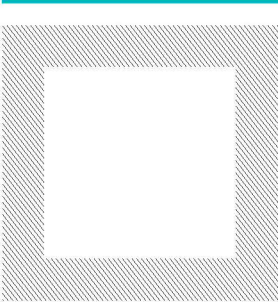
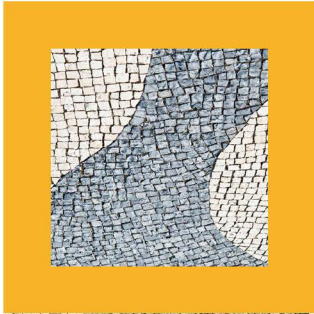
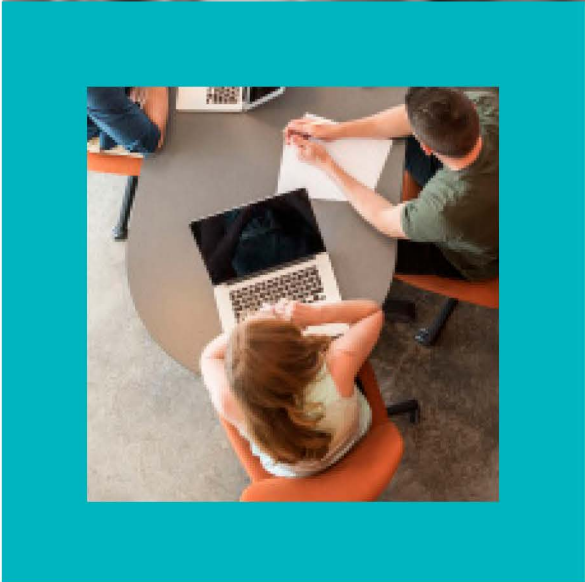
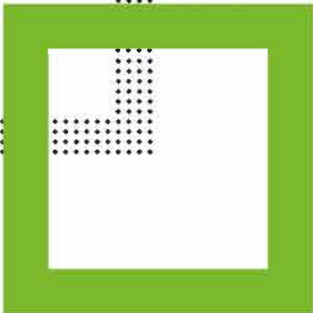
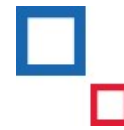
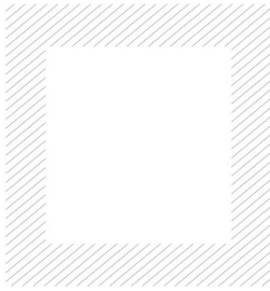


2021 SUPERVISORY PRIORITIES FOR THE AUTORITÉ DES MARCHÉS FINANCIERS





Introduction

Purpose of this document

This document sets out the AMF's priorities for 2021 with regard to the supervision of financial market professionals that come within its jurisdictional authority under Article L. 621-9 II of the Monetary and Financial Code. The thematic priorities cover three groups of activities:

- Asset management, in particular the management of collective investments;
- The marketing of financial products and investment advisory services, areas in which supervisory actions implemented with the *Autorité de Contrôle Prudentiel et de Résolution* (ACPR) within the framework of the ACPR-AMF Joint Unit are also mentioned;
- The activities of market intermediaries and infrastructures, together with the activities of securitisation originators and sponsors.

Market professionals supervised by the AMF whose activities are not covered by this document may still be subject to controls regardless of the actions detailed below. Monitoring issuers' financial and non-financial information and supervising the regulatory compliance of financial offerings and transactions (within the meaning of Article L. 621-9 I) are not addressed in this document.

Publishing these thematic supervisory priorities serves to highlight certain areas of risk that the regulator has identified and encourage regulated firms to look more specifically at some of their practices in light of applicable professional obligations. It is also an opportunity for the regulator to draw attention to specific areas of focus and identify the operational issues associated with practical implementation of the regulations.

Supervisory tools

The AMF has at its disposal a number of supervisory tools, ranging from ongoing monitoring to specific inspections. The AMF also actively monitors the financial offerings and savings products offered to retail investors and the marketing practices of service providers.

The AMF continuously monitors all market professionals under its supervision based on information submitted on a regular basis (annual control and compliance reports, reporting data, declarations, etc.) or on request (additional information requested from service providers, interviews, etc.). The AMF also receives information about the activities of service providers licensed in France directly through other channels (the AMF *Épargne Info Service* platform, monitoring tools, whistleblowers, sharing information with other regulators in France and abroad, etc.).

These monitoring and inspection activities may be:

- individual, in response to specific alerts or as part of the periodic coverage of regulated firms, calibrated according to a risk-based approach;
- thematic, in particular to ensure implementation of new regulations.

Ongoing monitoring is carried out by the Asset Management Directorate and by the Market Intermediaries and Market Infrastructures Supervision Directorate.

Inspections, which are carried out according to a procedure governed by law and by the AMF General Regulation, are also undertaken by the Inspections Directorate. An [Inspection Guide](#) sets out the AMF's procedures for carrying out inspections and the behaviours expected of those involved in an inspection. Once an inspection has

been completed, the findings are presented in a report that is sent to the regulated firm. Around 60 inspections¹ will be carried out in 2021, more or less evenly split between two types of inspections with different aims:

- Regular inspections of large market participants or those that present particular risks or have been the subject of specific alerts;
- Theme-based inspections of a sample of market participants (usually five per theme) to better understand a given activity or practice, assess implementation of applicable rules or explore potential risks to investors or the market. These “SPOT” (for *Supervision des Pratiques Opérationnelle et Thématique* – “operational and thematic supervision of practices”) inspections, conducted concurrently across a number of participants and over a shorter timescale than standard inspections, were introduced in 2018.

Learning from these inspections is fed back to the marketplace where relevant. Such feedback, which is intended to educate the market and raise awareness, constitutes an assessment of observed market practice at a given moment in time. In some cases, it can result in existing policy being updated.

European convergence in supervision

One of the missions of the European Securities and Markets Authority (ESMA) is to foster supervisory convergence, an objective supported by the AMF as part of its #Supervision2022 strategic vision. Since the reform of the European Supervisory Authorities came into effect at the end of 2019, ESMA has been given increased powers with regard to supervisory convergence.

Since then, ESMA has carried out an initial exercise to set the Union Strategic Supervisory Priorities (USSPs) by selecting two themes that national authorities must take into account in their 2021 supervisory actions:

- Costs and fees charged by asset managers
- The quality of data in the reporting regimes introduced by MiFIR II.

The peer review process, led by ESMA, has also been strengthened to give greater independence to the Peer Review Committee and thus give greater weight to the recommendations made to national authorities, with mandatory follow-up (conducted no later than two years after the review). Lastly, since 2019, ESMA has been deploying Common Supervisory Actions (CSAs) based on the needs identified by its standing committees. CSAs are supervisory actions coordinated between national authorities and defined according to a common theme and methodology.

The AMF supports ESMA’s efforts in favour of a greater convergence of supervisory practices and has endeavoured to incorporate these European priorities into its work programme wherever possible. For example, the two CSAs conducted in 2020 on UCITS liquidity risk management by asset management companies and on suitability requirements imposed on investment advisers were identified as supervisory priorities for the AMF in 2020. For 2021, the European work on supervisory convergence (USSPs, Peer Reviews and CSAs) is discussed later in this document. Where appropriate, the AMF may need to contribute to new initiatives, which could slightly modify the work planning set out in this document.

¹ All types of regulated entities combined. This figure excludes the AMF’s “mass” inspections of FIAs, which will number around 50 in 2021.

1. Review of 2020 supervisory priorities and publications

Among the thematic supervisory priorities identified in 2020 were:

- For asset management companies: delegation of permanent controls, liquidity risk management, granting loans, cybersecurity and anti-money laundering and counter-terrorist financing;
- For market intermediaries: implementation of the MiFID II provisions on reporting, post-trade transparency and best execution, liquidity contracts, provision of cross-border services and transition of benchmarks;
- For distributors: implementation of the MiFID II requirements concerning product governance and suitability of advice.

Specific work was also undertaken by the ACPR-AMF Joint Unit on the protection of ageing populations in connection with the marketing of financial products, on escheatment issues with employee savings and on self-placement.²

The conclusions from some of the work completed in 2020 are presented below. Due to the health crisis, the schedule of supervisory work was adjusted in 2020, resulting in some work being delayed. This rescheduling also reflected the difficult situation experienced by many regulated firms, especially during the first lockdown. Financial firms were also granted extended deadlines by the AMF and ESMA for submitting certain reports.

□ Enhanced monitoring of market intermediaries to ensure compliance with the provisions of the Markets in Financial Instruments Directive (MiFID II)

The application of several MiFID II provisions was included in the 2020 supervisory priorities:

- **Quality of reporting:** The reporting guide was updated to alert institutions to recurring problems or clarify specific expectations. Data from regulatory reporting was used in 2020 to carry out new studies to better understand the behaviour of retail clients in the spring of 2020 and to estimate the activities carried out through branches, especially important in the context of Brexit.
- **Post-trade transparency:** The AMF contributed to work aimed at making the ESMA register more reliable and to various European reports on the supervision of organised trading facilities (OTFs) and the use of transparency metrics by systematic internalisers.
- **Best execution:** Supervisory action continued in 2020 to improve the quality of reports produced by service providers that execute orders on behalf of third parties or provide an order reception/transmission service. These reports are intended to provide investors with better information, particularly about their brokers' routing practices.

□ SPOT inspections: a tool to help the marketplace improve its practices

Six SPOT inspection summaries were published in 2020:

- Implementation of the new MiFID II provisions on **discretionary management:** There was a significant delay in rolling out new questionnaires to clients who had taken out a contract before MiFID II came into force and in institutions' ability to assess their clients' risk tolerance. The information provided to clients in periodic management statements or documentation relating to fees is also still inadequate. Regarding the system for alerting clients to a decrease in the value of their portfolio, the time limits within which these alerts are sent are not always followed.
- **Recordings of conversations (record keeping):** The inspections carried out revealed a good level of operational implementation of the regulatory provisions. However, shortcomings were observed with regard to the control system (extent of controls, formalisation and monitoring). As regards the process

² Investment by financial institutions in their own securities (shares, membership shares, etc.) for their retail client base.

for identifying and managing incidents, the monitoring of incidents remains rather patchy and may lack effectiveness.

- **Procedures used by AMCs to provide real estate services:** The inspections revealed good practices in relation to selecting service providers and the effective implementation of a system for managing conflicts of interest when selecting service providers in the sample group. The sample companies had also set up level-two controls covering selecting service providers, fees and managing conflicts of interest. However, it was noted that improvements needed to be made to the systems in place at the management companies inspected relating to the procedures and traceability of the service provider selection process and to permanent and periodic controls.
- **AIFM Reporting:** The number of reports submitted to the AMF was broadly in line with what was expected. However, the AMF noted that some information was missing for some financial institutions (e.g. ISIN and/or LEI codes, management strategy and investor concentration). Although all supervised entities have specific procedures for AIFM reporting, these procedures are not always adequate from an operational perspective (traceability of the data used, methods for calculating leverage, scope of reporting). For some companies, the procedures do not define the assumptions used for liquidity management and do not take into account the time required for settlement of the funds' assets when establishing their liquidity profile on the liabilities side.
- **Valuation system for complex financial instruments:** In most procedures, the price sources used to value financial instruments and the valuation review process were not described in sufficient detail. While all companies have valuation models (for valuation or for reviewing the valuation obtained from other sources), the analysis shows that the models used could be documented in more detail and could use more appropriate modelling assumptions. The valuation process actually used is also not fully consistent with that described in the policies and procedures.
- **Internal control outsourcing arrangements:** Outsourcing internal controls is a particularly widespread practice in France among small asset management companies. The scope of the outsourcing arrangement differs from one management company to another. During its inspections, the AMF noted that the distinction between permanent and periodic controls was not clear for either the sample companies or the service providers, since periodic controls were in most cases no more than permanent spot checks. Regarding procedures for managing controls, the AMF noted that five companies had procedures that were not sufficiently detailed and effective from an operational perspective, even though all of them had compliance and internal control plans. Lastly, the regulator noted that there was a lack of supervision of the provider by the AMC or that the traceability of the due diligence carried out was not always sufficient. This series of inspections revealed internal control systems of varying effectiveness.

□ Anti-money laundering and counter-terrorist financing (AML/CFT)

The AMF continued its efforts to support the financial industry by publishing an educational guide on asset freezing in mid-July. Work to update its policy following legislation transposing into law the 5th AML Directive was also completed before the end of 2020.

After publication of the Sector Risk Assessment, the data from the annual anti-money laundering questionnaires was used in accordance with the methodology for rating regulated entities: individual supervisory actions were implemented in accordance with the AMF's risk-based supervision policy. Drawing on the lessons learned from this first campaign, the annual anti-money laundering questionnaire was revised and expanded to cover the areas identified. The procedures for sending and receiving the questionnaire were also streamlined.

□ Sustainable finance

AMF teams continued to focus on preventing the risks of greenwashing in 2020, and they also supported the implementation of the AMF Position-Recommendation 2020-03 on non-financial approaches in collective

investment management. In preparation for the first joint ACPR-AMF report on monitoring climate commitments,³ detailed questionnaires, supplemented by a series of interviews, were sent to the 20 largest asset management companies in the Paris financial centre to identify the commitments made and assess the internal monitoring systems in place. Among these commitments, particular attention was paid to the operational implementation of issuers' thermal coal exclusion policies (data used, controls in place, temporary exemptions and processing of exceptions, etc.) and to the information provided on these policies. Based on its findings, the AMF issued a series of recommendations for AMCs.

□ **Actions of the ACPR-AMF Joint Unit**

Given the challenges of the current demographic transition, the ACPR and AMF wanted to initiate discussions with a very wide range of market participants (financial firms, consumer associations and older people themselves) on how to manage the client base made up of vulnerable older people. To this end, thematic workshops were held from November 2019 to February 2020. The results of this work will be presented in the first quarter of 2021. Regarding self-placement, the market analysis was presented to the financial firms concerned, calling on them to be vigilant in this matter. The analysis shows that the marketing rules applicable to the various categories of subordinated securities need to be made consistent, particularly given the transposition into law of the Bank Recovery and Resolution Directive (BRRD).

The working group on escheatment in employee savings carried out a review of current practices and identified a number of shortcomings. Based on this information, each authority will follow up on this issue in accordance with its respective areas of jurisdiction.

2. 2021 Supervisory Priorities relating to Asset Management

□ **Implementation of best selection and best execution requirements by AMCs**

AMCs are required to take all reasonable measures to achieve, at order execution, the best possible result taking into account the price, cost, speed, likelihood of execution and settlement, size, nature of the order, or any other considerations related to execution of the order. To do this, AMCs select market intermediaries to which orders are sent for execution or they may execute orders themselves. Depending on the organisational structure chosen by the AMC, selecting the market intermediary is carried out by the AMC itself or outsourced to an authorised provider. As part of its SPOT inspections, the AMF will examine the selection and execution policy in place at AMCs, its implementation, the information provided to clients and the associated monitoring and control system.

□ **System for preventing market abuse within AMCs**

As market participants, AMCs must comply with requirements to prevent market abuse under Regulation (EU) No. 596/2014, known as the MAR, and must act in a manner that fosters market integrity. The AMF will conduct SPOT inspections to examine the organisational structure and procedures adopted by asset management companies to prevent the undue circulation of inside information, particularly when taking part in market surveys, and to define watch lists and blacklists. It will also analyse the operational implementation of these procedures and the associated internal controls.

□ **Setting and transparency of costs and fees in collective investment management**

As part of ESMA's USSP, the AMF will conduct work on the costs and fees applied to collective investment management. The aim of this CSA is to check whether AMCs comply with their obligations in terms of

³ ACPR-AMF, Climate Commitments of French Financial Institutions, December 2020.

organisational structure, acting in the interest of investors and providing information to clients. In particular, the AMF will analyse the process for setting and implementing costs and fees, the regulatory documents provided to investors and the related control system. An initial phase of analysis will be carried out using a questionnaire sent to a large population of AMCs. This will be followed by more targeted actions, including a SPOT inspection campaign on a small sample of the respondents from the initial phase.

□ Valuation and liquidity of real estate funds

As an extension of the supervisory priorities for 2018 and 2019 relating to the valuation system for AMCs in the unlisted and complex products segments, the AMF will conduct SPOT inspections on another illiquid asset class, real estate. In light of current fears about the resilience of commercial property, the AMF will analyse the liquidity risk management system in place at AMCs.

□ Monitoring and control of AMCs by collective investment depositaries

The AIF and UCITS V Directives have strengthened the obligations on CIU depositaries when they enter into a relationship with their client management companies and throughout that relationship. At the time it is appointed, the depositary must therefore assess the risks associated with the nature, size and complexity of the fund investment strategy and policy and the organisational structure of the investment management company. The depositary must establish appropriate supervisory procedures based on this assessment. Secondly, throughout the relationship, the depositary must perform supervisory functions, including ex post controls and audits of the management company's processes and procedures. A SPOT inspection campaign will be run in 2021 involving CIU depositaries to assess the implementation of these obligations.

3. 2021 Supervisory Priorities relating to Market Intermediaries and Infrastructures

□ Security of market infrastructure information systems

In 2020, market infrastructures demonstrated the effectiveness of their business continuity plans during the health crisis. The ability of market infrastructures to protect themselves from cyberattacks and to resume normal operations quickly after a serious incident are also key aspects of their operational resilience. Infrastructures are therefore building action plans into their overall strategy to remedy identified weaknesses and continuously improve the resilience of their information systems and level of maturity of their security systems. As part of its supervision work in 2021, the AMF will continue to monitor on a regular basis the implementation of these strategies by market infrastructures, in collaboration with the other authorities concerned.

□ Implementation of post-trade transparency requirements on bonds

More than two years after MiFID II came into force, it is clear that the benefits of bond transparency are yet to be realised. This is due to several factors. In particular, the completeness and quality of post-trade bond transparency continues to be inadequate. Post-trade transparency is a European Union Strategic Supervisory Priority (USSP) for 2021. SPOT inspections will therefore be conducted at institutions operating "systematic internalisers" or OTFs.

□ Product governance by financial instrument producers

After conducting SPOT inspections among financial instrument distributors in 2020, the AMF will conduct thematic work in 2021 on the product governance arrangements implemented by financial instrument

producers, as part of ESMA's common supervisory action (CSA). The aim is to ensure that the arrangements in place today are robust three years after the associated provisions covering the entire producer-distributor chain came into force.

Application of the regulation for simple, transparent and standardised (STS) securitisation by originators and sponsors: notification of compliance of receivables with the STS securitisation criteria

The objective of these SPOT inspections on Regulation (EU) 2017/2402 (known as the STS Regulation) is to ensure that market participants comply with their obligations, in force since the beginning of 2019. The AMF will act within its jurisdiction, which essentially concerns the compliance of STS notifications from originators and sponsors.

This SPOT inspection is also part of a peer review by ESMA, currently scheduled to take place in 2022, that will assess the French regulators responsible for supervising the STS Regulation. It is also part of a more comprehensive programme to assess the maturity of French participants with regard to this regulation, through monitoring activities scheduled for early 2021.

Cross-border operations

In 2021, ESMA will continue to work towards convergence of supervisory practices for cross-border operations. These activities will take the form of a peer review of the provision of investment services under the freedom to provide services, an area of proven risk in terms of investor protection and where the regulatory framework offers very limited scope for action by the host country regulator. It is against this backdrop that the AMF will continue the work begun in 2020 to measure the extent of cross-border services provided by French ISPs and ensure that these operations are properly integrated into companies' compliance monitoring arrangements.

Transition of benchmarks

The AMF has been monitoring the benchmark transition plans drawn up by French ISPs and intends to step up its work in this area in 2021.

In line with the work carried out in 2020, the AMF will continue its efforts to help the various market participants using critical benchmark indices that are set to disappear to prepare for the gradual transition to alternative Risk-Free Rates. The AMF will also continue to support market participants in implementing the new provisions of the Index Regulation introduced as part of the European Commission's Action Plan on Sustainable Finance, particularly the transparency requirements for ESG indices and the definition of the EU Climate Transition Benchmark and EU Paris-Aligned Benchmark.

4. 2021 Supervisory Priorities relating to Marketing and Advisory Services

Supervision of financial investment advisers (FIAs)

In 2021, the AMF will continue to implement the framework for sharing information with FIA professional associations that it began in 2020. One of the purposes of this information sharing is to inform associations of potential breaches identified by their members, which they can then review at the request of the AMF. In addition to providing information on regulated market participants, the AMF and professional associations also share information on investment products and offers with a high risk of being mis-sold or a high risk of money laundering or terrorist financing.

The support system for association auditors implemented in 2020 to harmonise supervisory practices between associations and the AMF, together with this information sharing, is designed to ensure that association supervision is more closely aligned with a risk-based approach, based primarily on an analysis of unusual products marketed by FIAs, their sources of income and any conflicts of interest that may arise.

□ Compliance with the rules for assessing the appropriateness and suitability of ISPs










The monitoring and supervision of ISPs in relation to compliance with the MiFID II rules that apply to marketing financial instruments as part of an investment service will continue in 2021. The results of the SPOT inspections carried out in 2020 on suitability will be published in a summary report in 2021. This summary will include the good and bad practices identified and a reminder of the rules that apply to ISPs in this area. The shortcomings and regulatory breaches identified remain significant in this area. The aim will therefore be to ensure that the rules are strictly applied by ISPs, with a strengthening of the checks and measures that could be taken against ISPs that fail to comply with their obligations.

□ Action taken by the ACPR-AMF Joint Unit

The ACPR-AMF Joint Unit, set up in 2010, enables staff from both authorities to work together on marketing-related client protection issues in the banking, insurance and financial services sectors.


At the end of the first half of 2021, the impact on the understanding and consent of retail investors from the ever-increasing use of digital distribution and subscription methods for financial products will be studied through consumer tests and reported on. The ACPR-AMF Joint Unit will also work in two new areas in 2021: the information provided to clients when marketing products described as “sustainable”; and the prevention of scams.

Annex: Summary of the 2020 and 2021 Supervisory Priorities

	2020	2021
ASSET MANAGEMENT	<ul style="list-style-type: none"> ▪ Delegation of permanent controls (SPOT) ▪ Liquidity risk management (SPOT)  ▪ Granting loans (SPOT) ▪ Cybersecurity (SPOT) ▪ Anti-money laundering and counter-terrorist financing 	<ul style="list-style-type: none"> ▪ Best selection and best execution (SPOT) ▪ Prevention of market abuse (SPOT) ▪ Setting and transparency of costs and fees (SPOT)  ▪ Valuation and liquidity of real estate funds (SPOT) ▪ Monitoring and control of AMCs by collective investment depositaries (SPOT) 
MARKET INTERMEDIARIES AND INFRASTRUCTURES	<ul style="list-style-type: none"> ▪ Implementation of MiFID II provisions on reporting, transparency and best execution ▪ Liquidity contracts (SPOT) ▪ Provision of cross-border services ▪ Transition of benchmarks 	<ul style="list-style-type: none"> ▪ Security of market infrastructure information systems ▪ Post-trade bond transparency (SPOT)  ▪ Notification of compliance of receivables with the STS securitisation criteria (SPOT)  ▪ Product governance for producers (SPOT)  ▪ Cross-border operations  ▪ Transition of benchmarks
MARKETING	<ul style="list-style-type: none"> ▪ MiFID II: Product governance for distributors (SPOT)  ▪ MiFID II: Suitability requirements (SPOT)  ▪ Supervision of financial investment advisers ▪ Actions of the ACPR-AMF Joint Unit 	<ul style="list-style-type: none"> ▪ Supervision of financial investment advisers ▪ Compliance with the rules of appropriateness and suitability of ISPs ▪ Actions of the ACPR-AMF Joint Unit

Legend:

(SPOT) Theme addressed as part of SPOT inspections.

 Theme addressed as part of a European supervisory action: a Union Strategic Supervision Priority (USSP), a common supervisory action (CSA) or a peer review.

Note: Summaries of SPOT inspections are available in English on the following page of the AMF's website: <https://www.amf-france.org/en/news-publications/publications/spot-inspection-campaigns>.



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