

# CHAPTER 7

## The AMF and Retail Investors

- 1 – Consultative Commission on Retail Investors
- 2 – Educating the General Public
- 3 – Regulatory Alerts
- 4 – Documentation and Information Centre
- 5 – Ombudsman's Report

Faced with a crisis in the financial markets, the AMF stepped up its investor protection activities. The Consultative Commission on Retail Investors adopted a new charter, while educational initiatives and efforts to provide consumers with better information continued apace. As a privileged contact for investors, the Ombudsman was extremely active in 2008.

## 1 – Consultative Commission on Retail Investors

### Commission members:

**Jean-Claude Mothié**, Chairman

**Jacques Delmas-Marsalet**, Vice-Chair

Bernard Camblain (Association Française du Family Office), Bernard Coupez (ASRAS)<sup>1</sup>, Jacques Coutance (member of the Sanofi Aventis, NYSE Euronext and Veolia Environnement individual shareholder committees), Vincent Dufloy (CLAS and ADSACA)<sup>2</sup>, Olivier Eon (Testé pour Vous), Agnès Gaultier de la Ferrière (FAS)<sup>3</sup>, Marcel Jayr (member of ANSA and Euronext individual shareholder committees), Pierre-Henri Leroy (Proxinvest), Viviane Neiter (APAI)<sup>4</sup>, Colette Neuville (ADAM)<sup>5</sup>, François Perrin-Pelletier (FAIDER)<sup>6</sup>, Guillaume Prache (ARCAF)<sup>7</sup>, Fabrice Remon (Deminor), Marie-Claude Robert (first COB Ombudsman), Aldo Sicurani (FFCI)<sup>8</sup>, François de Witt (journalist), Daniel Richard (lawyer).

The 2007 operating charter for the consultative commissions<sup>9</sup> allowed the Consultative Commission on Retail Investors and Minority Shareholders to sharpen its focus on canvassing investors' views. The name of the commission was also shortened to Consultative Commission on Retail Investors.

The commission continued its work in 2008, meeting eight times, as in 2007. It issued opinions on very concrete issues of AMF policy as well as on strategic regulatory issues, reinforcing its role representing retail investors in their dealings with the regulator. It also acted as an initial forum for discussing reports issued by the AMF's working groups.

In 2008 it devoted increasing energies to international issues. In particular it responded to the consultation on point-of-sale disclosure to retail investors organised by IOSCO<sup>10</sup> Standing Committee on asset management. Given the importance of the Committee's work in the area of investor protection, its work programme was submitted for opinion to the commission, which endorsed it.

The commission also participated in the debate and consultation organised by the European Commission and then CESR on the reform of the simplified fund prospectus. It formulated opinions and put forward recommendations to guide CESR expert groups in their work on the presentation of performance and expense data in the document that will replace the simplified prospectus. It also published an opinion on the AMF's response to the call for evidence from the European Commission on regulatory competition between comparable or substitute retail investment products.

The commission set up a working group on substitute investment products chaired by Jacques Delmas-Marsalet, member of the AMF Board and Vice-Chair of the commission. The group's report, submitted to the commission in November, contains a number of recommendations. These are aimed chiefly at harmonising the marketing rules applicable to products in terms of pre-contractual information, advertising, advice, product accessibility and the transparency of fee arrangements for distributors.

The commission continued to organise hearings<sup>11</sup> during the year. It heard from the Vice-Chair of the Consumer Panel of the Financial Services Authority, the AMF's UK counterpart. This contributed to the commission's debate on its role as representative and advocate for retail investors. The commission also considered ways of ensuring

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<sup>1</sup> BNP Paribas Employee and Former Employee Shareholder Association.

<sup>2</sup> LCL and Crédit Agricole Employee Shareholder Association.

<sup>3</sup> French Federation of Employee and Pensioner Shareholders.

<sup>4</sup> Association for the Promotion of Individual Share Ownership.

<sup>5</sup> Association for the Defence of Minority Shareholders.

<sup>6</sup> Federation of Independent Associations for the Defence of Retirement Savings.

<sup>7</sup> National Civil Servants Retirement Savings Association.

<sup>8</sup> French Federation of Investment Associations.

<sup>9</sup> Available from the AMF website [http://www.amf-france.org/documents/general/7819\\_1.pdf](http://www.amf-france.org/documents/general/7819_1.pdf)

<sup>10</sup> International Organisation of Securities Commissions.

<sup>11</sup> See 2007 Annual Report, chapter 7 page 22.

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that minority investors have a greater say in national and Community-level decision-making processes concerning the regulation of financial services.

The commission maintained is objective of taking a cross-sector view of products falling within the AMF's jurisdiction. It kept in regular contact with the Financial Sector Consultative Committee (CCSF) under the terms of a joint cooperation agreement. The commission paid particular attention to MiFID implementation in the area of financial product advertising and its impact on retail investors.

The commission was consulted on amendments to regulations in areas that could affect investors and their representative associations. These include workplace saving, especially leveraged profit-sharing plans embedded in employee stock ownership plans. It was also consulted on topics currently being considered by the AMF Board and departments:

- > publishing the AMF's policy on prospectus preparation and on certain fund operating rules;
- > the AMF's requirements regarding marketing literature following the entry into force of MiFID;
  
- > a review of the current situation and outlook for the AMF's sanction proceedings;
  
- > the easing of certain rules on admission to a regulated market following an IPO;
  
- > the case for preventing the shares of a société par actions simplifiée (simplified joint stock corporation) from being admitted to trading on a regulated market.

The commission responded to proposals made in the main reports published under the supervision or with the participation of the AMF. These included the findings of the working group chaired by Philippe Adhémar, an AMF Board member, on obtaining authorisation to operate a real estate collective investment scheme (OPCI) for retail investors; and the report of the working group chaired by Bernard Field, an AMF Board member, on major holding notifications and statements of intent.

The commission also dialogued with the AMF's staff and Secretary General on the lessons to be learnt from the financial crisis, especially its impact on the liquidity of certain funds. It also responded to the first implementation review of the AMF's "Better Regulation" approach<sup>12</sup>.

## 2 – Educating the general public

One of the AMF's main duties is to ensure that investments by the general public in financial products are properly protected. This duty has an educational component. The AMF thus provides investors – both professional and retail – and the industry with a range of tools such as a website and educational publications (factsheets, guidebooks and FAQs).

The AMF set up investor helplines at:

- > the documentation centre;
- > the Ombudsman's office;
- > the Legal Affairs division.

These helplines field questions from the AMF's different constituencies.

AMF representatives also attend a wide variety of public events within and outside France, including forums, investment fairs and conferences.

The AMF runs a decentralised nationwide network through Banque de France's regional delegations, where people can go for information and literature about the regulator and its missions<sup>13</sup>.

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<sup>12</sup> See chapter 8

<sup>13</sup> See chapter 8

## A – Educational guides

To keep investors informed, the AMF publishes a collection of factsheets and guidebooks on a range of issues, including golden rules for retail investors, takeover bids, net asset values, workplace saving and financial investment advisors (FIAs). These guides are available free of charge on request, and can be downloaded from the website<sup>14</sup>.

## B – The website: [www.amf-france.org](http://www.amf-france.org)

Over the years, the AMF's website has become one of the most important tools for communicating with both the general public and industry professionals. It attracted 4.9 million visitors in 2008 (8% more than in 2007), who appreciated the wealth of information available and daily updates<sup>15</sup>. The number of pages viewed in 2008 rose by nearly 11% to 82 million, compared with 74 million in the previous year.

The website provides three main types of information:

- > general information published by the AMF, including educational and professional guides, warnings, FAQs, a lexicon, regulations, newsletters, reports and studies;
- > disclosures by listed companies in the "Decisions and disclosures" database, including prospectuses and registration documents, major shareholding notifications, buyback and sale reports, directors' dealings, and links to listed companies' websites. This database also features information relating to AMF decisions such as those on bid compliance and document approvals.
- > AMF-approved information about funds (prospectuses, net asset values) and management companies (authorisation, programme of operations, products under management) in the Geco database. Geco also contains information about FIAs (contact details, association to which they belong, registration number) and a list of AMF-approved professional FIA associations.

The homepage provides individuals and professionals with access to four dedicated areas containing useful information. Retail investors can obtain key information such as practical advice, warnings, educational guides and information about mediation. Professionals, including issuers, ISPs and compliance officers, can access areas from the homepage that focus on the information and materials, such as regulations and forms, they need to carry on their business. A press room was launched in 2008, allowing journalists to access any information that may be of interest from a single page, regardless of the topic they are searching for.

The web pages devoted to Enforcement Committee decisions were upgraded to coincide with the committee's first conference in October 2008. The decisions can now be sorted by date or subject, depending on users' needs. The six subject categories are insider trading, price manipulation, disclosure requirements, special disclosure requirements, takeover bids, and ISPs, savings products and market infrastructure.

A number of services and tools are available to help online visitors find information:

- > Free subscriptions to:
  - mailing lists, which send emails to subscribers whenever relevant documents are posted online;
  - AMF newsletters: Financial Regulation Newsletter, Economic and Financial Newsletter, Regulation & Asset Management Newsletter, Regulation and Listed Corporates Newsletter, AMF Working Papers.
- > Tools:
  - the English language website;
  - a search engine with basic and advanced search functions;
  - Really Simple Syndication (RSS) feeds: visitors with an RSS aggregator are informed in real time whenever materials are posted online (excluding the Geco decisions, disclosures and funds database);
  - contact and assistance facilities allowing visitors to get in touch with departments directly or leave messages with the webmaster;

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<sup>14</sup> [www.amf-france.org](http://www.amf-france.org), Publications > Guides > Educational guides.

<sup>15</sup> Based on surveys carried out by Accenture of professional and retail investors in 2006, and an ergonomic study conducted in 2007.

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- links to websites of other authorities, fellow regulators in other countries and finance industry associations;
- an FAQ section;
  
- a lexicon of financial terms.

## C – Attendance at forums and investment fairs

Every year, the AMF attends the Forum de l'Investissement, an annual event dedicated to personal finance, the stock market and wealth management. The AMF also takes part in Actionaria, a shareholder fair. These events attracted 25,000 and 32,000 visitors, respectively, in 2008, giving the AMF a chance to get out and meet the public, talk about its role, field questions from investors, and give guidance on investing directly in stocks or through funds.

## D – Institute for Public Financial Education

The Institute for Public Financial Education (IEFP) was set up in April 2006 in response to the recommendations of an AMF-led working group and an AMF-sponsored study by TNS Sofres that highlighted the lack of financial literacy among French investors as well as their desire to be better equipped to face up to their responsibilities. The AMF supports the IEFP as part of efforts to engage in a closer dialogue with the general public – one of the components of the "Better Regulation" approach<sup>16</sup>.

Organised as an independent not-for-profit body, the IEFP is run by a board of directors composed of some 20 experts from the worlds of economics, finance, community action, academia and education.

The IEFP's main task is to help French people take better informed investment decisions by providing them with the knowledge they need to understand and choose between the financial products offered to them. The Institute conducts initiatives that seek to:

- > develop an overarching policy for training the public in personal finance and financial economics;
- > analyse the public's general needs in order to promote appropriate responses, by encouraging networking and the endorsement of different types of training programmes, both existing and future;
- > conduct nationwide communication campaigns to raise public awareness of economic and financial issues. Initiatives include organising or participating in conferences or seminars, producing educational materials for the general public, particularly young people, and operating a dedicated website, [lafinancepourtous.org](http://lafinancepourtous.org);
- > encourage academic research and contacts with international organisations in the field of consumer financial education;
- > build a constructive dialogue with the public authorities, the AMF and all other parties interested in financial literacy.

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<sup>16</sup> See Chapter 8

## 3 – Regulatory alerts

Another facet of investor protection is the warnings and alerts issued by the AMF and its fellow regulators when they identify financial products or services that infringe prevailing laws and regulations.

### 1 > AMF alerts

In general, the AMF recommends that investors residing in France use utmost caution if they are contacted by an unauthorised individual or company, whether by telephone, email or letter, and offered financial services or products that have not been approved for marketing in France.

The AMF reminds investors who may be tempted by these offers that they will have only limited means of redress if they decide to proceed.

In a dedicated area of its website, the AMF recommends investors to carry out checks before making any investment decision, to ensure that the individual or company has been duly approved to carry on that type of business and that the products being offered have been authorised for marketing. It allows investors to perform these checks by querying the following databases free of charge:

- > Geco (funds and investment products), to check whether a management company or product is authorised and to access the list of FIAs;
- > the direct marketer database, to check the identity of professionals that have contacted the investor or that he or she wishes to use, as well as the services and products they are authorised to offer;
- > CECEI<sup>17</sup>, to check authorisations for other types of provider, such as investment firms and credit institutions.

This section of the website also describes the most common scams and swindles, including:

- > the Nigerian advance fee scheme;
- > "Congratulations, you've won the jackpot!";
- > "An interesting career opportunity";
- > phishing<sup>18</sup> ;
- > high-yield investment programmes;
- > email investment tips on US companies (OTC Bulletin Board and Pink Sheets).

The site tells investors how the schemes work and how to protect themselves.

The AMF also publishes warnings. In 2008 it issued four such warnings further to complaints or queries sent to the Ombudsman's office or incidents detected by the Market Surveillance division or the Banque de France's regional representatives. These warnings can also be viewed on the "Warnings" pages of the AMF's website.

As part of cooperation between the members of the Committee of European Securities Regulators (CESR), these news releases are also sent to European regulators.

### 2 > Alerts issued by European regulators

The AMF also publishes warnings issued by its fellow regulators in Europe. In 2008 it published 90 such warnings. Investors can go to the "Warnings" section of the AMF's website, where hyperlinks are provided to take them to the appropriate sections of other regulators' websites where the warnings are posted.

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<sup>17</sup> Comité des établissements de crédit et des entreprises d'investissement / Committee on investment firms and credit institutions: <http://www.banque-france.fr/gb/supervi/agrement/agrement.htm>

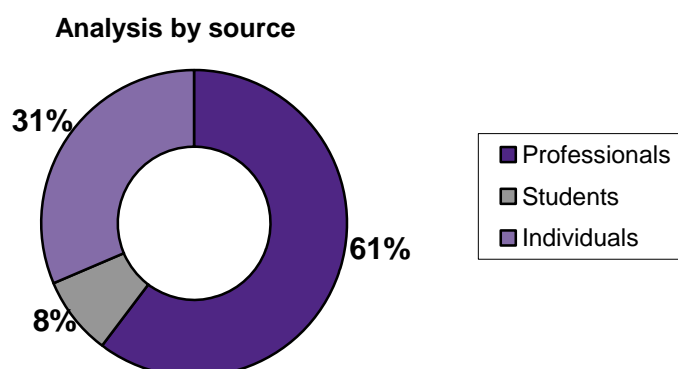
<sup>18</sup> Phishing: identity theft, usually involving personal data or bank details. The word is formed from "fishing" and "phreaking" (hacking into phone networks).

## 4 – The Documentation and Information Centre

Professionals, retail investors and students wishing to conduct research into the AMF's areas of activity, listed companies or regulated markets, can use the documentation and information centre.

Two-thirds of the external demands received by the centre come from professionals, chiefly law firms but also issuers and management companies. This proportion has stayed relatively stable, although the proportion of requests from individuals did increase from 27% in 2007 to 31% in 2008. Most of the requests concern information about funds, ISP authorisations, and share trading (prices, trading halts). Around one-third of individuals have questions about a dispute with a financial intermediary, particularly regarding the marketing of financial products, and are referred to the Ombudsman.

**Chart 1: Analysis by type of inquiry**



Source: AMF

### 1 > Remit of the documentation centre

Aside from serving the AMF itself, the documentation centre deals with requests for information received by phone, email or letter. People can also make an appointment to visit the centre to look for information that is not available on the AMF website, such as old regulations, COB and CMF archives, and prospectuses approved by the COB before 1999 and not posted online.

Where necessary, the documentation centre refers people to the AMF's operational divisions and to the Legal Affairs and Ombudsman helplines.

### 2 > Services

The documentation centre helps the public to find information about investment regulation and financial markets. It also provides web addresses and contact details for a wide variety of organisations. If necessary, the centre refers calls to other external specialised documentation centres. And it provides details of articles and publications on financial topics to help students and professionals in their research or business activities.

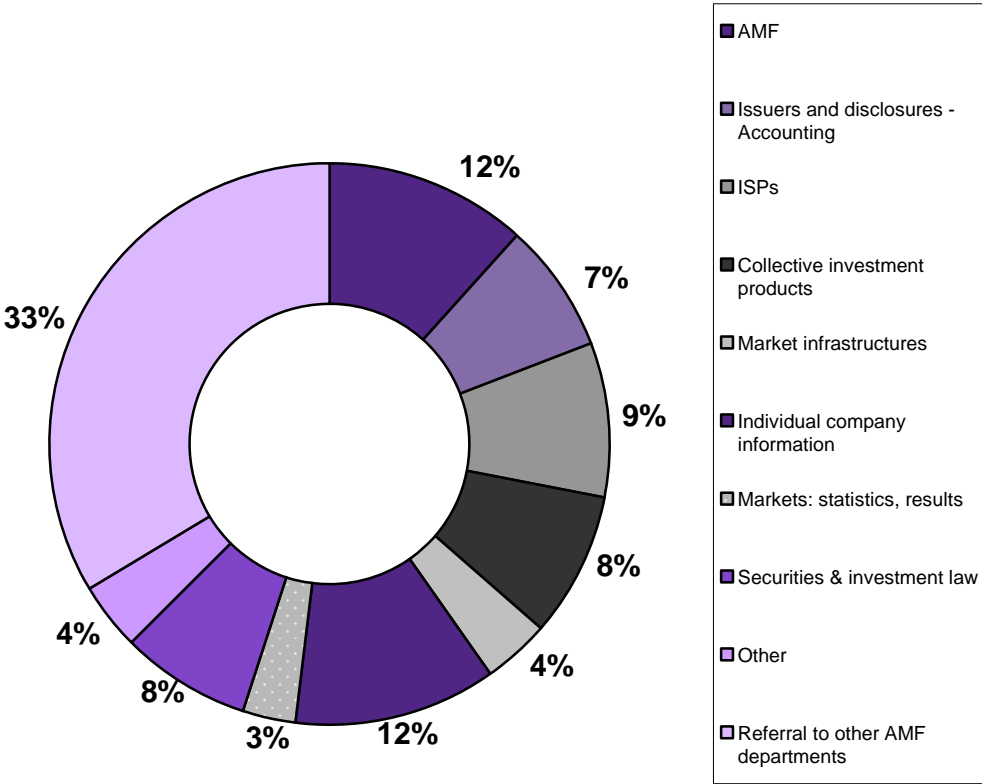
Copies of offer documents, notices, net asset values, stock prices and educational publications can also be sent on request by email. They can be faxed or posted to people without internet access.

Internet users who have difficulty accessing information can turn to the centre, which provides a guide to using the AMF website.

In 2008 the documentation centre answered 2,876 telephone enquiries and 1,202 emails and letters.

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**Chart 2 : Breakdown by topic of inquiries handled by the documentation centre in 2008**



Source: AMF

Most of the visitors to the centre come to read prospectuses and offer documents that were approved between 1968 and 1999 and are not available in full on the AMF's website.

Compared with the previous year, the documentation centre saw an increase in queries about investors' rights, reflecting concerns about issues such as the subprime and financial crises, short-selling and the Madoff affair. Questions about market infrastructure were also frequently raised in connection with MiFID implementation. By contrast, requests for listed company information declined as this became more readily available online.

Some questions concerned documents that are not available online because they are old or obsolete, including regulations, enforcement rulings, bulletins, brochures and company prospectuses.

Given the many amendments to the AMF's General Regulation, there were numerous requests from professionals about current regulations.

In 2008 one-third of requests had to be referred either to the Ombudsman or to Legal Affairs. The documentation centre helpline is open for longer than the helplines operated by the Ombudsman and Legal Affairs, and therefore regularly fields calls when the other two lines are closed.



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## 5 – OMBUDSMAN'S REPORT

### A - Ombudsman's department

#### 1 > Aims

Pursuant to Article L. 621-19 of the Monetary and Financial Code: "The authority is authorised to receive claims relating to matters within its jurisdiction from any interested party and to deal with them appropriately. When necessary, it proposes amicable resolution of the disputes brought to its attention, via conciliation or mediation.

The submission of a dispute to the Autorité des marchés financiers (AMF) to find an out-of-court settlement implies the suspension of the statute of limitations for civil and administrative proceedings. The statute starts to run again when the AMF declares the mediation to be terminated. The AMF cooperates with foreign authorities in the resolution of cross-border disputes."

The Ombudsman's activity is carried out in the broader context of Europe, based on Commission Recommendation 98/257/EC of 30 March 1998 on the principles applicable to the bodies responsible for out-of-court settlement of disputes.

Those principles are independence, transparency, effectiveness (the procedure must be easily accessible, free and quick), legality and liberty (both parties must accept the procedure). Also, the procedure must be adversarial.

A Europe-wide network for out-of-court settlement of consumer disputes was created through a European Council Resolution on 25 May 2000. Under this mechanism, the Commission is informed of all national bodies responsible for out-of-court settlement and mediation that comply with the principles of the 1998 and 2001 Recommendations (on out-of-court bodies involved in the consensual resolution of consumer disputes not covered by the 1998 Recommendation). These bodies can then become full members of the European Consumer Centres Network (ECC-Net).

Alongside ECC-Net, the European Commission set up the Financial Dispute Resolution Network (FIN-NET) in February 2001 as part of the Financial Services Action Plan (FSAP). The AMF Ombudsman is a member of FIN-NET.

Through its activities, the Ombudsman's department helps the AMF to keep a watchful eye on financial markets and to protect public savings and investment effectively.

The department analyses complaints and mediation requests, striving at all times to provide swift, reliable answers.

When reviewing investor complaints, most of which come from non-professionals, against investment services providers (ISPs) or issuers, the department weighs up the interests of both parties through an objective, adversarial analysis of all factual and legal aspects.

The Ombudsman's department also takes part in the AMF's education and training activities, contributing to its image and its policy of communicating with the public and professionals.

#### 2 > Organisation

The department has two main roles: consultation and mediation.

- In its consultation role, the department provides retail investors with answers to technical inquiries relating to all aspects of the AMF's activities;
- Requests for mediation come from clients and ISPs/issuers looking for an amicable way to settle a dispute.

In addition, a telephone helpline is open on Tuesday and Thursday afternoons to field urgent queries and answer questions about ongoing cases.

Some matters are outside the AMF's jurisdiction as well as the Ombudsman's scope of activity.

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These include queries relating to life insurance contracts, including unit-linked policies. These policies are regulated by insurance legislation, and the AMF has no power to enforce legal compliance or punish infringements. Although the specialised regulators may share related concerns, for example about providing investors with information on the funds underlying insurance investments or about transparent fee structures, this has nothing to do with the way their powers are apportioned.

However, the public may be confused about the way these powers are shared. For example, some investors submitted cases that were framed as complaints about the marketing of unit-linked insurance policies, but that were actually questions about how products worked or were managed. In such cases, the Ombudsman's department queries the management company in question.

Questions relating purely to banking, such as practical issues concerning deposit accounts, savings passbooks, term deposits or lending, as well as questions relating to the enforcement and interpretation of tax legislation, also fall outside the AMF's scope of activity.

If the department is not competent to deal with a request, it steers complainants toward the organisations that may be able to answer their queries or intervene. It sometimes forwards files directly to save time or transportation costs in the case of very large files.

Most referrals originate from mainland France and its overseas territories. However, in 2008 there was an increase in referrals from outside the country, mainly owing to FIN-NET's increased role in dealing with cross-border financial disputes.

Applications are submitted by post, fax or, following their introduction in spring 2008, online forms.

### Origin of cases received in 2008



Source AMF

## B – 2008 in figures

### 1 > New inquiries and mediation requests

A total of 2,307 cases were received in 2008, comprising 1,502 inquiries and 805 requests for mediation.

The annual caseload was therefore up 7% at 31 December 2008 compared with the previous year, when 2,155 cases were received (1,449 inquiries and 706 mediation requests).

These figures do not take account of the backlog in registering cases that resulted from the increased workload. This will be reflected in the 2009 figures.

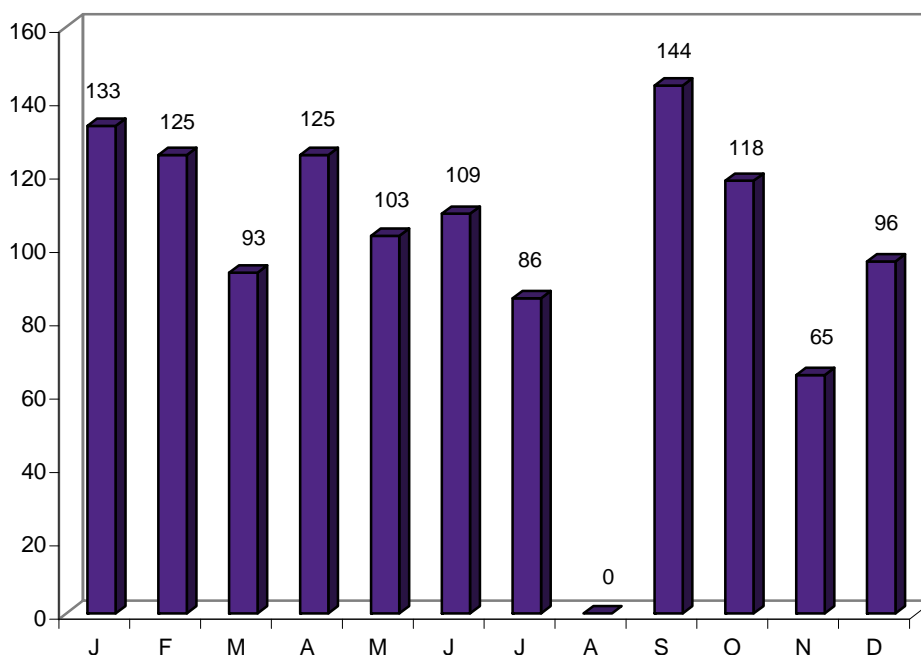
The breakdown between the two categories was slightly changed from 2007, with inquiries making up 65% of the total caseload and mediations 35%, after 67% and 33% respectively in 2007.

These figures testify to the success of the mediation process. They also reflect the confidence of individual investors in the AMF's ability to address their inquiries, as well as growing public awareness about the AMF's role in this area.

The helpline took 1,197 calls, up from 1,143 in 2007.

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## Telephone inquiries between 1 January and 31 December 2008



Source: AMF

## 2 > Inquiries and mediation cases handled

### a) Inquiries handled

As at 31 December 2008	
No. of inquiries handled	1473
> o/w inquiries received within the month	78%
> o/w inquiries received more than one month earlier	22%

Source: AMF

Between 1 January and 31 December 2008, 1,473 inquiries were answered, compared with 1,268 in 2007.

A query is closed once the initial question and any subsequent questions or clarification requests have been answered.

Naturally enough, inquiries reflect market developments and changes to the laws and regulations, and are becoming increasingly complex. Also, applicants are becoming more demanding. Although work remains to be done in terms of financial literacy, investors are certainly becoming better acquainted with the workings of financial markets.

In 2008, 78% of inquiries were closed within one month, ensuring that applicants received timely responses to their queries, many of which were of an urgent nature.

As regards the quality of the responses provided, it is gratifying to note that, although inquiries dealt with complex and wide-ranging issues, none of the AMF's response letters, which spanned all areas under its purview, from corporate actions to listing and marketing issues, was challenged, either by the recipients themselves or by third parties in subsequent legal proceedings.

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## b) Mediation cases handled

As at 31 December 2008	
Number of mediation cases closed	739
> o/w cases less than six months old	70%
> o /w cases more than six months old	30%

Source: AMF

In all, 739 mediation cases were closed between 1 January and 31 December 2008, compared with 493 in 2007.

A full 70% of these cases were closed within six months.

This six-month period begins when the Ombudsman receives the initial letter of complaint, which is never enough on its own to initiate the actual mediation procedure. When acknowledging the letter, the Ombudsman always asks applicants for additional documents and clarifications, and sends them the Mediation Charter, which explains how their case will be examined.

Cases still open after six months involve files that are more complex or that involve multiple participants, such as an account keeper and an asset management company, or an issuer and a financial intermediary. Mediation meetings with the main parties are often necessary in such situations, which means the case stays open for longer.

Sometimes, the information or documentation requested is hard to obtain for some reason – for example, the events in question occurred a long time ago or the service provider has changed in the meantime.

Of the 739 mediation cases closed in 2008, agreements were reached in 64% of the cases that were considered on their merits.

The success rate for mediation cases is calculated using this base, which in 2008 comprised 556 cases out of the total number of mediation cases closed.

The remainder includes cases whose review was not completed because the complainant abandoned the procedure. Both parties must accept the mediation procedure, and withdrawal is possible at any time.

Out-of-court settlements may take the form of a rectification (i.e. the contested transaction is cancelled), total or partial compensation for loss, or a conciliatory gesture towards the customer.

Regarding cases involving an adversarial process overseen by the Ombudsman, it is especially gratifying to note that more than half of those dealt with in 2008 resulted in an out-of-court settlement. The success rate was therefore maintained at the 2007 level, even though the number of cases handled rose sharply.

Admittedly, "success" is a qualitative factor that should be seen in perspective, firstly because neither of the parties in a mediation procedure can be forced into an agreement and secondly because agreeing to an Ombudsman-led procedure can help improve relations between complainant and respondent, even if no formal agreement is reached. Even so, the success rate shows that the mediation approach is effective.

Furthermore, as in 2007, no mediation case was closed because a respondent to a complaint failed to answer the Ombudsman's request for explanations. This goes to show that the industry has embraced this alternative dispute resolution process and considers it to have a positive effect.

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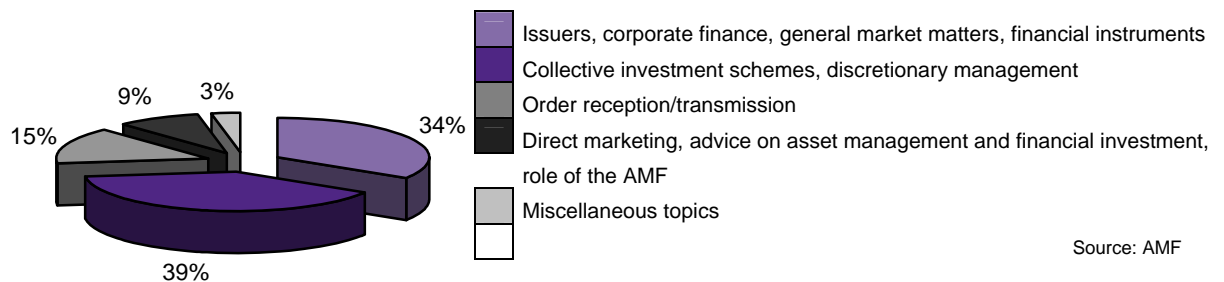
## C - Cases dealt with by the Ombudsman

The caseload is broken down into ten broad subject areas in the department's database:

- collective investment schemes
- discretionary management
- order transmission/execution
- custody account keeping
- issuers and corporate finance
- general market matters
- financial instruments (other than collective schemes)
- direct marketing, advice on asset management and financial investment
- role of the AMF
- miscellaneous topics

### 1 > Inquiries and mediation requests by subject area

1 January to 31 December 2008



The data for 2008 show how the crisis impacted the department's activity and the type of requests submitted by investors to the Ombudsman.

With the onset of the US mortgage crisis and the resulting collapse in the value of assets backed by these loans, from summer 2007 onwards, investors called and wrote to the Ombudsman's department with questions about "enhanced cash" funds that were potentially invested in securities backed by subprime loans.

Problems affecting the banking industry in autumn 2008 added a host of new questions to the concerns created by the first liquidity crisis. At the end of the year, many inquiries in connection with the Madoff affair were received.

The rise in the number of inquiries shows that savers are looking to the regulator to help them understand the crisis.

The main issues raised included the following:

> investors wanted to know how their savings would be protected in the event of a bank failure. They were told about the deposit and securities guarantee funds, which cover deposits and financial instruments respectively, up to a maximum of €70,000 per person and per institution.

> the decline in the net asset values of certain funds prompted investors to ask questions about the make-up of their assets. They wanted to know what proportion of toxic assets their portfolios contained and whether these assets were acquired before or after the crisis, since some institutions were suspected of selling toxic assets to funds managed by their subsidiaries.

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> investors also asked what would happen to managed portfolios if the management company ran into difficulties. They were reminded about capital requirements and told that protective measures would be activated if authorisation was revoked owing to deficiencies on this score. In such circumstances, the AMF informs the public through the media about the timetable and conditions of the revocation. The company is placed under the control of an AMF-appointed administrator and may carry out only such operations as are strictly necessary to safeguard clients' interests. In the case of common funds (*fonds communs de placement*), the AMF asks the depositary to appoint a different manager.

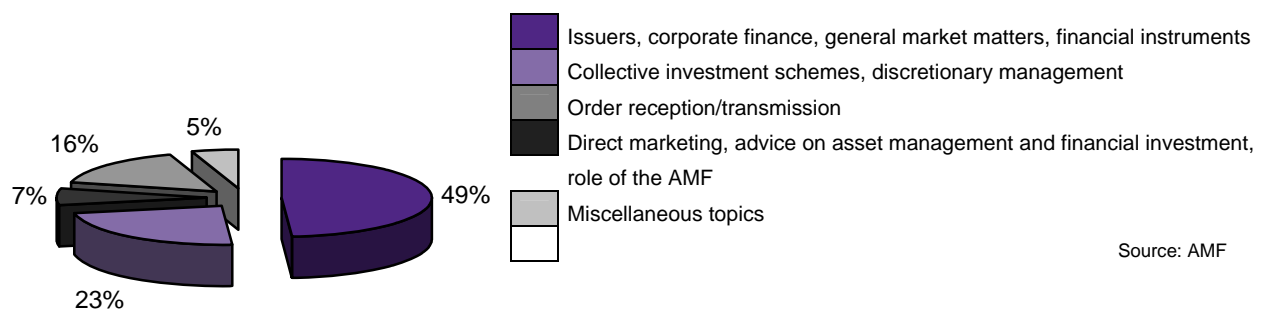
> the steep decline in some share prices, particularly in the financial sector, and the high volatility of derivative products gave rise to numerous questions and reports of anomalies.

> investors played an active part in the short selling debate. Many letters were received about the measures taken by the AMF in September 2008 to ban "naked" sales and impose transparency obligations for short positions on financial stocks. Investors were told that these moves, which were consistent with those taken by the UK and US authorities, were intended to provide, in an exceptional manner and amid turbulent market conditions, a framework for the short-selling of financial stocks traded on the French market.

The Ombudsman's department helped to prevent investor panic by tackling these questions as they came in and explaining the responsibilities of different market participants. A mediation procedure was instigated if the request showed that the investor had received insufficient information or advice before investing in a financial product whose value was severely impacted by the financial crisis.

## 2 > Inquiries by subject area

### 1 January to 30 December 2008



Inquiries covered a range of topics, including the following:

#### a) Corporate finance and market anomalies

Corporate finance transactions always elicit numerous requests for explanations, particularly concerning price setting methods and the scope of AMF approvals.

The financial crisis caused a decline in corporate finance transactions in 2008. Accordingly, the Ombudsman's department saw a steep drop in inquiries on this issue.

Even so, the department dealt with a number of cases and questions about older transactions, such as ongoing developments surrounding the Eurotunnel offer of exchange.

In 2007, the department received some 300 requests concerning the Eurotunnel offer of exchange. In 2008, it received a number of inquiries chiefly concerning transactions by Groupe Eurotunnel SA, consisting of the early redemption of bonds redeemable in shares issued as part of the rescue plan reorganisation measures, the issue

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of subordinated notes redeemable in shares, and the capital increase through the free allocation of equity warrants.

The department also received a few requests concerning the delisting of TNU (formerly Eurotunnel) units and their transfer to the delisted securities compartment.

#### > Capital increases

Investors regularly have questions about capital increases. These often deal with the timetable and implementation procedures, in particular what happens to pre-emptive subscription rights that are not exercised by holders.

The department has in the past received queries about the fact that some financial intermediaries sell unexercised rights if they fail to receive a timely response from the holder. This practice, which is designed to prevent the holder from sustaining a loss, is possible when the arrangements for these so-called "protective clauses" are stipulated in the corporate action notice and provided shareholders are informed of them sufficiently far in advance.

In the case of the Natixis capital increase, for example, in addition to the information provided in the corporate action notice issued by the custody account keeper, the securities note approved by the AMF on 3 September 2008 contained detailed provisions concerning the automatic sale of rights, which stipulated the following: "On the final day of the subscription period, namely 18 September 2008, the Banques Populaires and Caisses d'Epargne bank networks will automatically sell the pre-emptive subscription rights of customers who have not made their intentions known. Such a course of action is designed to protect customers' interests and might be taken by other bank networks. Such sales are likely to impact the price of pre-emptive rights. Other bank networks that do not take such action effectively leave customers' unexercised pre-emptive rights to lapse at the end of the subscription period".

Even in this case, the Ombudsman's department had to draw investors' attention to the procedures of the protective clause. Also, some people who had acquired pre-emptive rights on the market had to be told that their account keeper would not automatically sell their rights unless they had been shareholders before the transaction was launched.

#### > Further developments in US action

Vivendi and two of its senior managers agreed to settle a US court action by paying civil penalties and compensation in the total amount of approximately USD 51 million to injured investors. On 7 June 2005, a distribution agent was appointed by the US courts to prepare and implement a plan for distributing the funds to eligible investors. Since information about US compensation was reported in the French media, the Ombudsman's department received numerous requests from shareholders wishing to know what steps to take to be compensated. The department provided them with the distribution agent's contact details and has heard no word since that time.

> As in previous years, many investors asked the Ombudsman to investigate what they believed to be market anomalies, sometimes claiming price manipulation or insider trading.

Correspondence of this kind is passed on to the AMF's specialised departments when it contains information requiring further investigation.

In 2008, the Investigations and Market Surveillance Division thus received 105 complaints from retail investors about allegedly suspicious transactions, along with requests for investigations or appraisals of unusual price movements.

Many complaints and requests for investigations about unusual price movements concerned stocks traded on the *Marché Libre*. The investors who submitted these requests were reminded that since the *Marché Libre* is not a regulated market within the meaning of Article L. 421-1 of the Monetary and Financial Code, it is not subject to the provisions in the AMF General Regulation on price manipulation and insider trading. Only the regulations concerning the dissemination of false information apply to this market.

### **b) Malpractice reports**

Sometimes investors report suspect direct marketing or investment services practices. This may be because they have been a victim of such practices, because they want additional information before subscribing, or because they want to warn the AMF.

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Following reports of malpractice received by the Ombudsman, four news releases were published in 2008 on the AMF website and repeated in the press in order to warn the public. Such reports are dealt with using a rationalised procedure that ensures a meticulous examination of the reported facts and respects the rights of defence of the persons or entities referred to in the report.

In the continuation of a trend observed in 2007, there was a significant increase in the number of requests from investors wishing to know whether persons or companies who contacted them were properly authorised to do so or whether the products offered to them were authorised to be marketed in France.

In such circumstances, whether talking to people over the phone or dealing with inquiries, the Ombudsman's department always urges investors to be extremely cautious when considering seemingly low-risk high-return investment proposals, particularly in the case of online solicitation.

### **c) Market making for warrants, certificates and exchange traded funds (ETFs)**

As in previous years, many investors complained about market making for warrants and certificates. There were also more questions about ETFs, which are also known as trackers.

In responding to these queries, the Ombudsman's department often has to remind investors how these products work, telling them about knock out options, valuation issues, and so on. It also points out that Euronext Paris has signed a liquidity provision agreement with a market member.

Investors are also reminded that the commitments of liquidity providers vary depending on quotation groups and the specifics of each individual instrument.

They are informed that the warrant or certificate prospectus usually contains the main points of the liquidity provision agreement, particularly the clauses dealing with situations in which the provider is authorised to temporarily suspend publication of its spread. Such circumstances may arise if the provider no longer has enough securities to meet demand or if it is no longer in a position to reliably value securities, for example if trading in the underlying is halted. Investors wishing more information are generally told to contact the relevant liquidity provider.

In this regard, it is gratifying to note that NYSE Euronext is adding new features to its European warrant and certificate market to enhance transparency and efficiency. Measures include a guarantee to investors that orders will be executed at the best available price, indicators showing the average length of time spent by issuers in the order book, and information about volumes and average spreads on this market, which lists around 10,000 derivative products.

### **d) Trading halts**

Under Article 4404/2 of Book I of the Euronext Rules, the market undertaking may suspend trading in any security in order to prevent or halt disorderly market conditions, either on its own initiative or at the reasoned request of the relevant issuer. It may also suspend trading at the request of a competent authority. These trading halts are published in a Euronext Paris market notice, which describes the origin of and reasons for the halt, the date it takes effect and the conditions in which trading may resume. Failing this, it stipulates that trading has been suspended until further notice. There is no maximum time limit for trading halts.

Many retail investors complained that they had received no information following a trading halt or suspension. This is the case when trading is suspended pending a press release from the issuer or when news of court-ordered reorganisation or winding-up proceedings is released belatedly.

Difficulties in this area are exacerbated if the shares are delisted from Euronext Paris's Eurolist but the company is not removed from the Trade and Companies Register. In such cases the holdings cannot be deleted from customer accounts and customers have to pay custody fees to their custodians.

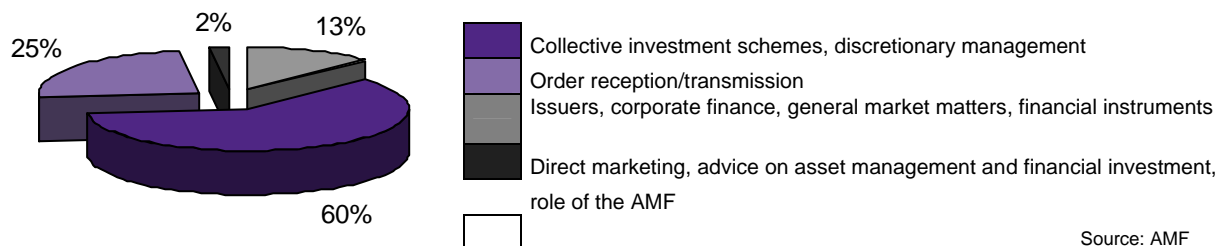
In responding to retail investors, the Ombudsman's department reiterated the current regulations and, in situations where a court had ordered the company to be reorganised or wound up, provided the necessary information, when available, on contact details for the liquidator who would be able to supply investors with comprehensive information about how matters would proceed.



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### 3 > Mediation cases by subject area

1 January to 30 December 2008



#### a) Marketing of financial products

In 2008, the Ombudsman's department once again received numerous complaints about the marketing of collective investment schemes (CIS) and particularly structured funds, chiefly by bank networks.

> All too often, subscribers once again complained that they had invested in CISs without receiving a simplified prospectus or being warned of the risks associated with the investment. Complainants said that they were unable to take properly informed investment decisions and often followed their advisor's recommendations.

Cases involving structured funds were especially striking as they revealed that subscribers were unaware of the specific characteristics of these products. Many investors discovered at maturity that this type of fund offered only the capital guarantee, besides entry fees, and that additional returns over and above the guarantee are based on the performance of one or more indices or of a basket of shares. The guarantee, coupled with an attractive name suggesting that the product would earn large returns or was certain to be successful, plus the recommended investment horizon led investors in structured funds to think that they were assured of making gains at maturity.

In spring 2008, the media reported complaints by clients of a bank involving structured-fund investments, most of which dated to 2001 and 2002. The Ombudsman's department started receiving inquiries and mediation requests concerning these funds in April 2006, with investors complaining about unfair marketing by overly bullish advisors who backed up their recommendations with misleading advertising literature. Some complaints also focussed on the workings of these products, especially the selection and management of securities in the basket.

Adding to the ongoing inflow of individual complaints, the department also received correspondence at the end of July 2008 amalgamating numerous individual claims and asking for help in obtaining compensation for injured investors, preferably through an amicable procedure. The department received over 300 requests for mediation in this context, some of which are still being dealt with, meaning that it is too early to draw any conclusions on this matter.

However, the institution in question cooperated fully, showing that the industry is aware of the advantages of a confidential amicable procedure.

As regards the marketing of financial products, it is worth noting the analysis of ISP disclosure obligations adopted by the commercial division of the Court of Cassation in a ruling dated 24 June 2008, insofar as this reading could have a major influence on the outcome of current or future legal proceedings and on industry practice.

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In the ruling, the Court of Cassation said that, by virtue of Article 1147 of the Civil Code and Article 33(2) of COB Regulation 89-02 amended by Regulation 98-04, "advertising by anyone proposing a common fund investment to a client must be consistent with the proposed investment and should mention, as appropriate, the least favourable characteristics and risks inherent in options that may accompany the described benefits; where advertising does not meet these requirements, the professional shall not be considered to have satisfied his disclosure obligation if he provides a copy of the notice approved by the Commission des opérations de bourse."

The Court of Cassation has thus made it clear that advertising must be consistent with the proposed investment and forms part of the information that must be provided to investors, just like the prospectus.

> Mediation requests concerning enhanced cash funds.

A bank client wishing to make a short-term risk-free investment placed money in a fund that was described as 90% invested in an extremely safe enhanced cash fund, with the remainder being placed in an absolute return hedge fund. The client was told that, thanks to the risk monitoring model, risks would be kept under control and maximum losses would not exceed 2.5%. Won over by this attractive description, the client invested a sizeable proportion of his assets in this fund. When the value of the investment plunged, he contacted the Ombudsman's department. After a review of the case based on the duty to provide information and advice at the marketing stage, the institution said that it would sign an agreement to compensate the client.

Within the framework of its cash management activities, a company manager suffered substantial capital losses after investing around €1 million in CISs based on a bespoke document that portrayed the funds in a highly favourable light. While the bank pointed out that the investor was financially literate and familiar with market mechanisms, it acknowledged that the document that served as the basis for the investment referred to past performance and emphasised the notion of returns with low capital risk. It further acknowledged that this representation did not reflect the product's true situation and paid compensation.

In a similar case, based on marketing documentation that described a CIS in a flattering light, a bank client, acting on the recommendation of his advisor, invested in the fund, believing that he was making a safe investment, as the name of the product suggested. Having sustained financial losses, the client turned to the Ombudsman's department. When questioned about the content of the marketing document, which spoke of "a low-risk approach targeting high returns relative to the money market" but failed to mention the risks linked to the fund's exposure to the performance of a basket of enhanced cash funds, the bank ultimately agreed to cancel the investment.

> The department was contacted in connection with disputes involving investment restrictions for certain funds.

The department was contacted by unitholders of leveraged funds with streamlined investment rules, who wanted to know whether their intermediary was entitled to ask them to redeem their units because they did not meet the eligibility criteria, or to redeem them automatically if they did not redeem the units of their own volition.

These requests highlight the risks of inappropriate marketing of funds with streamlined investment rules. In this instance, it appears that the intermediary, after failing to verify whether investors were eligible to invest in these products during the subscription period, then redeemed units held by unitholders without checking to see if they were eligible.

Investors who lodged complaints either remained invested in the fund if they met the eligibility criteria, or were reimbursed for any capital losses, entry fees and, where applicable, any excess income tax payments.

To prevent such problems from occurring again, appropriate procedures need to be in place when marketing funds that are reserved for certain types of investors.

> The Ombudsman's department was contacted with requests concerning investments in redeemable subordinated notes.

One couple in their eighties followed the recommendations of their bank, which had contacted them at home, and invested in redeemable subordinated notes with a 12-year maturity, thinking that their capital was protected and could be accessed at any time without penalty. They said that they received no information about the specific details of the investment, particularly concerning the risks of capital loss in the event of early redemption.

On discovering the exact nature of their investment, they asked for the principal to be refunded, which their bank refused to do.

Following the mediation procedure, the complainants secured the sale of all the notes and were reimbursed for the capital losses incurred as a result.

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In another case, an investor acting on the recommendations of his financial advisor invested €44,000 in redeemable subordinated notes with a 12-year maturity on behalf of the real estate company that he managed, thinking he would be able to access this money at any time.

It was only a few years later that the investor, seeking to acquire some property in the course of his company's business, was informed of the duration of the investment and told about the risks of capital loss in the event of early redemption. The person in question then asked unsuccessfully for the investment to be cancelled. Following the mediation procedure, an agreement was signed in which the bank paid the total capital loss of €7,100 incurred when the notes were sold.

> The Ombudsman's department is sometimes contacted in connection with new share placements

The client of one bank invested in newly listed shares. Her goals were to top up her pension and pay for work to her co-owned property. Far from earning capital gains as her financial advisor had hinted, she sustained heavy losses. She referred her case to the Ombudsman's department, hoping to obtain compensation for a failure to provide information and advice, claiming she had not been given clear, comprehensive and appropriate information about the shares' characteristics and, more specifically, about the risks involved in equity investing. For the sake of maintaining a cordial business relationship, the bank agreed to pay back half the client's capital outlay, without admitting to any fault.

## **b) Terms and conditions for redemption of units in venture capital funds**

In 2008, as in previous years, the Ombudsman's department received complaints that revealed a lack of understanding about the conditions applicable to the redemption of units in venture capital funds, especially innovation funds.

If an investor were to read only the subscription form, he might think that his assets would be tied up for a maximum of five years. But contractual provisions set out in the fund's information circular and rules may stipulate a longer lock-up. Cases received by the department show that marketers do not always draw attention to the real lock-up period.

Accordingly, investors must be reminded to read both the subscription form, which indicates the requirement to hold units for five years to be eligible for favourable tax treatment, and the provisions governing redemption, which are set out in the fund's information circular and rules.

Other complaints received in 2008 highlighted a discrepancy between the information provided in contractual documents, i.e. the information circular and rules, and the procedures implemented during the execution of redemption orders.

It is crucial for the investor to know the date and, where applicable, the time at which redemption requests will be collected, the net asset value that will be used as a base for executing requests, and the maximum time between execution and the transfer of the sale's proceeds to the customer's account.

If this information is not clearly provided in the contractual documentation, the customer should write to the management company for clarification before issuing redemption instructions.

## **c) Discretionary management**

As in past years, the Ombudsman's department received requests for mediation in the area of discretionary management, which exposed situations where ISPs had provided inadequate information and advice at any time during the contractual relationship. There are few amicable settlements in this area, because managers are subject to a best-efforts requirement rather than an absolute obligation, and poor returns alone do not constitute mismanagement.

Some requests concerned management fees. Many investors asked about performance fees. Feeling that such commissions should not be paid in the event of losses, they wrote to the Ombudsman, asking for these fees to be reimbursed.

The Ombudsman's department reminded them that, as the regulations stand, the remuneration paid to the management company may include a variable portion linked to outperformance by the managed portfolio, also called a performance fee.

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They were also reminded that the management agreement should contain information about variable management fees and might stipulate that the variable portion was payable on every euro earned, as determined relative to the management objective.

A few requests concerned the obligations of ISPs offering advisory or assisted portfolio services.

This type of service is actually a straightforward order reception/transmission service in which the holder of the portfolio retains full control over investments while receiving regular advice on markets and financial instruments.

In this regard, the terms used in the agreement should be clarified when the document is signed to prevent any ambiguity.

## D – Recent developments in mediation

### 1 > At European level

The Financial Dispute Resolution Network, or FIN-NET<sup>1</sup>, aims to assist consumers in finding quick, simple and inexpensive solutions – avoiding legal action where possible – to disputes with financial services providers such as banks, insurance companies and investment firms based in a Member State other than their home state.

At present the network has 50 members. Most are either ombudsmen or heads of "dispute commissions" or "consumer arbitration panels", depending on the country. Members are linked by a memorandum of understanding (MOU) that sets out the procedures for cross-border cooperation and states the basic principles for out-of-court settlement, which are defined in Commission Recommendation 98/257/EC of 30 March 1998.

In December 2008, the AMF Ombudsman was appointed to the FIN-NET steering committee.

The network meets regularly, following an agenda that is chiefly given over to legal developments in European financial services, the development of out-of-court systems of redress, cooperation by members and new, complex or recurring disputes. FIN-NET members are also consulted individually by the European Commission when it carries out studies.

In 2008, FIN-NET members worked hard to raise awareness among Member States about the need to create and promote alternative dispute resolution systems in all financial sectors. The goal is to provide investors with a way to reach amicable solutions in national and cross-border disputes that would not usually reach the courts because of the time and expense involved.

FIN-NET also looked at how members deal with mediation requests for which they do not have territorial jurisdiction. Out-of-court dispute settlement organisations cover providers of financial services that operate within and from the country in which the organisation is based.

When a request is submitted over which they do not have jurisdiction, some FIN-NET members, including the AMF Ombudsman, tell the complainant to contact the competent body directly, providing full information about the organisation and, if necessary, its procedures. Some members even help the applicant to translate the complaint, if he or she is unable to formulate the request in the appropriate language or in English. The goal of FIN-NET is to ensure that complainants would at least be able to express their complaints in the language of the agreement or the language in which they customarily deal with the financial services provider. Many members do however allow other languages to be used.

FIN-NET members were also asked to provide comments on the European Commission's draft consultation on alternative dispute resolution systems. They thus got the opportunity to adjust and clarify some of the questions included in the consultation before the document was released.

They considered the impact of the financial crisis on their activity. All of them received many questions concerning loans, deposit guarantee funds and large bank failures. In their view, investors had not panicked and seemed reassured by the presence of the guarantee funds and the fact that several countries had increased the maximum amount covered to €100,000.

They responded to numerous studies and consultations, including:

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<sup>1</sup> The website of the European Commission provides more information about FIN-NET and member systems: [http://ec.europa.eu/internal\\_market/finservices-retail/finnet/index\\_en.htm](http://ec.europa.eu/internal_market/finservices-retail/finnet/index_en.htm)

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- > a study on European consumer assistance networks,
- > a study on the impact on the conclusion of cross-border financial service contracts between professionals and consumers of Directive 2002/65 concerning the distance marketing of consumer financial services
- > a consultation document on developing a harmonised methodology for classifying and reporting consumer complaints across the European Union,
- > a consultation on alternative dispute resolution in financial services.

## 2 > At domestic level

### a) Ongoing work within the Club of Public Service Ombudsmen

The AMF Ombudsman has been part of the Club of Public Service Ombudsmen since February 2007.

Set up in April 2002, this informal group is designed to provide a forum for sharing ideas about practices, fostering debate and proposals, and promoting mediation in France as well as at European level, since some of the members also belong to FIN-NET.

On 20 October 2008, the club organised a meeting at the French Finance Ministry to consider the challenges and prospects created by the European Directive of 21 May 2008 on mediation in civil and commercial matters. The event was attended by players from the world of mediation and included participants from the courts and from public and private organisations.

The club has undertaken a series of initiatives that seek to build on the work done during the negotiation stage to ensure that the new directive is appropriately transposed.

### b) Promoting awareness about the AMF Ombudsman

One of the objectives of the Better Regulation approach is to raise awareness about the AMF Ombudsman.

The aim is to ensure that all investors enjoy the same protection and to provide them and professionals with a way to find an amicable solution to their disputes.

In 2008, various measures were taken to tell professionals and the public about the Ombudsman:

- > meetings were held to present the activities of the Ombudsman to the French Asset Management Association (AFG), whose members were given the opportunity to learn about the mediation process and the types of issues tackled by the department.
- > in addition to these meetings with industry, the Ombudsman's department is in regular contact with talking partners at financial institutions, including investment services compliance officers, compliance and internal control officers and customer managers. These exchanges are an opportunity to talk about individual cases affecting institutions, but also set the stage for constructive discussions on recurring issues, regulatory reforms and possible avenues for improvement.
- > the department continued its cooperation with the Financial Sector Consultative Committee as part of efforts to prepare an opinion on the marketing of financial products.
- > the Ombudsman took part in discussions organised by the working group set up by the French employers' federation, MEDEF, on alternative approaches to settling consumer disputes.
- > the Ombudsman answered investor questions live online, was interviewed on radio and spoke about the procedures, objectives and results of her work on investor protection in a host of articles in the business press.

Three online complaint forms were introduced on 16 April 2008 to make it easier to submit complaints and to speed up processing. The forms, which have proved successful, cover mediation, inquiries, and provision of information.

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### 3 > Outlook

Act 2008-3 of 3 January 2008 on promoting competition for the benefit of consumers extended the scope of banking mediation to savings products in 2008. This did not lead to a decline in requests sent to the AMF Ombudsman, nor did it affect the outstanding coordination between the parties that play a role in this area. Every effort must be made to ensure that coordination is maintained at this high level.

It is vital to make investors more aware of all their out-of-court settlement options. For this, efforts must be continued to promote mediation. While the Banking Mediation Committee told credit institutions about the reform, the message needs to be conveyed to other investment participants and should include information about the AMF's role in mediation.

This will ensure that all investors receive comprehensive information. Arrangements for these disclosures should be written into account agreements and should also appear in transaction slips and statements.

Transposition of the Directive on mediation in civil and commercial matters will surely help in promoting mediation. The provisions of the new legislation apply to cross-border disputes, but Member States may also apply them to "internal mediation processes".

The Ombudsman will also monitor action taken by the public authorities on the proposal by the working group on the decriminalisation of business law to develop alternative dispute resolution mechanisms in business and finance.

Furthermore, on the question of the marketing of financial products, the AMF Ombudsman's department will pay close attention to the choices that come out of the Report by the Taskforce on the Organisation and Operation of Oversight for Financial Activities in France, which was prepared by Mr Deletré in January 2009.

The report points out that "the AMF is the only one of the three supervisory authorities to have created an Ombudsman's department". It reviews the department's legal underpinnings and the latest figures on its activity. The report also states that if the scope of the AMF's activities were to be changed, thought should also be given to the jurisdiction of its Ombudsman's department.