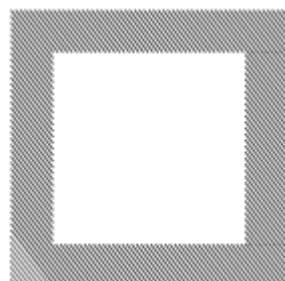
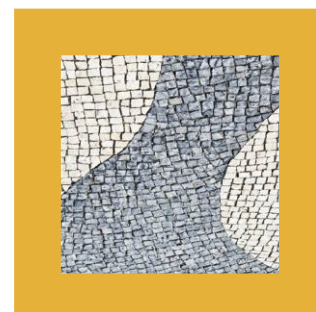
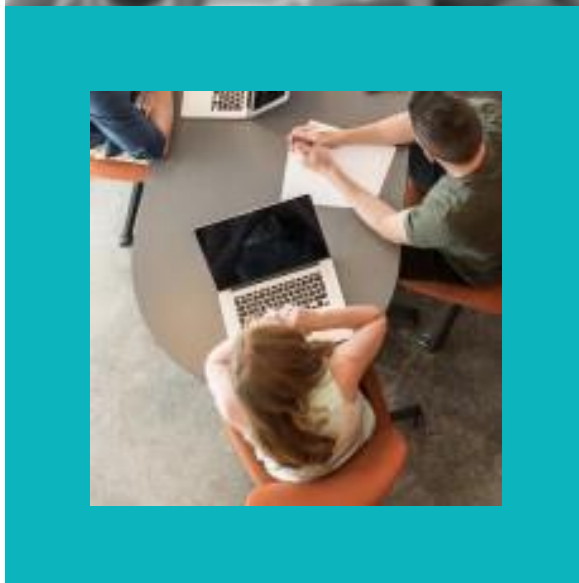
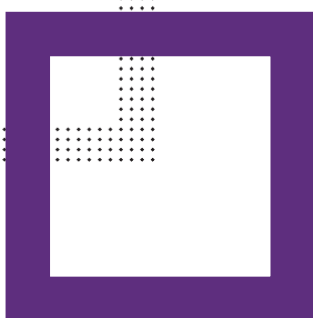
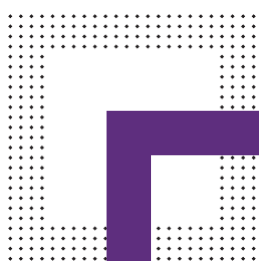
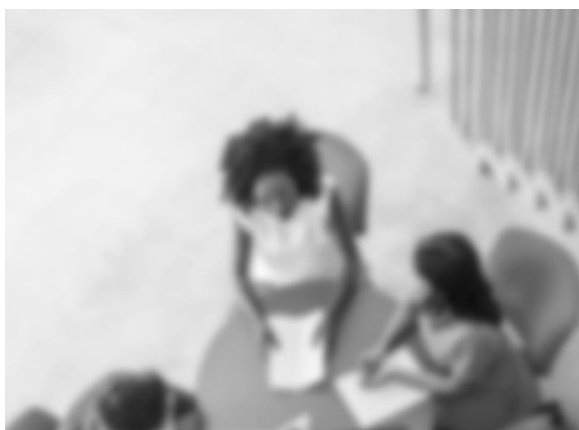


# 2020 SUPERVISORY PRIORITIES FOR THE AUTORITE DES MARCHES FINANCIERS





To supplement the associated 2020 priorities for action, the AMF is publishing here the themes that will constitute its supervisory priorities for 2020 and reviews the monitoring and supervision activities carried out in 2019.

### ➤ Target audience

This document is intended for market participants subject to AMF supervision who are authorised to provide investment, collective investment management and financial investment advice services, namely:

- Collective investment management companies (Article L. 543-1 of the Monetary and Financial Code), including portfolio asset management companies (Article L. 532-9);
- Investment services providers (Article L. 531-1) other than portfolio asset management companies: investment firms and credit institutions authorised to provide investment services;
- Financial investment advisers (FIAs) (Article L. 541-1).

Other market participants subject to AMF supervision (market undertakings, crowdfunding investment advisers, intermediaries in miscellaneous assets, authorised digital asset service providers, etc.) are not directly targeted by this document. They are, however, monitored, and could be subject to inspections and reviews regardless of the actions detailed here. The monitoring of issuers' operations and their financial and non-financial disclosures is also not addressed in this document.

### ➤ Purpose of this document

This document sets out the AMF's 2020 priorities with regard to the monitoring and supervision of the market participants referred to above.

The thematic priorities are broken down into three groups of activities: portfolio management, other market intermediary activities carried out by investment services providers (ISPs), and the distribution of financial instruments (carried out by financial investment advisers (FIAs) and ISPs, including asset management companies). This last theme also touches on some of the priorities of the work programme of the ACPR-AMF Joint Unit.

Publishing these thematic priorities serves to highlight certain areas of risk that the regulator has identified and to encourage regulated firms to look more specifically at some of their practices in light of applicable professional obligations. It is also an opportunity for the regulator to draw attention to specific areas of focus and identify the operational issues associated with practical implementation of the regulations.

### ➤ Supervisory tools available

The AMF has at its disposal a number of supervisory tools, ranging from ongoing monitoring to specific inspections. The AMF also actively monitors the financial offerings and savings products offered to retail investors and the marketing practices of service providers.

The AMF continuously monitors all professionals under its supervision based on information submitted on a regular basis (annual control and compliance reports, reporting data, declarations, etc.) or on request (additional information requested from service providers, interviews, etc.). The AMF also receives information about the activities of service providers licensed in France directly through other channels (the AMF Épargne Info Service platform, monitoring tools, whistleblowers, exchanges of information with other regulators in France and abroad, etc.).

These monitoring actions can be:

- individual, in response to specific alerts or as part of the periodic coverage of regulated entities, calibrated according to a risk-based approach;

- thematic, in particular to ensure implementation of new regulations.

This ongoing monitoring is carried out by the Asset Management Directorate for asset management companies (AMCs) and distributors (ISPs or FIAs) and by the Markets Directorate for market intermediaries.

Inspections, which are carried out according to a procedure governed by law and by the AMF General Regulation, are undertaken by the Inspections Directorate.<sup>1</sup> Once an inspection has been completed, the findings are presented in a report that is sent to the supervised entity. Around 60 inspections will be carried out in 2020<sup>2</sup> (compared with 63 in 2019), more or less evenly split between two types of inspections with different aims:

- Regular inspections of large market participants or those that present particular risks or have been the subject of specific alerts;
- Theme-based inspections of a sample of market participants (usually five per theme) to better understand a given activity or practice, assess implementation of applicable rules or explore potential risks to investors or the market. These inspections, conducted concurrently across a number of participants and over a shorter timescale than standard inspections, were introduced in 2018 and are known as SPOT inspections (for *Supervision des Pratiques Opérationnelle et Thématique* – “operational and thematic supervision of practices”).

Learning from these inspections is fed back to the marketplace where relevant. Such feedback, which is intended to educate the market and raise awareness, constitutes an assessment of observed market practice at a given moment in time. In some cases, it can result in existing policy being updated.

## ➤ European convergence in supervision and common supervisory priorities

One of the missions of the European Securities and Markets Authority (ESMA) is to foster supervisory convergence, an objective which the AMF sees as a priority. In this regard, ESMA conducts peer reviews on a regular basis, coordinated by the Supervisory Convergence Standing Committee (SCSC) and sets a joint work programme.<sup>3</sup>

The AMF supports ESMA’s efforts in favour of a greater convergence of supervisory practices and incorporates these European priorities into its work programme wherever possible. Where appropriate, the AMF may need to contribute to new initiatives, which could slightly modify the work planning set out in this document.

## ➤ Review of 2019 supervisory priorities and publications

Among the thematic supervisory priorities identified in 2019 were:

- For asset management companies, organisation in terms of cybersecurity, compliance with reporting requirements under the AIFM Directive, anti-money laundering, valuation procedures for complex products and practices for outsourcing property management activities;
- For ISPs, the implementation of certain key provisions of MiFID 2 relating to market intermediaries (trading, post-trade transparency and reporting requirements), product governance and discretionary management, securities lending and short selling practices and the operational implementation of voting at general meetings.

Specific work was also undertaken by the ACPR-AMF Joint Unit on the protection of ageing populations in connection with the marketing of financial products<sup>4</sup> and on the distribution by financial institutions of their own securities to personal customers.

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<sup>1</sup> This legal framework is detailed in an inspection guide available from the AMF’s website.

<sup>2</sup> Inspections of portfolio asset management companies, ISPs and FIAs. This figure excludes the AMF’s “mass” inspections of FIAs, which number around 70 a year.

<sup>3</sup> See <https://www.esma.europa.eu/convergence/supervisory-convergence>

<sup>4</sup> A summary of the responses received during the public consultation organised in the first half of 2019 was published by the two authorities in June 2019, and a marketplace working group was launched in September 2019. The aim is to raise awareness of the issue, share market practices and identify good practices.

The themes that were the focus of SPOT inspections were discussed in the publications briefly listed below, as are the findings of some of the other monitoring work carried out by the AMF during the year as part of its supervisory priorities.

■ **SPOT inspections: a tool for sharing with the financial community good and poor practices observed during inspections**

Five SPOT inspection summaries were published in 2019. The first presents the findings of two series of inspections carried out in 2018 on discretionary management, dealing respectively with the compliance of discretionary mandates and with fees. The second, based on inspections carried out between September 2018 and January 2019, highlights the SRI (Socially Responsible Investment) approaches of asset management companies and the integration of ESG criteria. The third summary published presents the findings of SPOT inspections carried out in 2018 on securities financing transactions (SFTs) undertaken by portfolio asset management companies. The fourth summary concerns the inspections carried out at the beginning of 2019 on the organisation and governance in relation to the completeness and quality of EMIR reporting. The fifth summary focused on the cybersecurity systems of six investment management companies. This theme is being repeated for 2020 (see below). On each occasion, the reports restate the applicable rules, provide an overview of the practices observed and identify good and poor practices.<sup>5</sup>

The other waves of SPOT inspections launched in 2019 will be published in the first half of 2020.

■ **Close monitoring since 2017 in relation to Sustainable and Responsible Investment to keep pace with the rapid changes**

The themes of sustainable and responsible investment have been the focus of specific efforts for more than two years. In addition to the on-site inspections carried out at the end of 2018, the teams continued their work with asset managers with regard to their non-financial reporting requirements defined by Article 173 of the Law on Energy Transition for Green Growth (LTECV). This work resulted in a joint report with the other authorities to provide an overview of practices and make recommendations.<sup>6</sup> Against a backdrop of rapid changes in providers' product ranges and innovations, particular attention was also paid to investment products involving a non-financial aspect and to the information provided to investors. A report on the subject will be published in early 2020, incorporating changes in AMF policy based on findings made throughout the year. The monitoring of new products that involve one or more environmental, social or governance (ESG) aspects will continue in 2020. Specific work will also be carried out to monitor the climate-related commitments made by financial institutions, the findings of which will be published at the end of 2020 in a joint report with the ACPR.<sup>7</sup>

■ **Anti-money laundering and counter-terrorist financing**

At the same time as updating its policy, the AMF sent a questionnaire in the last quarter of 2019 to 637 asset management companies to assess their exposure to AML/CFT risk. The responses to this questionnaire (of which, 575 were returned) were used to prepare the Sectoral Risk Analysis (SRA) published by the AMF at the end of 2019. The AMF also finalised its methodology for rating regulated entities. The theme remains an important focus of supervision in 2020 (see below). An internal Task Force involving several AMF departments has been set up.

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<sup>5</sup> All the reports are available on the AMF website: <https://www.amf-france.org/Publications/Contrôles-SPOT>; the various themes that were the focus of theme-based SPOT inspections in 2019 and those planned for 2020 are shown in the annex.

<sup>6</sup> *Review of the Implementation of the Provisions of Decree 2015-1850 on Investors' Non-Financial Reporting*, ACPR-AMF-CGDD-DGT, July 2019.

<sup>7</sup> See joint ACPR-AMF press release, *A new mechanism to monitor and independently assess the climate-related commitments taken by Paris financial centre entities*, 2 July 2019.

### ■ **Securities lending and short selling**

With regard to securities lending and short selling practices, the AMF's daily monitoring of net short position reports was enhanced in 2019 by performing regular cross-analyses with available data on settlement fails and on the lending/borrowing market for the securities concerned, and by activists' public announcements. In situations of market stress, the AMF's supervisory teams also made requests for additional information from those reporting net short positions in order to verify compliance with the provisions of the regulation on short selling. Increased monitoring of the quality of reports submitted to the AMF was also carried out, notably through the launch of a campaign to improve the reliability of data from reporting parties with long-standing, stable positions. The AMF is also preparing for the implementation of transaction reporting under the Securities Financing Transaction Regulation (SFTR), including being part of ESMA's Repository Task Force preparing the associated guidelines and making changes to AMF's information system so that it can include and process SFTR data from April 2020.

### ■ **EMIR reporting and transaction reporting (MiFID 2) requirements**

Monitoring of EMIR and MiFID 2 regulatory reporting continued in 2019 with a view to improving its quality, with particular attention paid to the completeness of reporting, to compliance with reporting deadlines and to information provided on prices and quantities and for identifying the various parties involved in transactions. As in previous years, the AMF also took part in ESMA's regular Data Quality Reviews. Lastly, like several other national authorities, the AMF was itself the subject of a Peer Review of its practices in supervising the EMIR reporting requirement, which were deemed satisfactory by ESMA.

### ■ **Voting at general meetings**

Following the incidents that occurred during the 2018 general meeting campaign, in 2019 the AMF carried out in-depth supervisory actions of several kinds: on-site inspections, analysis of internal audit reports carried out by several institutions at the AMF's request, and closer monitoring of the implementation of the resulting recommendations. In addition, the AMF monitored the implementation of Proposal 7 of the report of the working group on *Shareholder Rights and Voting at General Meetings* published in July 2018, which called for the market participants concerned to draw up a methodological guide for processing votes at general meetings.



## **SUPERVISION PRIORITIES FOR 2020**

### **PORTFOLIO MANAGEMENT**

#### ■ **Delegation of permanent controls**

Many French portfolio asset management companies, often of entrepreneurial size, use external service providers to carry out their permanent controls. In view of the key role played by the internal control function in asset management companies, and insofar as these companies remain responsible for performing this function in any case, it seemed appropriate to analyse, through a SPOT inspection of a sample of companies using different firms, the prerequisites for outsourcing these functions by delegation and the quality of the services provided. This supervisory priority is all the more appropriate given that most audit firms specialising in asset management are members of newly formed professional associations.

#### ■ **Liquidity risk management**

As part of ESMA's common supervisory action (CSA), the AMF will conduct work on liquidity risk management in UCITS. The aim of this CSA is to check whether portfolio asset management companies managing UCITS comply with their obligations in this area, by analysing in particular the liquidity of portfolios, the processes involved, the methodologies and data used, and the governance and control arrangements implemented by asset management companies. An initial phase of analysis will be carried out using a questionnaire sent to a large population of portfolio asset management companies. This will be followed by more targeted actions, including a SPOT inspection conducted on a small sample of the respondents from the first phase.

#### ■ **Granting loans**

Since November 2018, specialised professional funds and professional private equity funds have been able to grant loans. The AMF notes that this new activity is growing steadily among portfolio asset management companies. Consequently, the AMF will carry out targeted inspections on this activity, which will include examining the system for selecting, assessing and measuring borrowers' credit risk, the legal and operational framework for loans granted and the associated debt recovery.

#### ■ **Cybersecurity**

The first inspections carried out in 2019 on the systems established for cybersecurity at six portfolio asset management companies revealed that the institutions inspected have started to address cyber risk by including it in their risk mapping, by compiling the cybersecurity incidents experienced and by calling on specialised service providers to verify the robustness of their information system from time to time. However, these companies do not take into account the potential impacts of the materialisation of cybersecurity risks on compliance with regulatory requirements, in particular with regard to capital, retaining sensitive data, maintaining an effective business continuity plan and ensuring that adequate resources are available. During these inspections, the AMF also noted the almost total lack of mapping of critical systems, as well as significant shortcomings in the formal identification of cyber incidents in existing databases, necessary for the continuous assessment of the associated level of risk. Lastly, the vulnerabilities identified or confirmed by internal control processes are not remediated sufficiently quickly and consistently.

Following on from the SPOT and regular inspections carried out in 2019, and in view of the risk areas identified, the AMF has decided to repeat the theme of cybersecurity for its 2020 inspections. The investigations will focus more specifically on the process for collecting and managing cybersecurity incidents and the supervision and monitoring by portfolio asset management companies of their critical IT service providers, whether internal or external (*e.g.* providers of business applications and tools for communicating with depositaries, valuers and account-keepers).

#### ■ **Anti-money laundering and counter-terrorist financing**

The fifth European directive on preventing the use of the financial system for money laundering and terrorist financing, adopted on 9 July 2018, must be transposed into the national law of the Member States by 10 January 2020. AMF policy on this subject was updated and published at the end of November 2019 (Position-

Recommendation DOC 2019-18) after consultation with stakeholders. It is expected to be supplemented in 2020 by new provisions following the entry into force of the fifth directive and also those specific to crypto-assets.

Against this backdrop, the AMF intends to implement its supervisory policy based on its understanding of the risks arising from information collected from asset management companies. Where appropriate, the AMF will focus on this theme in its standard inspections. Lastly, the AMF will continue to gather information and hold meetings with stakeholders.



## **SUPERVISION PRIORITIES FOR 2020**

### **MARKET INTERMEDIARIES**

#### ■ **Markets in Financial Instruments Directive (MiFID 2): implementation of reporting, post-trade transparency and best execution provisions**

In line with the efforts made since 2018 to help firms implement the new rules, three areas at the heart of the market reform introduced by the directive will continue to be closely monitored by the AMF throughout 2020:

- Transaction reporting: continuous attention will be paid to the quality of the reports submitted and the control systems implemented by institutions to prevent and, failing that, detect and correct, any anomalies quickly. Two years after MiFID 2 came into force, the AMF expects institutions to now have robust and stable systems.
- Compliance with post-trade transparency requirements for equity, ETF and bond transactions: actions initiated to detect inconsistencies between data published and transaction reporting will continue. Particular attention will also be paid to the controls put in place by firms to ensure that the approved publication arrangements (APAs) they use comply with the conditions for publication.
- With regard to market structure, compliance with the obligations associated with the status of organised trading facilities (OTFs) and systematic internalisers (SIs) will continue to be closely monitored, in particular by studying the annual activity reports of OTFs and analysing the transactions reported by the institutions concerned.

Lastly, the AMF will continue to monitor measures put in place by intermediaries to adapt their execution arrangements and comply with best execution requirements, with a particular focus on certain practices known as “payment for order flows”. It will also monitor the implementation of the corrective measures required of institutions whose annual reporting on the order execution platforms and brokers used and the quality of execution obtained is sometimes insufficient.

#### ■ **Liquidity contracts**

As a reminder, the AMF introduced liquidity contracts as an “accepted market practice” despite the negative view published by the European Securities and Markets Authority (ESMA). Given this background, the AMF plans to conduct SPOT inspections of five investment services providers during the planned two-year transition period (2019-2020).

This series of inspections will enable the AMF, firstly, to fulfil its commitment to ESMA to carry out on-site investigations in this area and, secondly, to assess the relevance of certain provisions of the current AMF Decision 2018-01 governing liquidity contracts based on specific cases. In particular, this will involve determining the extent to which the current levels of the market maker’s intervention limits (in terms of volume and price) or the level of resources allocated by the issuer to the contract will need to be reviewed. These tasks will be a useful complement to monitoring this activity through market supervision, using the related monitoring tools currently being implemented.

Lastly, this work could lead to the departments proposing to the AMF Board, at the end of 2020, adjustments to the current market practice with a view to submitting a revised “accepted market practice” to ESMA.



### ■ Provision of cross-border services

The supervision of cross-border business will again be one of the themes addressed by ESMA as part of its convergence work, in light of identified investor protection issues. The AMF will take part in ESMA's work on cross-border cooperation and will continue to assess whether French institutions' compliance arrangements properly take into account business undertaken by their European branches. The AMF will also step up its supervision of branches of foreign institutions in France.

### ■ Transition of benchmarks

The AMF will pay particular attention to helping the various market participants using critical indices that are set to disappear to prepare for the gradual transition to alternative Risk-Free Rates (RFR). The AMF will also support market participants in implementing the new provisions of the Benchmark Regulation introduced as part of the European Commission's Action Plan on Sustainable Finance, particularly the definition of the EU Climate Transition Benchmark (CTB) and EU Paris-Aligned Benchmark (PAB).



## **SUPERVISION PRIORITIES FOR 2020** DISTRIBUTION

### ■ Markets in Financial Instruments Directive (MiFID 2): product governance

MiFID 2 contains new obligations relating to the identification of a target market, the marketing of financial instruments and distribution strategy. From the AMF's perspective, these new obligations must not impede open-architecture distribution; rather, they must allow participants to find the best way to distribute suitable products to their clients, including, where appropriate, for the purposes of diversifying client portfolios. Responses to the annual compliance questionnaire provide fresh information to help evaluate the extent to which institutions are meeting their obligations. In addition, a study will provide a better understanding of the match between the client profile and the products offered through product governance. A campaign of SPOT inspections will be run in 2020 involving institutions that distribute financial instruments to assess their compliance with these obligations relating to the identification of a target market and distribution strategy.

### ■ Markets in Financial Instruments Directive (MiFID 2): suitability requirements

In providing investment advice or portfolio management services for third parties, investment services providers must request information on the knowledge, experience, financial situation and investment objectives of their clients.

This requirement already existed under MiFID 1. MiFID 2 expressly states that the client's financial situation includes their ability to bear losses and that their investment objectives include their risk tolerance. In addition, investment services providers must now check whether there are other investment services or equivalent financial instruments that are appropriate to the client's profile, taking into account their cost and complexity. Furthermore, investment services providers providing an advice service must now provide their retail clients with a suitability declaration in which they justify the suitability of their advice. In March 2019, the AMF incorporated into its Position 2019-03 the ESMA guidelines on "certain aspects relating to MiFID 2 suitability requirements". These guidelines clarify the procedures that must be carried out by investment services providers to verify the suitability requirements.

In 2020, the AMF will review how investment services providers are implementing the new provisions introduced by MiFID 2 and the associated suitability rules. A sample of institutions will be selected with a view to reviewing and monitoring their procedures and results in this area in detail. As part of ESMA's common supervisory action (CSA), the AMF will run a campaign of SPOT inspections on the implementation of the MiFID 2 requirements for assessing the suitability of a financial instrument for a client's specific situation in the course of providing an investment advice service.

### ■ **Monitoring of financial investment advisers (FIAs)**

The supervision of FIAs remains an ongoing priority, building on the initiatives undertaken in 2019 to strengthen the collaboration and information sharing between the AMF and FIA professional associations.

In 2020, the AMF will implement the framework for sharing information agreed with these associations in 2019. To this end, the AMF is already planning to amend its General Regulation in order to establish legally, within each association, the function responsible for the mechanism for sharing information with the AMF. One of the purposes of such information sharing will be to inform associations of potential breaches identified by their members, which they can then review at the request of the AMF.

In addition to providing information on regulated market participants, the AMF and professional associations will also share information on investment products and offers with a high risk of misselling. Lastly, dialogue will continue with a view to harmonising supervisory practices, especially in the area of advice on non-standard products and the implementation of the MiFID 2 provisions.

### ■ **Action taken by the ACPR-AMF Joint Unit**

The ACPR-AMF Joint Unit, set up in 2010, enables staff from both authorities to work together on client protection issues related to distribution in the banking, insurance and financial services sectors.

Work that began in 2019 on three themes in particular will continue in 2020: the marketing of financial products to vulnerable elderly people, with the completion of the work undertaken by the working group and the launch of a new academic project; work on the issues facing clients as a result of technological innovations among financial institutions, particularly with regard to the distribution and subscription methods of financial products; and the follow-up action from the review of the situation of escheat in employee savings.

The ACPR-AMF Joint Unit will work in two new areas in 2020: firstly, marketing around savings products, in light of changes in the savings landscape in a world of low interest rates and the transformation of the offer around personal pension savings; and the information provided to clients when marketing products described as “sustainable”, once the applicable framework has been clarified.

**Annex: Overview of the themes covered by short SPOT inspections**

As explained, not all supervisory priorities involve SPOT inspections but might involve other forms of supervision (information requests, data analysis, dedicated questionnaires or meetings with firms, etc.) or standard inspections. Besides, SPOT inspections are not conducted in isolation but are part of the different supervisory actions undertaken by the regulator, enabling it to augment its understanding of market practices.

	2019	2020
ASSET MANAGEMENT COMPANIES	<ul style="list-style-type: none"> <li>▪ Cybersecurity</li> <li>▪ AIFM reporting: data quality and consistency of data transmitted</li> <li>▪ Asset valuation: valuation procedures for complex products</li> <li>▪ Outsourcing of certain real estate services within a group and associated potential conflicts of interest</li> </ul>	<ul style="list-style-type: none"> <li>▪ Delegation of permanent controls</li> <li>▪ Liquidity risk management</li> <li>▪ Cybersecurity</li> <li>▪ Granting loans</li> </ul>
MARKET INTERMEDIARIES	<ul style="list-style-type: none"> <li>▪ MiFID 2: implementation of requirements regarding record keeping arrangements</li> <li>▪ EMIR requirements: governance and organisational control arrangements in place for reporting transactions to trade repositories</li> </ul>	<ul style="list-style-type: none"> <li>▪ Liquidity contracts</li> </ul>
DISTRIBUTION	<ul style="list-style-type: none"> <li>▪ MiFID 2: discretionary investment management (cont'd): implementation of new requirements (notably notifications of clients when the value of their portfolio depreciates by 10%, changes in the management report, and the end of inducements)</li> </ul>	<ul style="list-style-type: none"> <li>▪ MiFID 2: product governance for distributors</li> <li>▪ MiFID 2: suitability requirements</li> </ul>

*Note:* Summaries of SPOT inspections are available in English on the following page of the AMF's website: [https://www.amf-france.org/en\\_US/Publications/Controles-SPOT?langSwitch=true](https://www.amf-france.org/en_US/Publications/Controles-SPOT?langSwitch=true)