



(UPDATED 17 OCTOBER 2017)
AMF INVESTIGATION GUIDE



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AUTORITÉ
DES MARCHÉS FINANCIERS



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INTRODUCTION

European Regulation No 596/2014 of 16 April 2014 on market abuse (known as ‘MAR’) became effective on 3 July 2016. This regulation, which is directly applicable, necessitated amendments to the AMF General Regulation, including in particular the removal of Book VI of the regulation, on market abuse, and the addition of a number of changes to the provisions set out in Book II on issuers and financial disclosures relating to the publication of inside information¹.

As regards the provisions affected by these amendments, this guide will therefore refer both to the provisions of the AMF General Regulation applicable to facts prior to 3 July 2016 – the date on which MAR entered into force – and the provisions of MAR applicable to facts occurring on or after 3 July 2016.

Duties of the AMF

The Autorité des marchés financiers (AMF) is an independent public authority with legal personality established by Act No. 2003-706 of 1 August 2003 (the ‘Financial Security Act’). It is tasked with²:

- protecting savings invested in financial instruments, certain assets³ and certain unit-linked products⁴ offered to the public or admitted to trading on a regulated market or multilateral trading facility, and in any other investment offered to the public;
- monitoring disclosures to investors;
- ensuring the orderly operation of markets in financial instruments, certain assets and certain unit-linked products.

The AMF is composed of a Board with sixteen members which is divided into three specialised committees, as well as an independent Enforcement Committee with twelve members who are not members of the Board, and a number of consultative commissions⁵.

The AMF has statutory powers to carry out its duties. In particular, it can:

- adopt a General Regulation covering, inter alia, the professional practices of issuers and service providers under its authority, as well the general organisation and operating principles of regulated markets and multilateral trading facilities⁶;
- issue approvals⁷, authorisations, etc.;
- carry out inspections and investigations⁸;
- enter into administrative settlement agreements⁹;
- issue formal notices¹⁰;

¹ Amendments introduced by the Order of 14 September 2016, published in the Official Journal of the French Republic on 23 September 2016.

² Article L. 621-1 of the Monetary and Financial Code.

³ Namely the assets referred to in Article L. 421-1 II of the Monetary and Financial Code, specified in Article D. 214-22-1 of that same code (certain shares or units of French or foreign UCITS).

⁴ Namely unit-linked products relating to greenhouse gas emissions quotas referred to in Article L. 229-7 of the Environmental Code.

⁵ Article L. 621-2 of the Monetary and Financial Code.

⁶ Article L. 621-7 of the Monetary and Financial Code.

⁷ Article L. 621-7 of the Monetary and Financial Code.

⁸ Articles L. 621-9 to L. 621-12 of the Monetary and Financial Code.

⁹ Article L. 621-14-1 of the Monetary and Financial Code.

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- impose sanctions subsequent to an adversarial procedure initiated by the Board¹¹.

Investigations and inspections

In the performance of its duties, the AMF carries out inspections and investigations¹².

The purpose of inspections¹³ is to ensure that the entities and persons referred to in Article L. 621-9-II of the Monetary and Financial Code, as well as individuals acting under their authority or on their behalf, comply with their professional obligations as set out in that code, the AMF General Regulation and professional rules approved by the AMF. Inspections may target a specific topic or cover general cross-cutting, thematic issues. Inspections are covered by a separate guide available from the AMF website, titled 'AMF Inspection Guide'.

Investigations focus on activities that may constitute either market abuse (insider dealing, price manipulation, disseminating false information) or, more generally, a breach of obligations that could undermine investor protection and disclosure or the orderly operation of the market¹⁴.

Purpose of this guide

This guide does not replace European regulations or the statutory and regulatory provisions applicable to investigations. It is not intended to give an exhaustive description of all the details that go into an investigation; rather, it seeks to explain the investigatory process. It merely provides information on normal practice and refers, where appropriate, to applicable laws and regulations.

As such, this guide helps ensure the proper conduct of investigations by raising awareness and spelling out some of the principles of good conduct followed by the AMF's investigators. It also describes how persons asked to cooperate with an investigation are expected to behave.

To this end, this guide has two sections:

- The first specifies the rights and obligations of investigators and persons asked to cooperate with an investigation.
- The second sets out rules of conduct applicable to investigators and the behaviour expected of persons asked to cooperate.

In addition to abiding by fundamental legal principles and the statutes and regulations applicable specifically to the AMF's activities, investigators undertake to comply with this guide, a copy of which will be given to any person asked to cooperate with an investigation.

The guide is also posted on the AMF website.

How investigations start

The decision to open an investigation is made by the AMF Secretary General or his representative, who appoints and

¹⁰ Article L. 621-14 of the Monetary and Financial Code.

¹¹ Article L. 621-15 of the Monetary and Financial Code.

¹² Article L. 621-9 of the Monetary and Financial Code.

¹³ Article 143-1 of the AMF General Regulation.

¹⁴ Article L. 621-9 of the Monetary and Financial Code; Articles 7, 8, 12, 14 and 15 of Regulation No 596/2014/EU of 16 April 2014 on market abuse.

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empowers investigators¹⁵.

The decision to conduct an investigation, signed by the Secretary General or his representative, specifies the scope of the investigation and the date from which the facts are analysed.

Most investigations are initiated following an alert raised by the AMF's Market Surveillance Directorate, which monitors all transactions in Paris-listed securities and the activities of investment services providers on a daily basis. The Market Surveillance Directorate receives and analyses suspicious transaction reports submitted to the AMF by credit institutions and investment firms¹⁶.

Alerts may also be raised by the AMF's divisions (including Corporate Finance and Corporate Accounting & Auditing), especially where financial reporting issues are concerned.

Investigations may also be initiated on the basis of complaints and alerts sent to the AMF by any external person or entity.

In addition, investigations may be initiated at the request of a foreign authority with equivalent powers to the AMF's¹⁷.

Purpose of investigations

Investigations concern one or more situations or events that may constitute a violation, including in particular:

- insider dealing¹⁸;
- price manipulation¹⁹;
- dissemination of false information²⁰;
- any other situation or event liable to undermine investor protection or orderly markets (e.g. with regard to issuers' financial reporting or the marketing of financial instruments)²¹;
- trading by companies and their executives in the securities of those companies²²;
- reporting requirements applicable to executives and third parties, relating in particular to changes in major shareholdings²³.

While most investigations focus on the specific issue that triggered them, they may also be cross-cutting and theme-based.

¹⁵ Article L. 621-9-1 and Article R. 621-33 of the Monetary and Financial Code; Article 144-1 of the AMF General Regulation.

¹⁶ Reports submitted in compliance with Article 16 of Regulation No 596/2014/EU of 16 April 2014 on market abuse and its Delegated Regulation No 2016/957/EU of 9 March 2016.

¹⁷ Article L. 632-16 of the Monetary and Financial Code.

¹⁸ Articles 7, 8 and 14 of Regulation No 596/2014/EU of 16 April 2014 on market abuse.

¹⁹ Articles 12 and 15 of Regulation No 596/2014/EU of 16 April 2014 on market abuse.

²⁰ Article 223-1 of the AMF General Regulation; Articles 12 and 14 of Regulation No 596/2014/EU of 16 April 2014 on market abuse.

²¹ Article L. 621-14 of the Monetary and Financial Code.

²² Article L. 621-18-2 of the Monetary and Financial Code; Article 19 of Regulation (EU) No 596/2014 of 16 April 2014 on market abuse; Delegated Regulation (EE) No 2016/522 of 17 December 2015.

²³ Articles 223-17ff. of the AMF General Regulation.

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How an investigation is conducted

An investigation consists in obtaining and analysing information, gathered notably on business premises, through written requests or during interviews²⁴. It can also involve requests to foreign regulators with whom the AMF may have signed bilateral or multilateral agreements on information exchange, although such agreements are not a prerequisite for cooperation.

Where an investigation requires a joint inquiry with a foreign regulator, information is exchanged in accordance with the laws and regulations of the respective countries, and also with any bilateral or multilateral agreements that have been signed.

The evidence obtained through this process may establish that a breach of obligations has occurred.

How an investigation is followed up

When the investigation is finished, the investigators draw up a report²⁵ and submit it to one of the three specialised Board committees, or possibly to a plenary session of the Board, which decides, in light of the conclusions set out in the investigation report and any observations received, what follow-up action to take:

- notifying the respondents of the complaints against them and initiating a proceeding before the AMF's Enforcement Committee, in compliance with the provisions of Article L. 465-3-6 of the Monetary and Financial Code and its implementing decree²⁶;
- notifying the respondents of the complaints against them and offering an administrative settlement²⁷, in compliance with the provisions of Article L. 465-3-6 of the Monetary and Financial Code and its implementing decree;
- referring the case to the Financial Public Prosecutor, in compliance with the provisions of Article L. 465-3-6 of the Monetary and Financial Code and its implementing decree;
- sending a deficiency letter;
- dismissing the case or forwarding the report to another domestic or foreign competent authority.

If sanction proceedings are instigated²⁸, the chairman of the Enforcement Committee appoints a rapporteur from among its members. The rapporteur conducts a procedure during which the respondents and their advisers have access to the investigation materials and can file a defence. Following this investigative procedure, the Enforcement Committee meets in public session and reaches a decision. It may issue a financial and/or disciplinary sanction if one or more breaches of rules have been established. Barring the exceptions provided for in Article L. 621-15 of the Monetary and Financial Code, the decision is publicly disclosed, with or without the respondent being named, and may be challenged before the Paris appeals court or France's supreme administrative court, the Conseil d'Etat.

²⁴ Article L. 621-10 of the Monetary and Financial Code.

²⁵ Article R. 621-36 of the Monetary and Financial Code.

²⁶ Decree 2016-1121 of 11 August 2016, published in issue 0189 of the Official Journal of the French Republic of 14 August 2016.

²⁷ Article L. 621-14-1 of the Monetary and Financial Code.

²⁸ Article L. 621-15 of the Monetary and Financial Code.

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I. LEGAL FRAMEWORK

A. Rights and obligations of AMF investigators

1. Rights of AMF investigators

Investigators have autonomous powers when conducting an investigation, but they may also take action that requires court authorisation.

a) Action under own powers

To carry out their duties, investigators act first and foremost under their own powers²⁹.

i. Disclosure and retention of documents

Investigators can requisition all types of documents (e.g. hard copy or electronic documents, e-mails) for the purposes of an investigation³⁰.

Furthermore, to ensure that the investigation proceeds smoothly, investigators may order the retention of any and all information, regardless of the storage medium. Such a measure is confirmed in writing, with details of its duration and the conditions under which it may be renewed³¹.

ii. Access to business premises

For the purposes of their investigation, investigators may gain access to business premises³².

iii. Gathering explanations on site

When visiting business premises under their own powers, investigators may gather explanations on site³³.

In such cases, a separate report must be drawn up from the minutes of the on-site visit. This report must state that the person interviewed has waived the right to the notice period required for a summons and been informed of the right to be assisted by the counsel of his choosing³⁴.

²⁹ Article L. 621-10 of the Monetary and Financial Code.

³⁰ First subparagraph, Article L. 621-10 of the Monetary and Financial Code.

³¹ Article 144-2 of the AMF General Regulation.

³² Second subparagraph, Article L. 621-10 of the Monetary and Financial Code.

³³ Second subparagraph, Article L. 621-10 of the Monetary and Financial Code.

³⁴ Article R. 621-34 and the final subparagraph of Article R. 621-35 of the Monetary and Financial Code.

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iv. Interviewing persons who may be of interest to the investigation

Investigators may summon and take statements from any person likely to be able to provide information and who may be useful to the progress of the investigation³⁵.

Interviews may be conducted either face to face or, if the person concerned agrees, by video or audio conference.

To that end, a summons is sent by registered letter with return receipt, or hand-delivered against receipt or served in an official court instrument, at least eight calendar days before the date of the summons, unless the person concerned expressly waives the right to this notice period. It reminds the person concerned of the right to be assisted by the counsel of his choosing³⁶. If the interview is conducted by video or audio conference, the summons must indicate this and specify that the interview will be recorded. Agreement must be obtained from the person concerned³⁷.

During the interview, answers to the investigators' questions are noted, along with all information the interviewees wish to bring to their attention. The last word goes to the interviewee, who is given an opportunity by the investigators to add a comment at the end of the meeting, if he so wishes.

If the interview is conducted by video or audio conference, the audiovisual or sound recording of the interview is the subject of a transcription report, which the interviewee is asked to sign. This report is sent to the interviewee within one month of the interview, accompanied by the recording³⁸.

v. Use of assumed identities

When regulated entities³⁹ provide services on the internet, investigators may make use of an assumed identity to access information about those services that could be of interest to the investigation⁴⁰.

The purpose of exercising this right is to document the manner in which the service is delivered.

When investigators exercise this right, a report stating the procedures for consulting and using the website, the responses obtained and the findings must be prepared and sent to the concerned person or entity before the end of the investigation⁴¹.

b) Action under court authorisation

i. Home visits

When investigating market abuse or acts that may constitute property crime and be sanctioned by the AMF's

³⁵ Second subparagraph, Article L. 621-10 of the Monetary and Financial Code.

³⁶ Second subparagraph, Article L. 621-34 of the Monetary and Financial Code.

³⁷ Third subparagraph, Article L. 621-34 of the Monetary and Financial Code.

³⁸ Third subparagraph, Article L. 621-35 of the Monetary and Financial Code.

³⁹ Entities listed in Article L. 621-9 II of the Monetary and Financial Code.

⁴⁰ Article L. 621-10-1 of the Monetary and Financial Code.

⁴¹ Fourth subparagraph, Article L. 621-35 of the Monetary and Financial Code.

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Enforcement Committee⁴², investigators are entitled, in accordance with a reasoned order from the magistrate (known as the 'liberty and custody judge') who has territorial jurisdiction⁴³, to carry out searches of any and all premises, including private residences, and to seize documents there⁴⁴.

During such home visits, the investigators may gather explanations on site⁴⁵.

A law enforcement officer takes part in these search operations to ensure that professional secrecy is maintained and due process is followed. Minutes of the terms and conduct of the search operation are drawn up on the spot by the investigators. An inventory of any exhibits and documents seized is appended thereto⁴⁶.

The order, and the minutes of the search operation and any items seized, may be appealed before the presiding judge of the court of appeal in the jurisdiction where the judge authorised the measure. Such appeals do not have suspensive effect⁴⁷.

ii. Temporary prohibition of activity, sequestration, payment into court and formal notices

The presiding judge of the regional court, acting on a reasoned request from the AMF's Chairman or Secretary General, can order a temporary ban on conducting a professional activity⁴⁸.

The AMF's Chairman or Secretary General can also ask the presiding judge of the regional court to:

- declare, in response to an ex parte application, the sequestration of funds, securities, certificates or rights – whoever holds them – belonging to the persons the AMF is pursuing;
- order, on a summary basis, that a respondent be required to make a payment into court⁴⁹.

Furthermore, the Board can, after giving the person concerned an opportunity to present his explanations, order an end to breaches of obligations arising from legislation or regulations or from professional rules within the AMF's jurisdiction⁵⁰. The AMF's Chairman may ask the courts to order the person responsible for the practice in question to comply with laws and regulations, to put an end to the irregularity or to eliminate its effects⁵¹.

c) Exchanging information with other domestic authorities or administrations

(i) Exchanging information with the judicial authorities

If, in the performance of its duties, the AMF becomes aware of a crime or an offence, it is required to inform the Public Prosecutor thereof without delay and to send him all relevant information, statements of offence and other documents⁵².

⁴² Pursuant to Article L. 621-15 of the Monetary and Financial Code.

⁴³ If the premises to be searched are located within the jurisdiction of more than one court and action must be taken simultaneously in each of them, a single order may be issued by one of the competent liberty and custody judges.

⁴⁴ Article L. 621-12 of the Monetary and Financial Code.

⁴⁵ First subparagraph, Article L. 621-12 of the Monetary and Financial Code.

⁴⁶ Twelfth subparagraph, Article L. 621-12 of the Monetary and Financial Code.

⁴⁷ Sixth and thirteenth subparagraphs, Article L. 621-12 of the Monetary and Financial Code.

⁴⁸ Article L. 621-13 of the Monetary and Financial Code.

⁴⁹ Article L. 621-13 of the Monetary and Financial Code.

⁵⁰ Article L. 621-14 II of the Monetary and Financial Code.

⁵¹ Article L. 621-14 III of the Monetary and Financial Code.

⁵² Article L. 621-20-1 of the Monetary and Financial Code.

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The Public Prosecutor may obtain from the AMF all the information held by the latter in connection with the performance of its duties, which information may not be withheld on grounds of professional secrecy⁵³.

Furthermore, where a statement of offence, investigation report or any other document forming part of criminal proceedings is directly linked to facts that could be subject to examination by the AMF's Enforcement Committee, the Financial Public Prosecutor may, at his own initiative or at the request of the AMF's Secretary General, where appropriate after consulting with the investigating magistrate, pass on that document to the AMF⁵⁴.

Lastly, exchanges of information are organised between the AMF and the Financial Public Prosecutor as part of the compulsory referral procedure between administrative and criminal proceedings⁵⁵.

(ii) Exchanging information with other domestic authorities

Provision is made for cooperation and exchanges of information between the AMF and various authorities including the Banque de France, the Autorité de contrôle prudentiel et de résolution (ACPR – the French prudential supervisory authority), the Haut Conseil du commissariat aux comptes (National Auditors' Oversight Board) and the administrative authority with responsibility for competition and consumer affairs⁵⁶. Information may also be exchanged with the Commission de régulation de l'énergie (Energy Regulation Commission)⁵⁷.

The AMF may also ask the tax authorities to disclose information and documents conducive to the performance of its duties⁵⁸. The AMF is in turn required to provide the tax authorities, at their request, with any document or information held by it in the performance of its duties, unless such documents or information come from a foreign authority with similar duties to those of the AMF and that authority has not given explicit authorisation for such exchange; the AMF may not refuse such requests on grounds of professional secrecy⁵⁹.

Similarly, the AMF and the national financial intelligence unit, Tracfin, may exchange any information conducive to the performance of their respective duties, with the understanding that, if the AMF uncovers "facts likely to be linked to money laundering or terrorist financing or any sum or transaction referred to in Article L. 561-15"⁶⁰, it shall "promptly" inform Tracfin.

⁵³ Article L. 621-20-1 of the Monetary and Financial Code; subject to the agreement of the AMF's foreign counterparts when the information in question was obtained through them.

⁵⁴ Article L. 621-20-4 of the Monetary and Financial Code.

⁵⁵ Referral procedure instituted by Act 2016-819 of 21 June 2016, supplemented by Decree 2016-1121 of 11 August 2016, which added a new Article L. 465-3-6 to the Monetary and Financial Code.

⁵⁶ Article L. 631-1 of the Monetary and Financial Code.

⁵⁷ Article L. 621-21 of the Monetary and Financial Code.

⁵⁸ Article L. 135 F of the Tax Procedures Guide: "To enable it to perform its duties, the Autorité des marchés financiers may obtain information and documents in accordance with the first subparagraph of paragraph I of Article L. 621-9, Article L. 621-9-1, the first subparagraph of Article L. 621-9-3 and Article L. 621-10 of the Monetary and Financial Code."

⁵⁹ Article L. 84 E of the Tax Procedures Guide: "Subject to paragraph II bis of Article L. 632-7 of the Monetary and Financial Code, the Autorité des marchés financiers shall provide the tax authorities, at their request, with any document or information held by it in the performance of its duties; the AMF may not refuse such requests on grounds of professional secrecy."

⁶⁰ Articles L. 561-28 II and L. 561-31 of the Monetary and Financial Code.

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d) Exchanging information with foreign counterparts and European supervisory and resolution authorities

As part of its investigatory duties, the AMF may exchange information with equivalent foreign authorities, whether or not they are from countries that are members of the Union European or parties to the Agreement on the European Economic Area⁶¹.

The AMF may also, in the performance of its investigatory duties, exchange information with European supervisory and resolution authorities, including in particular the European Securities and Markets Authority (ESMA)⁶².

2. Obligations of AMF investigators

a) Authorisation and absence of conflicts of interest

In exercising its investigatory powers, the AMF may use its own employees or draw from an exhaustive list of external appointees covered by a memorandum of understanding⁶³.

Before being authorised⁶⁴ by the AMF Secretary General, a person proposed to carry out an investigation must meet the following prerequisites⁶⁵:

- integrity: "No person may be authorised or appointed to carry out an investigation or an inspection if they have been subject to any of the convictions referred to in Article L. 500-1 [of the Monetary and Financial Code]"⁶⁶;
- absence of conflicts of interest: "No person may be authorised or appointed to carry out an investigation or an inspection of a legal person in which they have carried on a professional activity during the previous three years."

Before appointing an external investigator to conduct an investigation, the AMF's Secretary General ensures that the person approached to conduct the investigation is not liable to find themselves in a conflict of interest with the person or entity to be investigated⁶⁷. "Accordingly, if the proposed person is a statutory auditor, an accounting or legal expert, or a person or body with expertise in financial research or advice, the Secretary General of the AMF shall ask that person to disclose all professional dealings with the person being investigated in the last three years. The Secretary General of the AMF may not assign the inspection to this person if, during the period in question, he supervised or advised the persons concerned regarding the services or transactions in question"⁶⁸.

⁶¹ Articles L. 632-1ff. of the Monetary and Financial Code.

⁶² Article L. 632-6-1 of the Monetary and Financial Code and Article 24 of Regulation No 596/2014/EU of 16 April 2014 on market abuse, which require the immediate transmission to ESMA of all information needed fulfil its duties, in accordance with Article 35 of Regulation No 1095/2010/EU establishing ESMA.

⁶³ Articles R. 621-31 and R. 621-32 of the Monetary and Financial Code.

⁶⁴ Article L. 621-9-1 of the Monetary and Financial Code and Article 144-1 of the AMF General Regulation.

⁶⁵ Article R. 621-33 of the Monetary and Financial Code.

⁶⁶ Article R. 621-33 I of the Monetary and Financial Code.

⁶⁷ Article R. 621-33 of the Monetary and Financial Code.

⁶⁸ Article R. 621-33 II of the Monetary and Financial Code.

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b) Professional secrecy with regard to information gathered during an investigation

Article L. 621-4 II of the Monetary and Financial Code stipulates as follows: “The members, staff and officers of the Autorité des marchés financiers [...] are bound by professional secrecy under the conditions and subject to the penalties provided for in Article L. 642-1 [of the Monetary and Financial Code].”⁶⁹

Professional secrecy applies to facts, acts and information that may come to the attention of investigators when performing their duties. It also applies to documents and information obtained in the course of their investigation, which may not be divulged in any way unless otherwise provided by law.

In particular, “such secrecy cannot be used as grounds for not disclosing information to the judicial authorities acting within the scope of criminal proceedings or in connection with judicial liquidation proceedings instituted against persons referred to in paragraph II of Article L. 621-9 [of the Monetary and Financial Code]” who are under the authority of the AMF⁷⁰.

Neither may professional secrecy be used as grounds for not disclosing information to the national financial intelligence unit⁷¹ (Tracfin) in the performance of its duties. The professional secrecy requirement may also be lifted vis-à-vis other domestic authorities⁷² in the performance of their duties. Lastly, the professional secrecy requirement may also be lifted vis-à-vis equivalent foreign authorities⁷³.

B. Rights and obligations of persons asked to cooperate

The fundamental principles of law form the general framework applicable to investigations. However, attention may be drawn to certain rights and obligations that are specific to persons asked to cooperate.

1. Rights of persons asked to cooperate with an investigation

a) Verification of investigators' identity

The AMF's Secretary General or his representative issues mission orders naming the persons tasked with conducting investigations⁷⁴. Investigators also carry an official card bearing the AMF logo and their photograph. They present the card to persons asked to cooperate, together with a mission order made out in their name.

Persons under investigation may ask to see the mission order⁷⁵ and may obtain a copy of it.

⁶⁹ Article L. 642-1 of the Monetary and Financial Code refers to Article 226-13 of the Criminal Code, which stipulates as follows: “The disclosure of secret information by a person entrusted with such a secret, either because of his position or profession, or because of a temporary function or mission, shall be punished by one year's imprisonment and a fine of €15,000.”

⁷⁰ Article L. 621-4 II of the Monetary and Financial Code.

⁷¹ Articles L. 561-30 and L. 561-31 of the Monetary and Financial Code.

⁷² Authorities referred to in Article L. 631-1 of the Monetary and Financial Code.

⁷³ Under the conditions laid down in Articles L. 632-1 to L. 632-11 and L. 632-16 of the Monetary and Financial Code.

⁷⁴ Article R. 621-32 IV of the Monetary and Financial Code.

⁷⁵ First subparagraph of Article R. 621-34 of the Monetary and Financial Code.

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b) Information about the purpose of the investigation

The purpose of an investigation is set out in mission orders issued by the AMF's Secretary General. These mission orders, in which investigators are designated by name, are valid for the duration of each investigation.

The scope of an investigation may be extended if circumstances so require, by decision of the Secretary General. In such cases, a supplemental mission order setting out the new scope is drawn up and signed under the same conditions.

Investigators may gather information relating to a period prior to that covered by the investigation if such information helps clarify the facts being investigated.

c) Assistance by an adviser

Persons summoned for an interview have the right to be assisted by counsel of their choosing⁷⁶. This right is reiterated in the summons, which is sent out at least eight calendar days before the interview⁷⁷, unless the right to such notice period is explicitly waived by the person concerned. Persons whose explanations are gathered by investigators during an on-site visit conducted under their own powers or during a home visit authorised by the courts⁷⁸ may also be assisted by an adviser. In both cases, the person in question must be expressly reminded of this right.

d) Investigation minutes

Investigators keep minutes concerning the exercise of their right to access business premises, gather explanations, obtain documents and note any facts that may be of use in the investigation. The purpose of these minutes is to describe the conduct of the investigation and related observations, draw up a list of documents collected and, as the case may be, record explanations, comments and unprompted statements made by the persons interviewed. A copy of the minutes is given to the persons concerned, who retain the originals of all exhibits collected.

They also minute the explanations gathered by the investigators during their interviews as well as documents presented by them and/or by the person concerned. The investigators keep the originals of these minutes, and copies are not given to the persons interviewed.

Minutes are always signed by the investigators and the person concerned. If the person concerned refuses, this is noted in the minutes⁷⁹.

⁷⁶ Article L. 621-11 of the Monetary and Financial Code.

⁷⁷ Article R. 621-34 of the Monetary and Financial Code. The person being interviewed may also, if he so wishes, waive the aforementioned notice period.

⁷⁸ Article R. 621-34 of the Monetary and Financial Code. The person in question must be expressly informed of the right to be assisted by counsel of his choosing.

⁷⁹ Article R. 621-35 of the Monetary and Financial Code.

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e) Right of potential respondents to present their observations before the investigation is concluded

Before the final investigation report is written, points of fact and law gathered by the investigators are brought to the attention of any person who may subsequently be a respondent by sending them a detailed letter⁸⁰.

This letter is accompanied by a list of the principal materials that the investigators consider necessary for it to be properly understood. This list, which is not intended to exhaustively catalogue all items that will ultimately be included by the investigators in the investigation file, includes:

- items gathered by the investigators in the course of their investigations of which the person to whom the detailed letter is addressed is not aware: such items are enclosed with the detailed letter; and/or
- items provided by the person to whom the detailed letter is addressed and which the AMF intends to refer to during the proceedings.

The persons to whom the detailed letter is addressed have one month to submit their written comments and, if needed, to request that additional items handed over by them be included in the investigation file. The AMF may agree to review this deadline on receipt of a properly reasoned request.

Where possible, investigators will respond to requests for explanations made by potential respondents concerning the facts that may be alleged against them in light of applicable regulations.

The final investigation report takes into account any observations received, after any additional inquiries that may have been necessary in light of responses received.

The detailed letter and the response to it are appended to the investigation report presented to the specialised Board committee responsible for deciding on any further action. If the committee decides to instigate proceedings before the Enforcement Committee, a statement of objections is sent to each respondent, in compliance with the provisions of Article L. 465-3-6 of the Monetary and Financial Code and its implementing decree⁸¹.

This statement of objections, not the detailed letter, marks the beginning of the adversarial procedure during which the respondent will have access to the entire investigation file.

f) The investigation file

The investigators put together the investigation file to meet four main objectives:

- **Ensure that the file is consistent and understandable** for the members of the specialised Board committee, who need access to the investigation report with its annexes and the entire investigation file before they meet. Regarding evidence included in investigation files, decisions made by the AMF Enforcement Committee⁸² and upheld by the Paris appeals court and the Supreme Court ('court of cassation')⁸³ have confirmed the investigators' right to select the documents that are useful to the case,

⁸⁰ Article 144-2-1 of the AMF General Regulation.

⁸¹ Decree 2016-1121 of 11 August 2016, published in issue 0189 of the Official Journal of the French Republic of 14 August 2016.

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provided this does not infringe the principles of fairness and equality of arms for the prosecution and does not materially impair the rights of the defence⁸⁴.

- **Comply with the principle of transparency**, by including in the investigation file a detailed summary of the materials it contains as well as a summary of any evidence that has been gathered but put aside (the background file), in line with court of cassation rulings (see above).
- **Ensure legal certainty**, by verifying that investigative acts are honest, lawful and traceable, especially with regard to international applications. The investigation file must contain all evidence – both for and against – that contributed to the investigation, regardless of the medium on which it is stored.
- **Ensure the confidentiality of all information gathered, when it is used in connection with the investigation:**
 - by taking into account, without prejudice to investigations, constraints relating to business secrecy and personal privacy;
 - by respecting the professional secrecy of officers of the law (in particular lawyers, bailiffs and agents of the court), which, notwithstanding Article L. 621-9-3 of the Monetary and Financial Code, constitutes valid grounds for not disclosing information to the AMF.

With this in mind, any person who has handed over electronic mailboxes to the investigators is informed of which items the latter have retained and intend to add to the investigation file. Media containing electronic mailboxes collected during the investigation are returned to the person who handed them over. The return of such items is formalised by sending a letter by registered post to the person who originally handed over the media containing electronic mailboxes.

g) Information about follow-up action

The findings of the investigation are the subject of a written report which indicates, in particular, “any facts that may constitute a breach of the European regulations, the Monetary and Financial Code, the Commercial Code, the General Regulation of the Autorité des marchés financiers and rules approved by that Authority, a breach of other professional requirements or a criminal offence”⁸⁵.

The Board reviews the investigation report drawn up by AMF staff⁸⁶. If it decides to instigate enforcement proceedings, it notifies the respondents of the complaints against them and forwards the statements of objections to the AMF’s Enforcement Committee, in compliance with the provisions of Article L. 465-3-6 of the

⁸² The investigation must be fair so as not to cause irreparable harm to the rights of defence of the persons to whom objections are finally notified. Provided they abide by this principle of fairness, the investigators are free to determine which items they intend to annex to the file and use in their investigation report. - AMF CDS, 27 October 2014, SAN-2014-20.

⁸³ The adversarial principle, which is fully applicable from such time as the objections are notified, is a requirement of the proceeding and not the investigation, which must only be fair so as not to irretrievably compromise the rights of the defence. As such, the investigators can decide what happens to action taken and documents examined in the course of the investigation, provided the latter has not been unfair and has not led to a misplaced conviction on the part of the Enforcement Committee. – Judgment by the Court of Cassation, Commercial Chamber, 1 March 2011, no. 09-71252 – Paris court of appeal, 27 November 2014, no. 13/16393.

⁸⁴ Evidence gathered during an investigation and not added to the investigation file is kept in a background file, the contents of which are listed in the investigation file.

⁸⁵ Article R. 621-36 of the Monetary and Financial Code.

⁸⁶ In accordance with Article L. 621-15 I of the Monetary and Financial Code.

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Monetary and Financial Code and its implementing decree⁸⁷.

Persons served with a statement of objections may access the investigation file as soon as sanction proceedings commence.

In compliance with the provisions of Article L. 465-3-6 of the Monetary and Financial Code and its implementing decree, if the Board decides not to pursue a person who has been under investigation, the AMF duly informs that person by letter after the meeting of the specialised Board committee that decided to drop the proceedings, or, where the investigation has given rise to statements of objections regarding other persons, after the Enforcement Committee has announced its decision.

h) Right to access and rectify files held by the AMF in connection with investigations

The AMF keeps files on the persons encountered in connection with its investigations. The rules governing the constitution of such files and access by authorised AMF personnel to the information they contain are governed by an authorisation from the Commission nationale de l'informatique et des libertés (CNIL). In accordance with Act 78-17 of 6 January 1978 on the protection of personal information, any person concerned by an investigation whose personal information is processed in such files has the right to access and rectify them.

In accordance with the provisions of Article 39 of the aforementioned Act, these rights to access and rectify data are exercised by writing to the AMF at the following address: acesdopers@amf-france.org.

2. Obligations of persons asked to cooperate with an investigation

a) Not to obstruct the investigation

Where the proper performance of an AMF investigation has been hindered, this fact is mentioned in the investigation report or in a special report setting out these difficulties⁸⁸.

Obstructing investigations conducted by AMF investigators may further incur administrative and/or criminal penalties.

As such, the AMF Enforcement Committee may impose penalties “on any person who, during an investigation or inspection conducted pursuant to paragraph I of Article L. 621-9 [of the Monetary and Financial Code], at the request of the investigators or inspectors, and subject to the maintenance of legally protected secrecy that may be invoked against the Autorité des marchés financiers, refuses to provide access to a document, regardless of the medium on which that document is stored, and to provide a copy thereof, to disclose information, to answer a summons or to allow access to business premises”⁸⁹.

⁸⁷ Decree 2016-1121 of 11 August 2016, published in issue 0189 of the Official Journal of the French Republic of 14 August 2016. Furthermore, Article L. 621-20-1 of the Monetary and Financial Code specifies that if, in the performance of its duties, the AMF becomes aware of a crime or an offence, it must inform the Public Prosecutor without delay.

⁸⁸ Article 144-3 of the AMF General Regulation.

⁸⁹ Article L. 621-15 II f) of the Monetary and Financial Code resulting from Act 2013-672 of 26 July 2013 on the separation and regulation of banking activities, which introduced the notion of obstruction as a breach of administrative law into the Monetary and Financial Code.

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Furthermore, “persons who obstruct an inspection or investigation of the Autorité des marchés financiers carried out as determined in Articles L. 621-9 to L. 621-9-2 or who provide it with inaccurate information, shall incur a penalty of two years’ imprisonment and a fine of €300,000”⁹⁰.

b) Not to invoke professional secrecy against AMF investigators

Within the scope of investigations conducted by the AMF in the performance of its duties, information may not be withheld from the AMF on grounds of professional secrecy by officers of the law⁹¹.

The status of ‘officer of the law’ includes all professions whose primary and usual occupation is to help administer justice, including in particular lawyers, bailiffs and agents of the court (court-appointed administrators and receivers).

Act 71-1130 of 31 December 1971 reforming certain judicial and legal professions extended lawyers’ professional secrecy to correspondence between lawyers and their clients⁹².

Statutory auditors are expressly released from professional secrecy with regard to the AMF⁹³.

⁹⁰ Article L. 642-2 of the Monetary and Financial Code.

⁹¹ First subparagraph, Article L. 621-9-3 of the Monetary and Financial Code.

⁹² Article 66-5 of Act 71-1130 of 31 December 1971.

⁹³ Second subparagraph, Article L. 621-9-3 of the Monetary and Financial Code.

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II. PRINCIPLES OF GOOD CONDUCT

By complying with principles of good conduct, both the AMF's investigators and the legal entities or individuals involved in an investigation will help ensure that the investigation proceeds satisfactorily and in compliance with the rights of all parties.

A. Principles applicable to investigators

1. Comply with the principles governing investigatory proceedings

The principle of fairness means investigators must carry out their duties in such a way as to assemble evidence both for and against the person or persons concerned. They must collect factual evidence, documents and arguments that could confirm a breach of regulations but that could also reduce its scope or rule out its existence. These materials are added to the investigation file or report. Investigators are free at all times to interview any person who might help them progress with their investigation, but they can also take evidence from anyone who asks to be interviewed. Before the end of the investigation, where possible, they set themselves to interview or re-interview anyone who may be called into question in the investigation report, to allow that person to provide explanations and, where applicable, any additional evidence relating to the actions discovered by the inspection.

Investigators abide by the presumption of innocence and, as such, do not behave as if they automatically harbour suspicions.

The principle of proportionality means that operational, technical and professional constraints will be taken into account, except where this may be detrimental to the investigation. Respect for privacy is also an issue. As far as possible, the investigators endeavour to limit the effects of their activities on the privacy of the individuals and entities concerned.

2. Explain the context and framework of the investigation

As far as possible, notably in light of their professional secrecy obligations, the investigators explain the background to the investigation and the framework within which they are acting. The aim is to give the persons or entities concerned a better understanding of information that may be useful to the investigation, enabling them to behave accordingly.

Once the investigation report has been filed, however, investigators cannot divulge any information about how the case is progressing. Only the Secretary General and, where appropriate, the specialised Board committees and the Enforcement Committee are entitled to do this.

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3. Behave professionally, impartially and courteously

The investigators proceed with due care and professionalism to ensure that the requirements and timeframe of the investigation do not violate the constraints of the people with whom they are dealing. Any difficulties that may hinder their work must be reported immediately to their superiors at the AMF, as well as any difficulties they encounter and any events that might undermine the investigation.

When exercising their powers, especially as regards access to information and documents, they behave impartially and courteously with regard to the persons or entities concerned. They thus refrain from expressing personal opinions or considerations.

Both during interviews and in the conduct of on-site investigations, investigators make every effort to give the persons concerned enough time to acquaint themselves with the information they are given, understand its impact, answer questions relevantly and reread – and, where necessary, propose corrections to – the investigators' minutes before signing them.

The persons responsible for the investigation may not receive any invitation, gift or benefit from the persons being investigated⁹⁴.

4. Be diligent

Where there is no regulatory or statutory deadline, investigations are not limited in time; they last as long as necessary. Timeframes may vary depending on how complex an investigation is and whether it includes an international dimension. The AMF's management pays close attention to these timeframes.

Wherever possible, however, investigators try to limit the time between the signing of the mission order, which signals the start of the investigation, and the presentation of the report to the Board.

B. Behaviour expected of persons asked to cooperate with an investigation

To ensure that the investigation proceeds smoothly, the individuals and entities asked to cooperate (including their employees and persons for whom they are responsible) must behave as follows:

1. Answer the investigators' questions fairly

The individuals or employees of entities asked to cooperate with an investigation should answer questions or requests for information diligently, fairly and clearly.

They must endeavour to answer comprehensively and accurately. They should also provide substantiating evidence.

⁹⁴ Article 3.1.4 of the AMF's rules of procedure, published in issue 0177 of the Official Journal of the French Republic of 30 July 2017.

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2. Cooperate with the investigators

Persons asked to cooperate with an investigation provide the investigators with contact details for any third party (statutory auditor, member of the audit committee or board of directors, external consultant or service provider, former employee, counsel retained for the investigation, etc.) whom the investigators consider it necessary or helpful to contact or meet with.

Regarding access to business premises, a representative of the entity may be named as the investigators' primary contact person. Such representatives must be empowered, either personally or by way of delegation, to commit the entity and sign any records of findings and document submissions.

During the subsequent course of the investigation, such representatives are likely to be the investigators' main contact when requesting information. He will pass on such requests to the relevant departments, collate the information and issue reminders, where necessary, to ensure that the investigators' questions are answered within a reasonable timeframe.

Where the entity under investigation is an investment services provider, the investigators will consider – unless expressly informed to the contrary – that their correspondent is the compliance officer. The investigators take particular care to inform the correspondent of any difficulties encountered when performing their duties.

3. Supply documents, files and explanations within a reasonable timeframe

Pursuant to Article L. 621-10 of the Monetary and Financial Code, "Investigators [...] may, for the purposes of the investigation [...], require the submission of any documents on whatever medium". The AMF's investigators may exercise their right of access against all persons and entities likely to be able to provide them with information or documents related to the investigation.

Requests for information should be answered within a reasonable period that allows enough time to prepare answers without unnecessarily slowing down the investigation. It is in everyone's interest to ensure that the investigation does not last too long. All documents and files requested must be sent in a format that is easy to process, to be determined with the persons interviewed.

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4. Remain impartial, professional and courteous throughout the investigation

Persons asked to cooperate with an investigation are expected to adopt a professional, impartial and courteous attitude in their dealings with the investigators, as the investigators themselves are expected to do.

* * * *

In the event of any difficulties, persons asked to cooperate with an ongoing investigation can contact the secretariat of the AMF's Investigations Directorate (Tel: +33 (0)1 5345 5872), which will pass on the request to the relevant individual within the AMF hierarchy. The AMF's Investigations Directorate is part of the Inspection and Investigations Directorate, which in turn reports to the Managing Director for Investigations and Inspections and the AMF's Secretary General.

References:

AMF organisation chart:

<http://www.amf-france.org/L-AMF/Organisation/Organigramme>

2016 annual report, Chapter 5 – Market surveillance, inspections and investigations, and Chapter 6 – Transactions, sanctions and appeals:

<http://www.amf-france.org/Publications/Rapports-annuels/Rapports-annuels-de-l-AMF/annee-2015-2019?docId=workspace%3A%2F%2FSpacesStore%2F0cc59970-c498-40bb-b7d2-73a6a2419913>

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ANNEXES

- ANNEX 1:** excerpts from the provisions of the Monetary and Financial Code applicable at 17 October 2017, subject to any subsequent amendments
- ANNEX 2:** excerpts from the provisions of the AMF General Regulation applicable at 17 October 2017, subject to any subsequent amendments
- ANNEX 3:** excerpts from the provisions of the AMF General Regulation applicable prior to the entry into force of Regulation no. 596/2014/EU of 16 April 2014 on market abuse
- ANNEX 4:** excerpts from the provisions of Regulation No 596/2014/EU of the European Parliament and of the Council of 16 April 2014 on market abuse

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ANNEX 1

ARTICLES OF THE MONETARY AND FINANCIAL CODE APPLICABLE AS AT 17 OCTOBER 2017 SUBJECT TO ANY SUBSEQUENT AMENDMENTS

MONETARY AND FINANCIAL CODE

LEGISLATIVE PART

Article L. 465-1

I. - A. - Any chief executive officer, chairman, member of the management board, statutory manager, member of the board of directors or member of the supervisory board of an issuer that is the subject of inside information, or any person who holds an equivalent position, or any person who holds inside information about an issuer in which he holds an equity stake, or any person holding inside information by virtue of his profession, in the performance of his duties or as a result of participating in the commission of a crime or offence, or any other person who knowingly holds inside information, and who uses that inside information by conducting, on his own account or on behalf of a third party, whether directly or indirectly, one or more transactions, or by cancelling or amending one or more orders placed by that same person before he held the inside information, in financial instruments issued by that issuer or in financial instruments that are the subject of that inside information, shall incur a penalty of five years' imprisonment and a fine of €100 million, which amount may be increased to a figure representing up to ten times the amount of any profit realised and shall not in any event be less than the amount of that same profit.

B. - Merely holding inside information does not constitute the offence set out under point A above, if the behaviour of the person concerned is legitimate, within the meaning of Article 9 of Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (the 'Market Abuse Regulation') repealing Directive 2003/6/EC of the European Parliament and of the Council and Directives 2003/124/EC, 2003/125/EC and 2004/72/EC of the Commission.

C. - Within the meaning of this section, the term 'inside information' shall mean inside information as defined in subparagraphs 1 to 4 of Article 7 of the aforementioned Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014.

II. - Any attempt to commit the offence laid down under paragraph I of this article shall be punishable by the same penalties.

Article L. 465-2

I.- The penalties imposed by point A of the paragraph I of Article L. 465-1 shall apply to any of the persons referred to in that same article who recommend one or more transactions in the financial instruments to which the inside information relates or who induce such transactions on the basis of that inside information.

II.- Whoever acts on a recommendation or inducement referred to in paragraph I of this article in the knowledge that it is based on inside information shall be guilty of the offence set out under point A of paragraph I of the aforementioned Article L. 465-1.

III.- Whoever passes on a recommendation or inducement referred to in paragraph I of this article in the knowledge that it is based on inside information shall be guilty of the offence set out under point A of paragraph I of Article L. 465-3.

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IV.- Any attempt to commit the offence laid down under paragraph I of this article shall be punishable by the same penalties.

Article L. 465-3

I.- The penalties imposed by point A of paragraph I of Article L. 465-1 shall apply to any person with inside information about an issuer within which he serves as chief executive officer, chairman, member of the management board, statutory manager, member of the board of directors, member of the supervisory board or an equivalent role or within which he has access to information, any person holding inside information by virtue of his profession, in the performance of his duties or as a result of participating in the commission of a crime or offence, or any other person who knowingly holds inside information, and who discloses that inside information to a third party, unless he can prove that such disclosure falls under the normal course of his profession or duties, including where it relates to a market sounding conducted in accordance with subparagraphs 1 to 8 of Article 11 of Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (the 'Market Abuse Regulation') repealing Directive 2003/6/EC of the European Parliament and of the Council and Directives 2003/124/EC, 2003/125/EC and 2004/72/EC of the Commission.

II.- Any attempt to commit the offence laid down under paragraph I of this article shall be punishable by the same penalties.

Article L. 465-3-1

I. - A. - The penalties imposed by point A of paragraph I of Article 465-1 shall apply to whoever carries out a transaction, places an order or adopts a behaviour that gives or is likely to give misleading signals about the supply of, demand for or price of a financial instrument or that secures or is likely to secure the price of a financial instrument at an unusual or artificial level.

B. - Point A of this article shall not apply in cases where the transaction or behaviour referred to in this first subparagraph is based upon legitimate grounds and consistent with accepted market practice, within the meaning of point 9 of the first subparagraph of Article 3 of Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (the 'Market Abuse Regulation') repealing Directive 2003/6/EC of the European Parliament and of the Council and Directives 2003/124/EC, 2003/125/EC and 2004/72/EC of the Commission.

II. - The penalties imposed by point A of paragraph I of Article 465-1 shall apply to whoever carries out a transaction, places an order or adopts a behaviour that affects the price of a financial instrument, by employing fictitious devices or any other form of deception or contrivance.

III. - Any attempt to commit the offences laid down under paragraphs I and II of this article shall be punishable by the same penalties.

Article L. 465-3-2

I.- The penalties imposed by point A of paragraph I of Article 465-1 shall apply to whoever disseminates, by any means, information that gives false or misleading signals about an issuer's situation or outlook or about the supply of, demand for or price of a financial instrument, or that secures or is likely to secure the price of a financial instrument at an unusual or artificial level.

II.- Any attempt to commit the offence laid down under paragraph I of this article shall be punishable by the same penalties.

Article L. 465-3-3

I.- The penalties imposed by point A of paragraph I of Article L. 465-1 shall apply to whoever:

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1. transmits false or misleading data or information used to calculate a benchmark index or that could skew the price of an instrument or asset to which such an index is linked;
2. undertakes any other actions that manipulate such an index.

A benchmark index means any rate, index or number made available to the public or published, that is periodically or regularly determined by applying a formula or based on the value of one or more underlying assets or prices, including estimated prices, interest rates or other actual or estimated values, or survey data, by reference to which the amount to be paid in respect of a financial instrument or the value of a financial instrument is determined.

II.- Any attempt to commit the offence laid down under paragraph I of this article shall be punishable by the same penalties.

Article L. 465-3-4

I. - This section shall apply to:

1. Financial instruments traded on a regulated market or multilateral trading facility, or for which application for admission to trading on a regulated market or multilateral trading facility has been made;
2. Financial instruments other than those referred to under point 1 whose price or value depends on the price or value of a financial instrument referred to under point 1 or whose price or value has an effect on the price or value of a financial instrument referred to under point 1;
3. The units referred to in Article L. 229-7 of the Environmental Code.

II. - Articles L. 465-3-1 and L. 465-3-2 of this code shall also apply to:

1. Spot commodity contracts, within the meaning of point 15 of the first subparagraph of Article 3 of Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (the 'Market Abuse Regulation') repealing Directive 2003/6/EC of the European Parliament and of the Council and Directives 2003/124/EC, 2003/125/EC and 2004/72/EC of the Commission, that are not wholesale energy products within the meaning of point 4 of Article 2 of Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency, where the transaction, behaviour or dissemination has or is likely to have an effect on the price or value of a financial instrument referred to in this article;
2. Financial instruments whose price or value has an effect on the price or value of a spot commodity contract, within the meaning of point 15 of the first subparagraph of Article 3 of the aforementioned Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014, where the transaction, behaviour or dissemination has or is likely to have an effect on the price or value of the spot commodity contract.

III. - This section shall not apply to:

1. Transactions whereby companies buy back their own shares, within the meaning of Articles L. 225-206 to L. 225-216 of the Commercial Code, where those transactions are carried out in accordance with points 1 to 3 of Article 5 of the aforementioned Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014;
2. Stabilisation transactions, within the meaning of sub-point (d) of point 2 of Article 3 of that same regulation, in financial instruments referred to under sub-points (a) and (b) of that same point 2, where those transactions are carried out in accordance with points 4 and 5 of Article 5 of the aforementioned regulation;
3. Transactions or behaviours referred to in points 1 to 4 of Article 6 of that same regulation.

Article L. 465-3-5

I. - Legal entities declared criminally liable, under the conditions laid down in Article 121-2 of the Criminal Code, for the offences defined in Articles L. 465-1 to L. 465-3-3 of this code shall incur, in addition to the fine

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determined as set out in Article 131-38 of the Criminal Code, the penalties imposed by Article 131-39 of that same code. The terms laid down in Article 131-38 of the aforementioned code shall only apply to the fine expressed as an absolute value.

The ban referred to in the second subparagraph of Article 131-39 of that same code relates to the activity that was being exercised when the offence was committed.

II. - When committed by an organised group, the offences laid down in Articles L. 465-1 to L. 465-3-3 of this code shall be punishable by ten years' imprisonment and a fine of €100 million, which amount may be increased to a figure representing up to ten times the amount of the benefit derived from the offence.

Article L. 465-3-6

I. - The Financial Public Prosecutor may not prosecute with the aim of imposing the penalties laid down in this section when the Autorité des marchés financiers has notified objections in relation to the same facts and to the same person pursuant to Article L. 621-15.

The Autorité des marchés financiers may not notify objections to a person prosecuted by the Financial Public Prosecutor for the same facts and with the aim of imposing the penalties laid down in this section.

II. - Before bringing any prosecution with the aim of imposing the penalties laid down in this section, the Financial Public Prosecutor shall inform the Autorité des marchés financiers of his intention. The Autorité des marchés financiers shall have two months to inform the Financial Public Prosecutor of its intention to notify objections to the same person in relation to the same facts.

If the Autorité des marchés financiers does not make known, within the stipulated timescale, its intention to notify objections, or if it makes known that it does not wish to do so, the Financial Public Prosecutor may prosecute.

If the Autorité des marchés financiers makes known its intention to notify objections, the Financial Public Prosecutor shall have 15 days to confirm his intention to prosecute and refer the case to the Public Prosecutor at the Paris court of appeal, failing which the AMF may proceed to notify its objections.

III. - Before notifying objections in relation to facts liable to constitute one of the offences referred to in this section, the Autorité des marchés financiers shall inform the Financial Public Prosecutor of its intention. The Financial Public Prosecutor shall have two months to inform the Autorité des marchés financiers of his intention to prosecute the same person for the same facts.

If the Financial Public Prosecutor does not make known, within the stipulated timescale, his intention to prosecute, or if he makes known that he does not wish to do so, the Autorité des marchés financiers may proceed to notify its objections.

If the Financial Public Prosecutor makes known its intention to prosecute, the Autorité des marchés financiers shall have 15 days to confirm its intention to notify its objections and refer the case to the Public Prosecutor at the Paris court of appeal, failing which the Financial Public Prosecutor may prosecute.

IV. - When a case is referred to him pursuant to paragraph II or III of this article, the Public Prosecutor at the Paris court of appeal shall have two months from the date of such referral to decide whether to authorise the Financial Public Prosecutor to prosecute, after giving the Financial Public Prosecutor and the Autorité des marchés financiers an opportunity to put forward their observations. If the Financial Public Prosecutor is not authorised, within the stipulated timescale, to prosecute, the Autorité des marchés financiers may proceed to notify its objections.

V. - Within the context of the proceedings laid down in paragraphs II and III, any decision by the Autorité des marchés financiers not to proceed to notify its objections and any decision by the Financial Public Prosecutor not to prosecute shall be final and not subject to appeal. Such decisions shall be included in the record of the proceedings. Failure by the Autorité des marchés financiers and the Financial Public Prosecutor to respond within the timescales laid down in paragraphs II and III shall be final and not subject to appeal.

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The decision by the Public Prosecutor at the Paris court of appeal laid down in paragraph IV shall be final and not subject to appeal. Such decisions shall be included in the record of the proceedings.

VI. - The proceedings laid down in paragraphs II, III and IV of this article shall suspend the limitation period for public prosecution and action by the Autorité des marchés financiers for the facts to which they relate.

VII. - Notwithstanding Article 85 of the Code of Criminal Procedure, an independent action for damages for facts liable to constitute one of the offences referred to in this section shall only be admissible on the condition that the Financial Public Prosecutor has the possibility of bringing a prosecution pursuant to this article, and that the person claiming to have been harmed proves that three months have elapsed since they filed their complaint with the Financial Public Prosecutor against receipt or by registered letter with return receipt, or since they sent the Financial Public Prosecutor, under the same conditions, a copy of their complaint filed with a criminal investigation department. The limitation period for public prosecution shall be suspended, in the victim's favour, from the filing of the complaint to the response from the Financial Public Prosecutor upon expiry of the three-month deadline referred to in the first sentence of this paragraph VII.

VIII. - Notwithstanding the first subparagraph of Article 551 of the Code of Criminal Procedure, the summons referring to the offences mentioned in this section may only be issued at the request of the Financial Public Prosecutor, on the condition that he has the possibility of bringing a prosecution pursuant to this article.

IX. - Without prejudice to Article 6 of the Code of Criminal Procedure, a public prosecution aimed at imposing the penalties laid down in this section shall cease, following the procedures laid down in paragraphs II, III and IV of this article, when the Autorité des marchés financiers notifies its objections to the same person in relation to the same facts pursuant to Article L. 621-15 of this code.

X. - Book II, Title II, Chapter I, section 8 of the Code of Criminal Procedure shall apply to the offences laid down in this section.

XI. - The terms and conditions for implementation of this article shall be set out in a decree issued following consultation with the Conseil d'Etat.

Article L. 561-28

I.- The unit referred to in Article L. 561-23 shall exchange with the supervisory authorities, professional bodies and national representative bodies referred to in Article L. 561-36 any information required to perform their respective duties pursuant to this chapter.

II.- If, in performing their duties, the supervisory authorities and professional bodies uncover facts likely to be linked to money laundering or terrorist financing or any sum or transaction referred to in Article L. 561-15, they shall report them promptly to the unit referred to in Article L. 561-23.

That unit shall acknowledge receipt thereof and may, at their request, keep them informed of the outcome.

III.- Notwithstanding paragraph II, if, in performing their duties, the Conseil de l'Ordre des Avocats becomes aware of facts likely to be linked to money laundering or terrorist financing, the president of that body shall inform the Public Prosecutor at the court of appeal, who shall pass on that information to the unit referred to in Article L. 561-23 without delay.

The President of the Conseil de l'Ordre des Avocats of the Conseil d'Etat and of the court of cassation shall report any similar facts of which that body becomes aware to the Public Prosecutor at the court of cassation, who shall pass on that information to the aforementioned unit without delay.

Article L. 561-31

In addition to the application of Article L. 561-30-1 and Article 40 of the Code of Criminal Procedure, the unit shall be authorised to pass on the information it holds to criminal investigation departments, provided that such information is related to their duties.

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It may also pass on to specialist intelligence units information relating to facts concerning the aims referred to in Article L. 811-3 of the Internal Security Code.

It may also pass on to the tax authorities, which may use it for the performance of its duties, information about facts liable to come under the offence defined in Article 1741 of the General Tax Code or the laundering of the proceeds of that offence.

For the performance of their respective duties, the unit may also pass on information:

1. To the financial courts, via their public prosecutor;
2. To the Haute Autorité pour la transparence de la vie publique (High Authority for Transparency in Public Life);
3. To the Autorité de contrôle prudentiel et de résolution (the French Prudential Supervisory Authority, ACPR);
4. To the Autorité des marchés financiers (AMF);
5. To specialist anti-corruption units;
6. To the customs authorities;
7. To government departments tasked with preparing or implementing freezes or bans on the movement or transfer of funds, financial instruments and economic resources;
8. To government departments responsible for public policy on protecting and promoting the nation's economic, industrial and scientific interests;
9. To government departments responsible for competition, consumer affairs and fraud prevention;
10. To the police department tasked with supervising and monitoring racing and gaming;
11. To the bodies referred to in Article L. 114-12 of the Social Security Code.

Article L. 621-1

The Autorité des marchés financiers (AMF), an independent public authority, shall oversee the protection of savings invested in financial instruments, units referred to in Article L. 229-7 of the Environmental Code and assets referred to in paragraph II of Article L.421-1 of this code which give rise to an offer to the public or to admission to trading on a regulated market and in any other investment offered to the public. It shall also monitor disclosures to investors and the orderly operation of markets in financial instruments, units referred to in Article L.229-7 of the Environmental Code and assets referred to in paragraph II of Article L. 421-1 of this code. It shall lend its support to the regulation of those markets at the European and international level.

In performing its duties, the Autorité des marchés financiers shall take account of the objectives of financial stability throughout the European Union and the European Economic Area and of convergent implementation of domestic and European Union provisions while also embracing best practice and recommendations arising from the European Union's supervisory mechanisms. It shall cooperate with the competent authorities of other States.

It shall further ensure that undertakings subject to its supervision implement suitable measures to comply with the approved conduct of business codes referred to in Article L. 611-3-1.

Article L. 621-2

I. – The Autorité des marchés financiers shall consist of a Board, an Enforcement Committee and, when required, specialised committees and consultative commissions.

Except as otherwise provided herein, the responsibilities entrusted to the Autorité des marchés financiers shall be exercised by the Board.

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II. – The Board shall be composed of sixteen members:

1. A chairman, appointed by Presidential decree;
2. A councillor of the Conseil d’Etat designated by the Vice-President of that body;
3. A justice of the court of cassation designated by the Chief Justice of that court;
4. A senior member of the court of auditors (Cour des comptes) designated by the auditor general;
5. A deputy governor of the Banque de France designated by the governor of that bank;
6. The chairman of the Autorité des normes comptables (the French national accounting standards board);
7. Three members with legal and financial expertise and experience in connection with the issuance of securities, the admission to trading of financial instruments on a regulated market and investment in financial instruments, designated by the President of the Senate, the President of the National Assembly and the Chairman of the Conseil Économique, Social et Environnemental respectively;
8. Three members with legal and financial expertise and experience in connection with the issuance of securities, the admission to trading of financial instruments on a regulated market and investment in financial instruments, designated by the minister with responsibility for the economy after consulting with organisations representing industrial and commercial companies whose securities are publicly listed or admitted to trading on a regulated market, fund management companies and other investors, investment services providers, market undertakings, clearing houses, operators of clearing and settlement systems and central securities depositaries;
9. A representative of employee shareholders designated by the minister with responsibility for the economy after consulting with trade unions and representative associations.

The members appointed pursuant to points 2, 3, 4 and 7 shall include an equal number of men and women. Where the composition of members designated for appointment is such that this rule cannot be complied with, or where no member has been designated upon expiry of a deadline set by decree, lots shall be drawn, in accordance with procedures set out in a decree, between the authorities that designated a member of the overrepresented gender to determine which of them should designate or propose a woman or a man.

The difference between the number of women and men making up the members appointed pursuant to points 8 and 9 may not be greater than one.

The chairman of the Autorité des marchés financiers shall be empowered to act on behalf of the AMF before any court.

The chairman of the Autorité des marchés financiers shall serve on a full-time basis.

The chairman shall serve a term of five years with effect from his appointment. He may not be reappointed.

Other Board members, except those referred to in points 5 and 6, shall serve for five years. They may be reappointed once, subject to the eleventh and twelfth subparagraphs of this paragraph II. Upon expiry of the five-year period, members shall remain in office until the first meeting of the newly appointed Board.

If the seat of a Board member, other than the chairman, becomes vacant for whatever reason, it shall be filled, in compliance with the parity rules set out in the eleventh and twelfth subparagraphs, for the unexpired portion of the former member’s term of office. Terms of office of less than two years shall not be taken into account when applying the reappointment rule laid down in the previous subparagraph.

After consulting with the Board, the chairman of the Autorité des marchés financiers shall appoint a member to act as his replacement if he is incapacitated or his post becomes vacant.

III. – As determined in a decree issued following consultation with the Conseil d’Etat, the Board may delegate authority to make decisions of individual application to specialised committees composed of its members and chaired by the chairman of the Autorité des marchés financiers.

The Board may also set up consultative commissions to which it may, as the case may be, appoint experts to assist it in preparing for decisions.

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IV. – The Autorité des marchés financiers shall have an Enforcement Committee tasked with imposing the sanctions referred to in Articles L. 621-15 and L. 621-17.

The Enforcement Committee shall have 12 members:

1. Two councillors of the Conseil d'Etat designated by the Vice-President of that body;
2. Two justices of the court of cassation designated by the Chief Justice of that court;
3. Six members with legal and financial expertise and experience in connection with the issuance of securities, the admission to trading of financial instruments on a regulated market and investment in financial instruments, designated by the minister with responsibility for the economy after consulting with organisations representing industrial and commercial companies whose securities are publicly listed or admitted to trading on a regulated market, fund management companies and other investors, investment services providers, market undertakings, clearing houses, operators of clearing and settlement systems and central securities depositories;
4. Two representatives of the employees of investment services providers, fund management companies, market undertakings, clearing houses, operators of clearing and settlement systems and central securities depositories, designated by the minister with responsibility for the economy after consulting with representative trade unions.

The members appointed pursuant to points 1, 2, 3 and 4 respectively shall include an equal number of men and women.

The chairman shall be elected by the members of the Enforcement Committee from among the individuals referred to in points 1 and 2.

The Enforcement Committee may establish divisions of six members each, chaired by one of the individuals referred to in points 1 and 2.

The duties of members of the Enforcement Committee are incompatible with those of Board members.

Members of the Enforcement Committee shall serve a term of five years. They may be reappointed once, subject to the seventh subparagraph. Upon expiry of the five-year period, members shall remain in office until the first meeting of the newly appointed Enforcement Committee.

If the seat of a member of the Enforcement Committee becomes vacant for whatever reason, it shall be filled, in compliance with the parity rules set out in the seventh subparagraph, for the unexpired portion of the former member's term of office.

Pursuant to terms set out in a decree issued following consultation with the Conseil d'Etat, one half of the Enforcement Committee shall be renewed every 30 months.

V. – Employees appointed as members of the Autorité des marchés financiers shall be given sufficient time to ensure that they can prepare for, travel to and participate in meetings. For the purposes of calculating entitlement to social security benefits, such time shall be treated as actual working time. The employees concerned must inform their employer upon appointment, and notify their employer of each meeting, as soon as they receive the notice to attend.

Article L. 621-4

I. – (Repealed).

II. Staff and officers of the Autorité des marchés financiers and experts appointed to the consultative commissions referred to in paragraph III of Article L. 621-2 shall be bound by professional secrecy under the conditions and subject to the penalties laid down in Article L. 642-1.

Such secrecy may not be invoked against the judicial authorities acting within the scope of criminal proceedings or in connection with court-ordered liquidation proceedings instituted against a person or entity referred to in paragraph II of Article L. 621-9.

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III. – The provisions of Book I, Title II, Chapter VIII of the Commercial Code shall apply to members of the Autorité des marchés financiers. No individual who has been sanctioned under the provisions of this code during the preceding five years may be a member of the Autorité des marchés financiers.

Article L. 621-5-1

A secretary general shall be tasked with running and coordinating departments under the authority of the chairman.

The staff of the Autorité des marchés financiers shall consist of public servants under contract and private employees. As determined in a decree issued following consultation with the Conseil d'Etat, public servants may be seconded to the Autorité des marchés financiers in a position provided for in the rules governing them.

The provisions of articles L. 2111-1, L. 2141-4, L. 2311-1 and L. 2312-1 to L. 2312-5, L. 2321-1, L. 2322-1 to L. 2322-4, L. 4523-11 and L. 4523-12, L. 4523-14 to L. 4523-17 and L. 4524-1 of the Labour Code are applicable to the staff of the Autorité des marchés financiers. Such provisions may, however, be adapted as a result of a decree issued following consultation with the Conseil d'Etat.

The Board of the Autorité des marchés financiers shall establish the general remuneration framework for the organisation's staff. The Secretary General shall report to the Board on the management of the departments of the Autorité des marchés financiers under the conditions laid down by the Board.

Article L. 621-7

The General Regulation of the Autorité des marchés financiers shall determine, inter alia:

I.- Rules of professional practice applicable to issuers who issue securities or who make an offering that does not give rise to the publication of the information document referred to in the first subparagraph of paragraph I of Article L. 412-1 and that is carried out through the intermediary of an investment services provider or a crowdfunding adviser via a website, or whose financial instruments or units referred to in Article L. 229-7 of the Environmental Code are admitted to trading on a regulated market, as well as the rules that must be complied with when trading in the financial instruments and assets referred to in paragraph II of Article L. 421-1 which are admitted to trading on a regulated market or on a multilateral trading facility.

II.- Rules regarding takeover bids relating to securities admitted to trading on a regulated market.

III.- Conduct of business rules and other professional obligations that must be complied with at all times by the persons referred to in paragraph II of Article L. 621-9.

IV.- For investment services providers, market undertakings, members of regulated markets, and clearing houses and their members:

1. The conditions under which investment services providers render the services described in Article L. 321-2;
2. The conditions of membership and professional practice referred to in Article L. 440-2, which apply to the members of clearing houses;
3. The conditions under which a professional licence may be issued to or withdrawn from natural persons placed under the authority or acting on behalf of investment services providers, market undertakings, members of regulated markets, and clearing houses;
4. Rules applicable to the persons referred to in Article L. 532-18-1;
5. The conditions under which, pursuant to Article L. 440-1, the AMF approves clearing houses' rules, without prejudice to the powers conferred upon the Banque de France by Article L. 141-4;
6. The conditions under which the members of a regulated market trade in units referred to in Article L. 229-7 of the Environmental Code or assets referred to in paragraph II of Article L. 421-1 of this code, both for own account and on behalf of third parties.

V.- Concerning third party investment management and collective investment:

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1. Approval and conduct of business conditions for portfolio management companies;
2. Approval and conduct of business conditions for companies that manage collective investments referred to in paragraph I of Article L. 214-1;
3. Approval conditions for collective investments referred to in paragraph I of Article L. 214-1;
4. Conduct of business conditions for depositaries of collective investments referred to in paragraph I of Article L. 214-1.

VI.- Concerning custody and administration of financial instruments, central securities depositaries, and clearing and settlement systems for financial instruments:

1. The conditions under which legal persons which issue securities or admit financial instruments to trading on a regulated market, and likewise the intermediaries authorised to do so as provided for in Article L. 542-1, may provide custody or administration of financial instruments;
2. The conditions under which, pursuant to Article L. 441-1, the Autorité des marchés financiers approves the operating rules of central securities depositaries and the clearing and settlement systems they run, without prejudice to the powers conferred upon the Banque de France by Article L. 141-4;
3. The conditions under which a professional licence may be issued to or withdrawn from natural persons placed under the authority or acting on behalf of central securities depositaries;

VII.- Concerning regulated markets within the meaning of Article L. 421-1, market undertakings and multilateral trading facilities:

1. General organisational and operational principles with which regulated markets must comply, as well as rules relating to the execution of transactions in financial instruments, units referred to in Article L. 229-7 of the Environmental Code and assets referred to in Article L. 421-1 of this code admitted to those markets;
2. The conditions under which the Autorité des marchés financiers, pursuant to Articles L. 421-4, L. 421-5 and L. 421-10, proposes to recognise, review or withdraw regulated market status within the meaning of Article L. 421-1;
3. General organisational and operational principles of multilateral trading facilities;
4. General organisational and operational principles of market undertakings as provided for in paragraph III of Article L. 421-11;
5. The conditions under which the Autorité des marchés financiers authorises a market undertaking to run a multilateral trading facility, in accordance with the provisions of the second subparagraph of Article L. 424-1;
6. Rules relating to disclosures to the Autorité des marchés financiers and the public in relation to orders, transactions and positions in financial instruments, units referred to in Article L. 229-7 of the Environmental Code and assets referred to in paragraph II of Article L. 421-1 of this code admitted to trading on a regulated market.

VIII.- Concerning persons, other than those referred to in points 1 and 7, paragraph II of Article L. 621-9, who produce and disseminate financial analysis:

1. The conditions under which the persons referred to in Article L. 544-1 conduct their business;
2. Conduct of business rules applicable to individuals placed under the authority or acting on behalf of entities which produce and disseminate financial analysis in the normal course of their business, and provisions intended to ensure that their opinions are independent and prevent conflicts of interest.

IX.- Rules relating to persons who produce or disseminate investment recommendations or other information recommending or suggesting an investment strategy, defined in Article 3 of Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (the 'Market Abuse Regulation') repealing Directive 2003/6/EC of the European Parliament and of the Council and Directives 2003/124/EC, 2003/125/EC and 2004/72/EC of the Commission.

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X.- Arrangements for implementing the publication and disclosure requirements laid down in this code in relation to financial market transparency in connection with the issuance of financial securities or the admission of financial instruments to trading on a regulated market, by filing, dissemination in the printed press and electronically, or provision free of charge in printed form.

Article L. 621-9

I.- In the performance of its duties, the Autorité des marchés financiers shall carry out inspections and investigations.

It shall ensure the proper conduct of transactions in securities when they are offered to the public and in financial instruments, units referred to in Article L. 229-7 of the Environmental Code and assets referred to in paragraph II of Article L. 421-1 of this code admitted to trading on a regulated market or multilateral trading facility. It shall ensure the proper conduct of public issues of company shares referred to in the fourth subparagraph of Article L. 512-1 of this code and of public issues of certificats mutualistes ('mutual certificates') referred to in the first subparagraph, paragraph II of Article L. 322-26-8 of the Insurance Code. It shall ensure the proper conduct of offerings that do not give rise to the publication of the information document referred to in the first subparagraph, paragraph I of Article L. 412-1 and that are carried out through the intermediary of an investment services provider or a crowdfunding adviser via a website, and of offerings of minibons (a type of interest-bearing note) referred to in Article L. 223-6. It shall likewise ensure the proper conduct of transactions in commercial contracts relating to goods linked to one or more financial instruments or units referred to Article L. 229-7 of the Environmental Code. Markets in instruments created to represent banking transactions which, pursuant to Article L. 214-20 of this code, may not be held by UCITS, shall not be subject to the supervision of the AMF. Financial instruments and units referred to in Article L. 229-7 of the Environmental Code traded on a multilateral trading facility, admitted to trading on such a market, or for which application for admission to trading on such a market has been made shall be subject to the supervision of the Autorité des marchés financiers.

II.- The AMF shall also ensure compliance with the professional obligations incumbent upon the following legal and natural persons, as well as natural persons placed under their authority or acting on their behalf, by virtue of legislation and regulations:

1. Authorised investment services providers or those conducting business in France under the freedom of establishment, as well as legal entities placed under their authority or acting on their behalf;
2. Persons authorised to provide custody or administration of financial instruments referred to in Article L. 542-1;
3. Central securities depositories;
4. Members of regulated markets other than investment services providers;
5. Market undertakings;
6. Clearing houses for financial instruments;
7. Collective investments referred to in paragraph I of Article L. 214-1 and management companies referred to in Article L. 543-1;
- 7 bis. Management companies established in another country which is a Member State of the European Union or a party to the Agreement on the European Economic Area having a branch or supplying services in France, which manage one or more UCITS established under French law authorised in accordance with Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009;
- 7 ter. Management companies established in another country which is a Member State of the European Union or managers established in a third country having a branch or supplying services in France, which manage one or more AIFs within the meaning of Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011;
8. Miscellaneous property intermediaries referred to in paragraph I of Article L. 550-1;

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9. Persons authorised to act in the capacity of direct marketers referred to in Articles L. 341-3 and L. 341-4;
10. Financial investment advisers;
- 10 bis. Crowdfunding advisers;
11. Entities, other than those referred to in points 1 and 7, who produce and disseminate financial analysis;
12. Depositaries of collective investments referred to in paragraph I of Article L. 214-1;
13. External appraisers referred to in Article L. 214-24-15;
14. Legal persons administering group occupational pension entities referred to in paragraph I of Article 8 of Ordinance 2006-344 of 23 March 2006 or collective retirement savings plans referred to in Articles L. 3334-1 to L. 3334-9 and L. 3334-11 to L. 3334-16 of the Labour Code;
15. Tied agents referred to in Article L. 545-1;
16. (Repealed)
17. Authorised industry bodies referred to in Articles L. 541-4 and L. 547-4.

The Autorité des marchés financiers shall ensure that these entities and persons, as well as natural persons placed under their authority or acting on their behalf, comply with the provisions of applicable European regulations.

For persons or entities other than those providing services referred to in paragraph 4 of Article L. 321-1 or persons or entities referred to in points 7, 7 bis, 8, 10 and 11 of paragraph II above, in respect of whom the Autorité des marchés financiers has sole competence, supervision is exercised subject to the competence of the Autorité de Contrôle Prudentiel et de Résolution and, for those referred to in points 3 and 6, without prejudice to the powers conferred on the Banque de France by Article L. 141-4.

The Autorité des marchés financiers shall also be responsible for ensuring compliance with the laws and regulations applicable to investment services providers referred to in Article L. 532-18-1, as provided for in Articles L. 532-18-2, L. 532-19 and L. 532-21-1.

Article L. 621-9-1

Where the Secretary General of the Autorité des marchés financiers, or the Deputy Secretary General specifically appointed for such purpose, decides to carry out investigations, he shall empower the investigators under the terms laid down in the General Regulation.

The individuals selected for such assignments must meet ethical standards set out in a decree issued following consultation with the Conseil d'Etat.

Article L. 621-9-2

As determined in a decree issued following consultation with the Conseil d'Etat, the Autorité des marchés financiers may:

1. Delegate to market undertakings and, as the case may be, to clearing houses, supervision of business and transactions carried out by the members of a regulated market and by the investment services providers who have transmitted orders on that market. Such delegation shall be the subject of a memorandum of understanding. It may be withdrawn at any time;
2. Have recourse, for its inspections and investigations, to external inspection sources, statutory auditors, experts included on a list of legal experts, or competent individuals, entities or authorities. Those individuals, entities and authorities may receive remuneration in respect thereof from the Autorité des marchés financiers;
3. Delegate to the associations referred to in Articles L. 541-4 and L. 547-4 supervision of their members' activities. Such delegation shall be the subject of a memorandum of understanding and may be withdrawn at any time.

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The Board or the Secretary General of the Autorité des marchés financiers may ask the auditors of companies whose securities are admitted to trading on a regulated market or multilateral trading facility, or for which application for admission to trading on such markets has been made, or an expert included on a list of legal experts, to carry out any additional analysis or verification which they deem necessary for persons or entities whose securities are admitted to trading on a regulated market or multilateral trading facility, or for which application for admission to trading on such markets has been made, and for persons referred to in paragraph II of Article L. 621-9. Any associated costs and fees shall be born by the Autorité des marchés financiers. The provisions of this paragraph shall also apply to statutory auditors who carry out audits in connection with securities issuance.

Article L. 621-9-3

Within the scope of the inspections and investigations referred to in Articles L. 621-9 and L. 621-9-1, information may not be withheld on grounds of professional secrecy from the Autorité des marchés financiers or, where applicable, from market undertakings or clearing houses, inspection staff, or persons or authorities referred to in Article L. 621-9-2, when they are assisting the Autorité des marchés financiers, except by officers of the law.

For the purposes of this subsection, statutory auditors shall be released from professional secrecy with regard to the Autorité des marchés financiers.

Article L. 621-10

Investigators and inspectors may, for the purposes of an investigation or inspection, require the submission of any documents on whatever medium. Investigators may also require the submission of data kept and processed by telecommunications operators within the purview of Article L. 34-1 of the Post and Electronic Communications Code and service providers referred to in subparagraphs 1 and 2 of paragraph I of Article 6 of Act 2004-575 of 21 June 2004 in favour of confidence in the digital economy, and may obtain copies thereof.

Investigators and inspectors may summon and take statements from any person likely to be able to provide information. They may gain access to business premises. They may gather explanations on the spot under conditions set out in a decree issued following consultation with the Conseil d'Etat.

Article L. 621-10-1

Where persons and entities referred to in paragraph II of Article L. 621-9 provide their services on the internet, investigators and inspectors may use an assumed identity to access information and elements available via these services, without incurring criminal liability.

A decree issued following consultation with the Conseil d'Etat shall specify the conditions under which investigators and inspectors shall proceed with their investigations in such cases.

Article L. 621-11

Any individual summoned or interviewed shall have the right to be assisted by the adviser of his choice. The terms under which the summons is issued or explanations are gathered on the spot, and the conditions under which the aforementioned right is exercised, shall be determined in a decree issued following consultation with the Conseil d'Etat.

Article L. 621-12

For the purposes of investigating the violations referred to in Articles L. 465-1 to L. 465-3-3, and facts that may qualify as property crime and be sanctioned by the Enforcement Committee of the Autorité des marchés financiers pursuant to Article L. 621-15, the liberty and custody judge of the Regional Court in whose jurisdiction the premises to be searched are located may, at the request of the secretary general of the Autorité des marchés financiers giving grounds for the search, give an order authorising that Authority's investigators to enter any

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premises, seize documents and gather explanations from persons interviewed on the premises, under the conditions and in accordance with the procedures laid down in Articles L. 621-10 and L. 621-11.

If the premises to be searched are located within the jurisdiction of more than one court and action must be taken simultaneously in each court, a single order may be issued by one of the competent liberty and custody judges.

The judge must verify that the request for authorisation submitted to him is well-founded; that request must contain all the information in the possession of the Autorité des marchés financiers that justifies such a search. The judge shall designate the law enforcement officer who must be in attendance when the searches are carried out and who must keep him informed of their progress. If searches take place outside the jurisdiction of his Regional Court, the liberty and custody judge to which the case is referred may travel to premises anywhere in the country.

The order referred to in the first subparagraph shall make reference to the right of the occupant of the premises or his representative to be assisted by the adviser of his choice. The exercise of such right shall not give rise to suspension of search and seizure operations. The means of, and time limit for, appeal shall be indicated in the order.

The order shall be notified verbally and on the spot, at the time of the search, to the occupant of the premises or his representative, who shall receive an exact copy thereof in return for a receipt or an acknowledgement of receipt appended to the minutes provided for in the eleventh and twelfth subparagraphs of this article. If the occupant of the premises or his representative is absent, the order shall be notified, after the search, by registered letter with confirmation of receipt. Such notification shall be deemed to have been given on the date of receipt indicated on the advice of delivery. If it cannot be thus notified, the order shall be delivered by a bailiff. A copy of the order shall be sent to the alleged perpetrator of the offences referred to in the first subparagraph by registered letter with confirmation of receipt.

The order referred to in the first subparagraph shall be immediately enforceable upon presentation of the minutes. That order shall be subject to appeal before the presiding judge of the court of appeal or his representative in the jurisdiction within which the judge authorised the measure. The parties shall not be required to appoint legal counsel. Under the rules laid down in the Code of Civil Procedure, any appeal must be lodged within fifteen days in a declaration handed in or sent to the court registry by registered letter or, with effect from 1 January 2009, by electronic means. The time limit shall run from the date on which the order is handed in, delivered or served. Appeals shall not have suspensive effect. The registry of the Regional Court shall send the case file without delay to the registry of the court of appeal, where the parties may consult it. The order issued by the presiding judge of the court of appeal may be subject to appeal on points of law under the rules laid down in the Code of Civil Procedure. The time limit for appeal on points of law shall be fifteen days.

The search shall take place under the authority and control of the judge who authorised it. He may visit the premises during the search, and may decide to suspend or terminate the search at any time.

The search may not commence before 6.00 a.m. or after 9.00 p.m.; in places open to the public, it may also commence during normal opening hours. It shall be carried out in the presence of the occupant of the premises or his representative; should this prove impossible, the law enforcement officer shall enlist the services of two witnesses who are not under his authority or that of the Autorité des marchés financiers.

Only the Authority's investigators, the occupant of the premises or his representative, and the law enforcement officer may consult the documents before they are seized.

The law enforcement officer shall ensure observance of professional secrecy and of the defendant's rights pursuant to the provisions of the third subparagraph of Article 56 of the Code of Criminal Procedure. Article 58 of that code shall apply.

Where the search is carried out in the office or home of a lawyer, the premises of a press or audiovisual communications firm, a doctor's surgery, or the practice of a notary, an attorney or a bailiff, the provisions of Articles 56-1, 56-2 or 56-3 of the Code of Criminal Procedure, as the case may be, shall apply.

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Minutes recording the search operation shall be drawn up on the spot by the Autorité des marchés financiers' investigators. An inventory of exhibits and documents seized shall be appended thereto. The minutes and the inventory shall be signed by the Authority's investigators and the law enforcement officer, as well as the parties referred to in the sixth subparagraph of this article; any refusal to sign shall be recorded in the minutes. If it should prove difficult to make an inventory on the spot, the exhibits and documents seized shall be placed under seal. The occupant of the premises or his representative shall be informed that he may be present at the opening of the seals, which shall take place in the presence of the law enforcement officer; the inventory shall then be drawn up.

The presiding judge of the court of appeal in the jurisdiction within which the judge authorised the search shall hear appeals against the conduct of the search or seizure operations authorised pursuant to the first subparagraph. The minutes and inventory drawn up upon completion of those operations shall indicate the means of, and time limit for, appeal. The parties shall not be required to appoint legal counsel. Under the rules laid down in the Code of Civil Procedure, appeals must be lodged within fifteen days via a declaration handed in or sent to the court registry by registered letter or, with effect from 1 January 2009, by electronic means. The time limit shall run from the date on which the minutes or inventory are handed in or delivered. Appeals shall not have suspensive effect. The order issued by the presiding judge of the court of appeal may be subject to appeal on points of law under the rules laid down in the Code of Civil Procedure. The time limit for appeal on points of law shall be fifteen days.

The originals of the minutes of the search and the inventory shall be sent to the judge who issued the order as soon as they are drawn up; copies of those documents shall be sent to the occupant of the premises or his representative or, in their absence, shall be sent by registered letter with confirmation of receipt to the occupant of the premises and, where applicable, to the individual indicated in the authorisation given in the order referred to in the first subparagraph of this article who may have committed an offence or an act also referred to in the first subparagraph. If it cannot be thus notified, the order shall be delivered by a bailiff. These documents shall indicate the means of, and time limit for, appeal.

Documents that are no longer needed to ascertain the truth shall be returned to the occupant of the premises.

Article L. 621-12-1

The Autorité des marchés financiers may send to the court before which an action for damages has been brought, and which so requests, any minutes and investigation or inspection reports that it holds that may be useful in resolving the dispute.

Article L. 621-13

The presiding judge of the regional court may, acting on a reasoned request from the chairman or secretary general of the Autorité des marchés financiers, order that any funds, securities, certificates or rights belonging to the persons the Authority is pursuing, as well as any asset held by an AIF, regardless of who holds them, be sequestered. The judge shall rule via an order made in response to an ex parte application, it being incumbent on any interested party to refer the matter to him. The judge may, under the same conditions, issue a temporary ban on professional activity.

The presiding judge of the regional court may, acting on a reasoned request from the chairman or secretary general of the Autorité des marchés financiers, issue a summary order directing that a respondent be required to make a payment into court.

The judge shall determine the amount to be paid into court, the time limit for retention thereof and the allocation of the funds paid into court.

In the event that the respondent is placed under formal investigation, the investigating magistrate hearing the case may order that the sum paid into court be released in whole or in part, or that it be maintained or increased, via a decision rendered pursuant to point 11 of Article 138 of the Code of Criminal Procedure.

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Article L. 621-14

I.- In the event of breaches of the obligations laid down in Articles L. 233-7 and L. 233-8-II of the Commercial Code and L. 451-1-2 of this code, the Autorité des marchés financiers may publish a statement confirming the identity of the natural or legal person concerned, as well as the nature of the offence.

II.- The Board may, after giving the person concerned an opportunity to present his explanations, order the cessation, in France and abroad, of all breaches of obligations imposed by European regulations, legislation or regulations or professional rules intended to protect investors from insider dealing, market manipulation and unlawful disclosure of inside information referred to in points (c) and (d) of paragraph II of Article L. 621-15, and of any other breach liable to undermine investor protection, the orderly operation of the market or any other breach of anti-money laundering and counter-terrorist financing obligations laid down in Book V, Title VI, Chapters I and II of this code. Such decisions may be disclosed to the public.

The aforementioned decisions shall be made public when they follow breaches of the obligations referred to in paragraph III bis of Article L. 621-15. Such publication shall notably include the identity of the natural or legal person concerned, as well as the nature of the offence. The provisions relating to the postponement or anonymisation of the decisions concerned referred to in the second, third and fourth subparagraphs of paragraph V of Article L. 621-15 shall apply in such cases.

The Board shall have the same powers as those referred to in the first subparagraph of this paragraph II in relation to breaches of obligations resulting from European regulations, legislation or regulations intended to protect investors and the market from insider dealing, market manipulation and unlawful disclosure of inside information referred to in points (c) and (d) of paragraph II of Article L. 621-15, committed on French soil in connection with financial instruments, units referred to in Article L. 229-7 of the Environmental Code or assets referred to in paragraph II of Article L. 421-1 of this code admitted to trading on a regulated market of another country that is a Member State of the European Community or a party to the Agreement on the European Economic Area or in respect of which application for admission to trading on such a market has been made.

III.- The chairman of the Autorité des marchés financiers may ask the court to order the person responsible for the practice detected to comply with European regulations or legislation or regulations and end the irregularity or eliminate its effects.

Such requests shall be brought before the presiding judge of the Paris Regional Court ruling on a summary basis, whose decision shall be immediately enforceable. The judge may, even without consultation, take any protective measure and impose a coercive fine payable to the Treasury for execution of his order.

If criminal proceedings are brought, the coercive fine, if imposed, shall not be applied until a final decision is made on the merits of the public prosecution.

Article L. 621-14-1

Where the investigation report or inspection report drawn up by the Autorité des marchés financiers notes breaches of professional obligations by any person referred to in point 9 of paragraph II of Article L. 621-9, points (a) to (d) of paragraph II of Article L. 621-15, with the exception of persons referred to in points 3, 5 and 6 of paragraph II of Article L. 621-9, or the professional obligations referred to in Article L. 621-17, the Board of the Autorité des marchés financiers may send an offer of administrative settlement (composition administrative) at the same time it sends the statement of objections provided for in the first sentence of the second subparagraph of Article L. 621-15 to the person concerned.

That proposal shall suspend the time limit laid down in the second subparagraph of paragraph I of Article L. 621-15.

Any person to whom an offer of administrative settlement has been made undertakes, in an agreement with the Secretary General of the Autorité des marchés financiers, to pay a sum to the Treasury not exceeding the total fine applicable under paragraph III of Article L. 621-15.

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That agreement shall be submitted to the Board for validation, after which it shall be referred to the Enforcement Committee for approval. The agreement thus approved shall be made public.

Where an approved agreement is not reached or is not complied with, the notice of objections shall be referred to the Enforcement Committee, which shall apply Article L. 621-15.

Decisions by the Board and the Enforcement Committee referred to in this article shall be subject to appeal as provided for in Article L. 621-30.

The terms of implementation of this article shall be set out in a decree issued following consultation with the Conseil d'Etat.

Article L. 621-15

I.- The Board shall review the investigation or inspection report produced by the Autorité des marchés financiers, or the request put forward by the chairman of the Autorité de Contrôle Prudentiel et de Résolution.

Subject to Article L. 465-3-6, if the Board decides to instigate sanction proceedings, it shall notify the objections to the individuals concerned and forward the statement of objections to the Enforcement Committee, which shall appoint a rapporteur from among its members. The Enforcement Committee may not hear a case based on facts dating back more than three years if no action to uncover, declare or sanction those facts has been carried out during that period.

A member of the Board shall be invited to the hearing. He shall attend without voting rights. He may be assisted or represented by staff of the Autorité des marchés financiers, and may present observations in support of the objections made and propose a sanction.

The Enforcement Committee may hear any officer of the Autorité des marchés financiers.

In urgent cases, the Board may suspend the activities of the persons or entities referred to in subparagraphs (a) and (b) of paragraph II against whom sanction proceedings have been instigated.

If the Board forwards the report referred to in the first subparagraph to the Public Prosecutor, it may decide to make that fact public.

II.- Following an adversarial procedure, the Enforcement Committee may impose sanctions on the following persons:

(a) Persons referred to in points 1 to 8 and 11 to 17 of paragraph II of Article L. 621-9, in respect of any breach of professional obligations established by European regulations, legislation, regulations or applicable rules of professional conduct approved by the Autorité des marchés financiers, subject to the provisions of Articles L. 612-39 and L. 612-40;

(b) Natural persons under the authority of, or acting on behalf of, a person referred to in points 1 to 8 or 11 to 17 of paragraph II of Article L. 621-9 in respect of any breach of professional obligations established by European regulations, legislation, regulations or applicable rules of professional conduct approved by the Autorité des marchés financiers, subject to the provisions of Articles L. 612-39 and L. 612-40;

(c) Any person who, in France or abroad:

1. Has engaged in or attempted engage in insider dealing or market manipulation, within the meaning of Article 8 or 12 of Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (the 'Market Abuse Regulation') repealing Directive 2003/6/EC of the European Parliament and of the Council and Directives 2003/124/EC, 2003/125/EC and 2004/72/EC of the Commission;

2. Has recommended to another person that he engage in insider dealing, within the meaning of Article 8 of that same regulation, or has encouraged another person to engage in such dealing;

3. Has unlawfully disclosed inside information, within the meaning of Article 10 of the aforementioned regulation;

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4. Or has committed any other breach referred to in the first subparagraph of paragraph II of Article L. 621-14, whenever such facts concern:

- a financial instrument or a unit referred to in Article L. 229-7 of the Environmental Code traded on a regulated market or multilateral trading facility located in France, or for which application for admission to trading on such a market has been made;
- a financial instrument or a unit referred to in that same Article L. 229-7 other than those referred to in the seventh subparagraph of this point (c) whose price or value depends on the price or value of a financial instrument or a unit referred to in that same seventh subparagraph or whose price or value has an effect on the price or value of a financial instrument or a unit referred to in the aforementioned seventh subparagraph;
- a spot commodity contract within the meaning of subparagraph 1 of paragraph II of Article L. 465-3-4 of this code when the transaction, behaviour or dissemination is likely to, or intended to, have an effect on the price of a financial instrument or a unit referred to in the seventh or eighth subparagraphs of this point (c);
- an index referred to in Article L. 465-3-3;

(d) Any person who, in France:

1. Has engaged in or attempted engage in insider dealing or market manipulation, within the meaning of Article 8 or 12 of the aforementioned Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014;
2. Has recommended to another person that he engage in insider dealing, within the meaning of Article 8 of that same regulation, or has encouraged another person to engage in such dealing;
3. Has unlawfully disclosed inside information, within the meaning of Article 10 of the aforementioned regulation;

4. Or has committed any other breach referred to in the first subparagraph of paragraph II of Article L. 621-14, whenever such facts concern:

- a financial instrument or a unit referred to in Article L. 229-7 of the Environmental Code traded on a regulated market or multilateral trading facility of another country that is a Member State of the European Union or a party to the Agreement on the European Economic Area, or for which application for admission to trading on such a market has been made;
- a financial instrument or a unit referred to in that same Article L. 229-7 other than those referred to in the seventh subparagraph of this point (d) whose price or value depends on the price or value of a financial instrument or a unit referred to in that same seventh subparagraph or whose price or value has an effect on the price or value of a financial instrument or a unit referred to in the aforementioned seventh subparagraph;
- a spot commodity contract within the meaning of subparagraph 1 of paragraph II of Article L. 465-3-4 of this code when the transaction, behaviour or dissemination is likely to, or intended to, have an effect on the price of a financial instrument or a unit referred to in the seventh or eighth subparagraphs of this point (d);
- a financial instrument or a unit referred to in Article L. 229-7 of the Environmental Code whose price or value has an effect on the price or value of a spot commodity contract referred to in the second subparagraph of the paragraph II of Article L. 465-3-4 of this code, where the transaction, behaviour or dissemination has or is likely to have an effect on the price or value of a spot commodity contract;
- an index referred to in Article L. 465-3-3;

(e) Any person who, in France or abroad, has engaged in or attempted to engage in the dissemination of false information in connection with the issuance of securities;

(f) Any person who, in the context of an investigation conducted pursuant to paragraph I of Article L. 621-9, at the investigators' request and subject to the preservation of legally protected secrecy enforceable against the Autorité des marchés financiers, refuses to grant access to a document, whatever the medium, and to provide a copy thereof, refuses to disclose information or respond to a summons, or refuses to grant access to business premises;

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(g) Any other person in respect of breaches of obligations arising from European regulations and falling within the jurisdiction of the Autorité des marchés financiers.

III.-The sanctions applicable shall be:

(a) For the persons referred to in subparagraphs 1 to 8, 11, 12, and 15 to 17 of paragraph II of Article L. 621-9, a warning, reprimand, temporary or permanent ban on providing some or all of the services previously provided, or removal from the register referred to in Article L. 546-1; in lieu of or in addition to these sanctions, the Enforcement Committee may impose a fine of up to €100 million or ten times the amount of any profit made, which amount shall be paid into the guarantee fund to which the sanctioned person is affiliated or, failing that, to the Treasury;

(b) For individuals acting under the authority or on behalf of a person referred to in subparagraphs 1 to 8, 11, 12, or 15 to 17 of paragraph II of Article L. 621-9, a warning, reprimand, temporary suspension or withdrawal of their professional licence, or temporary or permanent ban on conducting some or all of their business; in lieu of or in addition to these sanctions, the Enforcement Committee may impose a fine of up to €15 million or ten times the amount of any profit made in the case of the practices referred to in points (c) to (g) of paragraph II, or, in other cases, up to €300,000 or five times the amount of any profit made, which amount shall be paid into the guarantee fund to which the legal entity on whose authority or behalf the sanctioned person is acting is affiliated or, failing that, to the Treasury;

(c) For persons other than those referred to in paragraph II of Article L. 621-9 who perpetrate acts referred to in points (c) to (g) of paragraph II, a fine of up to €100 million or ten times the amount of any profit made, which amount shall be paid to the Treasury.

Fines imposed pursuant to this paragraph III may be increased by up to 10% of their amount; such additional amount shall be payable by the sanctioned person and shall be used to provide financial support to the victims.

The amount of the fine and of any additional sum shall be commensurate with the seriousness of the violations and any benefit or profit derived from those violations.

The guarantee fund referred to in points (a) and (b) may, as provided for in its rules of procedure and subject to a maximum amount of €300,000 per annum, allocate a portion of the proceeds it receives from fines imposed by the Enforcement Committee to educational activities in the financial arena.

III bis.- Any person in breach of the obligations laid down in Articles L. 233-7 and L. 233-8-II of the Commercial Code and L. 451-1-2 of this code may be issued with a fine not exceeding €100 million or 5% of total annual revenue determined on the basis of the annual financial statements for the last financial year approved by the management body. When the legal entity is a parent undertaking or a subsidiary of a parent undertaking that is required to prepare consolidated financial statements, the total revenue to be taken into consideration shall be the total annual revenue, as shown in the latest consolidated annual financial statements approved by the shareholders at a general meeting of the parent undertaking.

The amount of the fine may also be up to ten times the amount of any profit realised or any losses avoided as a result of such violation, if such profits or losses can be determined.

Fines shall be paid to the Treasury.

III ter.- In determining the fines referred to in paragraph III bis, the following in particular shall be taken into account:

- the severity and duration of the breach;
- the nature and extent of involvement of the person concerned;
- the financial position and capacity of the person concerned, notably in light of its assets and, for a natural person, his annual income, and for a legal entity, its total revenue;
- the scale of any profits or benefits derived, or of any losses or costs avoided, by the person concerned, insofar as they can be determined;
- any losses sustained by third parties as a result of the violation, insofar as they can be determined;

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- the extent to which the person concerned has cooperated with the Autorité des marchés financiers;
- any previous violations committed by the person concerned;
- any circumstances specific to the person concerned, including in particular any steps taken by that person to remedy the problems identified, triggered by the violation and, as the case may be, to make reparation for any harm caused to third parties, as well as to avoid any recurrence of the violation.

III quater.- Under the terms laid down in a decree issued following consultation with the Conseil d'Etat, any member of the Enforcement Committee shall be recused at the request of the respondent if there is good reason to question that member's impartiality.

IV.- The Enforcement Committee shall make rulings on the basis of a reasoned decision, after the rapporteur has left the chamber. No sanction may be imposed unless the respondent or his representative has been heard or, failing that, duly summoned.

IV bis.- Enforcement Committee hearings may be held in public.

However, without consultation or at the request of the respondent, the Chairman of the session hearing the case may conduct all or part of the proceedings in camera for the sake of public order, national security or if a public hearing would compromise business secrecy or any other legally protected secret.

V.- The Enforcement Committee shall publish its decision in any publication, journal or media of its choosing, in a format commensurate with the breach committed and the sanction imposed. The cost thereof shall be borne by the sanctioned entities. However, where publication of a decision could severely disrupt the financial markets or cause undue damage to the parties involved, the Commission may decide to prohibit its publication.

With regard to enforcement decisions pursuant to paragraph III bis above, the Enforcement Committee may decide to defer publication of a decision, or to publish the latter in anonymous form, in either of the following circumstances:

- (a) Where publication of the decision is likely to cause the person concerned serious and disproportionate harm, notably for sanctions imposed on natural persons where publication would include personal information;
- (b) Where publication would be likely to severely disrupt the stability of the financial system or the progress of an ongoing investigation or inspection.

Where an enforcement decision pursuant to paragraph III bis is appealed, the Autorité des marchés financiers shall immediately publish this information on its website.

NOTE: In its decision no. 2014-453/454 QPC and 2015-462 QPC of 18 March 2015 (NOR: CSCX15072015), the Constitutional Council declared the words "has engaged in or attempted to engage in insider dealing or", in subparagraphs (c) and (d), paragraph II of Article L. 621-15 in the version resulting from Act 2008-776 of 4 August 2008 on the modernisation of the economy, unconstitutional. The declaration of unconstitutionality laid down in Article 3 takes effect under the conditions set out in Recitals 35 and 36. Repeal of the contested provisions has been postponed until 1 September 2016.

Article L. 621-15-2

When an institution referred to in Article L. 370-1 of the Insurance Code which offers transactions referred to in Articles L. 3334-1 to L. 3334-9 and L. 3334-11 to L. 3334-16 of the Labour Code has violated a provision referred to in the second subparagraph of Article L. 370-2 of the Insurance Code, the Autorité des marchés financiers, on its own initiative or on a referral by the competent authorities, shall notify such offence without delay to the competent authority of the State in which the institution is authorised, and shall ask it, in cooperation with that supervisory authority, to take the steps needed to put an end to the violation.

If the violation persists after two months have elapsed since such notification, the Autorité des marchés financiers may instigate sanction proceedings against the institution as provided for in Article L. 621-15. The sanctions applicable shall be those referred to in Article L. 621-15 (III, a).

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The Autorité des marchés financiers may decide to defer instigation of sanction proceedings until expiry of a period granted to the institution to take the steps needed to put an end to the violation.

Article L. 621-16-1

When proceedings are instigated pursuant to Articles L. 465-1 to L. 465-3-3, the Autorité des marchés financiers may exercise the rights granted to a party claiming damages. Failing this, the chairman of the Autorité des marchés financiers or his representative may attend the hearing at the court to which the case has been referred, and may file submissions and develop them orally.

NOTE: In its decision no. 2014-453/454 QPC and 2015-462 QPC of 18 March 2015 (NOR: CSCX1507201S), the Constitutional Council declared the words “L. 465-1 and”, in Articles L. 621-15-1 and L. 621-16-1 in the version resulting from Act 2003-706 of 1 August 2003 on financial security, unconstitutional. The declaration of unconstitutionality takes effect under the conditions set out in Recitals 35 and 36.

Article L. 621-17

Any breach by financial investment advisers as defined in Article L. 541-1 or by crowdfunding advisers referred to in Article L. 547-1 of legislation, regulations or professional obligations pertaining to them shall be punishable by sanctions imposed by the Enforcement Committee as provided for in subparagraphs I, (a) and (b) of paragraphs III, IV and V of Article L. 621-15.

Article L. 621-17-1

Any breach by external appraisers as defined in Article L. 214-24-15 of legislation, regulations or professional obligations pertaining to them shall be punishable by sanctions imposed by the Enforcement Committee as provided for in subparagraphs I, (a) and (b) of paragraphs III and III bis to V of Article L. 621-15.

Article L. 621-17-3

When the Autorité des marchés financiers forwards certain facts or information to the Financial Public Prosecutor pursuant to Article L. 621-20-1, the declaration or notification provided for in Article 16 of Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (the ‘Market Abuse Regulation’) repealing Directive 2003/6/EC of the European Parliament and of the Council and Directives 2003/124/EC, 2003/125/EC and 2004/72/EC of the Commission, of which the Public Prosecutor is informed, shall not be included in the record of the proceedings.

Article L. 621-20-1

If, in the performance of its duties, the Autorité des marchés financiers becomes aware of a crime or offence, it is required to notify the Public Prosecutor without delay and send him all relevant information, statements of offence and other documents.

Subject to the provisions of the third subparagraph of Article L. 632-16, the Public Prosecutor may obtain from the Autorité des marchés financiers all the information held by the latter in connection with the performance of its duties, which information may not be withheld on grounds of professional secrecy.

Article L. 621-20-4

Minutes, investigation reports and any other document forming part of criminal proceedings that is directly linked to evidence that could be subject to examination by the Enforcement Committee of the Autorité des marchés financiers may be provided by the Financial Public Prosecutor, after consulting the examining magistrate as the case may be, or without consultation or at their request:

1. To the secretary general of the Autorité des marchés financiers, before sanction proceedings are instigated; or

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2. To the rapporteur of the Enforcement Committee, once sanction proceedings have been instigated.

Article L. 621-21

I.- The Autorité des marchés financiers and the Commission de Régulation de l'Énergie shall cooperate with each other. They shall provide each other with information that is relevant to the performance of their respective duties.

The Autorité des marchés financiers shall seek the opinion of the Commission de Régulation de l'Énergie on any matter within the scope of its competence.

II.- Where a matter is referred to it by the Commission de Régulation de l'Énergie pursuant to Article 39-1 of Act 2000-108 of 10 February 2000 on the modernisation and development of the public electricity service, the Autorité des marchés financiers shall keep the Commission de Régulation de l'Énergie informed of the investigation's progress. The Commission de Régulation de l'Énergie may ask the Autorité des marchés financiers to forward to it any information relating to the case that may be relevant to the performance of its duties.

Notwithstanding the provisions of Article L. 631-1, the Autorité des marchés financiers may provide the Commission de Régulation de l'Énergie with information that is covered by professional secrecy.

Information gathered pursuant to paragraphs I and II shall be covered by professional secrecy obligations in force under the conditions applicable to the institution that provided it and the recipient institution.

Such information may be used by the authorities referred to in paragraphs I and II only in the performance of their duties, unless the institution that provided it agrees otherwise.

Article L. 631-1

I.- The Banque de France, the Institut d'émission des départements d'outre-mer, the Institut d'émission d'outre-mer, the Autorité de Contrôle Prudentiel et de Résolution and the Autorité des marchés financiers shall cooperate among themselves. They shall provide each other with information that is relevant to the performance of their respective duties.

The Autorité de Contrôle Prudentiel et de Résolution, the Autorité des marchés financiers and the Haut Conseil du Commissariat aux Comptes may also provide each other with information that is relevant to the performance of their respective duties.

II.- The authorities referred to in paragraph I, the deposit guarantee and resolution fund instituted by Article L. 312-4, the guarantee fund instituted by Article L. 423-1 of the Insurance Code, the compulsory indemnity insurance guarantee fund instituted by Article L. 421-1 of that same code, the joint guarantee fund instituted by Article L. 931-35 of the Social Security Code, the guarantee fund instituted by Article L. 431-1 of the Mutual Insurance Code, market undertakings and clearing houses shall be authorised to provide each other with information relevant to the performance of their respective duties.

The Autorité de Contrôle Prudentiel et de Résolution, the Autorité des marchés financiers and the administrative authority with responsibility for competition and consumer affairs may also provide each other with information relevant to the performance of their respective duties in the area of marketing practices.

The Banque de France, the Autorité de Contrôle Prudentiel et de Résolution and the administrative authority with responsibility for competition and consumer affairs may provide each other with information relevant to the performance of their respective duties so as to ensure compliance with Regulation (EU) No 260/2012 of the European Parliament and of the Council of 14 March 2012 establishing technical and business requirements for credit transfers and direct debits in euro, amending Regulation (EC) No 924/2009.

The administrative authority with responsibility for competition and consumer affairs shall determine, by agreement with the Banque de France and the Autorité de contrôle prudentiel et de résolution, the conditions under which it may seek their assistance so as to undertake, within the confines of their respective powers, assessments needed to monitor compliance with Regulation (EU) No 2015/751 of the European Parliament and of the Council of 29 April 2015 on interchange fees for card-based payment transactions. These three authorities

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shall provide each other with all the information needed to monitor compliance with these provisions.

III.- Information gathered pursuant to paragraphs I and II shall be covered by professional secrecy obligations in force under the conditions applicable to the institution that provided it and the recipient institution.

Such information may be used by the authorities referred to in paragraph I only in the performance of their duties, and by the other entities referred to in paragraph II only for the purposes for which it was communicated, unless the institution that provided it agrees otherwise.

The authorities referred to in paragraph I may also exchange between themselves information covered by professional secrecy with the consent of the authority or entity that provided that information.

Article L. 632-1 A

Confidential information received by the Autorité de Contrôle Prudentiel et de Résolution, the Banque de France and the Autorité des marchés financiers from a European supervisory authority, the European Systemic Risk Board, an authority from a Member State of the European Union or a country that is a party to the Agreement on the European Economic Area or a third country may not be divulged without the express consent of the authority or board that provided that information and, as the case may be, solely for the purposes for which consent was given.

Article L. 632-1

Notwithstanding the provisions of Act 68-678 of 26 July 1968 on the communication of documents and information of an economic, commercial, industrial, financial or technical nature to foreign natural or legal persons, the Autorité de Contrôle Prudentiel et de Résolution and the Autorité des marchés financiers shall cooperate with the authorities of other Member States of the European Union or other countries that are parties to the Agreement on the European Economic Area performing equivalent functions, as provided for in this chapter. Inter alia, they exchange with said authorities the information needed to perform their respective duties. When an urgent situation likely to threaten the stability of the financial system of another Member State of the European Union or another country that is a party to the Agreement on the European Economic so warrants, they shall also be authorised to exchange any necessary information with the ministries of those States having responsibility for the financial sector, in compliance with the rules laid down in this article, Article L. 631-1 and Articles L. 632-2 to L. 632-4.

The cooperation provided for in the first subparagraph may not be refused on the grounds that the acts to which the inspection or the investigation relates do not contravene a legal or regulatory provision in force in France.

The terms of implementation of this article shall be set out in a decree issued following consultation with the Conseil d'Etat.

Article L. 632-2

Notwithstanding the provisions of Act 68-678 of 26 July 1968 on the communication of documents and information of an economic, commercial, industrial, financial or technical nature to foreign natural or legal persons, the equivalent authorities of another Member State of the European Union or another country that is a party to the Agreement on the European Economic Area may require the cooperation of the Autorité de Contrôle Prudentiel et de Résolution or the Autorité des marchés financiers in connection with a monitoring action, an on-site inspection or an investigation.

In the same context, whenever the Autorité de Contrôle Prudentiel et de Résolution or the Autorité des marchés financiers receives a request concerning an on-site inspection or an investigation, it shall respond by carrying out the inspection itself, allowing the requesting authority to carry it out directly, or allowing statutory auditors or experts to carry it out.

Where it does not carry out the on-site inspection or the investigation itself, the authority that made the request may be in attendance, if it so wishes.

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Article L. 632-3

The Autorité de Contrôle Prudentiel et de Résolution and the Autorité des marchés financiers may use information received by them that is covered by professional secrecy only in the performance of their duties.

The terms of implementation of this article shall be set out in a decree issued following consultation with the Conseil d'Etat.

Article L. 632-4

Notwithstanding the provisions of this chapter, the Autorité de Contrôle Prudentiel et de Résolution and the Autorité des marchés financiers may pass on to the European System of Central Banks or the European Central Bank, acting in their capacity as monetary authorities, information covered by professional secrecy intended for the performance of their duties.

Notwithstanding the provisions of this chapter, the Banque de France, the Autorité de Contrôle Prudentiel et de Résolution and the Autorité des marchés financiers may pass on to other public authorities responsible for supervising payment systems and financial instrument clearing and settlement systems information covered by professional secrecy intended for the performance of their duties.

Article L. 632-5

When the Autorité de Contrôle Prudentiel et de Résolution or the Autorité des marchés financiers is invited to cooperate in an investigation, an on-site inspection or a monitoring action in accordance with Article L. 632-2, or in an exchange of information in accordance with Article L. 632-1, it may only refuse to comply with such a request if the nature thereof is likely to undermine French sovereignty, security or public order, or if criminal proceedings have already been instigated in France on the basis of the same facts and against the same persons, or if those persons have already been sanctioned for the same facts by way of a final judgment.

In the event of refusal, it shall notify the competent authority.

Article L. 632-6

I.- When the Autorité de Contrôle Prudentiel et de Résolution or the Autorité des marchés financiers has reasonable grounds to suspect that acts that violate the provisions applicable to investment services providers, management companies managing UCITS authorised in accordance with Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009, management companies managing AIFs within the meaning of Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011, regulated markets or market undertakings have been committed in another Member State of the European Union or another country that is a party to the Agreement on the European Economic Area by entities that are not subject to its supervision, it shall notify the competent authority of that other State in the most detailed manner possible.

II.- When the Autorité de Contrôle Prudentiel et de Résolution or the Autorité des marchés financiers is notified by an authority of another Member State of the European Union or another country that is a party to the Agreement on the European Economic Area that acts that violate the provisions applicable to investment services providers, management companies managing UCITS authorised in accordance with Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009, management companies managing AIFs within the meaning of Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011, regulated markets or market undertakings are likely to have been committed in mainland France, French overseas départements, or the département of Mayotte or Saint Martin by an entity that is not subject to that authority's supervision, it shall take the appropriate steps. It shall communicate the results of its intervention to the competent authority that informed it, as well as to the European Securities and Markets Authority in the case of an AIF management company, and, as far as possible, shall notify it of any important developments that occurred during the intervening period.

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Article L. 632-6-1

Notwithstanding the provisions of Act 68-678 of 26 July 1968 on the communication of documents and information of an economic, commercial, industrial, financial or technical nature to foreign natural or legal entities, the Autorité de Contrôle Prudentiel et de Résolution and the Autorité des marchés financiers shall cooperate with the European Securities and Markets Authority established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), the European Banking Authority established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), the European Insurance and Occupational Pensions Authority established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Systemic Risk Board established by Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board, and shall exchange with those authorities information needed to perform their respective duties, as provided for in the regulations establishing them. The Autorité de Contrôle Prudentiel et de Résolution and the Autorité des marchés financiers may, to this end, provide information covered by professional secrecy.

The terms of implementation of this article shall be set out in a decree issued following consultation with the Conseil d'Etat.

Article L. 632-6-2

The Autorité des marchés financiers shall provide the competent authorities of other Member States with the information needed to monitor the potential consequences of the activities of management companies providing third party asset management services or carrying on the business of managing collective investments, for the stability of systemically important financial institutions and the orderly functioning of the markets on which those managers operate, and to respond to those consequences.

It shall notify the European Securities and Markets Authority and the European Systemic Risk Board of the information referred to in the first subparagraph and shall provide them with aggregate information about the activities of AIF management companies under its responsibility.

Article L. 632-7

I.- Notwithstanding the provisions of Act 68-678 of 26 July 1968 on the communication of documents and information of an economic, commercial, industrial, financial or technical nature to foreign natural or legal persons, the Autorité de Contrôle Prudentiel et de Résolution and the Autorité des marchés financiers may enter into cooperation agreements with the equivalent authorities of a country that is not a Member State of the European Union and not a party to the Agreement on the European Economic Area that make provision, inter alia, for the exchange of information. Notwithstanding those same provisions, the Banque de France may enter into cooperation agreements with public authorities responsible for supervising payment systems and financial instrument clearing and settlement systems that make provision, inter alia, for the exchange of information. The information communicated must be covered by guarantees of professional secrecy at least equivalent to those that apply to the French authorities that are party to those agreements. Such exchanges of information must be intended for the performance of those competent authorities' duties.

II. - The Autorité de Contrôle Prudentiel et de Résolution and the Autorité des marchés financiers may also enter into cooperation agreements that make provision, inter alia, for the exchange of information with authorities or persons of a country that is not a Member State of the European Union and not a party to the Agreement on the European Economic Area, which/who are:

(a) Responsible for supervising credit institutions, investment firms, other financial institutions, insurance or reinsurance firms, financial markets and units referred to in Article L. 229-7 of the Environmental Code;

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(b) Tasked with overseeing court-ordered insolvency proceedings relating to credit institutions, investment firms or insurance and reinsurance firms, and any other similar proceedings;

(c) Tasked with conducting statutory audits of undertakings referred to in subparagraph (a) of this article, within the purview of their supervisory duties, or their duties as managers of compensation schemes;

(d) Responsible for supervising entities involved in court-ordered insolvency proceedings relating to credit institutions, investment firms or insurance or reinsurance firms, or in any other similar proceeding;

(e) Responsible for supervising the persons tasked with conducting statutory audits of undertakings referred to in subparagraph (a) of this paragraph II;

(f) Tasked with managing deposit guarantee systems and investor compensation schemes;

(f bis) Responsible for the proper conduct of transactions in commercial contracts relating to goods and linked to one or more financial instruments;

(g) Tasked with managing forced liquidation proceedings or guarantee funds for insurance and reinsurance firms;

(h) Actuaries independent of insurance or reinsurance firms performing, by virtue of their domestic legislation, a supervisory function in relation to such firms, as well as bodies tasked with overseeing such actuaries.

The information communicated shall be covered by guarantees of professional secrecy at least equivalent to those that apply to the French authorities that are party to those agreements.

Such exchanges of information must be intended for the performance of the duties of those authorities or persons.

II bis. - Where it originates from an authority of another Member State of the European Union or another country that is a party to the Agreement on the European Economic Area or a third country, information may not be disclosed without the express consent of the authority that provided it and, as the case may be, only for the purposes for which consent was given.

III. - The Autorité des marchés financiers must give its express consent before any disclosure by the competent authorities of a third country to the authorities of other third countries of data or analysis of data pertaining to AIFs and their managers and provided to those authorities by the Autorité des marchés financiers.

Article L. 632-8

The Autorité des marchés financiers shall be the sole authority that may act as a point of contact for requests for exchanges of information or cooperation with authorities of other Member States of the European Union or other countries that are parties to the Agreement on the European Economic Area, as well as the European Securities and Markets Authority, where those requests pertain to the implementation of Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011.

The Autorité des marchés financiers shall immediately communicate information needed to perform their duties to the competent authorities of other Member States of the European Union or other countries that are parties to the Agreement on the European Economic Area designated as points of contact for the purposes of paragraph 1 of Article 56 of Directive 2004/39/EC of 21 April 2004 on markets in financial instruments, and to competent authorities for the purposes of Directive 2009/65/EC of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS).

The Autorité des marchés financiers shall provide to the competent authorities of other directly concerned Member States of the European Union information about significant counterparty risk that an AIF or its management company under the responsibility of the Authority could present for a credit institution or other systemically important institution in those countries.

If the competent authority that provided the information so requested at the time of such provision, the Autorité des marchés financiers may disclose the information only with that authority's express consent and only for the purposes for which such consent was given.

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The Autorité des marchés financiers shall immediately forward information received pursuant this article, paragraph II of Article L. 612-44 and Articles L. 621-23 and L. 632-7 to the Autorité de Contrôle Prudentiel et de résolution. It shall only forward the information to other institutions or entities with the express consent of the competent authorities that disclosed it, and only for the purposes for which those authorities gave their consent, unless otherwise justified by an urgent situation. In the latter case, the Autorité des marchés financiers shall immediately notify the counterpart authority that sent the information.

Where the Autorité des marchés financiers receives personal information from the competent authorities of another Member State of the European Union or a third country, that information shall be retained for a maximum of five years.

Article L. 632-9

When the activities of a regulated market referred to in Article L. 421-1 that has installed access devices in another Member State of the European Union or in another country that is a party to the Agreement on the European Economic Area have acquired substantial importance there for the operation of financial markets and investor protection, the Autorité des marchés financiers shall put in place appropriate cooperation arrangements with the competent authority of that country.

Article L. 632-10

The Autorité des marchés financiers may request information directly from investment services providers that are members of a regulated market referred to in Article L. 421-1 and are not established in France. In such cases, it shall notify the competent authority of the Member State of the European Union or of the other country that is a party to the Agreement on the European Economic Area that is their home country.

Article L. 632-11

When the Autorité des marchés financiers receives transaction reports in accordance with Article L. 533-9, it shall pass on such information to the competent authority of the market that is the most relevant in terms of liquidity in the financial instrument in question, when that market is located in another Member State of the European Union or in another country that is a party to the Agreement on the European Economic Area.

When the Autorité des marchés financiers receives reports on the transactions of a branch in mainland France, in a French overseas département, in the département of Mayotte or in Saint Martin of investment services providers having their registered office in another Member State of the European Union or in another country that is a party to the Agreement on the European Economic Area, it shall pass them on to the competent authority of the branch's home country. However, it shall be exempted from the requirement to pass on such reports if the latter authority indicates that it does not wish to receive them.

Article L. 632-16

The Autorité des marchés financiers may carry out monitoring, inspection and investigatory activities at the request of foreign authorities having similar powers. When such activities are carried out on behalf of authorities of a country that is not a Member State of the European Union and not a party to the Agreement on the European Economic Area, they are carried out subject to reciprocity.

Notwithstanding the provisions of Act 68-678 of 26 July 1968 on the communication of documents and information of a financial or technical nature to foreign natural or legal persons, the professional secrecy obligations laid down in paragraph II of Article L. 621-4 shall not prevent the Autorité des marchés financiers from disclosing the information it holds, or which it gathers at their request, to foreign authorities that exercise similar powers and are bound by the same professional secrecy obligations. When such disclosure is made to authorities of a country that is not a Member State of the European Union and not a party to the Agreement on the European Economic Area, it shall take place subject to reciprocity. In the performance of its duties, the Autorité des marchés financiers may also exchange confidential information relating to the obligations referred to in Articles L. 412-1, L. 451-1-2 and L. 451-1-3 with entities to which those authorities have delegated

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supervision of their obligations, provided those entities are bound by the same professional secrecy obligations. To this end, the Autorité des marchés financiers may enter into agreements that structure its relations with those delegated entities.

The provisions of Articles L. 632-5 and L. 632-1 A shall apply to activities governed by this article.

In addition to agreements referred to in Article L. 632-7, for the purposes of implementing the preceding paragraphs, the Autorité des marchés financiers may enter into agreements that structure its relations with foreign authorities exercising powers similar to its own.

Agreements referred to in Article L. 632-7 and in the preceding paragraph shall be approved by the Autorité des marchés financiers as provided for in Article L. 621-3.

Article L. 642-1

The penalties imposed by Article 226-13 of the Criminal Code shall apply in the event that any member, employee or officer of the Autorité des marchés financiers, or any expert appointed to a consultative commission referred to in paragraph III of Article L. 621-2, violates the professional secrecy instituted by Article L. 621-4, without prejudice to the provisions of Article 226-14 of the Criminal Code.

Article L. 642-2

Persons who obstruct an inspection or investigation of the Autorité des marchés financiers carried out as determined in Articles L. 621-9 to L. 621-9-2 or who provide it with inaccurate information, shall incur a penalty of two years' imprisonment and a fine of €300,000.

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REGULATORY PART

Article R. 621-32

[...]

IV. – Mission orders shall be drawn up by the secretary general, who shall specify their purpose and the persons tasked with performing them.

Article R. 621-33

I.- No person shall be authorised or appointed to carry out an investigation or an inspection if they have been convicted of one of the offences referred to in Article L. 500-1.

No person may be authorised or appointed to carry out an investigation or an inspection of a legal person in which they have carried on a professional activity during the previous three years.

II.- Before assigning a mission order to one of the persons referred to in the second subparagraph of paragraph I, paragraph II or paragraph III of Article R. 621-31, the Secretary General shall ensure that the person in question is not likely to have a conflict of interest with person to be inspected or investigated. To that end, if the proposed person is one of the persons referred to in points (e), (f), (g) or (h) of the second subparagraph of paragraph I of Article R. 621-31, the Secretary General shall ask that person to disclose all professional dealings in the preceding three years with the person to be inspected or investigated. The Secretary General may not assign the inspection or investigation to that person if, during the period in question, he supervised or advised the persons concerned regarding the services or transactions in question.

III.- To be authorised by the Secretary General to act as an investigator, the proposed person must have executive or similar status or at least two years' professional experience.

Where an investigation is entrusted to one of the persons referred to in the second subparagraph of paragraph I of Article R. 621-31, the Secretary General shall ensure, before authorising the investigators, that the conditions set out in this article are met.

Article R. 621-34

Investigators and inspectors may summon and take statements from any person likely to be able to provide information. Investigators and inspectors shall show their personal mission order drawn up by the Secretary General in response to any request made during the course of their investigations.

The summons shall be sent to the person concerned by registered or hand-delivered letter with acknowledgement of receipt or by bailiff's deed at least eight days before the date on which he is summoned to appear. The summons shall refer to the mission order made out in the name of the investigator or inspector. It shall remind the person summoned that he has the right to be assisted by the counsel of his choosing, pursuant to Article L. 621-11.

If the investigators or inspectors wish to interview the person by means of video or audio conference, the summons issued as laid down in the previous paragraph must indicate this, specify that the hearing will be recorded, and request the express agreement of the person concerned.

Investigators and inspectors may gather explanations on the spot, on the basis of the second subparagraph of Article L. 621-10 or Article L. 621-12, provided that the person interviewed has been expressly informed of his right to be assisted by the counsel of his choosing and has expressly waived the right to the required notice period for summonses.

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Article R. 621-35

Minutes drawn up in connection with investigations or inspections shall specify the nature, date and location of the findings. They shall be signed by the investigator or inspector and the person being investigated or inspected. If the latter refuses, this shall be duly noted in the minutes.

If the investigators or inspectors gather explanations on the spot, a separate set of minutes must be drawn up from the minutes of the search. These minutes shall indicate that the person being investigated or inspected has been informed of his right to be assisted by the counsel of his choosing and has expressly waived the right to the required notice period for a summons.

If the investigators or inspectors interview the person concerned by means of video or audio conference, the audiovisual or sound recording of the interview shall be the subject of a transcription report that is submitted to the person concerned for signature. To this end, the minutes, together with the recording, shall be sent to the person concerned within one month of the video or audio conference.

If the investigators or inspectors make use of an assumed identity within the meaning of Article L. 621-10-1 in order to consult a website on which the persons and entities referred to in paragraph II of Article L. 621-9 provide their services, they shall draw up a report detailing how they consulted and used the website, the responses obtained and their findings. Any pages of the website completed by them shall be appended to this report. This report shall be sent to the person or entity concerned before the end of the investigation or inspection.

Article R. 621-36

Inspection and investigation results shall be the subject of a written report. This report shall indicate, in particular, any facts that may constitute a breach of European regulations, this code, the Commercial Code, the General Regulation of the Autorité des marchés financiers or rules approved by that Authority, a breach of other professional requirements or a criminal offence.

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ANNEX 2

ARTICLES OF THE AMF GENERAL REGULATION APPLICABLE AS AT 17 OCTOBER 2017 SUBJECT TO ANY SUBSEQUENT AMENDMENTS

AMF GENERAL REGULATION

Article 143-1

To ensure that the market operates in an orderly manner and that the activity of the entities and persons referred to in Section II of Article L. 621-9 of the Monetary and Financial Code complies with the professional obligations arising from laws and regulations or from the professional rules it has approved, the AMF carries out off-site examinations of records and on-site inspections at the business premises of such entities or persons.

Article 144-1

The General Secretariat of the AMF keeps a register of the authorizations provided for in Article L. 621-9-1 of the Monetary and Financial Code.

If, for the purposes of an investigation, the Secretary General wishes to call on a person that is not authorised to carry out investigations, he issues an authorization that is restricted to the investigation in question.

Article 144-2

To ensure that investigations proceed smoothly, investigators may order the retention of information, regardless of the storage medium. Such a measure is confirmed in writing, with details of its duration and the conditions in which it may be renewed.

Article 144-2-1

Before the final investigation report is written up, a detailed letter relating the points of fact and of law noted by the investigators is submitted to the persons likely to be charged subsequently. These persons may submit written observations within a period of no more than one month. These observations are forwarded to the Board when it examines the investigation report in accordance with Section I of Article L. 621-15 of the Monetary and Financial Code.

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Article 144-3

Where the proper performance of an AMF investigation has been hindered, this fact is mentioned in the investigation report or in a special report setting out these difficulties;

Article 221-1

For the purposes of this title:

1. Where the issuer's financial securities are admitted to trading on a regulated market: 'regulated information' shall mean the following documents and information:

- (a) The annual financial report referred to in Article 222-3;
- (b) The half-yearly financial report referred to in Article 222-4;
- (c) The report on payments to governments provided for in Article L. 225-102-3 of the Commercial Code;
- (d) The reports referred to in Article 222-9 on the conditions for preparing and organising the work of the board of directors or the supervisory board and on internal control and risk management procedures put in place by issuers;
- (e) [Removed by the Order of 27 February 2017] The press release concerning fees paid to statutory auditors referred to in Article 222-8;
- (f) Information on the total number of voting rights and the number of shares making up the share capital referred to in Article 223-16;
- (g) The description of buyback programmes referred to in Article 241-2;
- (h) The press release setting out arrangements for providing the prospectus referred to in Article 212-27;
- (i) Inside information published pursuant to Article 17 of the Market Abuse Regulation (Regulation No 596/2014/EU);
- (j) A press release specifying how the information referred to in Article R. 225-83 of the Commercial Code is being made available or may be consulted;
- (k) Information published pursuant to Article 223-21;
- (l) The declaration in relation to the competent authority pursuant to Article 222-1;
- (m) Information about substantial changes in share ownership to be reported to the AMF pursuant to Article L. 233-7-II of the Commercial Code and the first subparagraph of Article 223-14 I.

Where the issuer has sought or approved the trading of its financial securities on a multilateral trading facility operating on French territory in the case of financial securities traded exclusively on a multilateral trading facility, or where the issuer has approved the trading of its financial securities on an organised trading facility operating on French territory in the case of financial securities traded exclusively on an organised trading facility: 'regulated information' shall mean the documents and information referred to in points (g), (h) and (i).

2. 'Person' shall mean a natural or legal person.

The provisions of this title shall also apply to executives of the issuer, entity or legal person concerned.

Article 223-1 A

Within the meaning of this section, 'issuer' shall mean (i) any issuer that has sought or approved the admission of its financial securities to a regulated market operating on French territory, (ii) any issuer that has sought or approved the trading of its financial securities on a multilateral trading facility operating on French territory in the case of financial securities traded exclusively on a multilateral trading facility, and (iii) any issuer that has approved the trading of its financial securities on an organised trading facility operating on French territory in the case of financial securities traded exclusively on an organised trading facility.

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Article 223-1

Information provided to the public by the issuer must be accurate, specific and fairly presented.

Article 223-2

Where an issuer or an emission allowance market participant has deferred publication of inside information as provided for in Article 17 of the Market Abuse Regulation (Regulation No 596/2014/EU), the Autorité des marchés financiers may ask that issuer or participant to explain why publication has been deferred. This explanation must be given without delay.

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ANNEX 3

ARTICLES OF THE AMF GENERAL REGULATION APPLICABLE TO FACTS PRIOR TO THE ENTRY INTO FORCE OF REGULATION NO 596/2014/EU OF 16 APRIL 2014

European Regulation No 596/2014 of 16 April 2014 on market abuse (known as 'MAR') became effective on 3 July 2016. This regulation, which is directly applicable, necessitated amendments to the AMF General Regulation introduced by the Order of 14 September 2016 published in the Official Journal of the French Republic on 23 September 2016, including in particular the removal of Book VI of the regulation, on market abuse, and addition of a number of changes to the provisions set out in Book II on issuers and financial disclosures relating to the publication of inside information.

However, the following provisions of the AMF General Regulation continue to apply to facts prior to 3 July 2016, when Regulation No 596/2014/EU entered into force.

Article 216-1 (removed by the Order of 14 September 2016)

I. - An investment services provider that polls investors as part of preparations for a corporate finance transaction shall comply with the requirements set out in this article and in the conduct of business code laying down the conditions of its implementation and approved as professional rules by the Autorité des marchés financiers, in accordance with Article 314-2.

Within the meaning of this article, a corporate finance transaction shall mean a transaction in which the provider is involved at the request of an issuer or transferor with a view to:

1. Placing financial securities in the primary market; or
2. Disposing of financial securities in the secondary market in a manner equivalent, by virtue of its nature and size, to a placement transaction; or
3. Buying back financial securities in the secondary market.

II. - Before polling investors, the provider shall assess whether the information it is to disclose to them is inside information within the meaning of Article 621-1. The provider shall notify the issuer or the transferor of the outcome of this assessment.

Where the information in question is inside information within the meaning of Article 621-1, such polling shall constitute a market sounding. In such cases, the provider shall:

1. Notify its compliance officer;
2. Notify each investor it intends to poll that the information it intends to disclose to that investor is inside information, as well as informing them of the resulting consequences;
3. Obtain each investor's agreement before disclosing the information to them.

III. - To ensure compliance with this article and the aforementioned conduct of business code, the provider shall:

1. Establish and maintain a procedure setting out the terms of implementation for polling investors;
2. Retain for at least five years items needed by the Autorité des marchés financiers to exercise its supervision, with the exception of recordings of telephone conversations, which must be retained for at least six months and for no longer than five years.
3. Be in a position to provide the Autorité des marchés financiers, at its request and as quickly as possible, with the names of persons polled together with the dates and times at which they were contacted.

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Article 223-2 (version removed by the Order of 14 September 2016)

I. - Every issuer must as soon as possible make public any inside information, within the meaning of Article 621-1, that directly concerns that issuer.

II. - An issuer may, on its own responsibility, delay disclosure to the public of inside information so as not to prejudice its legitimate interests, provided that such delay is not likely to mislead the public and that the issuer is in a position to ensure confidentiality by controlling access to that information, in particular by:

1. Implementing effective security measures to prevent access to that information by persons other than those who require access in order to perform their duties within the issuer;

2. Taking the necessary steps to ensure that any person granted access to that information is aware of the legal and regulatory obligations associated with such access and has been warned of the penalties imposed for unauthorised use or distribution of that information;

3. Putting in place the necessary arrangements to immediately publish that information in the event that the issuer has not been able to ensure confidentiality, without prejudice to the provisions of the second subparagraph of Article 223-3.

III. - The legitimate interests referred to in paragraph II may concern, inter alia, the following situations:

1. Negotiations in progress or elements related thereto, if the act of making them public could affect the normal course or outcome of those negotiations. In particular, in cases where an issuer's financial viability is in grave and imminent danger, but where the provisions of Book VI of the Commercial Code relating to distressed companies do not apply, disclosure may be deferred for a limited period if it could cause serious harm to the interests of existing or potential shareholders by compromising the outcome of negotiations aimed at ensuring the long-term financial recovery of the issuer.

2. Decisions taken or contracts approved by an issuer's executive body that require approval by another of the issuer's governing bodies to become effective, where the issuer's governance structure requires such separation of powers, if disclosure before the approval by both bodies, combined with a simultaneous announcement that such approval is yet to be given, would be likely to prevent a fair assessment of those decisions or contracts by the public.

Article 223-22 (removed by the Order of 14 September 2016)

The persons referred to in Article L. 621-18-2 of the Monetary and Financial Code shall report to the AMF, by electronic means, within five trading days of their completion, all acquisitions, disposals, subscriptions or exchanges of shares of the issuer within which the persons referred to points (a) and (b) of the aforementioned Article L. 621-18-2 perform their duties, as well as transactions in instruments related thereto.

The reports referred to in the first subparagraph shall be published on the AMF's website.

Article 223-24 (removed by the Order of 14 September 2016)

Issuers shall establish, maintain and simultaneously disclose to the persons concerned and the AMF an up-to-date list of the persons referred to in point (b) of Article L. 621-18-2 of the Monetary and Financial Code.

Article 223-25 (removed by the Order of 14 September 2016)

The report referred to in Article 223-22 shall include the following:

1. For transactions undertaken by a person referred to in point (a) or (b) of Article L. 621-18-2 of the Monetary and Financial Code, the name of that person and the duties he performs within the issuer;

2. For transactions undertaken by a person referred to in point (c) of that same article, the name of that person, indicating: "one (of the) person(s) related to...", followed by the name of the person referred in point (a) or (b) of

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the aforementioned Article L. 621-18-2 and the duties he performs;

3. The name of the issuer concerned;
4. A description of the financial instrument;
5. The nature of the transaction;
6. The date and place of the transaction;
7. The unit price and amount of the transaction.

This information must be reported using the standard template laid down in an AMF instruction.

Article 223-27 (removed by the Order of 14 September 2016)

Any issuer whose financial instruments are admitted to trading on a regulated market, or for which application for such admission has been made, shall provide the AMF in writing, as and when the latter so requests, a list, drawn up pursuant to the first subparagraph of Article L. 621-18-4 of the Monetary and Financial Code, of persons and third parties having regular or occasional access to inside information within the meaning of Article 621-1.

The list of persons and third parties having regular or occasional access to inside information, drawn up by third parties pursuant to the second subparagraph of the aforementioned Article L. 621-18-4, shall be disclosed to the AMF under the same terms and conditions.

Article 223-28 (removed by the Order of 14 September 2016)

The lists referred to in Article 223-27 shall indicate, in particular:

1. The name of each of the persons;
2. The reason for including each person in the list;
3. The dates when the list was created and updated.

Article 223-29 (removed by the Order of 14 September 2016)

The lists referred to in Article 223-27 must be quickly updated in the following cases:

1. In the event of a change in the reason for including a person in the list;
2. When a new person needs to be added to the list;
3. When a person is no longer included on the list, stating the date on which that person ceases to have access to inside information.

Article 315-42 (removed by the Order of 14 September 2016)

The report provided for in Articles L. 621-17-2 to L. 621-17-7 of the Monetary and Financial Code may be made by e-mail, letter, fax or telephone. In the latter case, it shall be confirmed in writing.

Written reports shall be made using the standard template laid down in an AMF instruction.

Article 315-43 (removed by the Order of 14 September 2016)

Transactions to be notified pursuant to Article L. 621-17-2 of the Monetary and Financial Code shall also include stock exchange orders.

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Article 315-44 (removed by the Order of 14 September 2016)

The persons referred to in Article L. 621-17-2 of the Monetary and Financial Code shall have in place an organisational structure and procedures enabling them to respond to the instructions laid down in Articles L. 621-17-2 to L. 621-17-7 of the Monetary and Financial Code and Articles 315-42 and 315-43.

Taking into account the recommendations put forward by the Committee of European Securities Regulators, the purpose of that organisational structure and those procedures shall be, in particular, to establish and update a typology of suspicious transactions that makes it possible to identify those that must be reported.

Article 621-1 (removed by the Order of 14 September 2016)

Inside information is any information of a precise nature that has not been made public, relating directly or indirectly to one or more issuers of financial instruments, or to one of more financial instruments, and which, if it were made public, would be likely to have a significant effect on the prices of the financial instruments concerned or on the prices of related financial instruments.

Information is deemed to be precise if it indicates a set of circumstances or an event that has occurred or is likely to occur and a conclusion may be drawn as to the possible effect of those circumstances or that event on the prices of the financial instruments concerned or related financial instruments.

Information which, if it were made public, would be likely to have a significant effect on the prices of the financial instruments concerned or related derivative financial instruments is information that a reasonable investor would be likely to use as part of the basis of his investment decisions.

Inside information about an index is precise information which has not been made public, which concerns an index and which, if it were made public, would be likely to have a significant effect on the level of that index.

Article 621-2 (removed by the Order of 14 September 2016)

For commodity derivatives and commercial contracts, inside information shall mean precise information that has not been made public, that concerns, directly or indirectly, one or more such derivatives or commercial contracts, and that users of markets on which those derivatives or commercial contracts are traded would expect to receive, in accordance with accepted practices in such markets, where such information: :

1. Is routinely made available to their users; or
2. Is made public, pursuant to the law, market rules or regulations, contracts or customary practice on the market in the underlying commodity or on the market in the commodity derivative concerned.

Article 621-3 (removed by the Order of 14 September 2016)

For persons charged with the execution of orders concerning financial instruments or the trading of commercial contracts, inside information shall also mean information conveyed by a client and which relates to that client's pending orders, is of a precise nature, relates directly or indirectly to one or more issuers of financial instruments or to one or more financial instruments or to commercial contacts, and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments or on the price or value of those commercial contracts or on the price of related financial instruments.

Article 622-1 (removed by the Order of 14 September 2016)

Persons referred to in Article 622-2 shall refrain from using inside information they possess by acquiring or disposing of (Order of 30 December 2005), "or by trying to acquire or dispose of", for their own account or for the account of a third party, either directly or indirectly, financial instruments or commodities to which that information relates, by means of commercial contracts or financial instruments to which those instruments or commercial contracts are related.

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Such persons shall also refrain from:

1. Disclosing such information to another person other than in the normal course of his employment, profession or duties, or for a purpose other than that for which the information was disclosed to them;
2. Advising another person to buy or sell, or to have bought or sold by another person, on the basis of inside information, the financial instruments or commodities to which that information relates, by means of commercial contracts or financial instruments to which those instruments or commercial contracts are related.

The abstention requirements set forth in this article shall not apply to transactions effected in discharge of an obligation that has become due to acquire or sell financial instruments or commercial contracts, where that obligation stems from an agreement entered into before the person concerned held inside information.

Such persons shall also refrain from disclosing inside information concerning an index to another person other than in the normal course of his employment, profession or duties, or for a purpose other than that for which the information was disclosed to them.

Article 622-2 (removed by the Order of 14 September 2016)

The abstention requirements provided for in Article 622-1 shall apply to any person holding inside information by virtue of:

1. His membership of the administrative, executive, management or supervisory bodies of the issuer;
2. His holding in the issuer's capital;
3. His access to such information through the exercise of his employment, profession or duties, as well as his involvement in preparing for or executing a corporate finance transaction;
4. His activities that may be characterised as crimes or offences.

These abstention requirements shall apply also to any person who holds inside information and who knows, or should know, that it is inside information.

Where the person referred to in this article is a legal person, these abstention requirements shall also apply to natural persons taking part in the decision to effect the transaction on behalf of that legal person.

Article 631-1 (removed by the Order of 14 September 2016)

All persons must refrain from manipulating or attempting to manipulate prices.

Price manipulation shall mean:

1. Transactions or orders to trade that:
 - (a) Give or are likely to give false or misleading signals as to the supply of, demand for, or price of financial instruments, or the price or value of commercial contracts; or
 - (b) Secure, by a person, or persons acting in collaboration, the price of one or more financial instruments or the price or value of commercial contracts at an abnormal or artificial level, unless the person who entered into the transactions or issued the orders establishes that the reasons for effecting such transactions or issuing such orders are legitimate and conform to accepted market practices on the relevant regulated market or multilateral trading facility within the meaning of Article L. 424-1 of the Monetary and Financial Code;
2. Transactions or orders to trade that employ fictitious devices, or any other form of deception or contrivance.

The following, in particular, shall constitute price manipulation:

- (a) Conduct by a person, or persons acting in collaboration, to secure a dominant position in the market for a financial instrument or a commodity by means of a commercial contract, which has the effect of fixing, directly or indirectly, purchase or sale prices or creating other unfair trading conditions;
- (b) Issuing, when the market opens or closes or, as the case may be, when a periodic auction is held, orders to

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buy or sell financial instruments or commercial contracts with the intention of hindering price formation in that market or of misleading investors acting on the basis of the prices concerned.

Article 631-2 (removed by the Order of 14 September 2016)

When assessing the practices referred to in point 1 of Article 631-1, the AMF shall take into consideration the following factors, which shall not constitute an exhaustive list or be deemed in themselves to constitute price manipulation:

1. The proportionate share of daily trading volume represented by orders issued or transactions undertaken in the financial instruments or commercial contracts concerned, especially where such trading results in a significant change in the price of those instruments or the underlying instruments or in the price or value of the commercial contracts concerned;
2. The extent to which orders issued or trades undertaken by persons with significant short or long positions in a financial instrument or in commercial contracts lead to a significant change in the price of that financial instrument or corresponding underlying instrument or derivative admitted to trading on a regulated market or a multilateral trading facility within the meaning of Article L. 424-1 of the Monetary and Financial Code, or in the price or value of the commercial contracts concerned;
3. Transactions that do not result in a change of beneficial ownership of a financial instrument admitted to trading on a regulated market or a multilateral trading facility within the meaning of Article L. 424-1 of the Monetary and Financial Code or of a commercial contract;
4. Position reversals in a short period resulting from orders issued or trades undertaken in the regulated market or on a multilateral trading facility in the financial instrument concerned, or in the market in the commercial contracts concerned, together with any significant changes in the price of a financial instrument admitted to trading on a regulated market or a multilateral trading facility, or in the price or value of a commercial contract;
5. The extent to which orders issued or transactions undertaken are concentrated within a short time span during the trading session and lead to a price change that is subsequently reversed;
6. The impact of orders issued on the best bid or offer prices in the financial instrument or commercial contract, or more generally on the representation of the order book available to market participants, that are removed before they are executed;
7. Price changes resulting from orders issued or transactions undertaken at or around a specific time when reference prices, settlement prices and valuations are calculated.

Article 631-3 (removed by the Order of 14 September 2016)

When assessing the practices referred to in point 2 of Article 631-1, the AMF shall review the following factors, which shall not constitute an exhaustive list or be deemed in themselves to constitute price manipulation:

1. Whether orders issued or transactions undertaken by persons are preceded or followed by dissemination of false or misleading information by those same persons or persons linked to them;
2. Whether orders are issued or transactions are undertaken by persons before or after those same persons, or persons linked to them, produce or disseminate research or investment recommendations that are erroneous, biased or demonstrably influenced by a material interest.

Article 631-4 (removed by the Order of 14 September 2016)

Any person that has transmitted orders to the market must be able to explain publicly, if the AMF so requests during an investigation or inspection, the reasons for and characteristics of such transmission.

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Article 632-1 (removed by the Order of 14 September 2016)

All persons must refrain from disclosing or knowingly disseminating information, regardless of the medium used, that gives or may give false, imprecise or misleading signals as to financial instruments or commodities. This includes the spreading of rumours or false or misleading information, where the person making the dissemination knew or ought to have known that the information was false or misleading.

All persons must refrain from passing on false or misleading information and from providing false or misleading data used to calculate an index where the person passing on the information or providing the data knew or ought to have known that the information or data were false or misleading, or from any action that manipulates an index.

In particular, dissemination of false information shall include voicing, by whatever medium, an opinion about a financial instrument, or indirectly about its issuer, or about commodities, while having previously taken positions in that financial instrument or that commercial contract and subsequently profiting from the resulting situation without having simultaneously disclosed the conflict of interest to the public in an appropriate and effective manner.

Non-compliance with the prohibition referred to in the first subparagraph by journalists acting in a professional capacity should be assessed taking into account the rules governing their profession. However, such non-compliance may in itself constitute a breach if the interested parties derive, directly or indirectly, a benefit or profits from the dissemination of such information.

The provisions of this article shall apply where the financial instruments are admitted to trading on a regulated market or an organised multilateral trading facility within the meaning of Article L. 424-1 of the Monetary and Financial Code, or for which application for admission to trading on such markets has been made. They shall also apply to any public offer of financial securities.

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ANNEX 4

ARTICLES OF REGULATION NO 596/2014/EU OF 16 APRIL 2014 ON MARKET ABUSE APPLICABLE TO FACTS PRIOR TO THE ENTRY INTO FORCE OF THAT REGULATION

CHAPTER 1

GENERAL PROVISIONS

Article 1

Subject matter

This Regulation establishes a common regulatory framework on insider dealing, the unlawful disclosure of inside information and market manipulation (market abuse) as well as measures to prevent market abuse to ensure the integrity of financial markets in the Union and to enhance investor protection and confidence in those markets.

CHAPTER 2

INSIDE INFORMATION, INSIDER DEALING, UNLAWFUL DISCLOSURE OF INSIDE INFORMATION AND MARKET MANIPULATION

Article 7

Inside information

1. For the purposes of this Regulation, inside information shall comprise the following types of information:

(a) information of a precise nature, which has not been made public, relating, directly or indirectly, to one or more issuers or to one or more financial instruments, and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments or on the price of related derivative financial instruments;

(b) in relation to commodity derivatives, information of a precise nature, which has not been made public, relating, directly or indirectly to one or more such derivatives or relating directly to the related spot commodity contract, and which, if it were made public, would be likely to have a significant effect on the prices of such derivatives or related spot commodity contracts, and where this is information which is reasonably expected to be disclosed or is required to be disclosed in accordance with legal or regulatory provisions at the Union or national level, market rules, contract, practice or custom, on the relevant commodity derivatives markets or spot markets;

(c) in relation to emission allowances or auctioned products based thereon, information of a precise nature, which has not been made public, relating, directly or indirectly, to one or more such instruments, and which, if it were made public, would be likely to have a significant effect on the prices of such instruments or on the prices of related derivative financial instruments;

(d) for persons charged with the execution of orders concerning financial instruments, it also means information conveyed by a client and relating to the client's pending orders in financial instruments, which is of a precise nature, relating, directly or indirectly, to one or more issuers or to one or more financial instruments, and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments, the price of related spot commodity contracts, or on the price of related derivative financial instruments.

2. For the purposes of paragraph 1, information shall be deemed to be of a precise nature if it indicates a set of circumstances which exists or which may reasonably be expected to come into existence, or an event which has occurred or which may reasonably be expected to occur, where it is specific enough to enable a conclusion to be drawn as to the possible effect of that set of circumstances or event on the prices of the financial instruments or

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the related derivative financial instrument, the related spot commodity contracts, or the auctioned products based on the emission allowances. In this respect in the case of a protracted process that is intended to bring about, or that results in, particular circumstances or a particular event, those future circumstances or that future event, and also the intermediate steps of that process which are connected with bringing about or resulting in those future circumstances or that future event, may be deemed to be precise information.

3. An intermediate step in a protracted process shall be deemed to be inside information if, by itself, it satisfies the criteria of inside information as referred to in this Article.

4. For the purposes of paragraph 1, information which, if it were made public, would be likely to have a significant effect on the prices of financial instruments, derivative financial instruments, related spot commodity contracts, or auctioned products based on emission allowances shall mean information a reasonable investor would be likely to use as part of the basis of his investment decisions.

In the case of participants in the emission allowance market with aggregate emissions or rated thermal input at or below the threshold set in accordance with the second subparagraph of Article 17(2), information about their physical operations shall be deemed not to have a significant effect on the price of emission allowances, of auctioned products based thereon, or of derivative financial instruments.

5. ESMA shall issue guidelines to establish a non-exhaustive indicative list of information which is reasonably expected or is required to be disclosed in accordance with legal or regulatory provisions in Union or national law, market rules, contract, practice or custom, on the relevant commodity derivatives markets or spot markets as referred to in point (b) of paragraph 1. ESMA shall duly take into account specificities of those markets.

Article 8

Insider dealing

1. For the purposes of this Regulation, insider dealing arises where a person possesses inside information and uses that information by acquiring or disposing of, for its own account or for the account of a third party, directly or indirectly, financial instruments to which that information relates. The use of inside information by cancelling or amending an order concerning a financial instrument to which the information relates where the order was placed before the person concerned possessed the inside information, shall also be considered to be insider dealing. In relation to auctions of emission allowances or other auctioned products based thereon that are held pursuant to Regulation (EU) No 1031/2010, the use of inside information shall also comprise submitting, modifying or withdrawing a bid by a person for its own account or for the account of a third party.

2. For the purposes of this Regulation, recommending that another person engage in insider dealing, or inducing another person to engage in insider dealing, arises where the person possesses inside information and:

(a) recommends, on the basis of that information, that another person acquire or dispose of financial instruments to which that information relates, or induces that person to make such an acquisition or disposal, or

(b) recommends, on the basis of that information, that another person cancel or amend an order concerning a financial instrument to which that information relates, or induces that person to make such a cancellation or amendment.

3. The use of the recommendations or inducements referred to in paragraph 2 amounts to insider dealing within the meaning

of this Article where the person using the recommendation or inducement knows or ought to know that it is based upon inside information.

4. This Article applies to any person who possesses inside information as a result of:

(a) being a member of the administrative, management or supervisory bodies of the issuer or emission allowance market participant;

(b) having a holding in the capital of the issuer or emission allowance market participant;

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- (c) having access to the information through the exercise of an employment, profession or duties; or
- (d) being involved in criminal activities.

This Article also applies to any person who possesses inside information under circumstances other than those referred to in the first subparagraph where that person knows or ought to know that it is inside information.

5. Where the person is a legal person, this Article shall also apply, in accordance with national law, to the natural persons who participate in the decision to carry out the acquisition, disposal, cancellation or amendment of an order for the account of the legal person concerned.

Article 10

Unlawful disclosure of inside information

1. For the purposes of this Regulation, unlawful disclosure of inside information arises where a person possesses inside information and discloses that information to any other person, except where the disclosure is made in the normal exercise of an employment, a profession or duties.

This paragraph applies to any natural or legal person in the situations or circumstances referred to in Article 8(4).

2. For the purposes of this Regulation the onward disclosure of recommendations or inducements referred to in Article 8(2) amounts to unlawful disclosure of inside information under this Article where the person disclosing the recommendation or inducement knows or ought to know that it was based on inside information.

Article 11

Market soundings

1. A market sounding comprises the communication of information, prior to the announcement of a transaction, in order to gauge the interest of potential investors in a possible transaction and the conditions relating to it such as its potential size or pricing, to one or more potential investors by:

- (a) an issuer;
- (b) a secondary offeror of a financial instrument, in such quantity or value that the transaction is distinct from ordinary trading and involves a selling method based on the prior assessment of potential interest from potential investors;
- (c) an emission allowance market participant; or
- (d) a third party acting on behalf or on the account of a person referred to in point (a), (b) or (c).

2. Without prejudice to Article 23(3), disclosure of inside information by a person intending to make a takeover bid for the securities of a company or a merger with a company to parties entitled to the securities, shall also constitute a market sounding, provided that:

- (a) the information is necessary to enable the parties entitled to the securities to form an opinion on their willingness to offer their securities: and
- (b) the willingness of parties entitled to the securities to offer their securities is reasonably required for the decision to make the takeover bid or merger.

3. A disclosing market participant shall, prior to conducting a market sounding, specifically consider whether the market sounding will involve the disclosure of inside information. The disclosing market participant shall make a written record of its conclusion and the reasons therefor. It shall provide such written records to the competent authority upon request. This obligation shall apply to each disclosure of information throughout the course of the market sounding. The disclosing market participant shall update the written records referred to in this paragraph accordingly.

4. For the purposes of Article 10(1), disclosure of inside information made in the course of a market sounding

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shall be deemed to be made in the normal exercise of a person's employment, profession or duties where the disclosing market participant complies with paragraphs 3 and 5 of this Article.

5. For the purposes of paragraph 4, the disclosing market participant shall, before making the disclosure:

- (a) obtain the consent of the person receiving the market sounding to receive inside information;
- (b) inform the person receiving the market sounding that he is prohibited from using that information, or attempting to use that information, by acquiring or disposing of, for his own account or for the account of a third party, directly or indirectly, financial instruments relating to that information;
- (c) inform the person receiving the market sounding that he is prohibited from using that information, or attempting to use that information, by cancelling or amending an order which has already been placed concerning a financial instrument to which the information relates; and
- (d) inform the person receiving the market sounding that by agreeing to receive the information he is obliged to keep the information confidential.

The disclosing market participant shall make and maintain a record of all information given to the person receiving the market sounding, including the information given in accordance with points (a) to (d) of the first subparagraph, and the identity of the potential investors to whom the information has been disclosed, including but not limited to the legal and natural persons acting on behalf of the potential investor, and the date and time of each disclosure. The disclosing market participant shall provide that record to the competent authority upon request.

6. Where information that has been disclosed in the course of a market sounding ceases to be inside information according to the assessment of the disclosing market participant, the disclosing market participant shall inform the recipient accordingly, as soon as possible.

The disclosing market participant shall maintain a record of the information given in accordance with this paragraph and shall provide it to the competent authority upon request.

7. Notwithstanding the provisions of this Article, the person receiving the market sounding shall assess for itself whether it is in possession of inside information or when it ceases to be in possession of inside information.

8. The disclosing market participant shall keep the records referred to in this Article for a period of at least five years.

9. In order to ensure consistent harmonisation of this Article, ESMA shall develop draft regulatory technical standards to determine appropriate arrangements, procedures and record keeping requirements for persons to comply with the requirements laid down in paragraphs 4, 5, 6 and 8.

ESMA shall submit those draft regulatory technical standards to the Commission by 3 July 2015.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

10. In order to ensure uniform conditions of application of this Article, ESMA shall develop draft implementing technical standards to specify the systems and notification templates to be used by persons to comply with the requirements established by paragraphs 4, 5, 6 and 8 of this Article, particularly the precise format of the records referred to in paragraphs 4 to 8 and the technical means for appropriate communication of the information referred to in paragraph 6 to the person receiving the market sounding.

ESMA shall submit those draft implementing technical standards to the Commission by 3 July 2015.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

[...]

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Article 12

Market manipulation

1. For the purposes of this Regulation, market manipulation shall comprise the following activities:

(a) entering into a transaction, placing an order to trade or any other behaviour which:

(i) gives, or is likely to give, false or misleading signals as to the supply of, demand for, or price of, a financial instrument, a related spot commodity contract or an auctioned product based on emission allowances; or

(ii) secures, or is likely to secure, the price of one or several financial instruments, a related spot commodity contract or an auctioned product based on emission allowances at an abnormal or artificial level;

unless the person entering into a transaction, placing an order to trade or engaging in any other behaviour establishes that such transaction, order or behaviour have been carried out for legitimate reasons, and conform with an accepted market practice as established in accordance with Article 13;

(b) entering into a transaction, placing an order to trade or any other activity or behaviour which affects or is likely to affect the price of one or several financial instruments, a related spot commodity contract or an auctioned product based on emission allowances, which employs a fictitious device or any other form of deception or contrivance;

(c) disseminating information through the media, including the internet, or by any other means, which gives, or is likely to give, false or misleading signals as to the supply of, demand for, or price of, a financial instrument, a related spot commodity contract or an auctioned product based on emission allowances or secures, or is likely to secure, the price of one or several financial instruments, a related spot commodity contract or an auctioned product based on emission allowances at an abnormal or artificial level, including the dissemination of rumours, where the person who made the dissemination knew, or ought to have known, that the information was false or misleading;

(d) transmitting false or misleading information or providing false or misleading inputs in relation to a benchmark where the person who made the transmission or provided the input knew or ought to have known that it was false or misleading, or any other behaviour which manipulates the calculation of a benchmark.

2. The following behaviour shall, inter alia, be considered as market manipulation:

(a) the conduct by a person, or persons acting in collaboration, to secure a dominant position over the supply of or demand for a financial instrument, related spot commodity contracts or auctioned products based on emission allowances which has, or is likely to have, the effect of fixing, directly or indirectly, purchase or sale prices or creates, or is likely to create, other unfair trading conditions;

(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, and which has one of the effects referred to in paragraph 1(a) or (b), by:

(i) disrupting or delaying the functioning of the trading system of the trading venue or being likely to do so;

(ii) making it more difficult for other persons to identify genuine orders on the trading system of the trading venue or being likely to do so, including by entering orders which result in the overloading or destabilisation of the order book; or

(iii) creating or being likely to create a false or misleading signal about the supply of, or demand for, or price of, a financial instrument, in particular by entering orders to initiate or exacerbate a trend;

(d) the taking advantage of occasional or regular access to the traditional or electronic media by voicing an opinion about a financial instrument, related spot commodity contract or an auctioned product based on emission allowances (or indirectly about its issuer) while having previously taken positions on that financial

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instrument, a related spot commodity contract or an auctioned product based on emission allowances and profiting subsequently from the impact of the opinions voiced on the price of that instrument, related spot commodity contract or an auctioned product based on emission allowances, without having simultaneously disclosed that conflict of interest to the public in a proper and effective way;

(e) the buying or selling on the secondary market of emission allowances or related derivatives prior to the auction held pursuant to Regulation (EU) No 1031/2010 with the effect of fixing the auction clearing price for the auctioned products at an abnormal or artificial level or misleading bidders bidding in the auctions.

3. For the purposes of applying paragraph 1(a) and (b), and without prejudice to the forms of behaviour set out in paragraph 2, Annex I defines non-exhaustive indicators relating to the employment of a fictitious device or any other form of deception or contrivance, and non-exhaustive indicators related to false or misleading signals and to price securing.

4. Where the person referred to in this Article is a legal person, this Article shall also apply, in accordance with national law, to the natural persons who participate in the decision to carry out activities for the account of the legal person concerned.

5. The Commission shall be empowered to adopt delegated acts in accordance with Article 35 specifying the indicators laid down in Annex I, in order to clarify their elements and to take into account technical developments on financial markets.

Article 14

Prohibition of insider dealing and of unlawful disclosure of inside information

A person shall not:

- (a) engage or attempt to engage in insider dealing;
- (b) recommend that another person engage in insider dealing or induce another person to engage in insider dealing; or
- (c) unlawfully disclose inside information.

Article 15

Prohibition of market manipulation

A person shall not engage in or attempt to engage in market manipulation.

Article 16

Prevention and detection of market abuse

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, in accordance with Articles 31 and 54 of Directive 2014/65/EU.

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.

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

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paragraph 3 without delay.

[...]

CHAPTER 3

DISCLOSURE REQUIREMENTS

Article 17

Public disclosure of inside information

1. An issuer shall inform the public as soon as possible of inside information which directly concerns that issuer.

The issuer shall ensure that the inside information is made public in a manner which enables fast access and complete, correct and timely assessment of the information by the public and, where applicable, in the officially appointed mechanism referred to in Article 21 of Directive 2004/109/EC of the European Parliament and the Council (1). The issuer shall not combine the disclosure of inside information to the public with the marketing of its activities. The issuer shall post and maintain on its website for a period of at least five years, all inside information it is required to disclose publicly. This Article shall apply to issuers who have requested or approved admission of their financial instruments to trading on a regulated market in a Member State or, in the case of instruments only traded on an MTF or on an OTF, issuers who have approved trading of their financial instruments on an MTF or an OTF or have requested admission to trading of their financial instruments on an MTF in a Member State.

[...]

4. An issuer or an emission allowance market participant, may, on its own responsibility, delay disclosure to the public of inside information provided that all of the following conditions are met:

- (a) immediate disclosure is likely to prejudice the legitimate interests of the issuer or emission allowance market participant;
- (b) delay of disclosure is not likely to mislead the public;
- (c) the issuer or emission allowance market participant is able to ensure the confidentiality of that information.

In the case of a protracted process that occurs in stages and that is intended to bring about, or that results in, a particular circumstance or a particular event, an issuer or an emission allowance market participant may on its own responsibility delay the public disclosure of inside information relating to this process, subject to points (a), (b) and (c) of the first subparagraph.

Where an issuer or emission allowance market participant has delayed the disclosure of inside information under this paragraph, it shall inform the competent authority specified under paragraph 3 that disclosure of the information was delayed and shall provide a written explanation of how the conditions set out in this paragraph were met, immediately after the information is disclosed to the public. Alternatively, Member States may provide that a record of such an explanation is to be provided only upon the request of the competent authority specified under paragraph 3.

[...]

Article 18

Insider lists

1. Issuers or any person acting on their behalf or on their account, shall:

- (a) draw up a list of all persons who have access to inside information and who are working for them under a contract of employment, or otherwise performing tasks through which they have access to inside information, such as advisers, accountants or credit rating agencies (insider list);

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- (b) promptly update the insider list in accordance with paragraph 4; and
- (c) provide the insider list to the competent authority as soon as possible upon its request.

2. Issuers or any person acting on their behalf or on their account, shall take all reasonable steps to ensure that any person on the insider list acknowledges in writing the legal and regulatory duties entailed and is aware of the sanctions applicable to insider dealing and unlawful disclosure of inside information.

Where another person acting on behalf or on the account of the issuer assumes the task of drawing up and updating the insider list, the issuer remains fully responsible for complying with this Article. The issuer shall always retain a right of access to the insider list.

3. The insider list shall include at least:

- (a) the identity of any person having access to inside information;
- (b) the reason for including that person in the insider list;
- (c) the date and time at which that person obtained access to inside information; and
- (d) the date on which the insider list was drawn up.

[...]

4. Issuers or any person acting on their behalf or on their account shall update the insider list promptly, including the date of the update, in the following circumstances:

- (a) where there is a change in the reason for including a person already on the insider list;
- (b) where there is a new person who has access to inside information and needs, therefore, to be added to the insider list; and
- (c) where a person ceases to have access to inside information.

Each update shall specify the date and time when the change triggering the update occurred.

5. Issuers or any person acting on their behalf or on their account shall retain the insider list for a period of at least five years after it is drawn up or updated.

[...]

Article 19

Managers' transactions

1. Persons discharging managerial responsibilities, as well as persons closely associated with them, shall notify the issuer or the emission allowance market participant and the competent authority referred to in the second subparagraph of paragraph 2:

- (a) in respect of issuers, of every transaction conducted on their own account relating to the shares or debt instruments of that issuer or to derivatives or other financial instruments linked thereto;
- (b) in respect of emission allowance market participants, of every transaction conducted on their own account relating to emission allowances, to auction products based thereon or to derivatives relating thereto.

Such notifications shall be made promptly and no later than three business days after the date of the transaction.

The first subparagraph applies once the total amount of transactions has reached the threshold set out in paragraph 8 or 9, as applicable, within a calendar year.

[...]

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Article 24

Cooperation with ESMA

1. The competent authorities shall cooperate with ESMA for the purposes of this Regulation, in accordance with Regulation (EU) No 1095/2010.
2. The competent authorities shall, without delay, provide ESMA with all information necessary to carry out its duties, in accordance with Article 35 of Regulation (EU) No 1095/2010.

[...]