2013 AMF Ombudsman's Report

AUTORITÉ
DES MARCHÉS FINANCIERS
AMF

CONTENTS

2013 AMF Ombudsman's Report

Editorial 01

OMBUDSMAN'S REPORT

A. AMF mediation and related developments in 2013 05

B. Types of cases submitted to the Ombudsman 08

C. Development of domestic and international activities 17

The AMF's mediation service clearly has the wind in its sails. In 2013, the number of queries increased by more than 20% for the third year running, with a total of 907 mediation requests received, compared with 747 in 2012 and 500 in 2011.

It would appear, then, that there is growing awareness of the Ombudsman. This is largely a result of the AMF instruction on complaints applicable since 1 September 2012 (DOC-2012-07). That instruction charges investment services providers with including in their correspondence details of the AMF's mediation unit and how to access it whenever they reject customer complaints that fall within the financial sector.

But is the Ombudsman any better understood? The answer is less satisfactory. The number of cases where the Ombudsman was forced to reply that, since they related purely to banking, they were outside the jurisdiction of AMF mediation, which is confined solely to financial instruments, doubled, rising from 150 cases in 2012 to 313 in 2013. I therefore decided to further speed up the process of redirecting such claims by forwarding them directly to the respective banking ombudsmen.

There is undoubtedly action that could be taken to correct poor understanding of each ombudsman's jurisdiction in the banking, insurance and finance sectors. Beyond this, however, it is clear that there is a structural problem: the way in which the different ombudsmen's jurisdictions are carved up makes even less sense when one considers that the various products are usually sold by the same institutions, and sometimes even the same advisers.

This parcelling-up of jurisdictions is a peculiarly French phenomenon, unknown in most European countries, and particularly English-speaking countries. And one might wish to see a single gateway created for all three areas – banking, finance and insurance – to truly develop the use of mediation over the next few years.

A total of 883 mediation cases were processed and closed in 2013, compared with 695 in 2012 – an increase of 27%. Excluding cases outside the Ombudsman's jurisdiction, the number of cases rose by 4.6%, up from 545 in 2012 to 570 in 2013.

It is important to note that, while AMF mediation relies on the voluntary involvement of both parties, financial intermediaries almost never refuse to enter into mediation (only in five cases out of 907 received). The key reform in the mediation process in the second half of 2012 was the introduction of Ombudsman's recommandation, issued for all cases examined on their merits. Annual statistics, which we were able to compile for the first time in 2013, point to strong support for this process:of the 400 recommandations issued in 2013, 44% were in favour of retail investors. More than 80% of professionals abided by these recommandations; only 6% of those opinions that were unfavourable to retail investors were contested.

I would like to take the opportunity to salute the sterling work of the Mediation team, which consists of four seasoned legal specialists who support me and is led by my deputy, François Denis du Péage. Some of the cases they deal with are highly complex, often relating to products or services whose mechanics are particularly sophisticated.

Three key themes emerged in 2013:

- First, I would like to highlight the sudden doubling in the number of cases received relating to employee savings. This is a direct consequence of the fact that correspondence issued by custodians now makes reference to the Ombudsman. There is much at stake in this area, and many of the relevant issues are poorly understood. While there are just as many employee shareholders as individual shareholders, employee savings are not covered by the protective measures laid down in the Markets in Financial Instruments Directive (MiFID), since no investment advice is proffered when the assets held in employee savings schemes are allocated. As such, investment services providers operating employee savings schemes are not required to be aware of scheme members' profiles or to provide suitable advice.
- Second, I am concerned about the continuing rise in the number of forex-related cases – i.e. cases relating to speculation on publicly accessible currency markets. All too often, vulnerable individuals are persuaded that, with half an hour's instruction, anyone can become a trader. Even aside from the 50% increase in the number of cases received, and in spite of encouraging mediation outcomes, this is a very worrying phenomenon. Half of the companies against which complaints are filed are not even authorised. This in itself is a serious criminal offence that makes mediation impossible. While the public prosecutor's office is naturally advised in such cases pursuant to Article L.621-20-1 of the Monetary and Financial Code, careful thought is required as to whether the sanctions sought by the AMF should include blocking access to such sites by the French public.
- Third, I would like to refer back to a mass claim submitted in 2012. In December 2013, I received a hundred or so new claims from another lawyer in connection with the same dispute, which had given rise the previous year to a mass claim involving 143 investors and around 20 financial institutions. The institutions in question were accused of not giving investors sufficient warning of the specific risk associated with companies admitted to trading on the Alternext market by private placement, and which therefore are not covered by an AMF-approved prospectus. This first claim was closed in 2013, with 16 of the 20 institutions involved abiding by my opinions. In order to avoid recommending compensation in cases where investors might simply have been seeking a windfall, these opinions took into the account the degree to which each investor could be considered informed so as to assess the opportunity cost of investors being insufficiently warned.

Throughout the year, I spoke at numerous business and academic events, in the press and on the radio to promote the free public service of AMF mediation and its advantages for both parties and to talk about the astonishing diversity of mediation systems in Europe and elsewhere.

In January 2013, I joined INFO (the International Network of Financial Services Ombudsman Schemes), which brings together banking, financial and insurance ombudsmen from around the world. The annual meeting, held last September in Taiwan, was a valuable opportunity to discuss the practices adopted in different countries and the shift towards more stringent transparency requirements. For example, I learnt that New Zealand's financial ombudsman has the legal power to set aside the principle of

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. Since 15 October 2013, she has also been a member of the World Bank International Administrative Tribunal. Ms Cohen-Branche is a *Chevalier de la Légion d'honneur* and *an Officier de l'Ordre national du mérite.*

confidentiality when he notes serious and repeated practices, even where no criminal offence has been committed. Meanwhile, under a recent UK ruling, the UK ombudsman's decisions, which are binding, are to be made public.

However, the most important development in 2013 was the adoption on 21 May of Directive 2013/11/EU on alternative dispute resolution for consumer disputes – in simple terms, mediation for all market services. This directive should be transposed into French law by 9 July 2015 at the latest. The findings on which this new European law is based are rather stark, highlighting current disparities between European countries as regards coverage, quality and awareness. The European authorities are not seeking to harmonise mediation systems in Europe; rather, their aim is to require greater quality and consistency and to make certain that, in the future, consumers are aware of out-of-court settlement procedures.

The AMF mediation service already meets the various essential requirements laid down in this directive. The same cannot be said of alternative dispute resolution bodies internal to the company, who, under the terms of the directive, are appointed or remunerated solely by one of the parties to the dispute. In future, it will only be possible to refer cases to them if, under the terms of the directive, they comply with a series of strict additional requirements designed to better ensure their independence.

At the same time, public authorities will be required to appoint competent domestic authorities to periodically assess all ombudsmen. It is essential that those authorities put in place procedures that are both transparent and credible. This is the only way to ensure that confidence in the alternative dispute resolution process can continue to grow and meet the requirements of customers and professionals alike.

In the three related sectors of banking, finance and insurance, the AMF is calling for the creation of a competent authority under the joint aegis of the ACPR and the AMF, based on a single set of requirements.

10 March 2014, Paris

Marielle Cohen-Branche
AMF Ombudsman

SCOPE OF CONFIDENTIALITY

Mediation in France is a confidential procedure. Article 1531 of the Code of Civil Procedure stipulates that "non-judicial mediation and conciliation are subject to the principle of confidentiality under the terms of and in accordance with the procedures laid down in Article 21-3 of the aforementioned Act of 8 February 1995".

Some investors, who have initiated legal proceedings after mediation has failed, have asked the Ombudsman about the scope of confidentiality: at what point does mediation become confidential? Which documents from a mediation case can be produced as part of a legal proceeding? Who exactly is bound by this principle of confidentiality, and can refusal to enter into mediation be relied upon in court?

According to the AMF mediation charter, since the mediation procedure only begins when both parties agree to enter into it, the submission of a case to the Ombudsman, which documents the submitter's complaints, is not covered by the confidentiality requirement. When a mediation request is made, the two parties to the dispute have not yet entered into mediation.

This position is supported in particular by the provisions of the aforementioned Article 21-3, according to which "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 proceedings or arbitration without the consent of the parties".

In one case, the Ombudsman was able to reiterate that only the production in court of discussions and documents forming part of the mediation procedure, once the parties had agreed to enter into mediation, contravened the principle of confidentiality applicable to mediation. As such, the refusal by a professional to enter into mediation is not covered by the confidentiality rule.

The responsibility falls firstly on the parties to ensure that they maintain confidentiality and do not disclose to third parties the AMF Ombudsman's recommendation in relation to their dispute. During one mediation case, the Ombudsman was able to clarify that, since the parties' lawyers were not third parties but representatives bound by professional secrecy, the parties could disclose information about the mediation procedure to them, provided they did not produce that information in court.

It then falls to the Ombudsman and her team to maintain confidentiality. In this regard, the AMF mediation charter reiterates that "the Ombudsman and her team and the parties to the dispute are bound by the strictest obligations of confidentiality", even in their dealings with AMF departments.

Ombudsman's report

A. AMF MEDIATION AND RELATED DEVELOPMENTS IN 2013

1. Reminder of the Ombudsman's role

In accordance with the law, AMF mediation is a free public service promoting the out-of-court resolution of financial disputes. It is available to investors, who may be either private individuals or legal entities (e.g. pension funds or associations). Mediation is available for all disputes falling within the AMF's jurisdiction – i.e. disputes with an investment services provider (a bank, management company, etc.), a financial investment adviser or a listed company and relating to financial instruments.

By virtue of its position as a third party independent of the parties to a dispute, its experience and the technical expertise of AMF staff, the AMF mediation unit can recommend the most effective out-of-court solutions for financial disputes submitted to it, provided that, after examination, the complaint appears justified.

If the Ombudsman's recommendation, which is strictly confidential, is in the investor's favour, once accepted by both parties to the dispute, it takes the form of full or partial restitution or compensation for the loss suffered. In each case, the settlement is a conciliatory gesture on the part of the company in question; it does not imply any acknowledgement of liability.

Before referring a complaint to the Ombudsman, the complainant must have submitted a written complaint to the professional and failed to receive satisfaction.

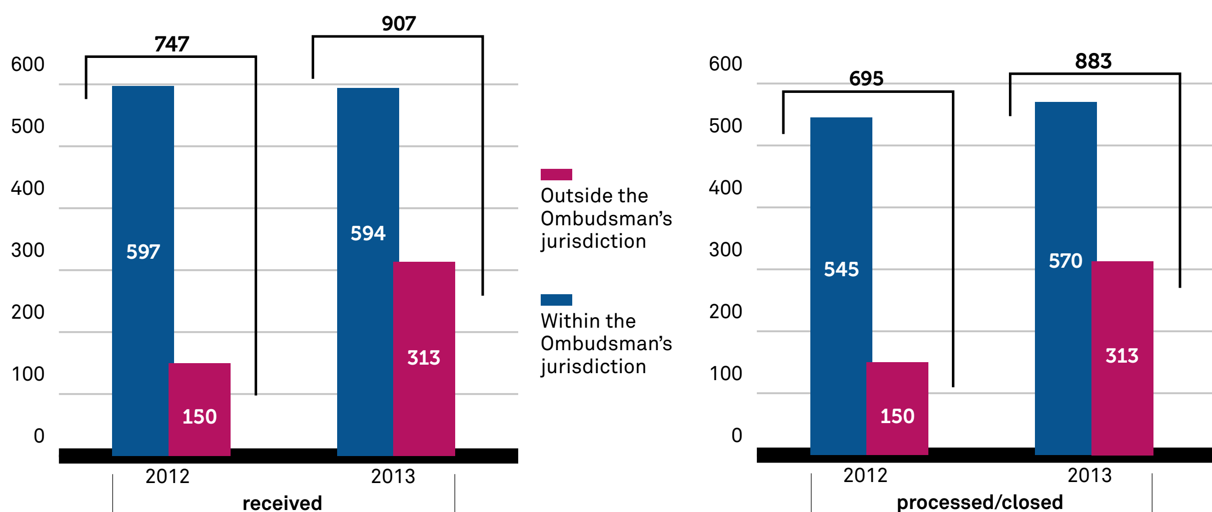
2. A significant increase in requests in 2013

In 2013, 907 mediation requests were received, an increase of 22% relative to 2012. Of these, 883 were processed and closed, compared with 695 in 2012, representing a 27% increase.

Of the 907 mediation requests received, 313 were outside the jurisdiction of the AMF Ombudsman, compared with 150 in 2012.

This increase in the number of requests, whether or not they fell within the Ombudsman's jurisdiction, may have been driven by the Ombudsman's improved visibility. Indeed, AMF Instruction 2012-07 on complaint handling requires professionals, whenever they reject a complaint, to provide the customer with details of the relevant mediation service(s). However, while awareness of the Ombudsman's existence has increased, it appears that the scope of the AMF Ombudsman's jurisdiction – and particularly the

NUMBER OF CASES RECEIVED, PROCESSED AND CLOSED BY JURISDICTION



CONTACT THE AMF OMBUDSMAN

- In writing: **The Ombudsman Autorité des marchés financiers 17, place de la Bourse 75082 Paris Cedex 02 – FRANCE**

or

- Via the online contact form available on the AMF website **www.amf-france.org > The Ombudsman**

distinction between banking and finance – is poorly understood or accepted by complainants.

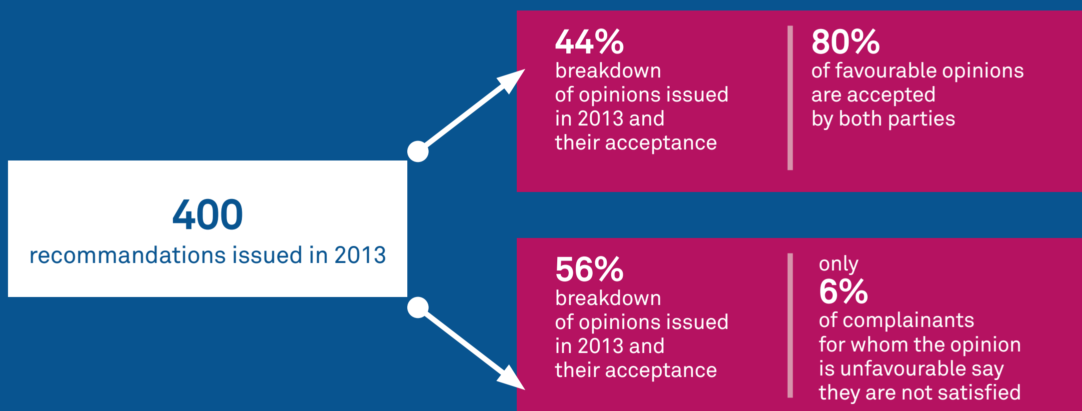
It is telling that the doubling of mediation requests falling outside the AMF's jurisdiction arose from the banking sector. Banking now accounts for half of all requests falling outside the AMF Ombudsman's jurisdiction, while life insurance, which represented half of all such requests in 2012, now represents only a quarter and is stable in terms of absolute volumes.

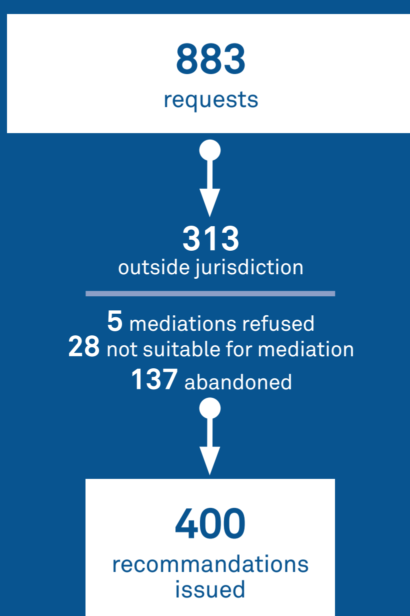
A new approach has been put in place under which complaints falling outside the AMF Ombudsman's jurisdiction (banking and insurance) are systematically redirected to the relevant bodies within a few days. Requests relating to banking are currently forwarded directly to the ombudsman of the bank in question so that he/she can decide on the most appropriate course of action.

As regards requests falling within the Ombudsman's jurisdiction, the number of cases processed and closed increased by almost 5% (from 545 in 2012 to 570 in 2013).

These cases gave rise to 400 recommendations, 176 of which were in favour or partly in favour of the complainant (44%), with 80% of these accepted by both parties. It is important to remember that the mediation procedure is based on the freedom of both parties, including in particular the freedom to reject the Ombudsman's recommendation. The complainant may also contest the Ombudsman's recommendation, though this is rare (it happened in less than 6% of cases in which the Ombudsman had issued an unfavourable opinion).

The principle of entering into mediation is accepted by the vast majority of professionals, with only five out of 883 cases being closed because of refusal to enter into mediation. There is also little incidence of premature





mediation requests – i.e. cases that are closed because the complainant had submitted no prior complaint. Out of 883 cases, only 47 were premature requests (these 47 are included in the 137 abandoned cases).

3. Improved tools

Three major improvements were implemented in 2013:

- The launch of the AMF's new website (www.amf-france.org) provided an opportunity to completely overhaul the Ombudsman's section. The site now provides more explicit details of the Ombudsman's jurisdiction, the mediation procedure and how to submit mediation requests.
- Similarly, the mediation request form has been completely redesigned and restructured to help complainants better describe their dispute and the loss they feel they have suffered as a result. To help complainants put together their mediation requests, a table is now included setting out the documentation expected by the Ombudsman for each type of dispute.
- The major innovation ushered in by the AMF's new website was the introduction of online tracking of mediation cases, available since 17 July 2013. Complainants are provided with a confidential access code when their case is first opened, allowing them to log on and directly track its progress step by step.

Also in 2013, the mediation team worked to develop a new software application to more effectively handle statistics, management and analysis in relation to requests received. Following a year of ongoing discussions and regular workshops, the tool has recently been implemented.

4. External communication by the Ombudsman

The Ombudsman also works to improve the visibility and awareness of the mediation service among professionals and the general public, so as to facilitate access to mediation.

For example, the Ombudsman shares her experience and vision by participating in conferences and training sessions. This educational role also means promoting the Ombudsman's visibility in the media, including in the mainstream press. The Ombudsman also regularly contributes to legal and specialist press titles by publishing feature articles on challenges and trends in mediation both in France and in Europe.

Examples of a few of the articles published in 2013 are as follows:

- "Is there more than one way to obtain justice? Proof through financial mediation?", Mélanges AEDBF-France VI.
- "Stock market and financial mediation", Gazette du palais, special edition, conference proceedings, 22 December 2013.
- Is the AMF Ombudsman already involved in class actions?", Bulletin Joly, January 2013, editorial.
- "The astonishing diversity of financial mediation systems in Europe and the objectives of the new directive of 21 May 2013" in Revue de droit bancaire et financier, September/October 2013.
- "A new European directive in May 2013 on mediation, to what end?" in Bulletin Joly Bourse, December 2013, p. 561.

B. TYPES OF CASES SUBMITTED TO THE OMBUDSMAN

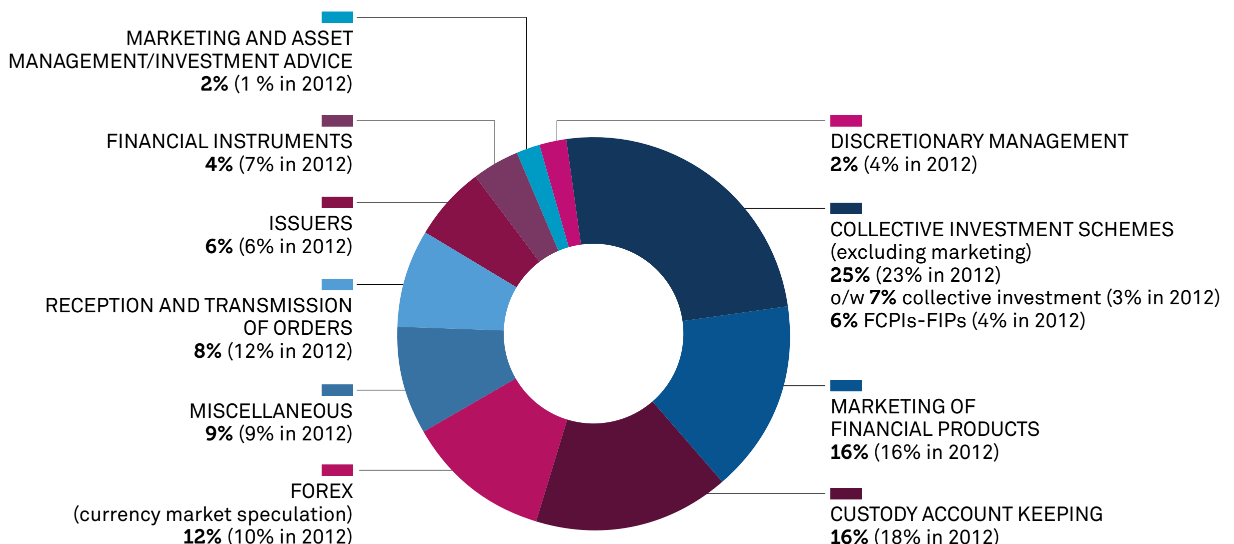
A wide range of issues were submitted to the Ombudsman in 2013. Many of these are recurring issues, such as the marketing of financial products not suited to customers' circumstances or objectives and the poor execution of (or failure to execute) stock market orders. However, three key themes emerged in 2013:a doubling in the number of cases relating to employee savings, an increase in the number of forex-related requests and the submission of a mass claim concerning the same security as in 2012.

1. Doubling in the number of cases relating to employee savings

a. Improvement in the Ombudsman's visibility among retail investors

Employee savings, which can be built up by any employee within his or her company, potentially with his/her employer's support, are regulated by the Labour Code as well as the AMF General Regulation. Huge amounts of assets are invested in employee savings, which totalled €98.6 billion at 30 June 2013 ("Key figures" released by the Association française de la gestion financière on 30 June 2013).

BREAKDOWN OF THEMES IN 2013 (EXCLUDING MASS CLAIM)



On the one hand, the AMF regulates those instruments in which employee savings may be invested: employee savings funds consisting of employee investment funds (FCPE) and open-ended investment companies for employee savings (SICAVAS). The shared retirement savings scheme (PERCO), however, works in a similar way to an investment in insurance, and therefore falls outside the AMF's jurisdiction. On the other hand, the AMF regulates custodians of employee savings.

There are problems that are highly specific to employee savings: MiFID and its provisions on investor protection do not apply to employee savings, and the population concerned includes novice investors who hold no other financial products.

The doubling in employee savings cases, up from 19 in 2012 to 42 in 2013, was mainly a result of an improvement in information about the Ombudsman included in complaint response letters. This improvement was driven by AMF Instruction 2012-07 on complaint handling, which requires companies' responses to unsatisfied complaints to cite the name and contact details of the relevant mediation service(s) – in this case the AMF Ombudsman. This trend can be expected to increase once all custodians comply with this instruction.

An employee savings case

In one mediation case, an investor had requested that his assets be released for reasons of "extension to main residence", based on work undertaken on his main residence under a valid work permit. The following year, the investor submitted another early release request for the same reason, referring to the work undertaken under the building permit. The Ombudsman considered that this request could not legitimately be met by the custodian.

b. The top questions from investors: release of assets, employee share ownership via employee savings schemes, option forms and custody fees

An analysis of cases received by the Ombudsman in 2013 highlights a lack of understanding among employee investors, particularly when requesting the early release of assets held in employee savings schemes and when investing in employee savings schemes.

Investors requesting the early release of their assets tend to assume that they will be able to access their cash immediately, as though they were making a withdrawal from a current account. Generally speaking, however, assets held in employee savings schemes are not immediately liquid: they are usually invested in employee investment funds whose redemption terms can delay the point at which funds become available.

The basic criteria also need to be reviewed. Institutions receiving requests for the early release of assets need to check the documentation submitted to them by investors. This means that funds cannot be released on the date on which the request is received. Many employees are manifestly ignorant of the rules on releasing assets. While the mediation unit cannot rule in their favour, it can help educate them.

For example, under current legislation and regulations, the same triggering event "cannot give rise to successive releases". This means that, upon receiving a request for early release, the custodian must check that it is not based on a triggering event already referred to by the customer.

It transpires that a maximum of 45 days may elapse between the date on which an employee requests a payment from an employee savings scheme and the date on which that payment is recognised in the custodian's accounts. In order to be valid, an event triggering a request for the early release of assets must take place after the custodian has recognised the payment in its accounts. The Ombudsman received cases in which investors requesting the early

release of assets for reasons of marriage or termination of employment had failed to understand this delay.

Thirty-eight percent of funds held in employee savings schemes are invested in employee investment funds – i.e. funds mainly consisting of shares issued by the employer's company. Employee savers do not always make the distinction between the price of the company's shares and the price of units in employee investment funds, changes in the value of which reflect the share price. Differences may arise from charges applicable to the fund, the fact that the fund must hold cash to meet subscription and redemption requests and cannot therefore consist solely of shares, or fund valuation rules. Here again, all the Ombudsman can do is try to educate misinformed employees.

The Ombudsman has also noted issues relating to the submission of the option form sent out to employees. Every year, employee savings scheme members receive an option form allowing them to choose whether to invest or request an immediate payout. If an employee does not respond within the deadline set by his or her employer or the scheme's custodian, that employee's scheme assets will be invested by default in accordance with the provisions laid down in the scheme rules. This investment by default can give rise to disputes relating to receipt of the option form. In this type of case, the Ombudsman uses the "body of evidence" technique, traditionally used in case law for mass mailings, drawing on items such as the mailing file used by the custodian, the frequency with which forms are dispatched and the means previously used by the employee to make investment choices.

The Ombudsman was also faced with a worrying issue concerning custody fees. A scheme member who is a former employee of a company may have to pay custody fees that are no longer paid by the employer once employment has been terminated. In accordance with the provisions of the Labour Code, these fees may be taken from the employee's assets held within the employee savings scheme. Such transactions are not always transparent to employees, who are not able to clearly identify them on their employee savings account statements. Rather than these fees being shown on a separate line, the statement simply indicates that units have been redeemed, without explaining that the redemption corresponds to the collection of custody fees.

The fees are particularly onerous when assets are low, and can exceed income from investments. Further efforts to make this information more transparent on statements would be welcome to avoid disappointment, such as when a retired person wishing to submit a redemption request realises that these gradual, discreet redemptions have completely eroded his or her funds.

2. A more than 50% increase in the volume of requests concerning forex (speculation on the publicly accessible currency market)

"Sign up for our free training and become a trader in just a few minutes!"

"Use leverage to invest only €100 and get back up to €100,000!"

Such promises continue to abound on the internet. However, the banners that tout such messages often hide opaque companies, phantom profits and very real losses.

Thanks to reduced entry costs and growth in the number of online trading platforms, the currency market commonly known as the forex (foreign exchange) market has become increasingly accessible to members of the public. In addition, the Markets in Financial Instruments Directive (MiFID) has facilitated the use of the European Passport, which enables companies authorised in other European Union countries to offer forex investment services in France. This can restrict the AMF's power to impose sanctions, with such powers available only to the home country's regulator.

The Ombudsman receives numerous requests, most of which are submitted by gullible and vulnerable complainants, some of whom are no longer entitled to social security benefits, who have been seduced by aggressive advertising or solicited by companies proposing investments on the currency market. The same approach is observed among companies proposing binary options.

In 2013, the Ombudsman received 88 forex-related requests, up more than 50% relative to 2012.

Faced with the abusive practices of many such companies, the AMF continues to use a variety of communication methods to warn the public about the risks inherent in the forex market. At the same time,

FOREX (publicly accessible currency market)

Trading usually consists of access to a platform showing exchange rates for pairs of currencies on which clients place bets. Most trades are carried out by telephone under the guidance of a coach. Once the client has incurred some initial losses, the coach, who has by now succeeded in winning the client's trust, encourages him or her to put more money in so as to continue trading and make back his or her losses. The coach then offers bonuses ("If you put €500 in, I'll match it with another €500"), which are nothing more than traps, to encourage further deposits.

The client is thus drawn into a spiralling cycle and ends up paying out much more than he or she can afford. In addition, some clients have reported unauthorised card transactions or transactions for amounts greater than they had instructed.

When their trades are unwound, clients are faced with one of three situations:

- Usually, both the amount initially staked and successive deposits are all lost, and the coach either becomes impossible to contact or simply explains that the losses were caused by a bad trade.
- In the few cases where clients manage to withdraw funds, they only do so with great difficulty.
- The client realises too late that the bonus will only be awarded in exchange for a volume 20 to 30 times the amount of the trade, and his or her withdrawal request is refused. Far from being a gift, the bonus is a lure that chains the client to the forex company since the client is unable to withdraw his or her funds.

the Authority is considering what administrative and legal action may be possible as well as working with its foreign counterparts.

More worryingly still, half of all such cases received in 2013 concerned companies not authorised by a financial regulator to provide investment services. Since such lack of authorisation constitutes a criminal offence, the Ombudsman must decline jurisdiction and, in accordance with Article L. 621-20-1 of the Monetary and Financial Code, inform the public prosecutor.

For European companies that are authorised, this authorisation is usually issued by the Cypriot regulatory authority, in accordance with European Union rules.

Most of the complaints received highlight the same kind of siphoning of funds: after being attracted by advertising boasting quick profits, with no warning of the associated risks, clients agree to leave their telephone numbers on companies' websites in return for free "training" using a demonstration account. Some companies even ask for a bank card number at this point.

This is systematically followed by insistent telephone calls from individuals introducing themselves as "coaches", "expert traders" or "advisers" promising large profits and training in return for an initial bank card payment of a few hundred dollars.

This kind of scheme was operated in virtually every one of the 44 cases examined on their merits. Another 44 cases concerned unauthorised companies over which the Ombudsman had no jurisdiction, but which were forwarded to the public prosecutor.

In such cases, the Ombudsman is often faced with a lack of evidence (all contact is by telephone, transaction logs are inaccessible or deleted, etc.) and the incriminated companies, which are located outside France, are reluctant to enter into mediation.

Faced with the accused companies contradicting complainants' allegations and constrained by a lack of compelling evidence, the Ombudsman was forced to conclude in 11 cases that the complainant's request could not give rise to compensation.

However, encouraging results have been or are in the process of being achieved in 61% of cases (17 out of 28 cases, with the remaining 16 cases being abandoned during the procedure).

3. Another mass claim submitted to the Ombudsman in relation to the same security (acquisition of securities on the Alternext market)

In the second quarter of 2012, the Ombudsman received 143 requests represented by the same lawyer in relation to a single complaint about the failure of a number of investment services providers to properly inform their clients upon the acquisition of securities issued by a listed company that had since been put into insolvency proceedings.

This company had been wound up by the court almost two years after being listed on the Alternext Paris market, which is an organised but unregulated market, causing its shares to lose all their value. The investors' complaint was that they had not been warned about the risks associated with that market when placing online stock market orders.

This claim was an opportunity for the mediation unit to:

- conduct a legal analysis of the obligations upon financial institutions to warn their investor clients when the latter place orders on the Alternext market in securities listed via private placement;
- note the wide variety of practices adopted by financial institutions in this area;
- recommend, both in law and in equity, the payment or non-payment of a conciliatory gesture, depending on the degree to which the clients were informed.

In its argument, the mediation unit relied on Article L. 533-12 II of the Monetary and Financial Code. This article, which arises from MiFID, which entered into force on 1 November 2007, stipulates that investment services providers must issue information that enables their clients to have a reasonable understanding of the nature of the type of investment service and the specific type of financial instrument being offered and the risks pertaining thereto, so that clients can make informed investment decisions.

As such, the mediation unit endeavoured in each case to analyse the degree to which the client was informed and was therefore in a position to assess the specific risk associated with trading in the securities in question – namely, the risk arising from the fact that there is no need for an issuer to publish an AMF-approved prospectus when its securities are listed on the Alternext market via private placement. In the absence of any warnings about this specific risk, this analysis was conducted for each client on the basis of assessment questionnaires and investment transactions carried out elsewhere.

These cases reached their conclusion in 2013. Of the 20 banks involved, 16 accepted the Ombudsman's analysis in law and in equity. The four institutions that did not accept the Ombudsman's analysis represented 33 cases.

Based on supporting documentation provided by the banks involved, the Ombudsman recommended a conciliatory gesture in those cases where such a gesture was justified. Of the 110 cases in which the banks accepted the Ombudsman's analysis, the Ombudsman issued recommendations in favour of or partly in favour of the client in 47% of cases, with the relevant banks accepting these recommendations in 81% of cases and rejecting them in 19% of cases. The Ombudsman issued unfavourable recommendations in the remaining 53% of cases, none of which were contested.

In December 2013, the AMF Ombudsman received a further 96 requests relating to the same claim.

4. Other significant themes: new themes in 2013, and more traditional but recurring themes

a. Newly emerging themes

- **Trading in warrants and certificates: liquidity risk arising from the extension of trading hours**

In partnership with companies issuing warrants, some financial intermediaries have developed a new technical solution allowing such products to be traded during extended hours, from 8 a.m. to 10 p.m., without passing through NYSE Euronext. Clients' orders are compared directly with the bid-ask spread supplied by the issuer and executed if the spread and size match. However, some investors complained to the Ombudsman after their orders placed using this new functionality outside the Paris market's opening hours were not executed.

Evolving practices

A mediation case should be an opportunity for the professional involved to identify a problem and, where applicable, review its practices and commit to upgrading them.

For example, the Ombudsman identified that one financial institution stated in its fee schedule that it did not charge for foreign exchange transactions while failing to point out that the provider to which these types of transactions were outsourced did charge for them. This meant that foreign exchange transactions were not free of charge, as the fee schedule appeared to suggest. The financial institution in question subsequently undertook to adjust its fee schedule so that it referred explicitly to all charges applicable to foreign exchange transactions.

Upon questioning the issuer, it emerged that liquidity in the underlying security was high between 9 a.m. and 5:35 p.m., when the market was open, but declined outside of these hours. When liquidity in the underlying security declines, the issuer reduces the size of its orders.

The Ombudsman also highlighted that the issuer's website contained a disclaimer clearly stating that "before 9 a.m. and after 5:30 p.m., prices are provided by [the issuer] depending on the available liquidity in the underlying asset, with bid-ask spreads and volumes adjusted in line with liquidity [...]. Bid-ask spreads can be wider and the volumes offered smaller before 9 a.m. and after 5:30 p.m." and "Pay particular attention to the size of your orders, since orders cannot be executed in part [...]".

The Ombudsman therefore reminded the complainants that placing an order did not necessarily mean that order would be executed and that, in the case in point, the conditions required for their orders to be executed – particularly in terms of volumes – were not met.

• Stock market applications for smartphones: required wording is not always shown

In this age of new mobile communication tools, some banks have developed stock market applications for smartphones and tablets. Such applications enable their users to be permanently connected to the markets, have access to a continuous information feed and even place orders directly from their smartphones. The Ombudsman received one request from an investor who had purchased a turbo warrant with a knock-out barrier that was knocked out the day after purchase. The investor knew nothing about the product's characteristics, claiming that the product information screen in the application included no information about the nature of the product or the existence of the barrier.

The financial intermediary said that all trades via the application involving turbo warrants required the user to first select a category, and that this meant the user must have been aware of the nature of the product when he had selected it. The intermediary claimed that, in the case in point, the complainant had no doubt mistakenly selected the "turbo" category rather than the "warrant" category during the purchase process. Conversely, the financial intermediary recognised that the application's information screen on turbo warrants said nothing about knock-out barriers; given that the inclusion of such information might have avoided the confusion that arose, the intermediary agreed to a conciliatory gesture in the form of compensation equivalent to 30% of the loss incurred.

However, the Ombudsman felt that a 50/50 split of responsibility was more justified, both in equity and in law. Both the financial intermediary and the investor agreed to the Ombudsman's recommendation.

- **Emergence of mediation cases based on decisions by the Enforcement Committee**

The Ombudsman receives mediation requests in which a unitholder or shareholder blames the loss of value of his or her investment on the company responsible for managing the relevant collective investment scheme.

The Ombudsman, who has no powers of investigation or inspection, cannot herself assess whether a collective investment scheme has been mismanaged. She is therefore usually forced to raise an alert on such cases and forward them to the AMF's specialist departments so that they can, if necessary, intervene to ask the management company to remedy the situation or even to collectively compensate unitholders.

However, where the management company has been found to be at fault by a ruling of the AMF's Enforcement Committee, the Ombudsman can rely on that ruling to initiate a mediation process in order to seek compensation for unitholders or shareholders who have incurred losses as a result of the management company's mismanagement.

In such cases, the Ombudsman only intervenes on behalf of unitholders or shareholders who have requested mediation. Moreover, since only individual requests are received, the Ombudsman cannot require the professional concerned to compensate all those who have incurred losses as a result of its mismanagement. The Ombudsman first checks that the product in which the complainant invested is indeed covered by the ruling, that he or she was a unitholder or shareholder at the point at which the Enforcement Committee issued its ruling, and that the mismanagement in question was detrimental to him or her.

Then, the Ombudsman's work mainly consists of determining the amount of the loss suffered by the complainant as a direct result of the professional's mismanagement.

Indeed, the total loss incurred by a unitholder on his or her investment must not be confused with the amount of the loss suffered as a result of mismanagement. The total loss incurred by the unitholder may have been caused by factors other than mismanagement, such as market fluctuations or the risk associated with the investment. The mismanagement recognised by the Enforcement Committee merely increased the amount of the loss sustained by the unitholder; it alone was not the cause of the total loss incurred.

The Ombudsman therefore worked with the professional to assess the impact of the mismanagement on the fund, based on indicators such as the percentage of disputed investments in the fund.

Once the impact of the mismanagement on the fund has been established, the Ombudsman determines its impact on the complainant's investment and thus calculates a suitable amount of compensation. The Ombudsman's recommendations were accepted in both cases of this type.

- **Structured funds: limitation period shortened to five years**

The AMF mediation unit continues to receive requests relating to the affair involving structured funds marketed by a banking group in 2001 and 2002. The reason for such requests more than five years after the funds in question expired is the continuing media attention around the affair, in particular following

a criminal conviction that was upheld on appeal. Of the 31 requests received in 2013, opinions were issued in connection with 24; in 19 cases, the Ombudsman recommended a conciliatory gesture, with the bank in question following this recommendation in 17 cases.

The flow of such cases should lessen given the time elapsed since the facts transpired and the legislative reform of 17 June 2008 on the statute of limitation, which shortened the limitation period from ten years to five years. As explained in the previous annual report, if the Ombudsman does not refer to the limitation period as a matter of course, the institution may refer to it in its defence, making it more to difficult to proceed with mediation due to the absence of legal risk if mediation is unsuccessful.

Given that the limitation period for claims relating to these funds has now expired, the number of opinions in favour of investors in such cases is also expected to decline.

FCPIs

The ban on redeeming units prior to maturity is intended to uphold the principle of equal treatment of unitholders. An FCPI mainly consists of unlisted securities, which are by nature relatively illiquid. As such, their estimated value during the product's life span can differ from their actual value when they are resold upon winding up the fund. That being the case, allowing redemptions prior to liquidation of the fund would enable some investors to sell their investment at a price higher than the asset valuation upon liquidation.

Banning redemptions enables the management company to sell the fund's assets at the best possible terms for all unitholders.

b. More traditional but recurring issues

- Innovation investment funds (FCPIs): a criticism and two misunderstandings

The complaints received either relate to the returns on these investments or their lack of liquidity or, more generally, highlight widespread misunderstanding of these products.

Many investors complain about the performance of a UCITS, and particularly about innovation investment funds (FCPIs). They note a loss in the value of their investments and request mediation, blaming the loss of value on failings by the company responsible for managing the product.

The Ombudsman cannot process mediation requests where the unitholder or shareholder calls into question the management of a UCITS unless the management company has been found to be at fault by a ruling of the AMF's Enforcement Committee. Indeed, the Ombudsman is dependent upon the information volunteered to it by each party. In her role of settling disputes out of court, the Ombudsman has no powers or means of investigation that allowing her to process such requests. Only those AMF departments that have legal powers of investigation and supervision are able to establish proof of mismanagement.

In such cases, the Ombudsman raises an alert as to the potential mismanagement of an FCPI and forwards the case for review to the AMF's department responsible for monitoring FCPIs so that it can, if necessary, intervene to ask the management company to remedy the situation or even to collectively compensate unitholders.

The Ombudsman has received requests from investors in FCPIs that have either gone into liquidation or are in the pre-liquidation phase, asking her to intervene with the management company so that they can redeem their units.

The pre-liquidation phase is a prerequisite to the reimbursement of units via liquidation of the fund's assets. The decision to go into liquidation or to enter the pre-liquidation phase is a management decision within the remit of the management company. Unless otherwise stipulated in the FCPI's regulations, requests to redeem units are no longer accepted by the management company during the liquidation or pre-liquidation phase.

In such cases, the Ombudsman can only recommend that unitholders wait for the FCPI's liquidation process

to conclude and see what amounts the management company pays out as it liquidates the fund's assets.

More generally, such cases highlight a lack of understanding of these types of products among investors. All too often, unitholders think they can redeem their units as soon as the fiscal lock-in period has expired, and fail to assess the risk and illiquidity associated with the products in which they invest.

All the Ombudsman can do is remind unitholders of the life span of such products (usually eight years), which can often be extended by several years by decision of the management company. She informs complainants that, in addition to the fiscal lock-in period, there is also a further lock-in period determined by the management company when the fund is created, which can be longer than the fiscal lock-in period. This lock-in period enables the management company to pursue a long-term investment strategy in light of the types of assets in which the fund is invested.

In such cases, investors, who see the value of their assets decline, sometimes sharply, and are unable to redeem their units, turn on the fund's marketer claiming that they have been provided with inadequate information and advice. However, in most cases they have received the relevant product documentation. Moreover, given that they have been able to enjoy the desired tax benefits associated with investing in the product, it is difficult to conclude that the investment was unsuitable.

- Taxation: outside the Ombudsman's jurisdiction, unless the loss sustained is fiscal in nature but the professional's error is not

Tax-related matters fall outside the AMF Ombudsman's jurisdiction. It is not always easy for investors to understand the limits of the Ombudsman's jurisdiction. If one were to try to sketch out a boundary, one might say that the Ombudsman does not get involved if the complaint is fiscal in nature. However, she may recommend a conciliatory gesture if the institution's mistake that caused the dispute is not fiscal in nature, but has fiscal consequences.

As such, the Ombudsman regularly has to decline jurisdiction when investors submit claims relating to the calculation of social security contributions on making redemptions from employee savings schemes or withdrawals from equity savings plans. Similarly, she cannot intervene in complaints to do with the calculation of the weighted average purchase price, which is used solely to calculate the amount of the taxable gain. Such tax disputes cannot be mediated by the AMF Ombudsman. In some cases, particularly where an investor has received no response to his or her preliminary complaint, the Ombudsman may ask the institution to respond to its customer while reiterating that mediation is not an option in that particular case.

Conversely, the Ombudsman has been able to obtain compensation for losses that are fiscal in nature. For example, one investor noticed a mistake by an institution after signing up for tax optimisation products. On the advice of a financial investment adviser, the investor had applied for units in FCPIs (innovation investment funds) and FIPs (local investment funds) so as to obtain the maximum possible tax reduction given applicable tax ceilings. The financial institution had mistakenly invested the entire amount in FCPIs. As a result, the customer was not able to obtain the tax benefit of investing in FIPs, which was the main reason for investing the amount in question. In this case, the Ombudsman obtained compensation for the customer for this tax-related loss in the amount of the difference between the expected and the actual tax benefit.

- Practical application in a misleading advertising case: compensation was successfully obtained

The Ombudsman is sometimes called on to express an opinion on the clarity, accuracy and truthfulness of advertising in cases other than that of the structured funds marketed by a banking group in 2001 and 2002, in which both civil and criminal courts found that the marketing materials were misleading. In practice, it is mainly advertising for structured funds that is examined by the Ombudsman.

One investor had purchased units in 2008 in a structured fund due to mature in 2016. He had made this investment on the recommendation of his adviser, who had pointed out, on the basis of the relevant marketing materials, that he could opt to withdraw his funds in either 2012 or 2016, with no additional charges. The investor proceeded to redeem his units in 2012 and was surprised to see that exit charges were levied. Feeling that he had been misled by the marketing materials provided and the advice of his

adviser, he complained to the Ombudsman, seeking reimbursement of these charges.

On reading the contractual documentation, it became clear that, under the formula used by the fund, early redemption was not available at the investor's choice but only if certain criteria were met; since these criteria had not been met, the contractual maturity date was indeed 2016, and these charges were correctly applied.

The Ombudsman analysed the marketing materials provided to the investor, and concluded that these could be misleading to the reader, suggesting that investors could choose how long they wanted to invest for. Furthermore, the brochure made no mention of exit charges applicable upon reselling units prior to maturity. Following this analysis, the bank agreed, as a conciliatory gesture, to reimburse the exit charges to its customer.

C. DEVELOPMENT OF DOMESTIC AND INTERNATIONAL ACTIVITIES

1. Future transposition of the European directive on mediation

The new European directive on alternative dispute resolution (Directive 2013/11/EU of 21 May 2013) is liable to profoundly affect the structure of mediation in France well beyond the financial sector: it requires that a mediation process be available in all market sectors.

It aims to ensure that mediation bodies, referred to in the directive as "alternative dispute resolution (ADR) entities", which are currently of widely varying quality in Europe, are "independent, impartial, transparent, effective, fast and fair". It must be transposed into domestic law by 9 July 2015.

However, the rules governing the functioning of the AMF's mediation service, which is backed by the regulator, mostly already comply with the new requirements laid down in the directive. Furthermore, its independence is not at issue, since the Ombudsman is neither paid nor employed by professionals involved in the disputes she mediates. However, the choice of one or more competent domestic authorities, whose role will be to evaluate all ADR entities, has yet to be finalised.

An inter-ministerial working group chaired by Emmanuel Constans, chairman of the Financial Sector Consultative Committee (Comité consultatif du secteur financier – CCSF), has been formed for the purpose of putting proposals to the Minister for Economic Affairs on the transposition of the directive into French law. Its members include representatives from the industry and consumer associations, and it is supported by the Directorate General for Consumers, Competition and Fraud Prevention (DGCCRF), the Treasury and the Ministry of Justice. It will need to address two key topics: the incorporation of independence criteria into the French system and the choice of the competent authority or authorities.

The AMF Ombudsman is involved in the ongoing discussions on the transposition of this directive within both this working group and the Club of Public Service Ombudsmen, of which she is a member.

2. The Ombudsman's involvement in the FIN-NET and INFO networks

As she does every year, the AMF Ombudsman, who is a member of FIN-NET, attended the network's conference, held in November 2013 in London. FIN-NET, the network of European financial ombudsmen recognised by the European Commission, has 57 members, all "notified" to the Commission by their

respective governments and bound by a memorandum of understanding. As well as defining procedures for cross-border cooperation, this memorandum sets out principles for out-of-court dispute resolution. It includes a statement of intent whereby the participants undertake to apply the principles defined in Commission Recommendation 98/257/EC of 30 March 1998, which are independence, transparency, adversarial procedures, effectiveness, legality, liberty and representation.

The network's last conference was an opportunity for its members to address a wide range of issues relating to alternative dispute resolution and to put forward ideas on the implementation of a solution for settling disputes arising from online purchases in another Member State. Consumers will be able to submit their claims electronically using a European Union platform that provides for online resolution.

The Ombudsman also attended the annual conference of the International Network of Financial Services Ombudsmen (INFO), of which she has been a member since January 2013, held in September 2013 in Taiwan. This network, established in 2007, brings together 56 financial ombudsmen (in the areas of banking, finance and insurance) from 37 countries on all continents. Its annual conference is a valuable opportunity for ombudsmen to share experience and practice. The AMF Ombudsman was able to observe the great diversity of mediation systems that exists around the world. For example, she noted that some of her foreign colleagues use "naming and shaming" to denounce the practices of institutions that repeatedly offend, and that, in some countries, decisions made by ombudsmen are mandatory and can even be published.

CONTENTS

Appendices

APPENDIX 1

Article L. 621-19 of the Monetary and Financial Code 20

APPENDIX 2

The AMF mediation unit: organisation chart 21

APPENDIX 3

Mediation Charter 22

APPENDIX 4

Stages in the mediation process 23

APPENDIX 5

Find out more about mediation 24

Appendix 1

ARTICLE L. 621-19 OF THE MONETARY AND FINANCIAL CODE

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.

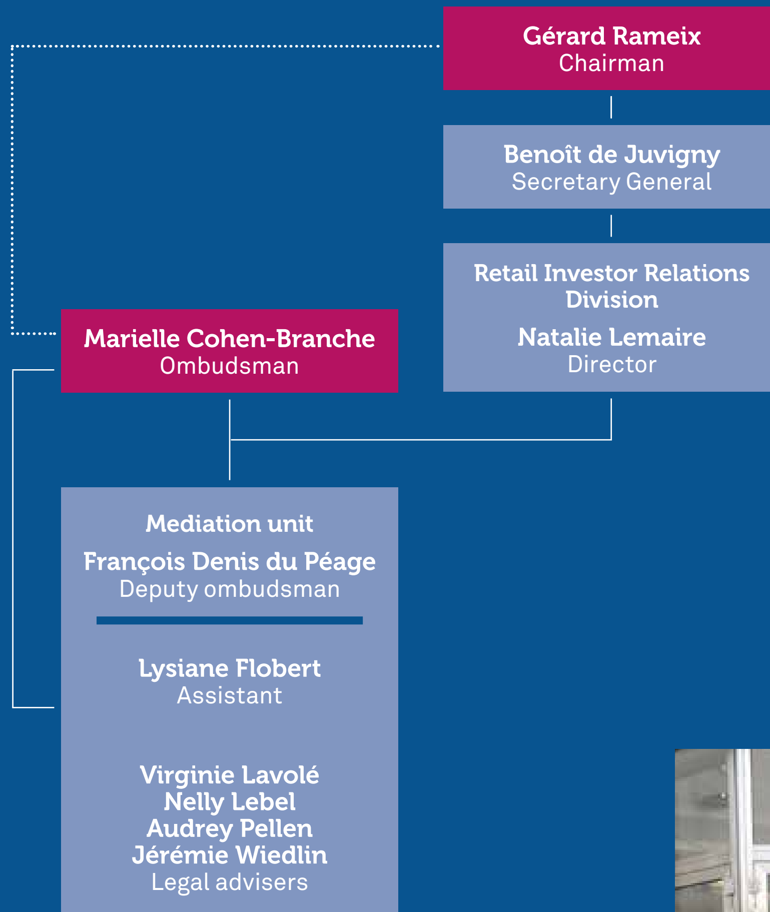
The Autorité des Marchés Financiers cooperates with its foreign counterparts to facilitate extra-judicial settlement of cross-border disputes.

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.

Appendix 2



Mediation team (2014)

Appendix 3

MEDIATION CHARTER

Drawn up in 1997 under the leadership of the first Ombudsman and approved by the AMF Board, the mediation charter – since revised – is aimed at any person submitting a complaint to the Ombudsman. Its provisions, to which the parties must submit, govern the mediation process.

Article L. 621-19 of the Monetary and Financial Code stipulates as follows:

"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 extra-judicial settlement of cross-border disputes."

Pursuant to this text, the Ombudsman receives and processes complaints and mediation requests submitted to the AMF.

Impartiality of the Ombudsman

As part of the AMF, an independent public authority, the Ombudsman is endowed with the necessary resources to carry out mediation in a neutral and impartial manner. The mediation service has its own budget.

It cannot receive orders concerning individual cases for which it is responsible.

Contacting the Ombudsman

Direct access to the Ombudsman is guaranteed and contact information is easy to obtain. The Ombudsman may be contacted by any individual or legal entity with an individual claim that falls within the jurisdiction of the AMF. The mediation process is free of charge.

Prerequisites

A claim may only be brought to the attention of the Ombudsman once a prior written complaint has been submitted to the investment services provider or issuer and that complaint has been rejected in full or in part.

The mediation process

Mediation can only take place with the consent of both parties.

In principle, the mediation process lasts three months from the time when the parties have supplied all useful evidence to the Ombudsman.

The mediation procedure is an adversarial procedure. While it is conducted in writing, the Ombudsman may decide to hear the parties, either separately or together.

The Ombudsman and her staff, and the parties, are bound by the strictest obligations of confidentiality.

Legal action

Both parties retain the right to refer their dispute to the courts at any time. In such cases, information exchanged during the mediation procedure may not be produced or referred to in court proceedings.

End of the mediation procedure

The mediation procedure ends when an out-of-court settlement is reached, a persistent disagreement is established or one of the parties withdraws. Whatever the outcome of the procedure, the Ombudsman informs the parties in writing of the end of her intervention.

Public notice and annual report

AMF media publications provide the public with the opportunity to learn about the mediation process and provide instructions on how to contact the Ombudsman. An annual report reviewing the Ombudsman's mediation activities is submitted to the AMF Board for publication.

Appendix 4

STAGES IN THE MEDIATION PROCESS

The Ombudsman examines mediation requests in law and in equity. For each case examined on its merits, the Ombudsman issues a recommendation for out-of-court settlement. The mediation process, which is governed by a charter to which the parties must submit, involves a number of stages.

Prerequisites

A claim may only be brought to the attention of the Ombudsman once a prior written complaint has been submitted to the investment services provider or issuer. If no response is received within two months, or if the response received is not satisfactory, the complainant may submit his or her case to the AMF Ombudsman either by post or online.

Preparing a mediation request

Mediation requests must be stated clearly and specifically in writing. They may be submitted either electronically via the AMF's website (www.amf-france.org) or by post. All mediation requests must include the following:

- a detailed chronological account of the dispute and any action already taken
- the desired out-of-court settlement, which may be cancellation, execution or compensation, and in the latter case, as assessment of the loss suffered

Copies of any documents that might help the Ombudsman with her assessment, including in particular any correspondence and other supporting documents, should be submitted along with the request.

The supporting documents expected by the Ombudsman depend on the subject of the request. An indicative list can be found in the "Ombudsman" section of the AMF website.

Examination of the case

After analysing the request and supporting documents, the Ombudsman may question the financial intermediary or listed company to gather its comments and any supporting documents. The Ombudsman reviews all the documentation and compares the arguments put forward by the parties. She then reviews the validity of each party's position in light of regulations and equity.

To supplement the examination, the Ombudsman may call or meet with either of the parties.

Once she has finished examining the case, the Ombudsman issues a recommendation.

Mediation assumes the willing involvement of both parties throughout the process. It is never binding: while the Ombudsman makes proposals, she cannot lay down requirements.

The mediation procedure suspends the limitation period so that cases can be brought before the courts if mediation is unsuccessful.

The Ombudsman's recommendation

After having examined the case, the Ombudsman issues an opinion on the dispute based on law and equity, and sends it to the two parties.

The Ombudsman's recommendation may be:

- in favour or partly in favour of the complainant. The parties decide whether or not to follow this recommendation. If they agree to follow the recommendation, they may formalise their agreement in writing. On request, the Ombudsman provides assistance in drafting the agreement and ensures, as necessary, that it is properly performed.
- unfavourable, in which case the Ombudsman explains the reasons for her recommendation. This completes the Ombudsman's involvement, and the case is closed.

Should mediation prove unsuccessful, the parties retain the right to refer their dispute to the courts. In such cases, the law stipulates that, unless both parties agree otherwise, neither the information exchanged during the mediation procedure nor the Ombudsman's recommendation may be produced or referred to in court proceedings.

Appendix 5

FIND OUT MORE ABOUT MEDIATION

- **FIN-NET website**
  The network of European financial ombudsmen:
  http://ec.europa.eu/internal_market/fin-net/index_en.htm
- **INFO website**
  International Network of Financial Services Ombudsman
  http://www.networkfso.org/
- **Club of Ombudsmen website**
  http://clubdesmediateurs.fr/en/
- **European Directive 2013/11/EE**
  On alternative dispute resolution for consumer disputes
  http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:165:0063:0079:EN:PDF
- **European Regulation 524/2013**
  On online dispute resolution for consumer disputes
  http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:165:0001:0012:EN:PDF

Advantages of the mediation procedure

The mediation procedure offered by the AMF is:

Free
No fees are charged for the procedure, either when a case is opened or when it is closed.

Non-binding
The Ombudsman makes a recommendation which the parties are free to reject.

Confidential
Neither the information exchanged during the mediation procedure, nor the names of the parties, nor the Ombudsman's recommendation may be disclosed.

Fast
In principle, the mediation process lasts three months from the time when the parties have supplied all useful evidence to the Ombudsman.

Independent
The Ombudsman is completely independent in her handling of cases. She does not receive any orders concerning individual cases for which she is responsible. The Ombudsman is endowed with the necessary resources to carry out mediation in a neutral and impartial manner.

Fair
Mediation is conducted in a fair, egalitarian and equitable manner in law and in equity.

Handled with skill
In using the AMF's mediation service, investors have the assurance that the Ombudsman and her team of legal specialists will handle their disputes with a high degree of expertise in banking and financial law.

Effective
It is easy to contact the Ombudsman: requests can be submitted either by post or via an online form on the AMF website.

Transparent
The rules governing mediation and the mediation charter are available to the public via the AMF website. The Ombudsman reports on mediation activities in an annual report.

Legal
The use of mediation suspends the limitation period. Should mediation prove unsuccessful, the law grants the complainant extra time to bring the matter to the courts.

CONTACTS

Contacting the AMF Ombudsman

Mrs Marielle Cohen-Branche
Autorité des marchés financiers
17, place de la Bourse
75082 Paris Cedex 02 – France
Website: www.amf-france.org > The Ombudsman

17, place de la Bourse
75082 Paris Cedex 02 — France
Tel.: + 33 (0) 1 5345 6000
www.amf-france.org

ISBN: 979-10-91964-29-6 – Graphic design: **avant**garde – © Franck Dunouau, Fotolia, Thinkstock.