the undetected orders correspond to small volumes compared with the volume traded on the market in the same period.

⁹⁶ The AMC justified the failure to generate an alert by explaining that the materiality threshold configured in the application had not been exceeded (for the cases tested here: no price variation greater than 5% of the price on the transaction date over the 10 days following the transaction tested).

⁹⁷ Specifically: (9+1+8+7+2)/5

⁹⁸ See section 5.3.3 above.

A comparison of the selected transactions (in the test sample) with the investment committees' minutes did not reveal any significant differences for AMCs 1, 2 and 4. However, for AMC 3, for three of the four securities tested,⁹⁹ no minutes of the committees held during the month in which the transaction was executed mentioned these securities.¹⁰⁰ Lastly, it was not possible to make this comparison for AMC 5 because it does not produce any minutes for the investment committees.

To conclude the test, the inspection task force notes that **the proportion of cases not detected by the AMC's monitoring system and for which any non-detection was not explained by the AMC remains significant for two of the five AMCs tested.** It varies from 9% (for AMC 2's equity fund management) to 23% for AMC 5. Given that these two AMCs have recently upgraded their computer systems for preventing market abuse, it is possible that these test results are related to the calibration period needed to ensure the tools are working at their best. Nevertheless, they suggest that the rules and alert thresholds configured in the automated transaction monitoring tools should be reviewed regularly to ensure that the market abuse prevention system is continuously updated to reflect changes in the management and risk environment of each AMC.

5.4.2. Checks on potential suspicious transactions in the securities of issuers with which the AMC's senior managers and asset managers have or may have had contact

- Checks on the appointments made by the AMC's asset managers with issuers or corporate clients' senior managers

The inspection task force found that most AMCs (three of the five) use a specific medium to record the meetings that their managers have with issuer representatives corporate clients' senior managers. However, it noted that:

- AMC 2 carries out this monitoring using an IT application that does not provide a data export function, which makes it difficult to use the information at a later stage for market abuse prevention purposes;
- AMC 5 has only been formally monitoring the data since February 2021.

For AMCs 1, 3 and 4, the inspection task force cross-referenced the transactions in the sample used above with the list of appointments provided. It found that 80% of these transactions for AMC 1, 35% for AMC 3 and 30% for AMC 4 occurred at the same time as meetings between the asset managers and the issuers concerned. The inspection task force found that this information was used during the alert investigation process. In each case, the meeting is mentioned in the comments added during the investigation but is excluded from the scope of suspicion because it was a public meeting that did not involve the dissemination of inside information.

- Checks on the previous professional experience of the AMC's senior managers

The inspection task force reviewed the CVs of the senior managers and asset managers of the five AMCs inspected and identified the listed companies at which each had gained their most significant professional experience. The names of these issuers were then cross-referenced with (i) the file of executed transactions and (ii) the list of alerts produced during the period under review by the market abuse prevention application. This cross-referencing did not identify any suspicious trends or management biases that could be construed as insider trading during the period under review.

⁹⁹ Because of the large volume of minutes to be reviewed (the investment/divestment committee usually meets on a weekly basis), this comparison work was carried out on subsets of the samples selected for each AMC.

¹⁰⁰ The AMC explained that the transaction involving one of these three securities was not included in the minutes reviewed because the orders concerned had been smoothed out over a long period to avoid impacting the market. However, no justification was provided for the other two securities.

➤ Checks on the directorships held by the AMC’s senior managers

The inspection task force decided to conduct a test similar to the one described above, but this time using as a starting point the list of directorships held outside the company by the AMC’s senior managers. The task force checked that none of these directorships were with listed companies.

5.4.3. Checks on major shareholding threshold notifications

Shareholding thresholds crossings are monitored manually by the five AMCs in the sample before any notifications are sent to the AMF. They are not integrated into the market abuse prevention application, but they are included in the data sources that the person responsible for market abuse prevention uses to investigate automatically generated alerts.

The number of notifications for each of the five AMCs inspected is summarised below.

| Number (January 2018 to October 2021) | AMC 1 | AMC 2 | AMC 3 | AMC 4 | AMC 5 |
|--|-------|-------|-------|-------|-------|
| Major shareholding notifications | 27 | 9 | none | none | 8 |

The inspection task force checked that the contents of the Excel files used to monitor shareholding thresholds crossings was consistent with the number of notifications actually sent to the AMF. The format of these notifications was consistent with the regulations and inspected AMCs’ procedures.

5.4.4. Checks on suspicious transaction reports (STORs)

➤ Details of STORs issued by the AMCs in the inspected sample

The STORs issued by the AMCs in the sample since their authorisation are presented in the table below.

| Number (January 2018 to October 2021) | AMC 1 | AMC 2 | AMC 3 | AMC 4 | AMC 5 |
|--|--|--|--|--|-----------------------------|
| Transactions executed | 104,821 | 261,276 | 163,990 | 476,089 | 5,198 |
| Automatic market abuse alerts produced | 2,152 | 4,678 | 881 | 31,196 ¹⁰¹ | 959 ¹⁰² |
| % (alerts/transactions) | 2.05% | 1.8% | 0.5% | 6.5% | 18.4% ¹⁰³ |
| STORs issued | 0 | 2 | 1 | 2 | 0 |
| % (STORs/alerts) | 0% | 0.04% | 0.11% | 0.01% | 0% |
| STOR dates | September 2019 | - February 2020 - March 2021 | October 2019 | - June 2018 - Q4 2019 | N/A |
| STOR content | unusual behaviour detected internally ¹⁰⁴ | suspected insider dealing ¹⁰⁵ | suspected insider dealing ¹⁰⁶ | suspected insider dealing ¹⁰⁷ | N/A |

Each of the STORs issued underwent a structured and formal preliminary analysis, which the inspection task force examined. The format of the STORs is also consistent with the requirements of the regulations.

While the proportion of alerts generated relative to transaction volume ranged from 0.5% to 18.4% (average 5.8%), **the proportion of the volume of STORs issued relative to the volume of alerts was almost nil for all the AMCs in the sample during the period under review. This supports the need for regular second - and third- level controls on the manual process for investigating alerts generated.**

The low number of STORs issued by the AMCs in the sample during the period under review is consistent with the (also low) volume of STORs received by the AMF since July 2016 for all supervised AMCs. To illustrate this point, the AMF provides below comparative statistics on the STORs submitted to the AMF by AMCs and by other ISPs.

| STOR issuers | Number of STORs received by the AMF | | | | | |
|--------------|-------------------------------------|------|------|------|------|------|
| | 2016 | 2017 | 2018 | 2019 | 2020 | 2021 |
| AMCs | No data ¹⁰⁸ | | | | | 5 |
| ISPs | 263 | 721 | 699 | 734 | 705 | 882 |

Given the low number of STORs received by the AMF from AMCs, it is worth remembering that collecting relevant and accurate STORs is a major supervisory challenge for the AMF in terms of risk detection and analysis, as is collecting other reporting data.

¹⁰¹ This is an estimate: the transaction monitoring system used by AMC 4 does not distinguish between alerts related to the AMC's activity and those related to its parent company. The amount indicated here corresponds to 60% of the overall volume of alerts recorded (percentage provided by the AMC based on its expert judgement).

¹⁰² This figure was extrapolated for a period of 46 months (January 2018 to October 2021) from the number of alerts recorded between the date the transaction monitoring application was implemented (March 2020) and the date the alert statistics were submitted to the inspection task force (October 2021), i.e. 438 alerts for 21 months ((438 x 46)/21 = 959). The AMC did not keep statistics on market abuse alerts produced and processed (manually) for the period prior to the implementation of the transaction monitoring application.

¹⁰³ The high percentage is due to the calculation estimates described above and to the recent implementation of the transaction monitoring tool by AMC 5 (which suggests that the tool was still being calibrated to the AMC's activity at the time of the inspection).

¹⁰⁴ The unusual transaction detected was the resale of all the securities received as part of an IPO less than a month after they were received. The security in question was also placed on the restricted list.

¹⁰⁵ The two STORs are linked to two discretionary management clients who reported having a connection with the senior management teams of the two targeted issuers. The associated transactions were disallowed by the AMC's compliance and internal control officer before they were executed.

¹⁰⁶ The STOR relates to a discretionary management client whose girlfriend is a member of the management board of the targeted issuer.

¹⁰⁷ The two STORs related to two advisory management clients. The first is a former executive of the issuer targeted by the transaction. The second client indicated, during discussions with the asset manager, a willingness to commit market abuse (by driving up the price of a very illiquid security by taking a position at the best bid price just before the fixing). AMC 4's compliance and internal control officer followed up the STOR issued with an additional awareness-raising exercise with the advisory management team on 19 December 2019. The security targeted by the second STOR was also placed on the watch list.

¹⁰⁸ Data not available (before 2020, STORs from an AMC subsidiary were recorded as being issued by an ISP).

➤ Special case of internal reporting of infringements (“whistleblowing” system)

The inspection task force checked that each of the five AMCs inspected had implemented a whistleblowing system. However, it did not find that this system had been used to report any deficiencies in the market abuse prevention system (or any suspicious transactions) during the period under review.

Regulatory reminders

- **Article 16(2) of the MAR:** “2. Any person professionally arranging or executing transactions shall establish and maintain effective arrangements, systems and procedures to detect and report suspicious orders and transactions. Where such a person has a reasonable suspicion that an order or transaction in any financial instrument, whether placed or executed on or outside a trading venue, could constitute insider dealing, market manipulation or attempted insider dealing or market manipulation, the person shall notify the competent authority [...] without delay.”
- **Article 2(1)(a)(b), (2) and (5)(c) of the STOR DR:** “1. Persons professionally arranging or executing transactions shall establish and maintain arrangements, systems and procedures that ensure: (a) effective and ongoing monitoring, for the purposes of detecting and identifying orders and transactions that could constitute insider dealing, market manipulation or attempted insider dealing or market manipulation, of all orders received and transmitted and all transactions executed; (b) the transmission of STORs to competent authorities in accordance with the requirements set out in this Regulation and using the template set out in the Annex. 2. The obligations referred to in paragraph 1 shall apply to orders and transactions relating to any financial instrument and shall apply irrespective of: (a) the capacity in which the order is placed or the transaction is executed; (b) the types of clients concerned; (c) whether the orders were placed or transactions executed on or outside a trading venue. 5. Persons professionally arranging or executing transactions, market operators and investment firms operating a trading venue shall ensure that the arrangements, systems and procedures referred to in paragraphs 1 and 3: [...] (c) are clearly documented in writing, including any changes or updates to them, for the purposes of complying with this Regulation, and that the documented information is maintained for a period of five years.”
- **Article 3(1)(a)(b), (2), (4) and (8) of the STOR DR:** “1. The arrangements, systems and procedures referred to in Article 2(1) and (3) shall: (a) allow for the analysis, individually and comparatively, of each and every transaction executed and order placed, modified, cancelled or rejected in the systems of the trading venue and, in the case of persons professionally arranging or executing transactions, also outside a trading venue; (b) produce alerts indicating activities requiring further analysis for the purposes of detecting potential insider dealing or market manipulation or attempted insider dealing or market manipulation; [...] 2. Persons professionally executing or arranging transactions and market operators and investment firms operating trading venues shall, upon request, provide the competent authority with the information to demonstrate the appropriateness and proportionality of their systems in relation to the scale, size and nature of their business activity, including the information on the level of automation put in place in such systems. 4. Persons professionally arranging or executing transactions and market operators and investment firms operating a trading venue shall put in place and maintain arrangements and procedures that ensure an appropriate level of human analysis in the monitoring, detection and identification of transactions and orders that could constitute insider dealing, market manipulation or attempted insider dealing or market manipulation. 8. As part of the arrangements and procedures referred to in Article 2(1) and (3), persons professionally arranging or executing transactions and market operators and investment firms operating a trading venue shall maintain for a period of five years the information documenting the analysis carried out with regard to orders and transactions that could constitute insider dealing, market manipulation or attempted insider dealing or market manipulation which have been examined and the reasons for

submitting or not submitting a STOR. That information shall be provided to the competent authority upon request.

- **Article 5(1) of the STOR DR:** *“1. Persons professionally arranging or executing transactions and market operators and investment firms operating a trading venue shall establish and maintain effective arrangements, systems and procedures that enable them to assess, for the purpose of submitting a STOR, whether an order or transaction could constitute insider dealing, market manipulation or attempted insider dealing or market manipulation. Those arrangements, systems and procedures shall take due account of the elements constituting the actual or attempted insider dealing or market manipulation under Articles 8 and 12 of the [MAR] and of the non-exhaustive indicators of market manipulation referred to in Annex I to that Regulation [...].”*

Good practices

- Documenting investment and disinvestment decisions in the minutes of the relevant committees and using this documentation in the market abuse prevention system.
- Ensuring that meetings held by asset managers with issuer representatives and corporate clients' senior managers are monitored in a formal and usable manner so that they can be taken into account when investigating market abuse alerts.
- Using the information on major shareholding notifications submitted to the AMF as part of the investigation of potential market abuse alerts.

5.5. INTERNAL CONTROL SYSTEM IN PLACE FOR THE MARKET ABUSE PREVENTION PROCESS

5.5.1. Consideration of risks relating to market abuse in risk mapping

The inspection task force checked that **all AMCs in the sample had considered the risks of market abuse in their risk mapping, particularly in terms of regulatory, criminal and reputational aspects.**

This involves estimating the level of associated risk in two stages:

- estimating the gross risk (estimated¹⁰⁹ as the impact of the risk – if it occurs – multiplied by the probability of it occurring);
- estimating the “net” risk (the gross risk adjusted by factoring in the control system in place).

The estimate of the risk of market abuse in the inspected AMCs' risk mappings is as follows.

| Risk level ¹¹⁰ | AMC 1 | AMC 2 | AMC 3 | AMC 4 | AMC 5 |
|---------------------------|--------|--------|--------|--------|--------|
| Gross | High | High | Medium | High | Medium |
| Net | Medium | Medium | Low | Medium | Low |

The inspection task force found that the market abuse prevention measures implemented by all the AMCs in the sample are likely to reduce the “gross” risk of market abuse. The low level of “net” risk observed for two of the five AMCs was explained:

- for AMC 3, by the confidence of the person responsible for implementing several market abuse prevention applications, the configuration and maintenance of which are delegated to third parties;

¹⁰⁹ This results in an evaluation at one of three levels: low, medium or high gross risk.

¹¹⁰ This is the predominant trend over the period under review (January 2018 to October 2021).

- for AMC 5, by the low volume of transactions per year,¹¹¹ which means that manual monitoring can be used in addition to automated monitoring (implemented in Q1 2020).

Lastly, with regard to AMC 5, the inspection task force notes the implementation of a specific market abuse risk mapping (in addition to the one for compliance and operational risks). This mapping is based on the indicators defined in the procedure for preventing and detecting market abuse.

5.5.2. Work carried out by the permanent control teams on the market abuse prevention system

➤ Organisation of the teams responsible for permanent controls

The organisational structure of the permanent control teams in the five AMCs inspected is shown in the table below.

| | AMC 1 | AMC 2 | AMC 3 | AMC 4 | AMC 5 |
|---|---|---|-----------------------|--|--|
| Compliance and Internal Control Officer | 1 FTE working 100% of their time with a direct reporting line to one of the AMC's senior managers | 1 FTE working 100% of their time with a direct reporting line to one of the AMC's senior managers and a functional reporting line to the compliance director of the parent company (a bank) | Same as for AMC 1 | | CEO of the AMC is also the compliance and internal control officer |
| Team responsible for permanent controls (in addition to the compliance and internal control officer) | 2 in-house controllers | 3 in-house controllers | 1 in-house controller | 10 in-house controllers shared with the parent company | The operational delivery of the work is delegated to an external consultant for 20 days per year |

The resources used for second-level controls in the market abuse prevention system are appropriate to the complexity and scope of the activities of the AMCs in the sample.

➤ Permanent control work actually carried out on the market abuse prevention system

The inspection task force found that the investment process was reviewed at least once a year during the period under review by four of the five AMCs (excluding AMC 4). However, all the AMCs in the sample reviewed the process for detecting and reporting major shareholdings at least once a year during the period under review.

The inspection task force found that second-level controls of the market abuse prevention system itself are included in the annual compliance and internal control plans (PCCIs) of three of the five AMCs (1, 2 and 3). The PCCIs reviewed for these AMCs include due diligence on both:

- the processes that contribute directly to preventing market abuse (e.g. management of securities on watch lists and restricted lists, investigation of market abuse alerts);
- the processes that are peripheral to the above (e.g. investment/divestment, response to market soundings, major shareholding notifications).

However, AMC 4 and 5's PCCIs are less specific about the controls put in place to cover the risks associated with the above processes. Specifically:

- AMC 4's PCCIs do not include any entries specific to the investment/divestment process;

¹¹¹ This is around 113 transactions per month (on average over the period under review, January 2018 to October 2021). This volume is consistent with the investment strategy of AMC 5, which favours long-term positions (two years on average) across some thirty securities in the portfolio, three or four of which have strong shareholder engagement.

- the processes that contribute directly to preventing market abuse were only included in AMC 5's PCCI at a later stage (from the time it implemented its automated transaction monitoring application in Q1 2020).¹¹²

Lastly, the inspection task force found that **most of the AMCs inspected (four of the five) did not formally document the findings of their second-level controls on the market abuse prevention system.** Only AMC 1¹¹³ was able to provide the inspection task force with documented and dated second-level control reports on the processes related to investments, monitoring of major shareholdings and preventing market abuse. These controls did not result in any significant anomalies being identified.

Discussions with AMCs 3, 4 and 5 provided an explanation for the above observation. These three AMCs **consider the operational involvement of their respective compliance and internal control officers¹¹⁴ in the market abuse prevention process to be a second-level control.** However, the inspection task force considers that the involvement of the compliance and internal control officer is similar to a first-level control (because it is applied directly to the target process), regardless of the role of the person involved. The approach of AMC 1, for example, which has implemented a second-level control that is independent of the target process (by selecting a sample of market abuse alerts that have already been investigated and checking that they have been properly dealt with), is considered to be more appropriate.

5.5.3. Periodic control work carried out on the market abuse prevention system

The five AMCs have delegated the work related to periodic controls:

- to a specific team at the parent company for AMCs 1 to 4 (supported by an external service provider for AMCs 1 and 2);
- entirely to an external service provider for AMC 5.

These teams have documented their work in annual audit plans that the inspection task force examined. Four of the five AMCs in the sample conducted at least one audit on the market abuse prevention process during the period under review. The exception was AMC 5, where an audit is planned for 2022.¹¹⁵ The recommendations made as a result of these audits (strengthening training materials for AMCs 1, 3 and 4, extending the market abuse prevention system to bond fund management for AMC 2) have been addressed.

5.5.4. Reporting the results of internal controls on market abuse to senior management

The inspection task force found that three of the five AMCs had implemented a process for informing senior managers of the results of controls carried out on the market abuse prevention system. This process involves a committee (or meeting) for AMC 2 and a dedicated report for AMCs 1 and 5. The reporting system implemented by AMCs 3 and 4 does not cover permanent control work in this area (since no work of this type is actually done), but it focuses on the volume of market abuse alerts produced and processed (together with any STORs issued). The task force checked that these reporting processes were actually in place for all AMCs in the sample by examining either the minutes of the meetings/committees or the reports mentioned.

Regulatory reminders

- **Articles 321-23 (IV) of the AMF GR (UCITS), 57(1)(c) of DR 231/2013 (AIFs), 21(1)(c) of DR 2017/565 (IS): “[AMCs] shall establish and maintain effective and adequate internal control mechanisms designed to secure compliance with decisions and procedures at all levels of the [AMC].”**

¹¹² This approach is counterintuitive in that the “manual” analysis of transactions carried out before Q1 2020 carries a higher operational risk – because of its manual nature – than the semi-automated analysis. The implementation of a robust second-level control over the transaction monitoring process should therefore have preceded AMC 5's implementation of the automated monitoring application.

¹¹³ AMC 2 provided the inspection task force with the second-level control reports produced on the investment/divestment process and the major shareholding threshold process. However, no control report was provided specifically on the market abuse prevention system.

¹¹⁴ See section 5.1.1 above.

¹¹⁵ This timing is linked to the preference of the AMC's senior management team to take advantage of a full year of operation of its automated market abuse monitoring application, which was implemented in 2020.

- **Articles 321-30 of the AMF GR (UCITS), 61(1) of DR 231/2013 (AIFs) and 22(1) of DR 2017/565 (IS):** see above.
- **Article 318-1 of the AMF GR (AIFs):** *“The [AMC] shall use, at all times, adequate and appropriate human and technical resources that are necessary for the proper management of AIFs. Given the nature of the AIFs it manages, it shall have sound administrative and accounting procedures, control and safeguard arrangements for electronic data processing and adequate internal control mechanisms including, in particular, rules for personal transactions by its employees or for the holding or management of investments in order to invest on its own account and ensuring, at least, that each transaction involving the AIFs may be reconstructed according to its origin, the parties to it, its nature, and the time and place at which it was effected and that the assets of the AIFs managed by the AIFM are invested in accordance with the AIF rules or instruments of incorporation and the legal provisions in force.”*
- **Articles 321-31 (I) of the AMF GR (UCITS), 61(2) of DR 231/2013 (AIFs) and 22(2) of DR 2017/565 (IS):** *“The [AMC] shall establish and maintain an effective compliance function that operates independently. Its role is to: Monitor and, on a regular basis, assess the adequacy and effectiveness of policies, procedures and measures implemented for the purposes of Article 321-30, and actions taken to remedy any deficiency in compliance of the asset management company and the relevant persons with their professional obligations referred to in II of Article L. 621-15 of the Monetary and Financial Code [and to] advise and assist the relevant persons in charge of the [AMC’s] services and business so that they comply with the [AMC’s] professional obligations [...].”*
- **Article 2(5)(b) of the STOR DR:** *“5. Persons professionally arranging or executing transactions, market operators and investment firms operating a trading venue shall ensure that the arrangements, systems and procedures referred to in paragraphs 1 and 3: [...] (b) are regularly assessed, at least through an annually conducted audit and internal review, and updated when necessary.”*
- **Articles 321-83 of the AMF GR (UCITS), 62(2)(c) of DR 231/2013 (AIFs) and 24(b) of DR 2017/565 (IS):** *“Asset management companies, where appropriate and proportionate in view of the nature, scale, complexity and range of their business, shall establish and maintain an effective internal audit function which is separate and independent from their other functions and activities and which has the following responsibilities: 1. To establish and maintain an effective audit plan to examine and evaluate the adequacy and effectiveness of the [AMC’s] systems, internal control mechanisms and arrangements; 2. To issue recommendations based on the result of work carried out in accordance with point 1; 3. To verify compliance with those recommendations; 4. To provide reports on internal audit issues [...].”*

Good practices

- Including risks relating to market abuse in the AMC’s risk mapping and considering their regulatory, criminal and reputational aspects.
- Including in the PCCI, at least once a year, due diligence covering both processes that contributes directly to market abuse prevention (e.g. managing watch/restricted lists and investigating transaction alerts) and peripheral processes (e.g. investments/divestments, market soundings and major shareholding notifications).
- Conducting an audit of the entire system for preventing market abuse (including the processes for detecting suspicious transactions and investigating alerts generated) at least once a year.

Poor practice

- As part of the permanent and periodic controls carried out on the market abuse prevention system, not carrying out “back-testing” of a sample of past transactions to check that the scenarios configured in the automated transaction monitoring system are adequate.

