AUTORITÉ
DES MARCHÉS FINANCIERS

AMF

2007 Ombudsman's Report

CONTENTS*

* Important: The following English text is a translation of extracts from the French version of the 2007 annual Report. Only the original French text has any legal value. The AMF expressly disclaims all liability for any inaccuracies in the translation.

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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.

It may formulate proposed amendments to the laws and regulations concerning disclosures to holders of financial instruments and the public, the status of investment services providers, and financial instruments markets."

Article L. 621-19 has been supplemented by Executive Order 2007-544 of 12 April 2007 transposing the Markets in Financial Instruments Directive (MiFID). The law now states that "The submission of a dispute to the Autorité des marchés financiers 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 Autorité des marchés financiers declares the mediation to be terminated" and that "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 adversial.

A Europe-wide network for out-of-court settlement of 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 Consumers Centres Network (ECC-Net).

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

Within this framework, 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 endeavours to analyse queries and mediation requests in an appropriate fashion and to supply reliable answers as quickly as possible.

When scrutinising 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, adversial 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 investors.

A - Ombudsman's Department

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 arise out of attempts to reach an out-of-court settlement by both parties in a dispute between a client/shareholder and an ISP/issuer.

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

Some matters are outside the AMF's jurisdiction, such as 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 about 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, one investor submitted a mediation request that was framed as a complaint about the way a unit-linked insurance policy had been marketed, but that was actually about poor management. After numerous exchanges with the complainant, the Ombudsman's department queried the management company after first referring the case to the Autorité de Contrôle des Assurances et des Mutuelles/insurance control commission (ACAM).

Questions relating purely to banking, such as practical issues concerning current accounts or lending, also fall outside the AMF's jurisdiction, as do tax matters.

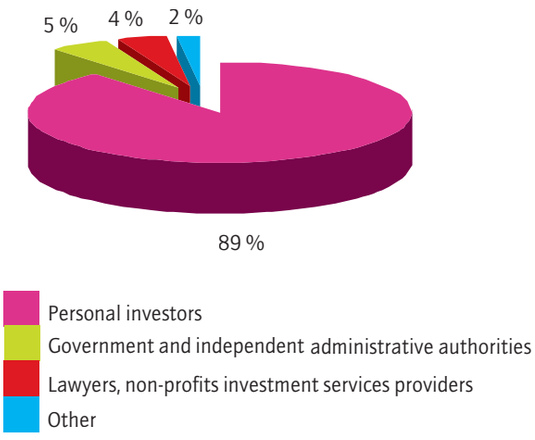
In this regard, 2007 saw an increase in queries about order processing relating to inheritances and about difficulties relating to asset management under guardianship arrangements.

If the department is not competent to deal with a request, it steers complainants toward the correspondents or agencies that can best answer their queries or intervene, and sometimes forwards cases directly to save time. Of all the referrals received in 2007, 189, or 8.7% of the total, were outside the AMF's jurisdiction.

Most referrals originate from mainland France and its overseas territories. However, in 2007 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, email or fax.

Origin of cases handled in 2007



Source: AMF

B - 2007 in figures

1 - New inquiries and mediation requests

A total of 2,155 cases were handled in 2007, comprising 1,449 inquiries and 706 requests for mediation.

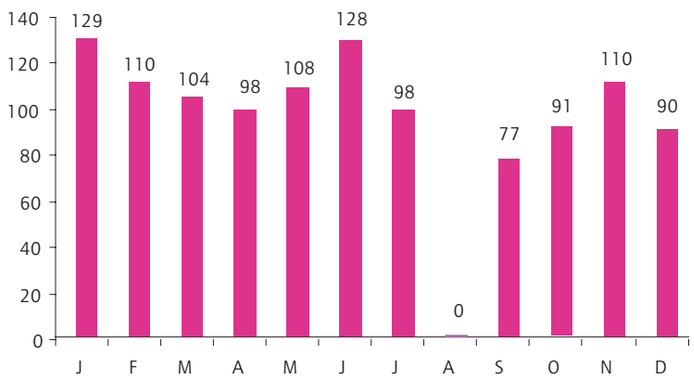
The annual caseload therefore increased compared with 2006, when a total 1,908 cases were handled (1,262 inquiries and 646 requests for mediation).

The breakdown between the two categories was more or less unchanged from 2006, with inquiries making up 67% of the total caseload and mediations 33%, after 66% and 34% respectively in 2006.

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.

The helpline took 1,143 calls, up from 1,105 in 2006.

Telephone inquiries between 1 January and 31 December 2007



Source: AMF

a) Inquiries handled

As at 31 December 2007	
No. of inquiries handled	1 268
o/w inquiries received within the month	88 %
o/w inquiries received more than one month earlier	12 %

Source: AMF

Between 1 January and 31 December 2007, 1,268 inquiries were answered.

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. Although work remains to be done in terms of financial literacy, investors are certainly becoming better acquainted with the workings of financial markets.

In 2007, 88% of inquiries were closed within one month.

Although the inquiries dealt with complex and wide-ranging issues, none of the AMF's response letters, which spanned all areas under its purview, was challenged, either by the applicants themselves or by third parties in subsequent legal proceedings.


Autorité des marchés financiers

B - 2007 in figures

b) Handling of mediation cases

As at 31 December 2007	
Number of mediation cases closed	493
o/w cases less than six months old	84 %
o/w cases more than six months old	16 %

Source: AMF

In all, 493 mediation cases were closed between 1 January and 31 December 2007, with a full 84% of these cases being closed within six months.

It must be stressed that 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.

The majority of cases still open after six months involve procedures that have been suspended to allow for an investigation.

They may also be cases involving 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 493 mediation cases closed in 2007, agreements were reached in 66% of the cases that were considered on their merits, i.e. that pertained to issues within the AMF's jurisdiction and were backed up by relevant supporting evidence.

Of the mediation cases handled in 2007, the AMF did not have jurisdiction in 16 cases, while in 46 instances, the complainant abandoned the procedure and the review was not completed.

The success rate for mediation cases is calculated by excluding this type of case.

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.

The mediation procedure must be accepted by both parties and, once under way, can be abandoned at any time.

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 2007 resulted in an out-of-court settlement.

The success rate in mediation cases was therefore maintained at 66%, the same as in 2006.

Furthermore, 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 mediation process is almost unanimously accepted by the industry.

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.

This is encouraging in view of the regulatory situation, and notably given the transposition of MiFID, which recommends more use of out-of-court settlements for financial disputes.

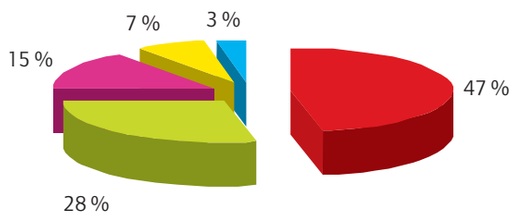
C - Cases dealt with by the Ombudsman

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
- general market matters
- financial instruments (other than collective schemes)
- direct marketing, advice on asset management and financial investment
- supervisory and regulatory agencies
- miscellaneous topics

Chart 1: Inquiries and mediation requests by subject area

1 January to 31 December 2007

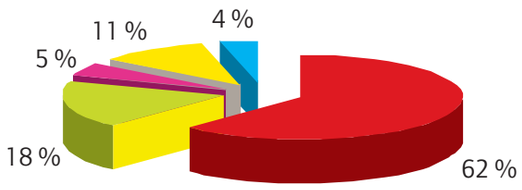


- Issuers + General market matters + Financial instruments
- Collective investment schemes and discretionary management
- Order reception/transmission
- Direct marketing, personal financial planning and investment advice, supervisory/regulatory agencies
- Other

Source: AMF

Chart 2: Inquiries by subject area

1 January to 31 December 2007



- Issuers + General market matters + Financial instruments
- Collective investment schemes and discretionary management
- Order reception/transmission
- Direct marketing, personal financial planning and investment advice, supervisory/regulatory agencies
- Other

Source: AMF

Inquiries covered a range of subjects, including the following:

a) Corporate financing and market anomalies

- Corporate financing transactions always elicit numerous requests for explanations, particularly concerning price setting methods and the scope of AMF approvals. Some transactions are extremely complex and thus hard to follow.

  This was true of the Eurotunnel offer of exchange, which was part of the rescue plan drawn up by the Paris Commercial Court on 15 January 2007. Under the terms of the offer, shareholders were entitled to receive one share and one GET SA warrant, issued subsequently, per unit tendered. However, the offer was subject to at least 60% of units being tendered (this was subsequently lowered to 50%).

  The Ombudsman answered around 300 inquiries. Among other things, it provided shareholders, mostly in the UK, with information about the fare discounts they would be entitled to if they took part in the offer of exchange.

  With the public offer underway, the Paris Commercial Court extended the deadline given to Eurotunnel SA to convene a general meeting of shareholders to rule on the accounts for the financial years ending 31 December 2005 and 31 December 2006. The new deadline was set at 15 June 2007. In view of the timing, some shareholders asked the AMF to intervene in order to put the exchange offer on the agenda of the general meeting. The Ombudsman had to inform them that such action was outside the AMF's purview.

C - Cases dealt with by the Ombudsman

As a reminder, in cases like this involving companies making public issues of securities, the AMF's role is not to comment on the merits of transactions referred to it, but rather to ensure that members of the public have access, through the documents made available to them, to clear and appropriate information so that they can make informed investment decisions.

As in 2006, many of the complaints concerned subscription rights.

ISPs and issuers were reminded that, under current regulations, care must be taken to ensure that shareholders are properly informed about how rights are exercised and what happens if they are not exercised. First, information on implementation of protective clauses must be given in account agreements and in each corporate action notice. Second, where a shorter subscription period has to be set, it must be the same for all account holders and must leave shareholders enough time to send instructions if they want to subscribe for new shares. Third, investors that acquire rights in the market after the exercise deadline set by the custodian will be sent a warning, either through the ISP's website or by the department responsible for order transmission/reception.

- 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.

  The internet generally, and particularly online broker forums, can be used to organise mass mailing campaigns in an effort to draw the Ombudsman's attention to a particular security.

  Correspondence of this kind is passed on to the AMF's specialised departments.

  In 2007, the Investigations and Market Surveillance Division thus received 117 complaints from retail investors about allegedly suspicious transactions, along with requests for investigations or appraisals of unusual price movements.

b) Malpractice reports

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

Following reports of malpractice received by the Ombudsman, four news releases were published in 2007 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.

c) Trading halts

Pursuant to 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.

As in 2006, 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. In situations where a court had ordered the company to be reorganised or wound up, and if the AMF had the necessary information, it provided investors with contact details for the liquidator who would be able to supply more comprehensive information.

Investors with tax-related questions are told to contact the Tax Legislation Directorate of the Ministry for the Economy, Industry and Employment.

d) Access to the Marché Libre and the Alternext private placement compartment

Many investors had queries about the procedures for accessing the Marché Libre. They complained to the Ombudsman that their intermediary had refused to let them buy certain stocks on the Marché Libre during initial public offerings or capital increases because the shares were reserved for qualified investors.

The Ombudsman's Department based its response on the rules for financial instruments traded on the private placement compartment of Alternext Paris. The Ombudsman was consulted on numerous occasions about these rules, which were clarified in an AMF news release on 15 October 2007.

The Ombudsman said that when an individual investor asked an intermediary to transmit an order for a stock in the private placement compartment of the Marché Libre, the intermediary was required to exercise the necessary due diligence to ascertain whether the investor had the experience and knowledge to be fully aware of the specific risks associated with the financial instrument in question, in accordance with Articles 314-43 *et seq.* of the AMF General Regulation. The Ombudsman also stressed that ISPs were prohibited from engaging in any solicitation concerning such stocks.

e) First questions arising in connection with MiFID application

In the final quarter of 2007, as MiFID began to be applied, the Ombudsman's Department started to receive inquiries from investors about the way their financial intermediary had interpreted the new rules introduced under MiFID.

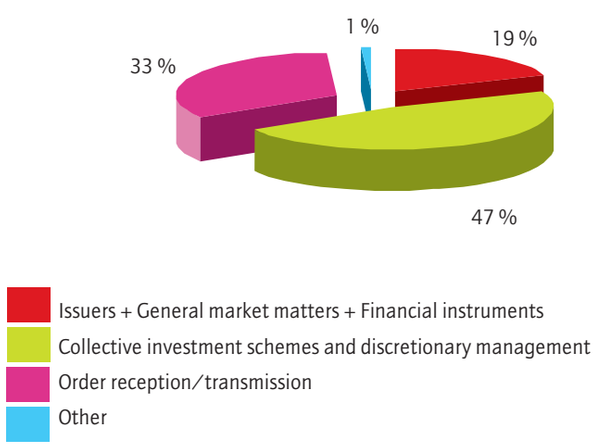
Many long-term customers had questions about the transmission by ISPs of changes to account agreements, pursuant to Article 314-58 of the AMF General Regulation.

Similarly, there were requests for clarification about the questionnaires used to assess customers' knowledge, experience, financial position and investment goals.

Explanations were also provided on the classification of customers into different categories and the effects of this classification on customer protection.

Chart 3: Mediation cases by subject area

1 January to 31 december 2007



Source: AMF

a) Mediation requests in relation to corporate actions

As well as submitting inquiries, some Eurotunnel shareholders also filed requests for mediation. These shareholders had instructed their intermediaries to tender their shares to the offer of exchange but had then sold the shares to take advantage of the rising price between 29 and 31 May 2007. Trading had been suspended from 22 to 29 May pending the results of the offer of exchange.

By selling their Eurotunnel shares, even though the tender order had become irrevocable - a point that the AMF was forced to reiterate in a news release on 30 May 2007 - customers found themselves with a debit balance on their share account.

When approached about this situation, the three banks named in the requests for mediation reacted differently:

- two felt that because tender orders were irrevocable, a fact that customers must have been aware of, those customers would have to rectify the situation by buying back shares on the market.

  The resulting trades were conducted at different prices and generated significant capital losses for some investors. Some goodwill gestures were made, however. For example, one customer who sold shares at the beginning of the trading session on 29 May, before the intermediary web-posted a message reiterating that tendered shares were unavailable, was compensated for the losses incurred.

- the third bank agreed to simply cancel the sales, meaning that there were no financial consequences and no tax impact, as applicable, for affected customers.

As well as highlighting the need to remind investors that tender orders are irrevocable once the offer period closes, no matter how the share price subsequently performs, these cases demonstrated the technical feasibility of such trades and the potential risks in the systems used by institutions that do not use a share blocking mechanism.

After reviewing the individual cases, the affected institutions told the Ombudsman that they were either taking steps to prevent customers from carrying out irregular sales or were strengthening their internal warning systems and enhancing customer information arrangements.

There were also many requests for help concerning the ISIN codes assigned to Eurotunnel shares. Three days before the close of each offer period, intermediaries were supposed to use different codes to distinguish regular Eurotunnel units from those quoted ex-rights to participate in the offer.

Mistakes were made and some orders were not executed. All the problems were cleared up once the Ombudsman approached the intermediaries in question.

b) Marketing of financial products

- 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 the capital guarantee offered type of fund excludes entry fees, and that additional returns over and above the guarantee are based on the performance of one or more indices or

C - Cases dealt with by the Ombudsman

of a basket of shares. The guarantee, coupled with an attractive name that suggested the initial outlay would be doubled or that the product 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.

As a result, in 2007 there was an increase in mediation requests concerning structured funds whose performance was such that subscribers merely recouped their initial investment at maturity, minus entry fees. The institution responsible for one of the funds agreed to pay many of its unhappy investors compensation equivalent to the annual interest on a Livret A passbook, also refunding custody fees in numerous cases.

While some requests highlighted marketing conditions, they also reflected a desire among investors to obtain management information in order to make sure that the results at maturity were correct and that the structuring arrangements had been properly implemented.

These investors were invited to contact their management company to obtain explanations. In the event of problems, the Ombudsman contacted the company for the investors.

Investors were also reminded that they are entitled to request regular statements and an annual report for CISs.

This new kind of request shows that more and more investors are trying to understand how their investments are progressing. They are no longer shy of demanding explanations not just from the intermediary that marketed the product but also from the company that manages it.

As in 2006, the Ombudsman's Department received complaints concerning the Bénéfic fund range. A dozen or so cases were successfully settled, with some EUR 50,000 paid to subscribers as full or partial compensation for their capital losses.

- The crisis on the US mortgage lending market resulted in substantial write-downs on assets backed by these loans, which impacted CISs invested in this asset class.

  Beginning in August 2007, the Ombudsman's Department was contacted by investors who were uncertain about would happen to their investments. Other investors were concerned about not being able to access funds after their CIS was closed.

  A review of the 30 or so complaints revealed that customers had been given the impression, either verbally or via marketing materials, that the funds were risk-free, since they were classified as short-term investments with a dynamic component to enable them to outperform money market rates. The name given to these funds - "enhanced cash" - was responsible for some misunderstanding and confusion.

  Furthermore, some investors who had expressly instructed their advisor to invest in money market CISs, pending a house purchase for example, found themselves holding enhanced cash CISs that were treated as diversified products under the AMF's classification system.

  The department subsequently received complaints about the redemption terms and timetables introduced by fund marketers.

  Since most of these cases are still being processed, final conclusions cannot be drawn at this stage. The 2008 report will include an assessment of the impact of the liquidity crisis for investors that appealed for mediation.

- There were some difficulties in connection with loans granted for the purpose of carrying out a financial transaction. These problems exposed insufficient information and advice.

  In one instance, funds were placed in an equity savings plan as part of a loan intended to finance renovation work. The value of the assets in the portfolio fell sharply, leaving the customer unable to fully repay the loan at the due date. The bank agreed to take over the outstanding loan amount of EUR 6,892.

  In another case, shortly after opening an account, a retail investor made an investment in warrants, claiming to be familiar with the characteristics of these products. He conducted numerous transactions even though there were insufficient funds on the account. His bank granted a personal loan and then a revolving credit facility before finally blocking his internet access.

  An apparent failure to check the funds on the account led the customer to believe that he could continue to place orders even though the account was in debit. If blocking and warning mechanisms had been activated from the outset, the customer would not have found himself in debit.

  In light of the evidence, the mediation procedure resulted in a compromise in which the bank abandoned its claim under the revolving credit facility.

- In the area of private equity, the Ombudsman's Department again received complaints in 2007 from investors who, having applied to redeem shares in certain private equity funds (FCPIs), were refused by the management company, even though they were asking for their funds to be released under the circumstances provided for in the General Tax Code.

  A review of these cases revealed that if the FCPI's bylaws do not include the tax code's provisions on making funds available in the event of death, disability, dismissal, or retirement of the investor or the investor's spouse, then the management company is allowed to refuse redemption requests.

  Insofar as investments in FCPIs are mainly carried out for tax reasons, fund marketers should therefore make special efforts to draw investors' attention to the fund's bylaws concerning the period during which redemptions are blocked and the options for exiting before maturity.

c) Discretionary management

Requests for mediation in the area of discretionary management exposed situations where ISPs had provided inadequate information and advice.

In one case, although the discretionary management agreement authorised only the purchase and sale of shares in SICAVs or units of FCPs other than FCIMTs, **and, in a later version, only French investment funds, investment funds that complied with Directive 85/611/EEC, and collective investment schemes, other than futures and options funds and venture capital funds, that had been authorised to be marketed in France, the manager bought units in a foreign investment fund that was not authorised to be sold in France and was, moreover, reserved for "sophisticated" investors.

Since this acquisition contravened the agreement, the customer approached the Ombudsman, seeking assistance in obtaining compensation for the capital losses attributable to the fund as well as for management and custody fees.

Following a meeting to hear the parties, the various management companies and the custodian, the Ombudsman steered the parties to agreement on compensation in the amount of EUR 15,000.

In another case, after cancelling his discretionary management agreements, a customer asked for virtually all his securities to be sold and for the proceeds of the sale and the three remaining holdings to be transferred to another bank.

The delay in executing these instructions had an adverse effect on the investor, who therefore turned to the Ombudsman. A review of the case found that the intermediary had not exercised due care. The firm agreed to pay its former client EUR 4,900.

d) Workplace saving schemes

These cases often deal with complex situations involving many parties whose responsibilities are not always clearly defined.

In one case, the prospectus and bylaws of a structured workplace savings scheme said that unitholders could opt to redeem their assets at maturity or transfer them by way of a merger to another fund also invested in listed securities of the company. However, the merger took place four months after the maturity date, a delay that caused an earnings shortfall for unitholders. Because the acquired fund was invested during the interim period in money market CISs whose value increased by less than that of the acquiring fund, the exchange ratio became less favourable.

Out-of-court proceedings failed to produce an agreement on the compensation for unitholders, since the companies managing the acquired and acquiring funds both felt that they had exercised due care.

This case reveals the need for cooperation between professionals during mergers of schemes managed by different companies, in order to properly complete the merger and safeguard the interests of unitholders.

As regards savings schemes invested in company stock, the Ombudsman was, as in previous years, asked to intervene in instances where unitholders were prevented from redeeming their investments.

In one case, for example, although these funds are required under the regulations to establish a liquidity mechanism, in fact this mechanism could no longer be applied. While ensuring adequate liquidity is the responsibility of the management company and is one of the principles of sound management, the management firm had no way to make the company take steps to organise its liquidity. The introduction of a liquidity mechanism was further complicated because the company had not had its securities valued.

Given these structural problems, the Ombudsman ruled that an out-of-court solution could not be reached for the 110 unitholders that had contacted it.

In light of the above, employees wishing to invest in the unlisted securities of their company via workplace savings schemes should be encouraged to obtain details about these investment vehicles and closely monitor their performance.


FIN-NET
financial dispute resolution network

D - Recent developments in mediation

1 - At European level

a) Cooperation within FIN-NET

In February 2001, the European Commission set up a network to allow Member States of the European Economic Area to cooperate on the out-of-court settlement of disputes in the field of financial services.

Called the Financial Dispute Resolution Network, or FIN-NET, the network aims to assist consumers in finding a quick, simple and inexpensive solution - avoiding legal action where possible - to disputes with financial service providers such as banks, insurance companies and investment firms based in a Member State other than their home state.

By helping actively to promote alternative dispute resolution methods, FIN-NET is contributing to the development of the European market in retail financial services.

At present the network has 48 members. Most are either ombudsmen or heads of "dispute commissions" or "consumer arbitration panels", depending on the country.

They meet regularly under the auspices of the European Commission in Brussels. The main aim of the first meeting of 2007, held on 6 March, was to share information about regular problems encountered by members within their own jurisdictions and to strengthen cooperation with the European Consumer Centres Network (ECC-Net). Set up by the European Commission in 2005, ECC-Net deals with cross-border disputes in areas other than financial services.

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. The MOU includes a declaration of intent whereby participants undertake to apply the quality standards in Commission Recommendation 98/257/EC of 30 March 1998, which lays down seven principles:

- the independence of the decision-making body is ensured in order to guarantee the impartiality of its actions;
- the procedure is transparent;
- the procedure is adversarial;
- the effectiveness of the procedure is ensured through measures guaranteeing that:
  - . the consumer has access to the procedure without being obliged to use a legal representative,
  - . the procedure is of moderate costs or free of charges,
  - . the procedure is swift,
  - . the competent body is given an active role.
- legality: the decision taken by the body may not result in the consumer being deprived of the protection afforded by the mandatory provisions of the applicable consumer protection law;
- liberty: the decision taken by the body concerned may be binding on the parties only if they were informed of its binding nature in advance and specifically accepted this.
- representation: if they wish, the parties have the right to be assisted or represented at all stages of the procedure.

FIN-NET has set itself the tasks of:

- improving the quality of settlements reached within the existing out-of-court mechanisms in the European Union;
- providing consumers with more comprehensive information about methods for out-of-court settlement of cross-border disputes.

This objective is set out in Article 53 MiFID, which states that:

"Member States shall encourage the setting-up of efficient and effective complaints and redress procedures for the out-of-court settlement of consumer disputes concerning the provision of investment and ancillary services provided by investment firms, using existing bodies where appropriate.

"Member States shall ensure that those bodies are not prevented by legal or regulatory provisions from cooperating effectively in the resolution of cross-border disputes."

This article was transposed into French law through the amended version of Article L. 621-19 of the Monetary and Financial Code, which came into effect on 1 November 2007.

The UK financial ombudsman organised the 2007 annual conference of the International Network of Financial Ombudsmen (INFO) in London on 27-28 September 2007, building on the success of previous conferences in Canada and Australia. Thirty-two countries participated.

The goal of the event was to enable participants to share their experiences, with a view to improving domestic systems for the out-of-court settlement of financial disputes and to facilitate cooperation among ombudsmen.

Participants attended workshops at which they discussed a range of issues, including confidentiality, alternative dispute resolution methods, and ombudsman independence.

Following these discussions, participants agreed that the development of a European retail financial services market and more use of alternative dispute resolution methods, as called for by MiFID, would inevitably lead to an increase in the number of cross-border cases brought before ombudsmen, thus confirming their European reach.

D - Recent developments in mediation

During the conference, FIN-NET ombudsmen also worked to prepare a joint response to Question 5 of the European Commission's Green Paper on Retail Financial Services in the Single Market, which deals with improving the way that cross-border complaints are handled.

b) Draft Directive on mediation in civil and commercial matters

The European Parliament and Council have prepared a Directive on mediation based on a proposal by the Commission. The new legislation, which marks the final stage in a long process of negotiation with EU Member States and the EU Parliament, will go a long way to facilitating the use of mediation in Europe. The directive seeks chiefly to:

- frame the concept of mediation and define mediation procedures and guarantees;
- make it clear where mediation fits in with respect to judicial proceedings.

Only mediation, i.e. efforts by the parties to reach an agreement with the aid of a third party, is covered by the scope of the directive, which deals with all civil and commercial matters.

Mediation will be used in cross-border disputes, for example where the two parties are ordinarily resident in two different Member States.

The directive defines mediation as a structured procedure that meets credibility and feasibility criteria and that allows two parties to try voluntarily to reach an agreement with the aid of a neutral third party.

The Ombudsman must be able to provide assistance in an effective, impartial and competent way.

Each Member State may choose to prepare an exhaustive list of dispute resolution schemes. In certain types of dispute, a scheme would then have to be selected from this list. Member States should also introduce supervisory arrangements and promote training for ombudsmen.

Although mediation is a voluntary process, judges may encourage parties to opt for it. Parties may also be required by law to use mediation before seeking a legal solution to their dispute.

Agreements reached through mediation must be put down in writing. A verbal agreement is not enough to ensure enforceability in a cross-border situation. An agreement reached in one Member State may be recognised and enforced in other Member States insofar as it complies with the requirements established in the directive.

In all Member States, the mediation process must be confidential. If the process has not ended, the ombudsman may not divulge information that has come into its possession.

In a radical new departure for many Member States, the mediation process will affect limitation and prescription periods for judicial proceedings, which may be suspended to enable the mediation process to have full effect.

Each Member State shall inform the public by any means deemed appropriate about the content of the directive and its scope of application. Similarly, Member States must also inform the European Commission of the authorities that they view as competent to make mediation agreements enforceable. Furthermore, an implementation period of three years is being provided, given that the directive may require some Member States to modify their statutory arrangements.

A review of application will be carried out once the directive has been implemented for five years.

2 - At domestic level

a) 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 functions and 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.

The organisation's activities last year included leading an Economic and Social Council symposium on 27 September 2007 and taking part in the first ever Mediation Congress, which was arranged by the Paris Chamber of Commerce and Industry in November 2007.

Members take turns to organise meetings, which are held approximately once every two months.

b) Better Regulation

Under the Better Regulation approach, it was felt that steps should be taken to raise awareness about the AMF Ombudsman, in an effort to provide uniform protection for investors and accommodate the needs of professionals.

- The message about the AMF's Ombudsman is being conveyed to professionals:

- meetings were held to present the role and activities of the Ombudsman to two industry groups, the French Asset Management Association (AFG) and the French Association of Investment Firms (AFEI), whose members were given the opportunity to learn about the mediation process and the types of issues tackled by the department.

The two groups warmly welcomed these initiatives. Commitments were made that paved the way for further discussions, notably on how best to tell professionals about the AMF Ombudsman.

Since any interested party is entitled to refer a matter to the AMF Ombudsman, the out-of-court dispute settlement procedure overseen by the Ombudsman is open to any individual or entity that does not want to get involved in legal proceedings;

- in addition to these meetings with trade groups, the Ombudsman's Department is in daily contact with talking partners at financial institutions, including investment services compliance officers, compliance and internal control officers and customer managers. It handles officers' requests for regular briefings on cases affecting their institutions, addresses recurring questions of interpretation and discusses possible avenues for improvement;
- the Ombudsman's Department also continued its fruitful cooperation with the Financial Sector Consultative Committee on the marketing of financial products. As well as addressing the marketing issue per se, this work programme, which began in 2006, has provided a way to inform the members and working groups of the consultative committee about the Ombudsman's activities.

The Ombudsman's Department also upgraded its procedures

- Three online complaint forms for use by the public were introduced to make it easier to contact the department. The forms cover inquiries, mediation and provision of information.

  These forms should mean that the subject of the referral is more clearly identified. Time will thus be saved, and investors will find it easier to formulate their requests;

- The Mediation Charter was updated to reflect MiFID transposition.

Article 53 MiFID recommends increasing the use of out-of-court settlement procedures for financial disputes. When MiFID was transposed, measures suspending the limitation period while settlement is under way were added to Article L. 621-19 of the Monetary and Financial Code, which came into effect on 1 November 2007[1].

The updated charter incorporates this key new measure, which is designed to promote this type of out-of-court dispute settlement. It also sets out and details a number of principles in this area.

The AMF published a news release when the new charter came into effect.

3 - Outlook

Efforts will be made to build on these improvements in 2008, in order to further enhance investor protection.

Close attention will be paid to the possible impact of measures introduced by Act 2008-3 of 3 January 2008 on promoting competition for the benefit of consumers, which extended the scope of banking mediation to savings products. Transposition into French law of the Directive on mediation in civil and commercial matters will be another area of focus.

There is no doubt that extending the scope of responsibility assigned to bank ombudsmen will lead credit institutions to take communication initiatives. It will be vital to keep step with these initiatives, in order to clarify the role of the different ombudsmen, but also, and more importantly, to propose appropriate ways of providing information so that investors are aware of all the out-of-court options available to them.

As things stand, participants are coordinating extremely well. It is essential to safeguard this coordination at a time when the legal and regulatory landscape is changing.

It must be emphasised, though, that investors' interests cannot be served without the support of professionals. Steps must be taken to further nurture the fruitful dialogue with professionals. This issue is especially important because ongoing discussions, notably those being taken forward by the working group on the decriminalisation of business law, are recommending, like MiFID, more use of alternative dispute mechanisms in business and finance as a quick, confidential way to compensate injured parties more swiftly.

1 It will doubtless be necessary to align the measures with the framework for banking mediation, which covers all types of proceedings, i.e. civil, criminal and administrative..

Appendix I

COMMISSION RECOMMENDATION

(Of 30 March 1998)

COMMISSION RECOMMENDATION of 30 March 1998 on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes (*) (Text with EEA relevance) (98/257/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community and in particular Article 155 thereof,

Whereas the Council, in its conclusions approved by the Consumer Affairs Council of 25 November 1996, emphasised the need to boost consumer confidence in the functioning of the internal market and consumers' scope for taking full advantage of the possibilities offered by the internal market, including the possibility for consumers to settle disputes in an efficient and appropriate manner through out-of-court or other comparable procedures;

Whereas the European Parliament, in its resolution of 14 November 1996 (1), stressed the need for such procedures to meet minimum criteria guaranteeing the impartiality of the body, the efficiency of the procedure and the publicising and transparency of proceedings and called on the Commission to draft proposals on this matter;

Whereas most consumer disputes, by their nature, are characterised by a disproportion between the economic value at stake and the cost of its judicial settlement; whereas the difficulties that court procedures may involve may, notably in the case of cross-border conflicts, discourage consumers from exercising their rights in practice;

Whereas the 'Green Paper on the access of consumers to justice and the settlement of consumer disputes in the single market` (2) was the subject of wide-ranging consultations whose results have confirmed the urgent need for Community action with a view to improving the current situation;

Whereas the experience gained by several Member States shows that alternative mechanisms for the out-of-court settlement of consumer disputes - provided certain essential principles are respected - have had good results, both for consumers and firms, by reducing the cost of settling consumer disputes and the duration of the procedure;

Whereas the adoption of such principles at European level would facilitate the implementation of out-of-court procedures for settling consumer disputes; whereas, in the case of cross-border conflicts, this would enhance mutual confidence between existing out-of-court bodies in the different Member States and strengthen consumer confidence in the existing national procedures; whereas these criteria will make it easier for parties providing out-of-court settlement services established in one Member State to offer their services in other Member States;

Whereas one of the conclusions of the Green Paper concerned the adoption of a Commission recommendation with a view to improving the functioning of the ombudsman systems responsible for handling consumer disputes;

Whereas the need for such a recommendation was stressed during the consultations on the Green Paper and was confirmed during the consultation on the 'Action Plan` communication (3) by a very large majority of the parties concerned;

Whereas this recommendation must be limited to procedures which, no matter what they are called, lead to the settling of a dispute through the active intervention of a third party, who proposes or imposes a solution; whereas, therefore, it does not concern procedures that merely involve an attempt to bring the parties together to convince them to find a solution by common consent;

Whereas the decisions taken by out-of-court bodies may be binding on the parties, may be mere recommendations or may constitute settlement proposals which have to be accepted by the parties; whereas for the purposes of this recommendation these various cases are covered by the term 'decision`;

Whereas the decision-making body's impartiality and objectivity are essential for safeguarding the protection of consumer rights and for strengthening consumer confidence in alternative mechanisms for resolving consumer disputes;

Whereas a body can only be impartial if, in exercising its functions, it is not subject to pressures that might sway its decision; whereas, therefore, its independence must be guaranteed without this implying the need for guarantees that

(*) A communication on the out-of-court settlement of consumer disputes was adopted by the Commission on 30 March 1998. This communication, which includes this recommendation and the European consumer complaint form, is available on the Internet (http://europa.eu.int/comm/dg24).

(1) European Parliament resolution on the Commission communication 'Action plan on consumer access to justice and the settlement of consumer disputes in the internal market` of 14 November 1996 (OJ C 362, 2. 12. 1996, p. 275).

(2) COM(93) 576 final of 16 November 1993.

(3) Action Plan on consumer access to justice and the settlement of consumer disputes in the internal market, COM(96) 13 final of 14 February 1996.

Appendix I

are as strict as those designed to ensure the independence of judges in the judicial system;

Whereas, when the decision is taken by an individual, the decision-maker's impartiality can only be assured if he can demonstrate that he possesses the necessary independence and qualifications and works in an environment which allows him to decide on an autonomous basis; whereas this requires the person to be granted a mandate of sufficient duration, in the course of which he cannot be relieved of his duties without just cause;

Whereas, when the decision is taken by a group, equal participation of representatives of consumers and professionals is an appropriate way of ensuring this independence;

Whereas, in order to ensure that the persons concerned receive the information they need, the transparency of the procedure and of the activities of the bodies responsible for resolving the disputes must be guaranteed; whereas the absence of transparency may adversely affect the rights of the parties and cause misgivings as to out-of-court procedures for resolving consumer disputes;

Whereas certain interests of the parties can only be safeguarded if the procedure allows them to express their viewpoints before the competent body and to acquaint themselves with the facts presented by the opposing party and, where applicable, the experts' statements; whereas this does not necessarily necessitate oral hearings of the parties;

Whereas out-of-court procedures are designed to facilitate consumer access to justice; whereas, therefore, if they are to be effective, they must remedy certain problems associated with court procedures, such as high fees, long delays and cumbersome procedures;

Whereas, in order to enhance the effectiveness and equity of the procedure, the competent body must play an active role which allows it to take into consideration any element useful in resolving the dispute; whereas this active role is all the more important when, in the framework of out-of-court procedures, the parties in many cases do not have the benefit of legal advice;

Whereas the out-of-court bodies may decide not only on the basis of legal rules but also in equity and on the basis of codes of conduct; whereas, however, this flexibility as regards the grounds for their decisions should not lead to a reduction in the level of consumer protection by comparison with the protection consumers would enjoy, under Community law, through the application of the law by the courts;

Whereas the parties are entitled to be informed of the decisions handed down and of grounds for these decisions; whereas the grounds for decisions are a prerequisite for transparency and the parties' confidence in the operation of out-of-court procedures;

Whereas in accordance with Article 6 of the European Human Rights Convention, access to the courts is a fundamental right that knows no exceptions; whereas since Community law guarantees free movement of goods and services in the common market, it is a corollary of those freedoms that operators, including consumers, must be able, in order to resolve any disputes arising from their economic activities, to bring actions in the courts of a Member State in the same way as nationals of that State; whereas out-of-court procedures cannot be designed to replace court procedures; whereas, therefore, use of the out-of-court alternative may not deprive consumers of their right to bring the matter before the courts unless they expressly agree to do so, in full awareness of the facts and only after the dispute has materialised;

Whereas in some cases, and independently of the subject and value of the dispute, the parties and in particular the consumer, as the party who is regarded as economically weaker and less experienced in legal matters than the other party to the contract, may require the legal advice of a third party to defend and protect their rights more effectively;

Whereas, in order to ensure a level of transparency and dissemination of information on out-of-court procedures in line with the principles set out in the recommendation and to facilitate networking, the Commission intends to create a database of the out-of-court bodies responsible for resolving consumer disputes that offer these safeguards; whereas the database will contain particulars communicated to the Commission by the Member States that wish to participate in this initiative; whereas, to ensure standardised information and to simplify the transmission of these data, a standard information form will be made available to the Member States;

Whereas, finally, the establishment of minimum principles governing the creation and operation of out-of-court procedures for resolving consumer disputes seems, in these circumstances, necessary at Community level to support and supplement, in an essential area, the initiatives taken by the Member States in order to realise, in accordance with Article 129a of the Treaty, a high level of consumer protection; whereas it does not go beyond what is necessary to ensure the smooth operation of out-of-court procedures; whereas it is therefore consistent with the principle of subsidiarity,

Appendix I

RECOMMENDS

that all existing bodies and bodies to be created with responsibility for the out-of-court settlement of consumer disputes respect the following principles:

I. Principle of independence

The independence of the decision-making body is ensured in order to guarantee the impartiality of its actions.

When the decision is taken by an individual, this independence is in particular guaranteed by the following measures:

- the person appointed possesses the abilities, experience and competence, particularly in the field of law, required to carry out his function,
- the person appointed is granted a period of office of sufficient duration to ensure the independence of his action and shall not be liable to be relieved of his duties without just cause,
- if the person concerned is appointed or remunerated by a professional association or an enterprise, he must not, during the three years prior to assuming his present function, have worked for this professional association or for one of its members or for the enterprise concerned.

When the decision is taken by a collegiate body, the independence of the body responsible for taking the decision must be ensured by giving equal representation to consumers and professionals or by complying with the criteria set out above.

II. Principle of transparency

Appropriate measures are taken to ensure the transparency of the procedure. These include:

1) provision of the following information, in writing or any other suitable form, to any persons requesting it:

- a precise description of the types of dispute which may be referred to the body concerned, as well as any existing restrictions in regard to territorial coverage and the value of the dispute,
- the rules governing the referral of the matter to the body, including any preliminary requirements that the consumer may have to meet, as well as other procedural rules, notably those concerning the written or oral nature of the procedure, attendance in person and the languages of the procedure,
- the possible cost of the procedure for the parties, including rules on the award of costs at the end of the procedure,
- the type of rules serving as the basis for the body's decisions (legal provisions, considerations of equity, codes of conduct, etc.),
- the decision-making arrangements within the body,
- the legal force of the decision taken, whereby it shall be stated clearly whether it is binding on the professional or on both parties. If the decision is binding, the penalties to be imposed in the event of non-compliance shall be stated, as shall the means of obtaining redress available to the losing party.

2) Publication by the competent body of an annual report setting out the decisions taken, enabling the results obtained to be assessed and the nature of the disputes referred to it to be identified.

III. Adversarial principle

The procedure to be followed allows all the parties concerned to present their viewpoint before the competent body and to hear the arguments and facts put forward by the other party, and any experts' statements.

IV. Principle of effectiveness

The effectiveness of the procedure is ensured through measures guaranteeing:

- that the consumer has access to the procedure without being obliged to use a legal representative,
- that the procedure is free of charges or of moderate costs,
- that only short periods elapse between the referral of a matter and the decision,
- that the competent body is given an active role, thus enabling it to take into consideration any factors conducive to a settlement of the dispute.

V. Principle of legality

The decision taken by the body may not result in the consumer being deprived of the protection afforded by the mandatory provisions of the law of the State in whose territory the body is established. In the case of cross-border disputes, the decision taken by the body may not result in the consumer being deprived of the protection afforded by the mandatory provisions applying under the law of the Member State in which he is normally resident in the instances provided for

Appendix I

under Article 5 of the Rome Convention of 19 June 1980 on the law applicable to contractual obligations.

All decisions are communicated to the parties concerned as soon as possible, in writing or any other suitable form, stating the grounds on which they are based.

VI. Principle of liberty

The decision taken by the body concerned may be binding on the parties only if they were informed of its binding nature in advance and specifically accepted this.

The consumer's recourse to the out-of-court procedure may not be the result of a commitment prior to the materialisation of the dispute, where such commitment has the effect of depriving the consumer of his right to bring an action before the courts for the settlement of the dispute.

VII. Principle of representation

The procedure does not deprive the parties of the right to be represented or assisted by a third party at all stages of the procedure.

THIS RECOMMENDATION is addressed to the bodies responsible for the out-of-court settlement of consumer disputes, to any natural or legal person responsible for the creation or operation of such bodies, as well as to the Member States, to the extent that they are involved.

Done at Brussels, 30 March 1998.

For the Commission

Emma BONINO

Member of the Commission

Appendix II

MONETARY AND FINANCIAL CODE
(LEGISLATIVE PART)

Article L 621-19

(Act 2003-706 of 1 August 2003, Article 1, Article 17, Article 46 V 1° Official Journal of 2 August 2003)

(Order No2005-429 of 6 May 2005 Article 82 Official Journal of 7 May 2005)

(Act 2005-811 of 20 July 2005 Article 1 I Official Journal of 21 July 2005)

(Act 2005-1564 of 15 December 2005 Article 17 Official Journal of 16 December 2005)

(Order No 2007-544 of 12 April 2007 Article 5 Official Journal of 13 April 2007, effective 1 November 2007)

The [Authority] is authorised to receive claims relating to matters within its jurisdiction from any interested party and to deal with them appropriately. When appropriate, it proposes amicable resolution of the disputes brought to its attention, via conciliation or mediation.

The limitation period in civil and administrative proceedings shall cease to run when a dispute is referred to the Autorité des marchés financiers for out-of-court resolution. It shall resume once again when the Autorité des marchés financiers has declared that the mediation procedure is terminated.

The Autorité des marchés financiers cooperates with its foreign counterparts with a view to out-of-court resolution of cross-border disputes.

It may formulate proposals for amendments to the laws and regulations concerning the information provided to holders of financial instruments and the public, the financial instruments markets and the status of investment service providers. Each year, it draws up a report to the President of the Republic and Parliament which is published in the Official Journal of the French Republic.

The chairman of the [Autorité des marchés financiers] is heard, when they so request, by the Finance Committees of the two assemblies and may ask to be heard by them.

Appendix III

MEDIATION CHARTER

Paris, 19 February 2008

The AMF Ombudsman updates the Mediation Charter

In accordance with the Better Regulation initiative, it has become necessary to update the Mediation Charter, which governs the handling of requests for out-of-court dispute resolution, in order to take account of the latest thinking on the mediation procedure as well as recent experiences and legislative amendments.

The main change stems from the introduction of a rule suspending the limitation period in civil and administrative proceedings during the mediation procedure[1]. This follows on from the transposition of the Markets in Financial Instruments Directive, notably Article 53, which urges the setting-up of out-of-court dispute settlement procedures in the financial sphere.

Besides this crucial measure, the updated charter incorporates the principles set forth in European Commission recommendations[2], namely independence, an adversarial approach, effectiveness, liberty and transparency. The Mediation Department already applies these principles.

A number of clarifications have also been added:

- the legal basis for the mediation procedure;
- the principle that the procedure is free of charge;
- the precondition that an initial approach must be made to the institution or person in question and that the AMF Ombudsman steps in only if these internal complaint procedures fail;
- an average time period of three months for resolving the dispute, starting once all useful data have been forwarded to the Ombudsman by both the complainant and the institution or person concerned;
- the adversarial nature of the procedure and the possibility of interrupting it at all times.

1 Article L 621-19 of the Monetary and Financial Code.
2 European Commission Recommendations 98/257/EC and 2001/310/EC.

Appendix III

MEDIATION CHARTER

In application of Article L.621-19 of the Monetary and Financial Code, the Autorité des marchés financiers is authorised to receive claims relating to matters that fall within its jurisdiction from any interested party, and to deal with them appropriately. When relevant, it proposes an out-of-court settlement of the disputes brought to its attention, via conciliation or mediation.
The submission of a dispute to the Autorité des Marchés Financiers to find an out-of-court settlement, implies the suspension of the statute of limitations for civil and administrative proceedings. It starts to run again when the Autorité des marchés financiers declares the mediation as ended.
The Autorité des marchés financiers cooperates with foreign stockmarket regulators in the resolution of cross-border disputes.

CONTACTING THE OMBUDSMAN

The Ombudsman may be contacted by any person or legal entity, involved in a dispute of an individual nature falling within the Autorité des marchés financiers jurisdiction, only if no legal action or AMF investigation, regarding the same facts, is in progress.
The mediation procedure is free of charge.

PRIOR ACTION

A claim may only be brought to the attention of the Ombudsman when a prior action has been taken against the investment services provider or issuer, and your complaint has remained unanswered or has been rejected either totally or partially.

THE MEDIATION PROCESS

The necessary means to carry out mediation in a neutral, impartial and independent manner are registered in the budget of the Autorité des marchés financiers.
The Ombudsman may only undertake the mediation procedure with the consent of both parties.
In principle, mediation lasts three months from the time when all useful evidence has been supplied to the Ombudsman by the parties.
The mediation procedure is a contradictory procedure. It is carried out in writing, but the Ombudsman may decide to hear the parties separately or together.
The Ombudsman and the parties are bound by the strictest obligations of confidentiality.

LEGAL ACTION

Both parties retain the right to bring the dispute in front of the courts at any time. The submission of the dispute to the courts brings the intervention of the Ombudsman to an end.
On this assumption, any exchange that has taken place during the mediation procedure may not be used or submitted to the courts.

END OF THE MEDIATION PROCEDURE

The mediation procedure ends either by an out-of-court settlement, or by the statement of a persistent disagreement, the withdrawal of one of the parties, or by the start of legal action relating to the dispute.
Whatever the outcome of the procedure, the Ombudsman informs the parties, in writing, of the end of his intervention.

ANNUAL REPORT

The Ombudsman presents an annual report to the Board of the Autorité des marchés financiers, in which his activities are reviewed. This report is published.

Appendix IV

PUBLIC SERVICE OMBUDSMEN'S CHARTER
(extracts)

The ombudsmen who signed this charter on 16 September 2004 all share the same conception of service to citizens, customers and users, a conception based on attentiveness, dialogue and out-of-court dispute resolution […].

Institutional mediation is an "alternative dispute resolution" mechanism. Like contractual mediation, it can be used in an effort to avoid legal action and resolve specific individual disputes between natural or legal persons and institutions or companies. The procedure is free of charge, quick and freely accessible, both directly and indirectly […]. The purpose of mediation is to improve service quality and user satisfaction […].

Institutional ombudsmen not only play a key role in resolving disputes between institutions and users; they also have a preventive role and expedite change in institutions or companies […].

Public service ombudsmen ensure first and foremost that the law is respected, and they rely on the intrinsic values of mediation. These are the desire to facilitate the search for out-of-court resolution of disputes; fairness (the ombudsmen can issue fairness recommendations, since a rule or practice that is suitable for the vast majority of users may prove unworkable for an individual case); impartiality relative to the complainant, company or government department; compliance with the adversarial principle; transparency; and confidentiality […].

Public service ombudsmen also have an overall view of the problems that have been identified, enabling them to better detect an institution's shortcomings and to propose changes […].

The special status of institutional ombudsmen ensures they will be impartial in the dispute settlement process. They are independent from the organisational structures of institutions and companies […].

Because the ombudsman's function is personalised and located at the heart of the institution, he or she can narrow the gap between citizens and institutions […], thereby putting the parties on an equal footing to establish a balanced dialogue […].

The signatories to the charter at end-2006 are the ombudsmen of the following:

-Caisse des dépôts et consignations

-Eléctricité de France

-the national education system

-the insurance sector

-France 2, France 3

-France Télévision (programming)

-Gaz de France

-La Poste

-Paris municipal authorities

-Ministry of the Economy, Finance and Industry

-Paris mass transit authority (RATP)

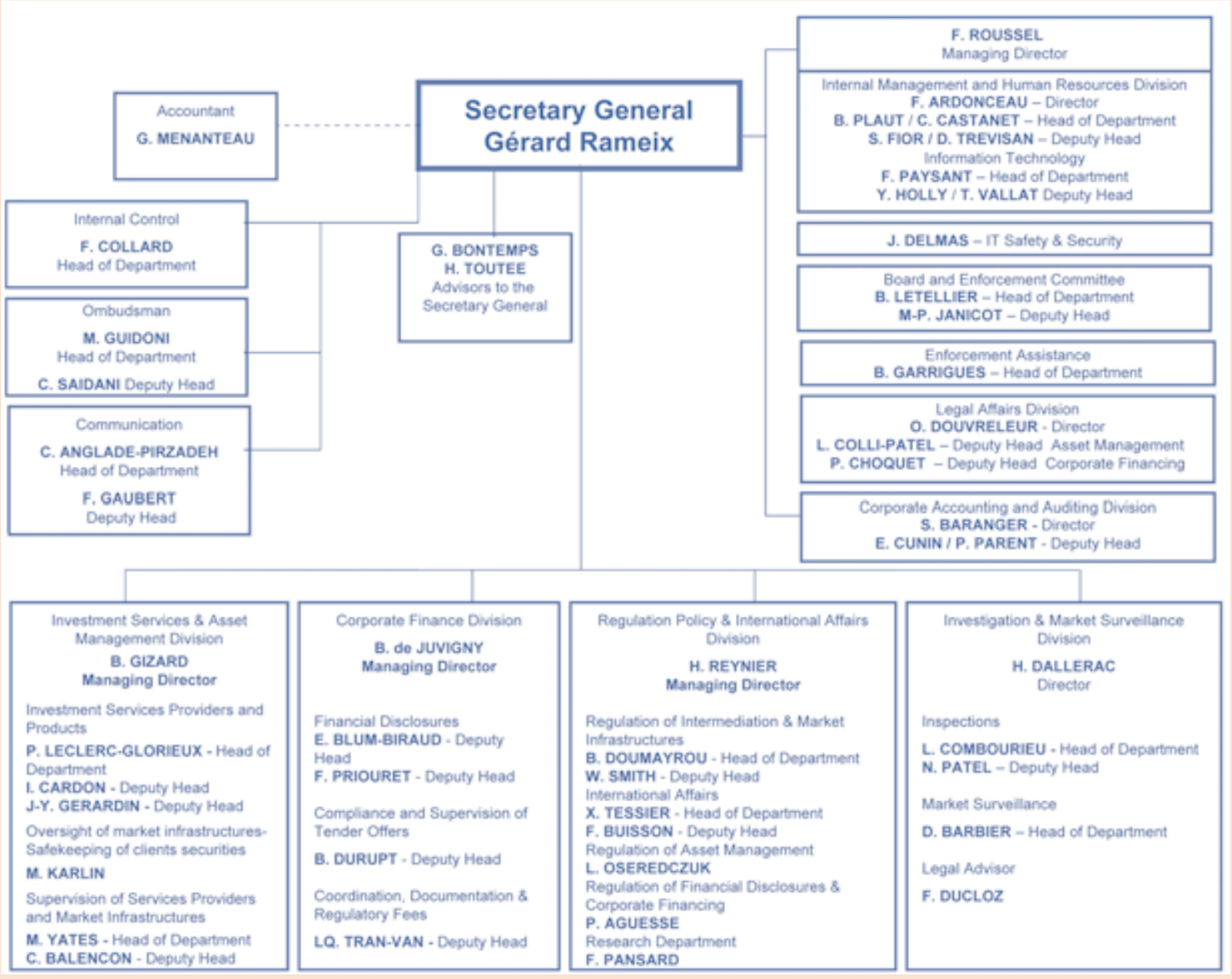
-French Railways (SNCF)

-Mutualité sociale agricole (MSA)

-Autorité des marchés financiers (AMF).

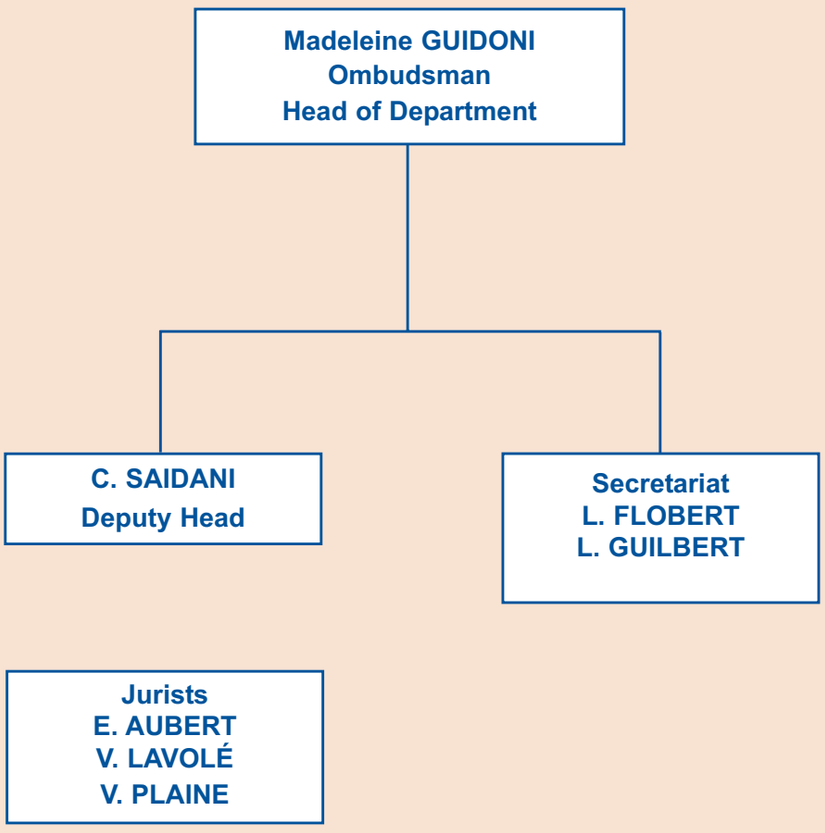
Appendix V

AMF DEPARTMENTS



Appendix VI

OMBUDSMAN'S DEPARTMENT



Appendix VII

REPLY FROM A PROFESSIONAL IN RESPONSE TO A RECOMMENDATION

In your letter of 3 July 2007, you confirmed that several of our clients had contacted you regarding a dispute with our firm.

You forwarded us a list of six clients who had tendered their Eurotunnel shares to the exchange offer and then sold them into the market.

The appendix contains a summary table of the position of each of those clients.

More broadly, further to your meeting with XXX on 21 June 2007 and in reply to the questions in your letter, we are pleased to provide you with the information below. Please note that some of this information is the same as that disclosed to the Supervision of Service Providers and Market Infrastructure department, which has also questioned us about this transaction.

For your information, at 31 May 2007, after which date our information system blocked all irregular sales, our records show that 456 clients had sold 4,232,994 shares, mostly through remote channels (Internet and Minitel).

• Regarding "the measures that XXX intends to take in order to prevent this type of malfunction from reoccurring"

Going forward, in order to handle unusual events of the kind that occurred with Eurotunnel, we will strengthen our system in three ways:

• improve our internal warning system;

• improve client communications by ensuring that information about the irrevocability of trades connected with share exchanges and takeovers, as well as the date after which such transactions become irrevocable, are incorporated into the corporate action notices used by XXX.

• study the possibility blocking securities positions more quickly.

We will be glad to assist should you require further information.

Yours sincerely,

Appendix VIII

THANK YOU LETTERS

Dear Madam,

Regarding the above correspondence and further to your request, I am pleased to confirm that I countersigned an agreement on 18 January 2007 on the premises of the XXXXX branch through Mr XXX from the Consumer Relations Department, with Mr XXX, Director of the XXXXX group of branches, duly mandated, to settle the dispute between myself and XXXXXX.

The proposed contractual compensation, reassessed to reflect the prices of the loss-making funds at the centre of the dispute when the agreement was signed, was credited to my account in late January.

I am extremely grateful to you for your intervention, which was decisive in sorting out a situation that had been deadlocked for more than two years despite extensive correspondence.

Yours sincerely

Hello,

I would like to thank you for the high standard of dialogue with your staff and the speed with which they responded.

However my financial intermediary decides to proceed in this matter, I commend you on your professionalism.

It is always pleasant in a mediation procedure to have a competent talking partner who listens.

Without your intervention, I would probably not have taken any action, since I would not have known how to proceed in this kind of dispute, which can really only be handled by professionals with a thorough knowledge of the stockmarket.

I hope that xxxxxxx will acknowledge the shortcomings of which I was a victim and which have left me in a precarious financial situation.

Many thanks again.

Yours sincerely,

Appendix VIII

THANK YOU LETTERS

Dear Ombudsman,

Thank you for your letter of the 12th of this month.

In response to the offer of €15,000, I accept that proposal in order to settle this matter once and for all.

I would like to thank you for your intervention, without which this matter would still be ongoing, and would not have settled for that amount.

I wish to inform you that the €15,000 must be net of any charges relating to the transaction. The transaction costs must be borne solely by XXXX.

Please do not hesitate to contact me if you require any further information.

Yours sincerely,

Re: settlement of all disputes with XXXXXXXX

Dear Madam,

I refer to your letter of 13/11/2007, in which you asked me whether my complaint in the XXXXX matter had been satisfactorily resolved.

I apologise for my late reply. XXXX took their time to deliver on their promises.

The matter has finally been settled and I would like to thank you for your rapid intervention, without which my situation would now be quite desperate.

I am happy to be of service should you require any further information.

Yours gratefully,

Appendix IX

EUROPEAN COMMISSION GREEN PAPER ON RETAIL FINANCIAL SERVICES

The AMF responded to the questions contained in the European Commission Green Paper on Retail Financial Services. Question 5 was worded thus:

Question (5) Despite efforts, in particular the creation of FIN-NET, the handling of cross-border consumer complaints in the field of financial services still remains problematic. The Commission would welcome input as to the ways to improve the current situation. For example, should Member States be obliged to ensure that alternative dispute resolution (ADR) schemes are in place? Should providers be obliged to adhere to an ADR scheme? Should they be contractually obliged to offer ADR mechanisms to their clients?

The AMF Ombudsman offers a mediation procedure. The legal basis of the AMF Ombudsman's remit is set forth in Article L. 621-19 of the Monetary and Financial Code, which reads: The AMF "is authorised to receive claims relating to matters within its jurisdiction from any interested party and to deal with them appropriately. When appropriate, it proposes amicable resolution of the disputes brought to its attention, via conciliation or mediation".

Apart from its remit to inform and educate the public, the Ombudsman receives complaints relating to financial instruments and markets. It also proposes out-of-court settlement of disputes between individuals and professionals. Referral to mediation in the event of a dispute is confidential. The procedure, governed by a charter, begins only after agreement between the two parties and generally results in the Ombudsman proposing a negotiated solution. This proposal is not binding on the parties, which at any time are entitled to take legal action.

The AMF Ombudsman's action fits naturally into the European framework established by Commission Recommendation 98/257/EC of 30 March 1998 on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes. Those principles are independence, transparency, the adversarial principle, effectiveness (direct access to the procedure without the need for legal counsel, free of charge, and short timeframes), legality and liberty (the procedure must be accepted by both parties).

With the experience of its Ombudsman2, who is recognised and increasingly called upon to intervene, the AMF is highly attentive to the potential introduction of ADR schemes for disputes concerning financial services. The AMF Ombudsman is also an active member of FIN-NET.

As a preamble, the AMF wonders whether the question asked by the Green Paper concerns disputes over financial matters only or whether it is broader in scope

Regarding financial matters, MiFID has already taken a stance on this question by setting forth under Article 53 that:

"Member States shall encourage the setting-up of efficient and effective complaints and redress procedures for the out-of court settlement of consumer disputes concerning the provision of investment and ancillary services provided by investment firms, using existing bodies where appropriate. "Member States shall ensure that those bodies are not prevented by legal or regulatory provisions from cooperating effectively in the resolution of cross-border disputes".

If the Commission wishes to ensure the effectiveness of an ADR scheme (mediation or arbitration), each Member State must first set up such schemes, effective domestically, so they can be extended to the European level for cross-border disputes via FIN-NET.

That would strengthen the position of FIN-NET and provide effective support for the development of cross-border transactions.

Out-of-court procedures for dispute settlement already seem to exist in most Member States. Member States that have not yet set up such procedures should be encouraged to do so, in compliance with the principles of extra-judicial procedures set forth in the Commission's 1998 decision.

FIN-NET receives unsolicited membership requests every year, showing that Member States are aware of the need to strengthen European cooperation on cross-border dispute resolution.

However, FIN-NET is not yet used optimally because it is not sufficiently well known

FIN-NET therefore needs to publicise its existence and activities both to Member States and to European consumers. Better communication would build consumer confidence and encourage the development of cross-border business in financial products and services.

FIN-NET could approach Member States that do not yet belong to the network and encourage them to join.

Appendix IX

Should providers be obliged to adhere to an ADR scheme?

Providers could be forced to adhere to an ADR scheme to improve consumer protection, which does not inherently rule out recourse to the courts if the ADR procedure fails.

In France, a report on the marketing of financial products released in November 2005 recommended that financial intermediaries should be required to indicate the identity and address of the Ombudsman whenever they reject a claim, whether fully or partly.

Mediation is a flexible, non-binding, free, confidential procedure that the parties may leave at any time. However, its effectiveness is limited by the fact that it depends on the parties' goodwill.

Should they be contractually obliged to offer ADR mechanisms to their clients?

Such a clause would enable the parties to try and find an amicable solution while leaving open the possibility of legal action in the event of failure.


Autorité des marchés financiers

Madeleine GUIDONI

After graduating from Ecole Nationale de la Magistrature in Bordeaux, Madeleine Guidoni joined the Paris courts to begin a career in economics and finance.

She subsequently joined the French competition authority as a rapporteur and later a deputy general rapporteur. Ms. Guidoni then moved to the Economic and Financial subdivison of the Criminal Affairs and Pardons Directorate of the Justice Ministry, where she was in charge of the serious financial crimes sector (corruption, embezzlement, public contract fraud, interference).

She was appointed legal advisor to the newly formed Conseil des marchés financiers (CMF), with special responsibility for implementing and monitoring sanction procedures.

The CMF merged with the Commission des opérations de bourse (COB) to form the Autorité des marchés financiers (AMF) in 2003 and Ms. Guidoni was appointed AMF Ombudsman in April 2004.

How to contact the Ombudsman?

• Write to:

Madame Madeleine Guidoni
Autorité des marchés financiers
17, Place de la Bourse - 75082 Paris Cedex 02

Contact forms are available in the Ombudsman section of the AMF website:
www.amf-france.org

• Call:

Investor helpline
Tuesdays and Thursdays, 2pm - 4pm
+ 33 (0)1 5345 6464

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AMF