AUTORITÉ
DES MARCHÉS FINANCIERS

AMF

AMF Ombudsman's Report **2012**

Contents

AMF Ombudsman's Report 2012

OMBUDSMAN'S REPORT

ANNEXES

At the end of 2011, a few weeks after taking up my post, I set myself three main objectives for 2012. The first was to be a source of new ideas for each and every enquiry by issuing recommendations on all cases assessed on their merits. For my team of experienced legal specialists, led by my deputy François Denis du Péage, this was a minor "Copernican revolution". The approach that had prevailed until then was the equally viable option of conciliation, with the Ombudsman expressing no particular opinion. Despite the additional workload, this new approach was quickly accepted, given the benefits to both parties of initiatives negotiated by the Ombudsman. This new way of working was phased in during the first half of the year before being applied systematically in the second half. The results speak for themselves: 98% of fully or partially favourable opinions were accepted by both parties, and only 5% of claimants challenged unfavourable opinions, even though these represented 70% of cases assessed on their merits in the second half-year. It is also true that, in many cases, retail investors are faced with complex, changing and often unexplained regulations of which they are, often legitimately, ignorant or which they do not understand.

Accordingly, the Ombudsman also needs to act as an educator, not merely reiterating regulations applied by companies, but helping claimants understand the situation in a calmer fashion. When disputes arise, the Ombudsman, as a third party who is independent of both parties and reports to the regulator, can more easily be heard in a climate of confidence than can companies themselves.

My second objective for 2012 was to shorten the time taken to redirect retail investors towards the right Ombudsman for claims falling outside my jurisdiction, mainly insurance, banking and taxation. As a result of agreements with the Autorité de Contrôle Prudentiel (ACP), these timescales have been cut from sometimes several weeks to a few days. This successful example of two-way cooperation should be welcomed.

My third objective for 2012 was to promote wider awareness of the AMF Ombudsman's existence and specific jurisdiction. Substantial progress has been made in this regard, once again thanks to active cooperation by the two regulators, the AMF and the ACP. From 1 September 2012, all correspondence sent out by an investment services provider who refuses to settle a complaint from a client must mention the existence of the relevant Ombudsman and give details of how they can be contacted. For financial complaints, for instance, the two mediators are the AMF Ombudsman and the banking Ombudsman.

It is still too early to tell whether the 15% increase in the number of mediation requests received in 2012 (a total of 747) is partly due to the Ombudsman being more visible. Other obvious reasons are investors' disappointment with the final performance of certain products and the continued effects of the financial crisis.

In any event, 2012 will go down in history as a year of change not only because new, more proactive and responsive mediation methods were introduced, but also because the AMF Ombudsman received a request that could be called a "mass claim". In the space of a few days, a single lawyer submitted 143 mediation requests involving 20 or so credit institutions. The 143 investors making these requests claimed that they had not been given sufficient warning of the specific risk associated with the Alternext market in relation to a private placement initially placed on that market, and which should therefore have been restricted to highly sophisticated investors. The companies in question initially refused any form of compensation. My approach was firstly to remind these companies of their obligation to provide information that would enable an investor to take risks in full knowledge of the

facts, and secondly to prevent any windfall effect for those same clients, on grounds of equity. A detailed review was conducted to establish the extent to which each investor was informed and adjust or rule out any compensation accordingly. Most of the institutions involved accepted the Ombudsman's proposals, sometimes following discussions with senior management. While there are similarities between mass claims and class actions, they are not the same thing. They are similar in three ways: they are intended to remedy imbalances between companies and investors, they provide a way to recognise losses that may individually be very modest and may otherwise not be compensated, and finally, by treating a number of cases together, they avoid the risk of unequal treatment before the law. But the fact remains that the Ombudsman service, which must abide by the principle of confidentiality in handling mediation requests, does not have access to the key tool of dissuasion: the prerogative of the sanctions and class actions regime.

At this writing, it is not yet clear whether financial disputes will be included in the 2013 government bill on class actions. As AMF Ombudsman, I hope they are. In my view, the ability to bring robust and broad class actions, but without the well-documented excesses of the US system, would strengthen investors' rights and encourage companies to make use of the Ombudsman service.

It is also important to note an increase in 2012 in the number of mediation requests relating to transactions on the forex market. Pervasive and aggressive advertising is no doubt partly to blame. The AMF also found it necessary to issue several warnings. These requests highlight situations of genuine distress, with the victims often experiencing financial, family or medical difficulties. The results achieved by the Ombudsman service are encouraging in so far as the mediation process highlights a spiralling cycle in which companies encourage clients to take on ever greater risk irrespective of their circumstances. This results in drastically increased positions, thus exacerbating the losses incurred.

Apparently, mediation is becoming increasingly prominent. The AMF has demonstrated as much by strengthening the position and role of its Ombudsman, as recommended in 2011 by the AMF's working group on investor compensation, chaired by Jacques Delmas-Marsalet and Martine Ract-Madoux. The European Union is heading in the same direction: on 12 March 2013, the European Parliament passed a directive establishing a process to facilitate the use of independent – and not just impartial – mediation services. This future regulation is another sign of a desire on the part of European authorities to temper the widespread litigiousness by bolstering this final opportunity to settle disputes out of court, thus helping create a more peaceable society.

MARIELLE COHEN-BRANCHE
AMF Ombudsman
30 April 2013

Ms Cohen-Branche served as Extraordinary Judge at the Court of Cassation with responsibility for banking and financial law from March 2003 to January 2011, and was a member of the AMF Enforcement Committee from November 2003. Her term of office in this position ended in January 2011, at the same time as her term as judge at the Court of Cassation. Ms Cohen-Branche had previously served for 25 years as a legal expert in banking, notably as Legal Affairs and Litigation Director for Crédit Agricole Île-de-France from 1993 to 2003. From 2003 to 2011, she was also a member of the Banking Mediation Committee led by the Governor of the Banque de France, which was responsible for supervising the independence of banking ombudsmen. Ms Cohen-Branche is a Chevalier de la Légion d'honneur and an Officier de l'Ordre national du mérite.

Ombudsman's report

1 – AMF MEDIATION AND RELATED DEVELOPMENTS IN 2012

A – REMINDER OF THE OMBUDSMAN'S ROLE

The AMF's Ombudsman service is a free public service established by law[1] and European regulations, particularly since the 2011 transposition into French law of Directive 2008/52/EC of 21 May 2008 on certain aspects of mediation in civil and commercial matters. It provides a final opportunity to settle individual disputes in the financial field out of court with the help of an independent third party, the Ombudsman.

B – PROCEDURES FOR CONTACTING THE OMBUDSMAN

The AMF Ombudsman may be contacted by any retail saver or investor, whether a consumer or a legal entity (such as a pension fund or a non-profit organisation), that is involved in a dispute with a financial market participant or a company falling under the AMF's jurisdiction – i.e. an investment services provider, a financial investment adviser or a listed company. Banking and insurance fall outside the AMF's jurisdiction, particularly as regards the operation of deposit accounts, passbook accounts, term deposits, life insurance or the provision of credit.

Requests may only be brought to the attention of the Ombudsman once a complaint has been submitted to the company and remains unresolved. They may be submitted either using an online form available on the Ombudsman's page of the AMF website (www.amf-france.org) or by post.

When it receives a request falling within its jurisdiction, the mediation unit firstly checks that it is complete, asking the claimant for additional documentation and information where applicable. It then asks the company to set out its version of events and its position on the claim and to provide supporting documentation. After carefully reviewing the case and the information provided by each party, the Ombudsman issues a recommendation, which the parties are free to accept or reject. These recommendations are based on law and the principle of equity.

C – 2012: A YEAR OF CHANGE FOR THE AMF'S OMBUDSMAN SERVICE

The Ombudsman service has now completed changes intended to refocus on its core mission. It no longer responds to consultations, which are now handled by AMF Épargne Info Service, managed by the Retail Investor Relations Directorate.

Marielle Cohen-Branche, who was appointed AMF Ombudsman on 16 November 2011, announced three policy areas designed to strengthen the role of mediation, in line with the recommendations made in May 2011 by the working group on investor compensation, chaired by Jacques Delmas-Marsalet and Martine Ract-Madoux.

The key policy area, which was put into practice in 2012, was the decision to issue recommendations on every case assessed on its merits. This was a departure from the AMF Ombudsman's traditional approach of seeking out-of-court settlements through conciliation alone, with the Ombudsman expressing no opinion.

The second policy area related to the systematic redirection of requests, implemented by the AMF Ombudsman in cooperation with the Autorité de Contrôle Prudentiel (ACP) and the Ombudsman of the Ministry of Economic and Financial Affairs. All requests falling outside the Ombudsman's jurisdiction (e.g. those relating to banking, insurance and taxation) are now redirected to the relevant authorities within a few days.

The last policy decision was to put in place appropriate tools to promote wider awareness of the AMF Ombudsman's existence and jurisdiction. Substantial progress has been made in this regard: AMF Instruction 2012-07 on the handling

1. Article L. 621-19 of the Monetary and Financial Code

of complaints requires providers, whenever they partially or wholly reject or refuse to settle a complaint, to set out in their response to the client the available means of redress, including the existence and contact details of the relevant ombudsman or ombudsmen.

2 – A SIGNIFICANT INCREASE IN REQUESTS IN 2012: 15%

A total of 747 mediation requests were received in 2012, including 150 that were outside the jurisdiction of the AMF Ombudsman[2]. This left a total of 597 requests, compared with 518 in 2011, equating to a 15% increase.

A total of 695 mediation requests were handled in 2012, compared with 578 in 2011[3].

In the second half of 2012, the AMF Ombudsman issued 207 opinions out of a total of 382 mediation requests handled – i.e. in 54% of cases. Those instances in which no opinion was issued mainly related to claims that were abandoned by the claimant or fell outside the Ombudsman's jurisdiction. Of the opinions issued, 61 (30%) were favourable or partly favourable to the claimant. Only 2% of the opinions issued were not adopted by the parties. Meanwhile, claimants challenged only 5% of the 146 unfavourable opinions issued.

Out-of-court settlement may take the form of rectification (for example, where a challenged transaction or account transfer is cancelled), full or partial compensation for losses sustained or payment of a sum of money to the client. In each case, the settlement is a gesture of goodwill by the company in question, and does not imply an acknowledgement of liability.

2. In previous years, requests in this category were reclassified as consultation requests.

3. Excluding the 150 requests received that fell outside the AMF's jurisdiction, a total of 545 cases were assessed on their merits in 2012.

3 – ISSUES HANDLED BY THE OMBUDSMAN

A – MASS DISPUTE

The Ombudsman had the opportunity to put her arguments into practice in connection with a mass dispute.

During 2012 the Ombudsman was contacted by a lawyer representing 143 investors complaining that they had not been properly informed by around 20 financial institutions when acquiring, through those institutions, shares in a listed company that had since been placed into court-ordered insolvency proceedings. These investors had lost their entire investment.

That the company had been placed into insolvency proceedings did not, on its own, warrant the Ombudsman's involvement: the Ombudsman's role is not to exonerate shareholders from the risk of financial market uncertainties inherent in any investment in stocks and shares. Furthermore, mediation could not result in a solvent financial institution bearing the consequences of a potential breach by a company of its duty to provide information.

What was unique about this mass dispute was not only that the company had listed on the Alternext market, but that it had done so through a private placement. In light of applicable regulations, the Ombudsman considered that the financial institutions were required to inform their clients of this dual risk when they placed orders to buy the share in question; the risk was aggravated by the fact that investors did not have access to a prospectus approved by the AMF.

Since all the requests related to the same grievance, the Ombudsman shared her analysis of the situation with the claimants' lawyer. First, she had reviewed the information provided to clients on the risk associated with investing in companies listed on Alternext through private placement. Second, she recommended that the amount of any goodwill gesture be fairly adjusted in accordance with the degree to which each investor was seasoned and experienced, so that only claims made by inexperienced investors who were genuinely unable to understand the risks associated with the Alternext market and the particular method used to list the company on that market would be upheld.

The Ombudsman then contacted each of the institutions involved to share this analysis with them and ask them, for each of their clients, to provide her with information on the order in question or any warnings given when it was placed, as well as information about each client's profile as an investor.

While the Ombudsman's analysis necessarily looked at the obligation upon all the institutions involved, the losses suffered could only be assessed on a case-by-case basis. After reviewing each investor's profile, as a matter of equity the Ombudsman in some cases recommended no compensation while in other cases proposing a gesture of goodwill in line with the degree to which the investor in question was seasoned and experimented.

This case highlights the benefits of mediation. First, mediation allows equity to be restored – something that no court can do. In this particular case, this was an argument to which the financial institutions involved were sensitive. From the claimants' perspective, the involvement of the Ombudsman enabled imbalances between them and the institutions in question to be corrected. Given the uncertainty and cost associated with court proceedings, these claims may never have been brought to court, and would thus have remained without redress. Finally, the analysis of these requests as a combined whole by an independent third party removed the risk of unequal treatment before the law by examining the obligation upon each of the financial institutions together.

The Ombudsman's actions in connection with a mass dispute should not be seen as a substitute for the introduction of class actions in France, an issue currently under discussion. In France, the use of mediation is always based on a voluntary and confidential approach by the two parties. The confidentiality associated with mediation is a critical factor in negotiations with companies: mediation makes it possible for individual losses to be compensated quickly without damaging the company's reputation. Conversely, the key unique feature and major benefit of a class action is that, because the court's decision is made public, it addresses the issue of dissuasion as well as that of compensation.

As such, mediation is not a replacement for class actions; in reality, it should rather be seen as a helpful addition to a class action if the parties wish to avail themselves of it.

More generally, the mass dispute involving 143 claims received by the mediation unit in 2012 provided an opportunity for a number of account-keeping institutions to change the information they issue to their clients when the latter place orders in shares admitted to trading on the Alternext market via private placement. These institutions have included within their warning systems more detailed and specific information on the risks associated with this type of investment.

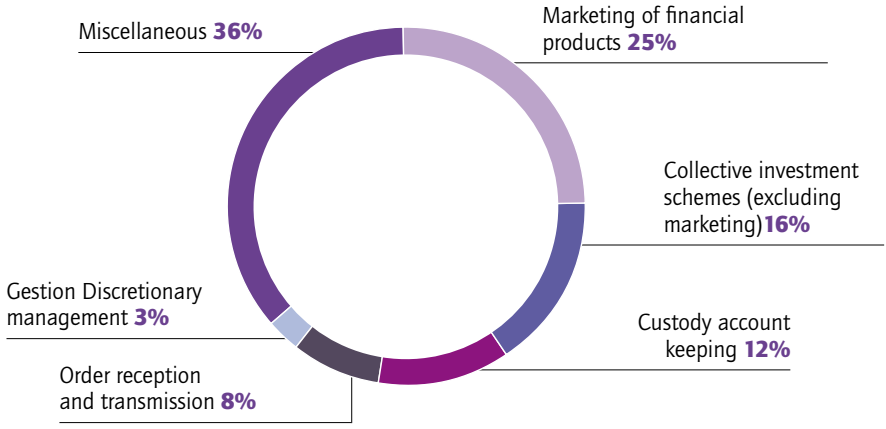
B – MAIN TOPICS IN OTHER CASES

As well as this mass dispute, which was symbolic of the Ombudsman's role, the Ombudsman service was asked to intervene in many other issues in 2012. As in previous years, the mediation unit received many requests relating to the marketing of financial products not suited to clients' circumstances or objectives, while the number of disputes involving companies specialising in the forex market continued to increase. The Ombudsman was also asked to intervene in disputes over the time taken to transfer securities accounts and equity savings plans, complaints over incorrectly executed or unexecuted buy and sell orders, situations arising from a lack of understanding on the part of retail investors following the winding-up of investment funds, and disputes over discretionary management in which investors felt that their portfolios had not been managed in their best interests.

Given the relatively high proportion of requests represented by the mass dispute in 2012, those requests have been excluded from the breakdown by subject area – including them in the breakdown would have made year-on-year comparisons impossible.

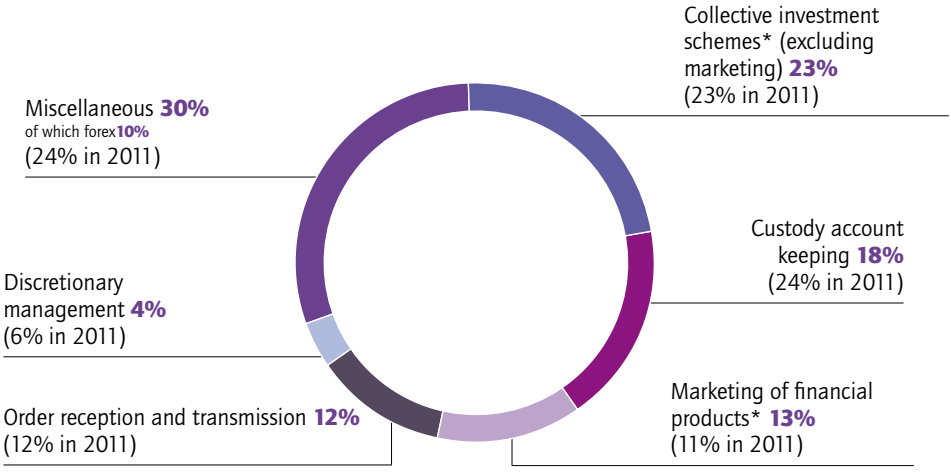
After excluding the mass dispute, a comparison of the breakdown by subject area in 2011 and 2012 shows a reduction in requests relating to "custody account keeping" following a relative reduction in requests relating to delays in transferring securities accounts. The proportion of requests in the "miscellaneous" category increased in 2012, with forex-related requests increasingly significantly within this category.

MEDIATION REQUESTS HANDLED IN 2012 BY SUBJECT AREA (including mass dispute)



Source AMF

MEDIATION REQUESTS HANDLED IN 2012 BY SUBJECT AREA (excluding mass dispute)



Source AMF

* The figures published in the 2011 Ombudsman's Report have been corrected. Instead of 28% and 6%, they should have read 23% and 11% respectively.

4 – DEVELOPMENT OF DOMESTIC AND INTERNATIONAL ACTIVITIES

A – ACTIVE DISCUSSIONS WITHIN THE CLUB OF PUBLIC SERVICE OMBUDSMEN ON THE PROPOSED EUROPEAN DIRECTIVE ON MEDIATION

The Ombudsman belongs to the Club of Public Service Ombudsmen. As such, she is actively involved in current discussions on planned changes to European regulations on mediation.

The European Commission has noted that entities responsible for out-of-court dispute resolution (conciliation, mediation and arbitration services, claims offices, etc.) intended to settle European cross-border disputes linked to electronic transactions are scattered and incomplete (due to language barriers, high costs and legislative differences between Member States) and that, in most cases, the end-to-end procedure cannot be completed online.

Accordingly, on 29 November 2011 the Commission published two proposed instruments intended to encourage out-of-court settlement of consumer disputes:

- A draft directive on the out-of-court settlement of consumer disputes (known as the "ADR Directive", for "alternative dispute resolution"), the purpose of which is to ensure that every European Union country has an entity responsible for the out-of-court settlement of consumer disputes.
- A draft regulation of the European Union and of the Council on the online settlement of consumer disputes (known as the "ODR Regulation", for "online dispute resolution"), the purpose of which is to create a single European platform to handle certain consumer disputes online. This draft regulation covers all contract disputes between consumers and professionals arising from cross-border online sales of goods and supplies of services. As such, it does not cover disputes between professionals, internal disputes or disputes relating to sales not carried out online.

The European Parliament and the Council agreed to the European Commission's two proposals on 18 December 2012. The final vote on the proposed instruments was passed by the European Parliament on 12 March 2013, and they are expected to be published in the Official Journal of the European Union before the summer. Member States will have two years to transpose the legislation into domestic law with effect from the entry into force of the directive.

The Club of Public Service Ombudsmen will be closely monitoring these two new pieces of European legislation, the transposition of the directive into French law and the impact of the legislation.

We welcome the fact that this legislation solemnly establishes the key concept of independence within the mediation function by laying down a series of conditions designed to guarantee that independence. It should also be noted that Member States will have the option of applying the directive to domestic mediation as well as cross-border mediation.

B – PARTICIPATION IN EUROPEAN BODIES INVOLVED IN THE WORK OF FIN-NET

Following notification to the European Commission (meaning that the AMF Ombudsman is recognised as meeting the criteria laid down in Commission Recommendation 98/257/EC of 30 March 1998), the AMF Ombudsman regularly participates in the work of FIN-NET, which met in Brussels on 20 March 2012 and in Budapest on 18 October 2012. The FIN-NET network consists of out-of-court settlement bodies in countries within the European Economic Area (EEA: European Union Member States plus Iceland, Liechtenstein and Norway) tasked with handling disputes between consumers and financial services providers including banks, insurers and investment firms.

The European Commission established this financial dispute resolution network in 2001 to make it easier for consumers to access out-of-court settlement procedures in relation to cross-border disputes, where the service provider is established in a different EEA country from the consumer.

When a dispute arises between a consumer based in one member state and a financial services provider based in another member state, the network's members put the consumer in contact with the relevant out-of-court settlement body and provide him or her with all the required information about that body.

The AMF Ombudsman also participated for the first time in the annual meeting of the International Network of Financial Services Ombudsman Schemes (INFO), held in Copenhagen on 17 and 18 September 2012. The INFO network encompasses ombudsmen from all over the world (with 49 members from 32 countries) and encourages the fruitful sharing of mediation experience and practices.

5 – 2012: A MORE RESPONSIVE AND PROACTIVE APPROACH TO MEDIATION

A – QUICKLY IDENTIFYING AND REDIRECTING REQUESTS THAT CANNOT BE HANDLED

A significant proportion of the requests received by the Ombudsman cannot be handled on the grounds that they are inadmissible. Aside from disputes where no prior complaint has yet been made or which, conversely, have already been brought before the courts, a request may be ruled inadmissible because it falls outside the Ombudsman's jurisdiction, because of the geographical location at which the dispute arose or because the reported facts may have criminal implications.

Even when requests are mistakenly submitted to the AMF Ombudsman, it is very important to the clients in question that they are quickly redirected to the correct body. The Ombudsman gave a commitment in this regard in early 2012, and an arrangement was put in place with the ACP with regard to requests relating to banking and life insurance, to the satisfaction of all parties, ensuring that claimants are put in contact with the relevant body within a few days.

In some other cases, it becomes clear that the damage suffered calls for investigative powers that the Ombudsman does not have. Such powers belong exclusively to the AMF's investigative and supervisory departments and Enforcement Committee. Since mediation is not appropriate for such cases and the Ombudsman service cannot handle them, they are classed as alerts and forwarded to the relevant specialist departments.

1 – Requests that are inadmissible because they relate to banking, life insurance or taxation, or because of the geographical location at which the dispute arose, or because the reported facts may have criminal implications

a – The Ombudsman does not have jurisdiction over banking-related matters

The mediation unit receives requests concerning passbook savings accounts, unpaid direct debt charges, loans, etc., that fall outside its jurisdiction. However, a financial package such as the subscription of units in a real estate investment company financed via a bank loan falls within the AMF Ombudsman's jurisdiction.

b – The Ombudsman does not have jurisdiction over matters related to life insurance, which are governed by specific rules

Examples in this area include advice on and the sale of life insurance policies including unit-linked policies invested in collective investment schemes, endowment policies, people's savings plans invested in life insurance policies (PEPs) and retirement savings plans (PERPs).

Investment-related requests sometimes involve both securities accounts, which fall within the Ombudsman's jurisdiction, and life insurance. Such requests are handled by the AMF Ombudsman for the aspect that falls within her jurisdiction and by another Ombudsman for the life insurance aspect. Despite the complexity of such cases, the "securities account" aspect of one such mediation request was successfully resolved in 2012.

c – Finally, the Ombudsman does not have jurisdiction over matters related to taxation

On this subject, in accordance with the commitment given by the Ombudsman, an agreement has been entered into with the Ministry of Economic and Financial Affairs to ensure that requests are handled as efficiently as possible. Experience shows that there is sometimes a very fine line between tax-related issues and the account-keeping obligations upon financial intermediaries. Analysis is often necessary to establish

whether the issue at hand is the result of a financial issue, or whether the issue itself is tax-related.

d – The Ombudsman may not have jurisdiction if the dispute arose outside France

For example, the Ombudsman received one request relating to a bond issued by a Belgian company. After noting that the issue had not been approved by the AMF, the Ombudsman used the FIN-NET network, of which she is a member, to identify the European Ombudsman with jurisdiction in this particular case. As a network that exists to help resolve financial disputes, FIN-NET consists of out-of-court settlement bodies established in countries within the European Economic Area. The Ombudsman was therefore able to forward the request directly to the Belgian banking, lending and investment Ombudsman service. This type of cooperation makes it easier for claimants to access out-of-court settlement procedures in relation to cross-border disputes. The Belgian ombudsman service subsequently informed the AMF Ombudsman once the case had been closed.

Furthermore, some foreign financial firms offering investments in the forex market specify in their general terms and conditions which Ombudsman has jurisdiction in the event of disputes; from experience, it is usually the Ombudsman in the United Kingdom or Ireland.

e – The Ombudsman may face situations where the reported facts are liable to be classed as criminal offences

Examples of such cases include unlicensed investment services providers and instances of fraud. It should be noted that the bulk of such cases in 2012 related to investment services offered by unregulated forex operators[4], and that the proportion of such cases increased relative to 2011.

In accordance with the statutory obligation laid down in Article L. 621-20-1 of the Monetary and Financial Code, the Ombudsman forwarded the information in her possession to the public prosecutor at the Paris Regional Court to decide what action, if any, should be taken in response to the reported facts.

The judicial authorities informed the Ombudsman that a number of preliminary investigations into unregulated operators had been initiated in 2012 on the basis of the information forwarded by the mediation unit.

2 – Cases in which mediation is not possible because the Ombudsman does not have investigative powers

The last annual report referred to the difficulty of making a worthwhile contribution in cases where investors complain about the performance of collective investment schemes (see page 9 of the 2011 Ombudsman's Report). Technical and legal constraints make mediation more difficult in such cases. However, since this type of request from retail investors cannot go unanswered, it was announced that discussions were underway on the most effective way to handle such cases.

The mere fact that the value of units in a collective investment scheme has fallen is obviously not sufficient to represent proof of management failings. The unitholders with whom the initial burden of proof lies are clearly powerless to provide such proof. Meanwhile, the Ombudsman, who has no powers of investigation or inspection, cannot herself assess whether a collective investment scheme has been mismanaged. It is important to remember that mediation is based on a voluntary approach; by contrast, management failings call for investigations that are within the sole purview of specialist departments responsible for monitoring and supervising these products.

The Ombudsman therefore views such cases as alerts in relation to the way in which a product is managed, and forwards them to the AMF's specialist departments. These departments analyse requests forwarded to them in this way and may, if necessary, intervene to ask the management company to remedy the situation or even to collectively compensate unitholders. However, because of professional secrecy rules surrounding supervisory procedures, individuals who raise such alerts are not kept informed of the investigations conducted by the AMF's specialist departments.

The obstacle to the Ombudsman handling this type of request may, however, be removed where a decision by the AMF's Enforcement Committee has identified and described the management company's failing. On the basis of such an enforcement decision and after reviewing the

4. See page 16 below.

admissibility of the request, the AMF Ombudsman may initiate mediation proceedings with the management company to seek compensation for unitholders affected by the actions it has been found to have committed. It remains for the mediation process to determine the link between the established failing and the loss sustained.

B – ANALYSING POTENTIAL DEFICIENCIES, ASSESSING LOSSES AND CHANGING COMPANIES' BEHAVIOUR

When the Ombudsman service receives a request, it seeks to identify a deficiency. However, the mere fact of identifying a deficiency does not mean that the Ombudsman will get involved. Indeed, the Ombudsman's main role is to recommend a gesture of goodwill in compensation where she establishes that a deficiency has resulted in a loss for the claimant and that there is a causal link between that deficiency and the loss sustained. The Ombudsman then assesses the amount of the loss and proposes appropriate compensation.

1 – Misinterpretation by a company of an early redemption clause within a collective investment scheme

When the Ombudsman, after analysing the facts and applicable regulations, identifies a deficiency that has resulted in a loss, she shares her analysis with the company in question and announces her intention to issue a recommendation in favour of the investor.

In one case, a unitholder in an innovation investment fund (FCPI) submitted a mediation request in connection with a dispute with the company managing the fund. The management company had rejected an early redemption request from the unitholder after he was made redundant, on the grounds that the request was made more than 24 months after he was made redundant. The company pointed to tax regulations and stated that there had to be a causal link between the redemption and the reason for early redemption, and that this link had ceased to exist more than 24 months earlier.

In this case, the Ombudsman pointed out firstly that no maximum cut-off period was laid down in the fund's regulations – such regulations generally only authorise redemption requests within six months of the date on which the reason for redemption arises – and secondly that the causal link still existed in so far as the claimant had proved that he was still unemployed and that his entitlement to unemployment benefit was about to expire.

The management company agreed to accept the claimant's redemption request. Since the net asset value (NAV) on redemption gave rise to a capital gain relative to the NAV on the date at which the redemption request should have been executed, this gain served as compensation.

2 – Changes to a prospectus by a management company

The mediation unit received a request from a retail investor who had bought units in an investment fund but did not understand the net asset value (i.e. the price of each unit) that had been applied to the purchase. An examination of the case revealed that the prospectus was lacking in clarity in relation to subscription procedures. A proposed change was therefore submitted to the management company. The management company made the proposed change to the fund prospectus and compensated the unitholder for the loss sustained.

3 – Changes to disclosure rules on the calculation of exchange rates

In another case, a dispute provided an opportunity for an account-keeping institution to detect an anomaly in the method used to calculate exchange rates applied to trades in foreign securities. The institution, which outsourced this activity to an external provider, had no information about the method used to calculate the exchange rates used for its clients' trades.

This mediation request provided an opportunity for the institution to review the issue with the external provider and provide a composed response to the client.

Deficiencies and losses

The mere fact that a deficiency has occurred does not in itself warrant the Ombudsman's involvement in view of compensation. Unlike the AMF's Enforcement Committee, which issues sanctions when it identifies breaches of regulations, the Ombudsman's role is first and foremost to ensure that losses are compensated. Even where the Ombudsman identifies a deficiency when examining a case, she cannot recommend that the claimant be compensated unless a loss has been sustained.

In accordance with this principle, there have been cases in which the Ombudsman has not recommended compensation despite having identified a deficiency. However, where a case highlights procedural failings, the Ombudsman enters into a constructive and supportive dialogue with the company to make it aware of the opportunity to correct those failings. Many companies take concrete action in response to this approach.

4 – Changes to order-placing systems

A retail investor contacted the mediation unit in relation to the execution of instructions under the deferred settlement system. This investor did not understand why there had been a delay of one minute and 30 seconds before the system processed his instruction to sell a long position.

Following discussions with the account-keeping institution, the Ombudsman was able to establish that the disputed delay corresponded to the time needed by the financial institution to carry out a preliminary consistency check. The Ombudsman confirmed that, when placing his instruction online, the investor had not been informed that it would not be processed immediately. The Ombudsman the bought this state of affairs to the company's attention.

In this case, the company committed to adjust its order-placing systems so as to notify its clients in real time that their instructions are subject to preliminary checks before being processed.

5 – Assessing the opportunity cost where a company withdraws a holding from an equity savings plan, thus blocking future payments

Retail investors who contact the mediation unit do not always have an objective view of the amount of compensation they wish to obtain. In such cases, the role of the Ombudsman is to explain to claimants why their claims are not fully justified.

The Ombudsman often has to draw claimants' attention to the difference between an expected benefit and an opportunity cost. In accordance with well-established legal precedent, in 2012 the Ombudsman reiterated on a number of occasions that, when dealing with losses arising from an opportunity cost, the amount of compensation is not equal to the whole of the expected benefit, but must be assessed on the basis of the lost opportunity.

As an illustration, if a claimant feels that he has been sold a financial instrument that is not suited to his circumstances and objectives and states that, if he had not bought that instrument, he would have invested his money in a passbook savings account, the expected benefit is the interest he would have earned on the passbook savings account. However, the amount of compensation cannot be considered equal to the

full amount of this expected benefit. In the case in point, an assessment must be made of the probability of that benefit arising and a percentage loss must be negotiated. This percentage loss becomes the repairable loss, which equates to the loss of opportunity (or opportunity cost).

In 2012, the Ombudsman had to explain these concepts to an individual who asked her to intervene in a dispute with a bank. This client had entrusted management of an equity savings plan to financial institution X. A few years later, she had transferred her equity savings plan to a different institution, bank Y. When she came to make another payment into the account, bank Y informed her that the payment could not be made, since she had already made a withdrawal. After contacting financial institution X, the client learned that that institution had withdrawn a particular holding from her equity savings plan on the basis that this holding "could not be placed under management". The client received no notification of this withdrawal from institution X. The withdrawal had significant consequences from a taxation perspective: in such cases, no further payments can be made into an equity savings plan, which becomes, so to speak, "blocked". The client was seeking compensation from institution X for the loss she felt she had sustained.

While the client had undeniably sustained a loss, the amount of compensation remained to be established. In this particular case, the Ombudsman firstly calculated what the expected benefit would have been – i.e. the likely return on the amount the client had wanted to pay into her equity savings plan, had she been able to do so. The Ombudsman calculated this amount based on the performance of the CAC 40 index between the date on which the client tried to make the payment and the date on which she referred the dispute to the mediation unit, less interest on the amount of the payment, which had been held in a suspense account.

However, the loss sustained by the client represented an opportunity cost. As such, the amount of compensation could not exceed the probability of the expected benefit actually arising. In this particular case, the Ombudsman recommended compensation equivalent to 50% of the expected benefit.

6 – Assessing compensation where the claimant has contributed to the deficiency

On occasions, it is not the amount of the loss that is tricky to calculate but the amount of compensation, which may be reduced if the claimant has contributed to the deficiency.

In one case, a claimant had bought some highly speculative bonds for which he had expected to pay less than €1 each. In fact, his order was executed at a unit price of almost €20; the bonds in question had changed quotation group, resulting in their price being quoted in euros rather than as a percentage. In this case, calculating the amount of the loss was straightforward: it was simply the difference between the price at which the claimant's order was executed and the price at which it should have been executed. However, upon further analysis, it emerged that two mistakes had been made: first, the client had filled out his order as a percentage rather than in euros, and second, the market undertaking had failed to adjust the bond's reference price following a change in quotation group. The market undertaking therefore proposed compensation equivalent to 50% of the amount of the loss.

In this particular case, the Ombudsman felt that the claimant's mistake was, in part, excusable and had been absorbed by the company's mistake: in particular, had the company not made its mistake, the claimant's mistake would have had no consequences.

Given the specific circumstances of the case, the Ombudsman proposed compensation equivalent to 75% of the amount of the loss, and this was accepted by both parties.

C – WORKING MORE CLOSELY WITH BOTH COMPANIES AND CLAIMANTS

In response to growing demand to listen to and dialogue with claimants, the communication channels used by the mediation unit have been increased and diversified. Alongside mail, which has traditionally been the mediation unit's most frequently used channel, greater emphasis has been placed on discussions with claimants by telephone and e-mail.

In addition, claimants are provided with more information throughout the mediation process. For example, claimants are automatically sent an

acknowledgement when their request is received and a further confirmation once the mediation unit has contacted the company in question.

Similarly, while the mediation process is still mainly a written process, the mediation unit has significantly increased its use of telephone conversations with companies. This approach helps identify the underlying issues in a case, speeds up the overall process and, above all, makes it possible to negotiate more directly, openly and freely with the company and, where necessary, with the claimant.

Finally, to further improve accessibility for claimants, a case tracking tool should be made available via the AMF website in 2013. Claimants will be able to use this tool to track a case's progress at every step of the process using a personal and confidential code provided by the mediation unit.

D – PROCESSING AND IDENTIFYING REQUESTS THAT ARE UNFOUNDED ON RECEIPT AND AFTER INVESTIGATION

While the primary role of the Ombudsman service is to investigate both sides of each request it receives, it is sometimes obvious that requests are unfounded as soon as they are received. In such cases, which account for 15% of all requests, this means that the claimant either was unaware of or had failed to understand applicable regulations. In other cases, only after conducting an investigation and exchanging documents and arguments with the parties can the Ombudsman conclude that a request is unfounded. In such cases, the Ombudsman issues an unfavourable recommendation, and the claimant is still free to make a claim to the courts.

In both cases, the Ombudsman writes to the claimant to explain clearly why she believes there are no grounds for compensation. This correspondence is bound by the usual rules of confidentiality. It is important in such cases that the Ombudsman adopts as instructive an approach as possible. Rather than simply reiterating regulations, the Ombudsman should seek to clarify them or explain why there was no deficiency or why there is no repairable loss. Any lack of understanding on the part of the claimant must be clarified, and the Ombudsman's recommendation – whatever it may be – must be understood and accepted.

A good indicator of the extent to which the Ombudsman is successful in explaining such situations is the proportion of unfavourable opinions that are not challenged by claimants. Since the second half of 2012, when records of opinions issued by the Ombudsman began to be kept, only 5% of claimants have challenged unfavourable opinions.

1 – Dispute involving a redemption in a collective investment scheme on a forward pricing basis

An investor in an "FCPI" innovation fund and an "FIP" local investment fund disputed the practice of carrying out redemptions on a "forward pricing" basis, as set out in the relevant fund prospectuses. The Ombudsman firstly reminded the investor that FCPIs and FIPs are collective investment schemes mainly consisting of unlisted securities. To redeem units, the management company must therefore sell some of the fund's assets to obtain the cash needed to pay the investor. This means that the unit price on redemption may not be known at the time the redemption request is received, hence the use of forward pricing.

2 – Cancellation of an order because no counterparty can be found

The Ombudsman received two requests relating to a thankfully unusual situation which, quite understandably, triggers discontent among investors: the cancellation of an order because no counterparty can be found.

The Ombudsman had to explain to investors how a buy order could be cancelled 12 days after appearing on their account statements. Failure to deliver securities is an unusual situation that is covered by the rules of the clearing house, LCH. Clearnet SA.

The process consists of two phases. On day D+10, seven days after the theoretical settlement date (which is set at day D+3), the clearing house tries to find another potential seller of the required securities so it can settle the trade. LCH.Clearnet posts an attractive bid price on its website. Two days later, if no seller has been found, compensation is paid by the financial intermediary on behalf of the defaulting client. This compensation must be paid over by the financial intermediary to the client whose order has remained unfulfilled, in full and on the same day. The amount of this compensation must be 120%

of the price of the security at day D+10, and may not in any event be less than the amount of the purchase price at the date on which the order was placed.

In both cases submitted to the Ombudsman, it became clear that the situation had been managed in accordance with the rules.

3 – Loss in value of securities issued by companies in insolvency proceedings

In 2012, the Ombudsman was contacted by shareholders claiming mismanagement by the senior executives of listed companies placed into compulsory liquidation.

Where compulsory liquidation proceedings are in progress, only the court-appointed liquidator may intervene; shareholders are prohibited from acting, either through the courts or via the Ombudsman. There are very specific conditions under which a loss in the value of securities issued by a company can constitute a repairable loss for shareholders that can be settled out of court – in particular, where a shareholder considers that his or her financial intermediary or the senior executives of the listed company had failed to provide the information needed to assess the associated risk at the time the securities were purchased.

Furthermore, following recent case law in the Commercial Chamber of the Court of Cassation on 9 March 2010 (published in issue 48 of the Bulletin Civil), shareholders may petition the courts to find the senior executives of companies in insolvency proceedings personally liable for a failure to provide them with adequate information resulting in them buying or not selling the securities in question.

E – PREVENTING WINDFALL EFFECTS AND APPLYING THE PRINCIPLE OF EQUITY

Mediation provides an opportunity to settle disputes out of court. As such, it requires both parties to cooperate fairly and in good faith. In issuing recommendations, the Ombudsman therefore pays close attention to indications of each party's sincerity or lack thereof.

1 – An experienced investor suddenly declares himself a "novice" when a dispute arises

In one case, the Ombudsman found that the client was acting in bad faith. This client was classed as "experienced" after completing the client assessment questionnaire; however, when the dispute arose, he changed his profile on the company's website to "novice", a category that offers a higher level of protection.

2 – A particularly experienced investor

The Ombudsman was contacted by an investor who, like other investors, was complaining that he had not been properly informed by his financial institution when acquiring securities issued by a listed company that had since been placed into insolvency proceedings. It emerged that the client had already been a shareholder in the company before it was even listed.

The Ombudsman therefore considered that, while this client had subsequently bought securities via his financial institution, as an investor he was particularly aware of the risks associated with those securities and could not claim not to have been made aware of them.

3 – An indicator of windfall effects: the absence of any claim at the time the supposed loss arises

Towards the end of 2012, the AMF's mediation unit saw a further increase in requests concerning the marketing of a range of structured funds by a banking group in 2001 and 2002, already referred to in previous annual reports. In particular, this increase could have been driven by increased media coverage of the cases in question. The issue raised was the same as before: the way in which these products had been marketed, and in particular the advice given by the adviser and the documents provided on subscription.

In these cases, given the time elapsed since the facts had occurred, it appeared important to distinguish, as far as possible, those individuals who had been properly informed of the product's characteristics but who wished to obtain compensation (and thus to benefit from a windfall effect) from those who had not been properly informed of the product's characteristics and who felt they had been misled, but who had not immediately contacted the Ombudsman service simply because they were not aware of its existence.

The Ombudsman therefore paid particularly close attention to whether or not a written claim had been made not when the product was sold but when it matured in 2008 – the date with effect from which the loss became apparent to investors.

As far as possible, given the time elapsed since the facts had occurred, opinions issued by the Ombudsman also took into account clients' financial experience and knowledge at the time of subscription in order to establish whether they were able to understand how the product worked.

4 – A case of simple equity, irrespective of legal rules: the cost of a holding of worthless securities

Where a shareholder has a holding of securities that are declared worthless following compulsory liquidation, under the law, that shareholder cannot seek compensation for loss of value from his or her bank.

The bank is merely an account-keeper and is in no way linked to the compulsory liquidation of the listed company in question. In practice, however, the worthless shares are shown in the shareholder's account until liquidation proceedings are completed, which can take several years. Under a strict interpretation of the rules, the financial institution is entitled to continued charging custody fees throughout this period.

In one case, given the particular circumstances, the Ombudsman asked the financial institution, as a matter of equity, to refund these custody fees, and the institution agreed to do so.

5 – An element of equity: the Ombudsman is not required to refer to limitation periods

Under the principle of equity, the Ombudsman can sometimes intervene even when the facts occurred a very long time ago. In such cases, the Ombudsman is not required to mention the legal limitation period – i.e. the latest date by which a case must be brought to court. In practice, however, where the company in question points out that the limitation period has expired, it becomes more difficult to undertake the mediation process because there is no legal risk, thus limiting the Ombudsman's leverage in any negotiations.

Even where the Ombudsman does not refer to the limitation period, then, a company can do so in its defence.

Legal limitation

Legal limitation periods applicable to financial disputes

Since Act 2008-561 of 17 June 2008, in accordance with the new Article 2224 of the Civil Code, private actions pertaining to financial disputes are subject to a limitation period of five years (previously ten years) with effect from the date on which the person bringing the action became aware or should have become aware of the facts on which the action is based. This date may be the date on which the loss arose or, where the victim establishes that he or she had previously not been aware of the loss, the date on which he or she became aware of it. In the absence of special provisions, these provisions are applicable with immediate effect.

Suspension of the limitation period during the mediation process

In accordance with the provisions of Article 2238 of the Civil Code, the limitation period is suspended as from the day when, after a dispute has arisen, the parties agree to use mediation. This suspension becomes effective as soon as the mediation service is contacted and ceases when the mediation process is confirmed as having come to an end. The limitation period recommences, for a period not less than six months, as from the date on which one or both parties or the mediator declares that the mediation process has come to an end.

Adjusting limitation periods

The limitation period may be adjusted or shortened by contract. According to well-established case law in the Court of Cassation, contractual clauses under which account statements issued by credit institutions state that any discrepancies must be notified within 30 days, or a few days for contract notes, amount to no more than simple presumption. As such, clients are entitled throughout the statutory limitation period to provide evidence that might overturn the presumption of agreement.

In one mediation case, a couple had entered into two discretionary management agreements with a management company in 1996. In 2012, 12 years after the facts, the wife – whose investor profile had not been assessed either upon entering into the agreements or upon the death of her husband, an experienced investor, in June 2000 – contacted the Ombudsman claiming that her portfolios had been managed in a way not suited to her profile and seeking compensation for the resulting loss.

While the case was being investigated, the management company rightly pointed out that the limitation period in relation to the facts in question had expired. The Ombudsman reiterated that, while she was not required to refer to the limitation period when handling a mediation request, the company in question was entitled to do so in its defence.

As a result, the mediation process could not continue.

F – DEVELOPING NEGOTIATION ARGUMENTS TO REACH AGREEMENT

A mediation process supervised by the Ombudsman offers a number of benefits to both parties: it is fast, fair and free. Also, for the company, it offers confidentiality (and hence entails no reputational risk) as well as the opportunity to resume the business relationship.

1 – The Ombudsman's intervention in cases linked to the forex market

The AMF and the Autorité de Contrôle Prudentiel (ACP) issued several news releases warning retail investors about proposals to invest on the forex market, reiterating the specific risks associated with products offered on that market.

The number of forex-related disputes is increasing:
The mediation unit once again received an increasing number of requests: 58 in 2012, compared with 46 in 2011. Of the 58 requests received, 35 fell outside the Ombudsman's jurisdiction because they were liable to represent criminal offences, 12 were assessed on their merits and four resulted in compensation.

Distress situations:
The requests received often highlight situations of genuine distress, with many victims experiencing financial, family or medical difficulties. Claimants' profiles are often different from those of active investors in financial products. The mechanism used results in a spiralling cycle, detailed below.

Many operators use the exact same approach, based on a vicious cycle: a novice is drawn in by an online advertisement offering free training to become a trader on the forex market, holding out the prospect of substantial and easy financial gains. After completing 15 to 30 minutes' training using a dummy account, the client is sufficiently convinced to try his hand with a modest initial investment. The client assessment questionnaire is either non-existent or, in the very rare cases where it does exist, is completed quickly. The client aspires to be looked after by an "adviser", who promises to provide close support. Initial returns are usually fast and positive, enticing the client to invest more money. However, the client soon finds himself with nothing left in his account and with an "adviser" who cannot be contacted.

While it is true that, in the cases submitted to the Ombudsman, a client's commitment may be no more than his or her initial investment, the high level of leverage and the sales techniques used for this type of investment force clients to invest much more money than they would like to at the outset. Clients are encouraged to invest more money, failing which their open positions will be closed. "Advisers" propose "incentives", which may be free bonuses (that cannot be withdrawn), conditional upon accrued business volumes, or the desactivation of various stops that would otherwise cause positions to be closed out automatically. These proposals usually serve only to increase the client's losses.

In some cases, where the proposal was made by a company licensed by a financial authority in a European country, the Ombudsman was able to secure compensation after highlighting very aggressive sales practices.

The primary argument was to point out to the companies concerned, where applicable, that they had already been found guilty of misleading advertising by the Advertising Ethics Committee, thus highlighting a legal risk that might arise where the claimant had informed the Ombudsman that it was through this same type of banner advertisement that he or she had come into contact with the investment services provider in question.

The Ombudsman placed particular emphasis on sales practices that were objectively highly aggressive, with no warnings given and clients encouraged to take ever greater risks. This was particularly the case where the client's adviser promised conditional trading bonuses or any other very forceful sales argument that could only be perceived as an incentive to take on greater risk, irrespective of the client's circumstances, by drastically increasing the client's positions with the sole aim of increasing his or her commitment to a certain level.

The AMF Ombudsman cannot accept jurisdiction in cases where the company states that an Ombudsman in another European country – for example the United Kingdom or Ireland – has jurisdiction.

Where the company is unlicensed – and is thus liable to criminal charges – mediation is not possible and the case is referred to the public prosecutor (pursuant to Article L. 621-20-1 of the Monetary and Financial Code).

2 – A request to redeem units in an "FIP" local investment fund

Following the advice of their then financial adviser, a couple of retail investors invested €24,024 in an "FIP" local investment fund in 2007, consisting of €21,500 from a loan taken out specifically for that purpose and €2,524 withdrawn from a passbook savings account. They did not sign any subscription form or any commitment to hold units for a particular duration. Furthermore, they were not even provided with a full or simplified prospectus for the fund, and thus did not have the opportunity to make an investment decision in full knowledge of the facts associated with a high-risk investment.

The Ombudsman recommended that this couple be compensated for the full amount of the loss sustained upon redemption of their units in the fund relative to the subscription price paid, plus exit charges, to which an additional amount of compensation was added in recognition of the specific circumstances. The institution in question accepted this recommendation.

3 – Loss arising from late execution of an order

In another case in which an order was sent by mail and had still not been executed several days after being received, the institution in question initially did not wish to accept the Ombudsman's request to pay compensation to the client. The Ombudsman pointed out that, given the specific facts of the case, the court might consider that the order had not been executed as promptly as might be expected. The Ombudsman thus highlighted a legal precedent that might not be to the institution's advantage, given that this was an isolated incident for the institution, which rarely received orders by mail.

The Ombudsman recommended compensation based on the difference in price arising from the delay in executing the order. This recommendation was accepted.

4 – Improper execution of an order because of a one-off incident

The Ombudsman received one request linked to an online incident recognised by an institution.

An investor bought 20,000 Turbo Pro Put warrants at 9:06 a.m. At 9:27 a.m., that same

investor wished to place a sell order, but a technical incident affecting the online order system meant this was not possible. The institution recognised in writing that "an incident affecting the trading site" had occurred. It was admitted that, had this technical problem not occurred, the client would have been able to resell his 20,000 securities at around €1 each (€0.99 at 9:26:30 a.m. and €1 at 9:35:31 a.m.), generating a gain of €600 (excluding fees) instead of a loss of €4,000 (excluding fees).

The Ombudsman highlighted that, even though the problem was in reality caused by a one-off incident, the reliability of the provider's IT system was likely to be called into question.

This analysis convinced the institution to follow the Ombudsman's recommendation.

The parties agreed to compensation for the full amount of the loss sustained plus associated fees.

5 – Restoration of a business relationship thanks to mediation

An institutional investor had entrusted the management of a number of dedicated collective investment schemes to a given management company. A foreign exchange loss of more than a million euros arose on one of the products in the space of a few days. Following in-depth analysis by the Ombudsman, which involved interpreting the terms of contractual documents and the intentions of both parties at the point at which they signed those documents, the parties agreed on a gesture of goodwill in the form of a waiver of management fees for one of the parties. This gesture of goodwill was phased over time, thus reassuring the management company by favouring a continuing business relationship. From the point of view of the investor, who, aside from this incident, was satisfied with the services provided by the management company, this gesture of goodwill restored the business relationship in a satisfactory way.

6 – The Ombudsman advises the parties of the scope of confidentiality

The Ombudsman received a request to clarify the scope of confidentiality as regards the initial submission of a case to the mediation unit. The Ombudsman reminded the claimant that, in accordance with the provisions of Article 21-3 of Act 95-125 of 8 February 1995 amended by Executive Order 2011-1540 of 16 November 2011, which subsequently became Article L. 1532 of the Code of Civil Procedure, "Unless the parties agree otherwise, mediation is subject to the principle of confidentiality", and that Article 4 of the AMF mediation charter stipulates that "the Ombudsman and mediation staff, as well as the parties, are bound by the strictest confidentiality". The Ombudsman also explained that the principle of confidentiality applies to the entire mediation process, once both parties have agreed to mediation, and covers all communications and documents involved in the process.

As stipulated in the aforementioned Article 1532, "Neither the observations of the mediator nor any statements taken during mediation may be disclosed to third parties; nor may they be raised or produced in connection with judicial or arbitration proceedings without the consent of the parties."

In another case, the company in question ultimately rejected the Ombudsman's recommendation because it feared that, given the particularly demanding and threatening attitude displayed by one of the claimants, that claimant might share the details of any agreement reached on social networks. It was essential that confidentiality be maintained, since other investors were also likely to have found themselves in the same position. The Ombudsman had, however, found a solution that would have been reasonable for both parties in this case, in which the claimants felt they had been victims of a lack of information and poor advice from a financial investment adviser.

G – FORMALISING OUT-OF-COURT SETTLEMENTS: THE MEMORANDUM OF UNDERSTANDING

Once negotiations have been completed and an agreement reached, that agreement may be documented in the form of a memorandum of understanding signed by both parties. While in no way mandatory, a memorandum of understanding can be a useful way for parties to permanently settle a dispute with no further room for disagreement while defining the precise scope of the agreement reached.

It presupposes that the parties have agreed to reciprocal and balanced concessions: the payment of compensation – with no admission of liability – by the company and the waiver by the claimant of any subsequent legal action in relation to the same facts.

A memorandum also provides an opportunity to remind both parties of their commitment to maintain confidentiality.

The Ombudsman offers to assist with the drafting of the memorandum so as to ensure that it is legally watertight and fair and that the undertakings given are balanced and proportionate. In particular, the Ombudsman, who is not a signatory to the memorandum, ensures that the facts are set out accurately – i.e. that the subject of the dispute is clearly defined – but concisely so as to avoid crystallising or reviving tensions over the dispute.

Marielle Cohen-Branche - Ombudsman
and François Denis du Péage, Manager.

Contents

Annexes

Annex 1

MONETARY AND FINANCIAL CODE, ARTICLE L. 621-19

The Autorité des Marchés Financiers is authorised to deal with claims from any interested party relating to matters within its competence and to resolve them appropriately. Where the conditions so permit, it proposes a friendly settlement of the disputes submitted to it, via arbitration or mediation.

A referral to the Autorité des Marchés Financiers seeking extrajudicial settlement of a dispute shall suspend limitation of any civil or administrative action. Said limitation shall resume when the Autorité des Marchés Financiers announces the close of the mediation procedure.

The Autorité des Marchés Financiers cooperates with its foreign counterparts to facilitate extrajudicial settlement of cross-border disputes.

It may formulate proposals for amendments to the laws and regulations concerning the information provided to the holders of financial instruments and to the public, the markets in financial instruments and in assets referred to in paragraph II of Article 421-1 and the status of the investment service providers.

Each year, it draws up a report to the President of the Republic and to Parliament which is published in the Official Journal of the French Republic. Said report presents, in particular, the changes to the regulatory framework of the European Union applicable to the financial markets and reviews the cooperation with the regulatory authorities of the European Union and of the other Member States. The Chairman of the Autorité des Marchés Financiers shall be heard by the Finance Commissions of the two Assemblies if they so request and may ask to be heard by them.

Annex 2

ORGANISATION CHART – MEDIATION

at 31 December 2012

Gérard Rameix - Chairman

Secretary General
Benoît de Juvigny

Retail Investor Relations Directorate
Director
Natalie Lemaire

Marielle Cohen-Branche - Ombudsman

Mediation Unit
Manager
François Denis du Péage

Assistant
Lysiane Flobert

Legal team
Xavier Beaud
Virginie Lavolé
Nelly Lebel
Audrey Pellen

Annex 3

MEDIATION CHARTER

Article L. 621-19 of the Monetary and Financial Code states: "The Autorité des Marchés Financiers is authorised to deal with claims from any interested party relating to matters within its competence and to resolve them appropriately. Where the conditions so permit, it proposes a friendly settlement of the disputes submitted to it, via arbitration or mediation.

"A referral to the Autorité des Marchés Financiers seeking extrajudicial settlement of a dispute shall suspend limitation of any civil or administrative action. Said limitation shall resume when the Autorité des Marchés Financiers announces the close of the mediation procedure.

"The Autorité des Marchés Financiers cooperates with its foreign counterparts to facilitate extrajudicial settlement of cross-border disputes."

Pursuant to this article, the ombudsman receives and examines all complaints and mediation requests submitted to the Autorité des Marchés Financiers.

Impartiality

As part of the Autorité des Marchés Financiers, an independent public body, the ombudsman has sufficient and appropriate resources to carry out his duties neutrally and impartially. He also has his own budget.

He receives no direction on how to deal with the individual cases for which he is responsible.

Referral

Direct access to the ombudsman is guaranteed and his contact details are readily available. Any individual or legal entity is entitled to contact the ombudsman with regard to a dispute of an individual nature falling within the jurisdiction of the Autorité des Marchés Financiers. Referral to the ombudsman is free of charge.

Prior action

Before contacting the Ombudsman, a complainant must have made an initial written approach that has been totally or partially dismissed by the investment services or issuer concerned.

The mediation process

The Ombudsman may only undertake the mediation procedure with the consent of both parties.

In principle, mediation lasts three months from the time the parties supply the Ombudsman with all relevant evidence.

The mediation procedure is adversarial. It is carried out in writing, but the Ombudsman may decide to hear the parties separately or together.

The Ombudsman, his team and the parties to the proceedings bound to observe strict confidentiality.

Court referral

The parties have the right to petition the courts at any time.

In this case, communications that have taken place during the mediation procedure may not be submitted or referred to in court.

End of the mediation procedure

The mediation procedure ends in an out-of-court settlement, recognition of persistent disagreement, or the withdrawal of one of the parties. Whatever the outcome, the Ombudsman informs the parties in writing that his mission has terminated.

Information an annual report

AMF publications, whatever the medium, mention the existence of the mediation process and explain how it can be accessed. The Ombudsman presents an annual report reviewing his activities to the Board of the Autorité des Marchés Financiers. This report is published.

Annex 4

FIND OUT MORE ABOUT MEDIATION

- Extract from the report to the President of France on Order 2011-1540 (annex 1 of the 2011 Ombudsman's Report, available online at **www.amf-france.org** => Ombudsman).
- Order 2011-1540 of 16 November 2011 transposing Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters (available online at **www.legifrance.gouv.fr**).
- Extract from Decree 2012-66 of 20 January 2012 on out-of-court dispute settlement (available online at **www.legifrance.gouv.fr**).
- Commission Recommendation of 30 March 1998 on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes (98/257/EC) (available online at **www.europa.eu**).
- Charter of the Public Services Mediators (available online at **www.clubdesmediateurs.fr**).

CONTACTS

How to contact the AMF Ombudsman

Mrs Marielle Cohen-Branche
Autorité des Marchés Financiers
17, place de la Bourse – 75082 Paris Cedex 02

Website: www.amf-france.org – "Ombudsman" section

AUTORITÉ
DES MARCHÉS FINANCIERS
AMF

17, place de la Bourse
75082 Paris Cedex 02 – France
Tel.: +33 (0) 1 5345 6000
Fax: +33 (0) 1 5345 6100

N° ISBN : 979-10-91964-19-7 – Design and production: **avant**garde – © Franck Dunouau.