

CHAPTER 6

The Enforcement Committee

1 – Activity of the Enforcement Committee in 2008

Important: The following English text is a translation of extracts from the French version of the 2008 annual Report. Only the original French text has any legal value. The AMF expressly disclaims all liability for any inaccuracies in the translation

The Enforcement Committee takes decisions on complaints brought against natural persons and legal entities. It is independent from the Board and has 12 members sitting in full session, usually divided into two six-member sections.

Cases are referred to the Chairman of the Enforcement Committee by the AMF Chairman on the basis of a decision by the Board, and most commonly by one of the three specialised Committees further to an investigation report or an inspection report. For each case, the Committee's Chairman appoints one of its members to act as rapporteur and prepare the hearing. Rapporteurs are entitled to seek the assistance of AMF departments, in accordance with Article R. 621-39 of the Monetary and Financial Code. The rapporteur relies on the Enforcement Assistance Department of the AMF but does not take part in the final decision.

Membership of the Enforcement Committee

The Enforcement Committee has been chaired since 29 May 2006 by Daniel Labetoulle, honorary president of the litigation division of the Conseil d'État, who was re-elected by the committee's members on 26 November after the vice-president of the Conseil d'État had renewed his term of office. One section of the Enforcement Committee is chaired by the Committee Chairman, the other by Claude Noquet, a judge at the Court of Cassation, who was also reappointed to her post by the Court's president.

In November 2008 the finance minister renewed the terms of Jean-Claude Hanus, Pierre Lasserre, Jean-Jacques Surzur and Joseph Thouvenel as members of the Enforcement Committee in light of their financial and legal skills and their experience in securities offerings and financial instrument investments. Jean-Claude Hassan, a State Councillor, was appointed by the vice-president of the Conseil d'État to replace Jacques Bonnot; and Guillaume Jalenques de Labeau was appointed by the finance minister to replace Jean-Pierre Hellebuyck.

New rules of procedure

Decree 2008-893 of 2 September 2008 introduced three new measures concerning the Enforcement Committee's procedural rules:

- > the Board is now represented at Enforcement Committee meetings by a person selected by the AMF Chairman and entitled to submit verbal comments to substantiate the complaints under review;
- > a disqualification procedure enables a respondent to request the removal of the rapporteur or a member of the Enforcement Committee body dealing with the case if he or she has serious grounds for doubting the person's impartiality;
- > the deadline for respondents to submit written comments on the complaints brought against them has been extended to two months.

Furthermore, the Economic Modernisation Act raised the upper limit on Enforcement Committee fines from €1.5 million to €10 million, with the exception of fines imposed on natural persons working for or on behalf of an AMF-supervised investment services provider. The aim of this measure is to allow the Committee to set fines according to the seriousness of the misconduct and in relation to the expected proceeds in cases where a direct profit cannot be established. But if the perpetrator has earned a direct profit from their misconduct, then the upper limit on the fine can be raised to ten times that profit.

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1 – ACTIVITY OF THE ENFORCEMENT COMMITTEE IN 2008

The Enforcement Committee's fifth year of activity was eventful. In 2008 it dealt with more cases than the number referred to it. Seventeen of the 40 cases examined were dealt with in less than 12 months. Furthermore, the number of backlogged cases declined as the longest-standing ones were judged. And at 31 December 2008, only nine proceedings pre-dated 1 January 2008. This means that the goal of processing all cases within an average of one year was almost reached, despite an increase in the number of defendants and complaints per case.

Between January and December 2008, the Commission gave a verdict on 40 proceedings, 34 of which gave rise to sanctions against natural persons and legal entities.

The sanctions handed down related to breaches of rules on public disclosure (5 proceedings), insider dealing (10 proceedings) and price manipulation (1 proceeding). The other proceedings resulted in sanctions for rule breaches by investment services providers carrying on an asset management business (7 proceedings) or on the grounds of provisions governing providers of investment services other than asset management (11 proceedings).

Appeals can be lodged against all Committee decisions, as provided for in Articles R. 621-44 and seq. of the Monetary and Financial Code. A total of 63 persons and entities lodged appeals against sanction decisions with the Paris Appeal Court, the Court of Cassation and/or the Conseil d'État in 2008.

The AMF now publishes an annual compendium of Enforcement Committee decisions and appeals court rulings, together with supporting documentation, in order to inform markets and the industry about the scope of financial regulation.

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Statistical data

Sanction proceedings opened in 2008:

36 (compared with **29** in 2007, **35** in 2006, **34** in 2005, and **24** in 2004).

Sanction proceedings completed in 2008:

40, including **6** that did not give rise to a sanction.

The **40** proceedings concerned **137** persons or entities:

84 sanctions (35 entities and 49 individuals);

51 acquittals (6 entities and 45 individuals).

The **84** sanctions break down as follows:

80 fines:

– ranging from **€1,000** to **€5 million**;

– making a total of **€24,715,000** levied against **34** entities

(**€6,546,000**) and **46** individuals (**€18,169,000**);

of these **4** were accompanied by a reprimand and **11** by a warning;

4 warnings with no fine;

no temporary suspensions.

Sanction proceedings still under way at end-2008: **33**

Appeals held admissible at 31 December 2008:

by the Paris Appeals Court: **30** out of **30** lodged (**1** appeal resulted in a partial rectification with a lower fine);

by the Court of cassation: **2** out of **2** lodged;

by the Conseil d'Etat: **4** out of **4** lodged (**1** appeal resulted in a partial rectification).

Appeal proceedings won by the AMF:

before the Paris Appeal Court: **5** (100%);

before the Conseil d'Etat: **2** (100%).

Appeals lodged by sanctioned persons or entities at 31 December 2008:

63 (compared with **53** in 2007).

Appeals pending before the Paris Appeals Court, the Court of Cassation and the Conseil d'État at 31 December 2008: **46**.

Source: AMF