



27 SEPTEMBER 2021

AMF INVESTIGATION GUIDE

The following English text is a translation of the French version of the Investigation Guide. Only the original French text has any legal value. The AMF expressly disclaims all liability for any inaccuracies in the translation.

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INTRODUCTION

European Regulation No 596/2014 of 16 April 2014 on market abuse (known as ‘MAR’) became effective on 3 July 2016. This regulation, which is directly applicable, necessitated amendments to the General Regulation of the Autorité des Marchés Financiers, including in particular the removal of Book VI of the regulation, on market abuse, and the addition of a number of changes to the provisions set out in Book II on issuers and financial disclosures relating to the publication of inside information.¹

As regards the provisions affected by these amendments, this guide will therefore refer both to the provisions of the General Regulation of the Autorité des Marchés Financiers applicable to facts prior to 3 July 2016 – the date on which MAR entered into force – and the provisions of MAR applicable to facts occurring on or after 3 July 2016.

Duties of the AMF

The Autorité des Marchés Financiers (AMF) is an independent public authority with legal personality established by Act No. 2003-706 of 1 August 2003 (Financial Security Act). It is charged with:²

- protecting savings invested in financial instruments, certain assets³ and certain unit-linked products⁴ offered to the public or admitted to trading on a regulated market or multilateral trading facility, and in any other investment offered to the public;
- providing information for investors;
- ensuring the markets for financial instruments, certain assets and certain units of account operate correctly.

The AMF is composed of a Board with sixteen members which is divided into three Specialised Commissions, as well as an independent Enforcement Committee with twelve members who are not members of the Board, and several Consultative Commissions.⁵

The AMF has statutory powers to carry out its duties. Among other things it can:

- adopt a General Regulation covering, inter alia, the professional practices of the issuers and service providers under its authority, as well the general organisation and operating principles of regulated markets and multilateral trading facilities,⁶ all with a view to protecting investors;
- issue approvals⁷ and authorisations;
- carry out inspections and investigations;⁸
- sign administrative settlement agreements;⁹

¹ Amendments introduced by the Order of 14 September 2016, published in the Official Journal of the French Republic on 23 September 2016.

² Article L. 621-1 of the Monetary and Financial Code.

³ Specifically the assets listed in Article L. 421-1 II of the Monetary and Financial Code, as stipulated by Article D.214-22-1 of the same code (certain shares or units in French or foreign UCITS).

⁴ Namely unit-linked products relating to greenhouse gas emissions quotas referred to in Article L. 229-7 of the Environmental Code.

⁵ Article L. 621-2 of the Monetary and Financial Code.

⁶ Article L. 621-7 of the Monetary and Financial Code.

⁷ Article L. 621-8 of the Monetary and Financial Code.

⁸ Articles L. 621-9 to L. 621-12-1 of the Monetary and Financial Code.

⁹ Article L. 621-14-1 of the Monetary and Financial Code.

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- issue formal notices;¹⁰
- impose sanctions subsequent to an adversarial procedure initiated by the Board.¹¹

Investigations and inspections

In the performance of its duties, the AMF carries out inspections and investigations.¹²

The purpose of inspections¹³ is to ensure that the entities and persons referred to in Article L. 621-9 II of the Monetary and Financial Code, as well as individuals acting under their authority or on their behalf, comply with their professional obligations as set out in that code, the AMF General Regulation and professional rules approved by the AMF. Inspections may target a specific topic or cover general cross-cutting, thematic issues. Inspections are covered by a separate guide available from the AMF website, titled 'AMF Inspection Guide'.

Investigations focus on activities that may constitute either market abuse (insider dealing, price manipulation, disseminating false information) or, more generally, a breach of obligations that could undermine investor protection and disclosure or the orderly operation of the market.¹⁴

Purpose of this guide

This guide does not replace European regulations or the statutory and regulatory provisions applicable to investigations. It is not intended to give an exhaustive description of all the details that go into an investigation; rather, it seeks to explain the investigatory process. It merely provides information on standard practice, and refers where appropriate to the applicable laws and regulations.

As such, this guide helps ensure the proper conduct of investigations by raising awareness and spelling out some of the principles of good conduct followed by the AMF's investigators. It also describes how persons asked to cooperate with an investigation are expected to behave.

To this end, this guide has two sections:

- The first specifies the rights and obligations of investigators and persons asked to cooperate with an investigation.
- The second sets out rules of conduct applicable to investigators and the behaviour expected of persons asked to cooperate.

In addition to abiding by fundamental legal principles and the statutes and regulations applicable specifically to the AMF's activities, investigators undertake to comply with this guide, a copy of which will be given to any person asked to cooperate with an investigation.

The guide is also posted on the AMF website.

¹⁰ Article L. 621-14 of the Monetary and Financial Code.

¹¹ Article L. 621-15 of the Monetary and Financial Code.

¹² Article L. 621-9 of the Monetary and Financial Code.

¹³ Article 143-1 of the AMF General Regulation.

¹⁴ Article L. 621-9 of the Monetary and Financial Code; Articles 7, 8, 12, 14 and 15 of Regulation No 596/2014/EU of 16 April 2014 on market abuse.

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How investigations start

The decision to open an investigation is made by the AMF Secretary General or his representative, who appoints and empowers investigators.¹⁵

The decision to conduct an investigation, signed by the Secretary General or his representative, specifies the scope of the investigation and the date from which the facts are analysed.

Most investigations are initiated following an alert raised by the AMF's Data and Market Surveillance Directorate, which monitors all transactions in Paris-listed securities and the activities of investment services providers on a daily basis. The Data and Market Surveillance Directorate receives and analyses suspicious transaction reports submitted to the AMF by credit institutions and investment firms.¹⁶

Alerts may also be raised by the AMF's divisions (including Corporate Finance and Corporate Accounting & Auditing), especially where financial reporting issues are concerned.

Investigations may also be initiated on the basis of complaints and alerts sent to the AMF by any external person or entity.¹⁷

In addition, investigations may be initiated at the request of a foreign authority with equivalent powers to the AMF's.¹⁸

Purpose of investigations

Investigations concern one or more situations or events that may constitute a violation, including in particular:

- insider dealing;¹⁹
- price manipulation;²⁰
- dissemination of false information;²¹
- any other situation or event liable to undermine investor protection or orderly markets (e.g. with regard to issuers' financial reporting or the marketing of financial instruments);²²
- trading by companies and their executives in the securities of those companies;²³
- reporting requirements applicable to executives and third parties, relating in particular to changes in major shareholdings.²⁴

While most investigations focus on the specific issue that triggered them, they may also be cross-cutting and theme-based.

¹⁵ Article L. 621-9-1 and Article R. 621-33 of the Monetary and Financial Code; Article 144-1 of the AMF General Regulation.

¹⁶ Reports submitted in compliance with Article 16 of Regulation No 596/2014/EU of 16 April 2014 on market abuse and its Delegated Regulation No 2016/957/EU of 9 March 2016.

¹⁷ Some of these may be subject to the whistleblower procedure adopted by the AMF under the Sapin 2 Law 2016-1691 of 9 December 2016 on transparency, anti-corruption and economic modernisation. <https://www.amf-france.org/fr/formulaires-et-declarations/lanceur-dalerte>

¹⁸ Article L. 632-16 of the Monetary and Financial Code.

¹⁹ Articles 7, 8 and 14 of Regulation No 596/2014/EU of 16 April 2014 on market abuse.

²⁰ Articles 12 and 15 of Regulation No 596/2014/EU of 16 April 2014 on market abuse.

²¹ Article 223-1 of the AMF General Regulation; Articles 12 and 14 of Regulation No 596/2014/EU of 16 April 2014 on market abuse.

²² Article L. 621-14 of the Monetary and Financial Code.

²³ Article L. 621-18-2 of the Monetary and Financial Code; Article 19 of Regulation (EU) No 596/2014 of 16 April 2014 on market abuse; Delegated Regulation (EE) No 2016/522 of 17 December 2015.

²⁴ Articles 223-17 and following of the AMF General Regulation.

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How an investigation is conducted

An investigation consists in obtaining and analysing information, gathered notably on business premises, through written requests or during interviews.²⁵ It can also involve requests to foreign regulators with whom the AMF may have signed bilateral or multilateral agreements on information exchange, although such agreements are not a prerequisite for cooperation.

Where an investigation requires a joint inquiry with a foreign regulator, information is exchanged in accordance with the laws and regulations of the respective countries, and also with any bilateral or multilateral agreements that have been signed.

The evidence obtained through this process may establish that a breach of obligations has occurred.

How an investigation is followed up

When the investigation is finished, the investigators draw up a report²⁶ and submit it to one of the three specialised Board committees, or possibly to a plenary session of the Board, which decides, in light of the conclusions set out in the investigation report and any observations received, what follow-up action to take:

- notifying the respondents of the complaints against them and initiating a proceeding before the AMF's Enforcement Committee, in compliance with the provisions of Article L. 465-3-6 of the Monetary and Financial Code and its implementing decree;²⁷
- notifying the respondents of the complaints against them and offering an administrative settlement,²⁸ in compliance with the provisions of Article L. 465-3-6 of the Monetary and Financial Code and its implementing decree;
- referring the case to the Financial Public Prosecutor, in compliance with the provisions of Article L. 465-3-6 of the Monetary and Financial Code and its implementing decree;
- sending a deficiency letter;
- dismissing the case;
- forwarding the report to another domestic or foreign competent authority.

If sanction proceedings are begun,²⁹ the chairman of the Enforcement Committee appoints a rapporteur from among its members.³⁰ The rapporteur conducts a procedure during which the respondents and their advisers have access to the investigation materials and can file a defence. At the end of this investigation procedure, the Enforcement Committee holds a public hearing and issues its decision.³¹ It may order a financial penalty and/or disciplinary measure if one or more regulatory breaches have been confirmed. Barring the exceptions provided for in Article L.621-15 of the Monetary and Financial Code, the decision is publicly disclosed, in an anonymised or non-anonymised version, and may be challenged in the Paris Court of Appeal or in France's supreme administrative court, the Conseil d'Etat.³²

²⁵ Article L. 621-10 of the Monetary and Financial Code.

²⁶ Article R. 621-36 of the Monetary and Financial Code.

²⁷ Decree 2016-1121 of 11 August 2016, published in issue 0189 of the Official Journal of the French Republic of 14 August 2016.

²⁸ Article L. 621-14-1 of the Monetary and Financial Code.

²⁹ Article L. 621-15 of the Monetary and Financial Code.

³⁰ Article R. 621-39 of the Monetary and Financial Code.

³¹ Article R. 621-40 of the Monetary and Financial Code.

³² Article L. 621-30 of the Monetary and Financial Code.

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I. LEGAL FRAMEWORK

A. Rights and obligations of AMF investigators

1. Rights of AMF investigators

Investigators have autonomous powers when conducting an investigation, but they may also take action that requires court authorisation.

a) Action under own powers

To carry out their duties, investigators act first and foremost under their own powers.³³

i. Disclosure and retention of documents

Investigators can requisition all types of documents (e.g. hard copy or electronic documents, e-mails) for the purposes of an investigation.³⁴

Furthermore, to ensure that the investigation proceeds smoothly, investigators may order the retention of any and all information, regardless of the storage medium. Such a measure is confirmed in writing, with details of its duration and the conditions under which it may be renewed.³⁵

ii. Access to business premises

For the purposes of their investigation, investigators may gain access to business premises.³⁶

iii. Gathering explanations on site

When visiting business premises under their own powers, investigators may gather explanations on site.³⁷

In such cases, a separate report must be drawn up from the minutes of the on-site visit. This report must state that the person interviewed has waived the right to the notice period required for a summons and been informed of the right to be assisted by the counsel of his choosing.³⁸

³³ Article L. 621-10 of the Monetary and Financial Code.

³⁴ First subparagraph, Article L. 621-10 of the Monetary and Financial Code.

³⁵ Article 144-2 of the AMF General Regulation.

³⁶ Second subparagraph, Article L. 621-10 of the Monetary and Financial Code.

³⁷ Second subparagraph, Article L. 621-10 of the Monetary and Financial Code.

³⁸ Articles R. 621-34 and R. 621-35 of the Monetary and Financial Code.

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iv. Interviewing persons who may be of interest to the investigation

Investigators may summon and take statements from any person likely to be able to provide information and who may be useful to the progress of the investigation.³⁹

As the Court of Justice of the European Union noted in its judgement of 2 February 2021 (C 481/19 DB v. CONSOB), the right to silence cannot justify every failure to cooperate with the competent authorities, such as a refusal to appear at a hearing planned by the authorities or delaying tactics designed to postpone it.

Interviews may be conducted either face to face or, if the person concerned agrees, by video or audio conference.

To that end, a summons is sent, by any means that can be used to verify its date of receipt, at least eight calendar days before the date of the summons, unless the person concerned expressly waives the right to this notice period. It reminds the person concerned of the right to be assisted by the counsel of his choosing.⁴⁰ If the interview is conducted by video or audio conference, the summons must indicate this and specify that the interview will be recorded. Agreement must be obtained from the person concerned.⁴¹

During the interview, answers to the investigators' questions are noted, along with all information the interviewees wish to bring to their attention. The last word goes to the interviewee, who is given an opportunity by the investigators to add a comment at the end of the meeting, if he so wishes.

If the interview is conducted by video or audio conference, the audiovisual or sound recording of the interview is the subject of a transcription report, which the interviewee is asked to sign. This report is sent to the interviewee within one month of the interview, accompanied by the recording.⁴²

v. Use of assumed identities

When regulated entities⁴³ provide services on the internet, investigators may make use of an assumed identity to access information about those services that could be of interest to the investigation.⁴⁴

The aim is to document the manner in which the service is being delivered.

When investigators exercise this right, a report stating the procedures for consulting and using the website, the responses obtained and the findings must be prepared and sent to the concerned person or entity before the end of the investigation.⁴⁵

³⁹ Second subparagraph, Article L. 621-10 of the Monetary and Financial Code.

⁴⁰ Second subparagraph, Article R. 621-34 of the Monetary and Financial Code.

⁴¹ Third subparagraph, Article R. 621-34 of the Monetary and Financial Code.

⁴² Third subparagraph, Article R. 621-35 of the Monetary and Financial Code.

⁴³ Entities listed in Article L. 621-9 II of the Monetary and Financial Code.

⁴⁴ Article L. 621-10-1 of the Monetary and Financial Code.

⁴⁵ Fourth subparagraph, Article R. 621-35 of the Monetary and Financial Code.

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b) Action under court authorisation

i. Home visits

When investigating market abuse or acts that may constitute property crime and be sanctioned by the AMF's Enforcement Committee,⁴⁶ investigators are entitled, in accordance with a reasoned order from the magistrate (known as the 'liberty and custody judge') who has territorial jurisdiction,⁴⁷ to carry out searches of any and all premises, including private residences, and to seize documents there.⁴⁸

During such home visits, the investigators may gather explanations on site.⁴⁹

A law enforcement officer takes part in these search operations to ensure that professional secrecy is maintained and due process is followed. Minutes of the terms and conduct of the search operation are drawn up on the spot by the investigators. An inventory of any exhibits and documents seized is appended thereto.⁵⁰

The order, and the minutes of the search operation and any items seized, may be appealed before the presiding judge of the court of appeal in the jurisdiction where the judge authorised the measure. Such appeals do not have suspensive effect.⁵¹

ii. Temporary prohibition of activity, sequestration, payment into court and formal notices

The presiding judge of the judicial court, acting on a reasoned request from the AMF's Chairman or Secretary General, can order a temporary ban on conducting a professional activity.⁵²

The AMF's Chairman or Secretary General can also ask the presiding judge of the judicial court to:

- declare, in response to an ex parte application, the sequestration of funds, securities, certificates or rights – whoever holds them – belonging to the persons the AMF is pursuing;
- order, on a summary basis, that a respondent be required to make a payment into court.⁵³

Furthermore, the Board can, after giving the person concerned an opportunity to present his explanations, order an end to breaches of obligations arising from legislation or regulations or from professional rules within the AMF's jurisdiction.⁵⁴ The AMF's Chairman may ask the courts to order the person responsible for the practice in question to comply with laws and regulations, to put an end to the irregularity or to eliminate its effects.⁵⁵

⁴⁶ Pursuant to Article L. 621-15 of the Monetary and Financial Code.

⁴⁷ If the premises to be searched are located within the jurisdiction of more than one court and action must be taken simultaneously in each of them, a single order may be issued by one of the competent liberty and custody judges.

⁴⁸ Article L. 621-12 of the Monetary and Financial Code.

⁴⁹ First subparagraph, Article L. 621-12 of the Monetary and Financial Code.

⁵⁰ Twelfth subparagraph, Article L. 621-12 of the Monetary and Financial Code.

⁵¹ Sixth and thirteenth subparagraphs, Article L. 621-12 of the Monetary and Financial Code.

⁵² Article L. 621-13 of the Monetary and Financial Code.

⁵³ Article L. 621-13 of the Monetary and Financial Code.

⁵⁴ Article L. 621-14 II of the Monetary and Financial Code.

⁵⁵ Article L. 621-14 III of the Monetary and Financial Code.

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c) Exchanging information with other domestic authorities or administrations

(i) Exchanging information with the judicial authorities

If, in the performance of its duties, the AMF becomes aware of a crime or an offence, it is required to inform the Public Prosecutor thereof without delay and to send him all relevant information, statements of offence and other documents.⁵⁶

The Public Prosecutor may obtain from the AMF all the information held by the latter in connection with the performance of its duties, which information may not be withheld on grounds of professional secrecy.⁵⁷

Furthermore, where a statement of offence, investigation report or any other document forming part of criminal proceedings is directly linked to facts that could be subject to examination by the AMF's Enforcement Committee, the Financial Public Prosecutor may, at his own initiative or at the request of the AMF's Secretary General, where appropriate after consulting with the investigating magistrate, pass on that document to the AMF.⁵⁸

Lastly, exchanges of information are organised between the AMF and the Financial Public Prosecutor as part of the compulsory referral procedure between administrative and criminal proceedings.⁵⁹

(ii) Exchanging information with other domestic authorities

Provision is made for cooperation and exchanges of information between the AMF and various authorities including the Banque de France, the Autorité de Contrôle Prudentiel et de Résolution (ACPR – the French prudential supervisory authority), the Haut Conseil du Commissariat aux Comptes (National Auditors' Oversight Board) and the administrative authority with responsibility for competition and consumer affairs.⁶⁰ Information may also be exchanged with the Commission de Régulation de l'Énergie.⁶¹

The AMF may also ask the tax authorities to disclose information and documents conducive to the performance of its duties.⁶² Reciprocally, the AMF is required to provide the tax authorities, at their request and without refusing to do so on grounds of professional secrecy, "any document or information obtained in the course of carrying out its duties" unless these documents or this information come from a foreign authority tasked with similar responsibilities to those of the AMF, where said authority has not given explicit permission for the exchange.⁶³

⁵⁶ Article L. 621-20-1 of the Monetary and Financial Code and Article 40 of the Code of Criminal Procedure.

⁵⁷ Article L. 621-20-1 of the Monetary and Financial Code; subject to the agreement of the AMF's foreign counterparts when the information in question was obtained through them.

⁵⁸ Article L. 621-20-4 of the Monetary and Financial Code.

⁵⁹ Referral procedure instituted by Act 2016-819 of 21 June 2016, supplemented by Decree 2016-1121 of 11 August 2016, which added a new Article L. 465-3-6 to the Monetary and Financial Code.

⁶⁰ Article L. 631-1 of the Monetary and Financial Code.

⁶¹ Article L. 621-21 of the Monetary and Financial Code.

⁶² Article L. 135 F of the Book of Fiscal Procedure: "For the purposes of its duties, the Autorité des Marchés Financiers may obtain information and documents pursuant to the first subparagraph of I of Article L. 621-9 to Article L. 621-9-1, the first subparagraph of Article L. 621-9-3 and Articles L. 621-10 and L. 621-20-6 of the Monetary and Financial Code".

⁶³ Article L. 84 E of the Tax Procedures Guide: "Subject to paragraph II bis of Article L. 632-7 of the Monetary and Financial Code, the Autorité des Marchés Financiers shall provide the tax authorities, at their request, with any document or information held by it in the performance of its duties and responsibilities; the AMF may not refuse such requests on grounds of professional secrecy."

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Similarly, the AMF and the national financial intelligence unit, TRACFIN, may exchange any information conducive to the performance of their respective duties, with the understanding that, if the AMF uncovers “*facts likely to be linked to money laundering or terrorist financing or any sum or transaction referred to in Article L. 561-15*”, it shall “*promptly*” inform TRACFIN.⁶⁴

d) Exchanging information with foreign counterparts and European supervisory and resolution authorities

As part of its investigatory duties, the AMF may exchange information with equivalent foreign authorities, whether or not they are from countries that are members of the Union European or parties to the Agreement on the European Economic Area.⁶⁵

The AMF may also, in the performance of its investigatory duties, exchange information with European supervisory and resolution authorities, including in particular the European Securities and Markets Authority (ESMA).⁶⁶

2. Obligations of AMF investigators

a) Authorisation and absence of conflicts of interest

In exercising its investigatory powers, the AMF may use its own employees or draw from an exhaustive list of external appointees covered by a memorandum of understanding.⁶⁷

Before being authorised⁶⁸ by the AMF Secretary General, a person proposed to carry out an investigation must meet the following prerequisites:⁶⁹

- a requirement of integrity: “*No person may be authorised or appointed to carry out an investigation or an inspection if they have been subject to any of the convictions referred to in Article L. 500-1 [of the Monetary and Financial Code]*”;
- absence of conflicts of interest: “*No person may be authorised or appointed to carry out an investigation or an inspection of a legal person in which they have carried on a professional activity during the previous three years*”.⁷⁰

Before giving an investigation order to an external investigator, the secretary general of the AMF shall ensure that the nominee is not likely to have a conflict of interests with the person to be investigated.⁷¹ To that end, where the nominee is a statutory auditor, an accounting or legal expert, or a person or organisation competent in financial research or consultancy, the secretary general of the AMF shall ask him for information about all his professional relations during the three previous years with the person to be inspected. The Secretary General of the AMF may

⁶⁴ Articles L. 561-28 II and L. 561-31 of the Monetary and Financial Code.

⁶⁵ Articles L. 632-1 and following of the Monetary and Financial Code.

⁶⁶ Articles L. 632-6-1 of the Monetary and Financial Code; Article 24 of Regulation 596/2014/EU of 16 April 2014 on market abuse, which requires the competent authorities, without delay, to provide ESMA with all information necessary to carry out its duties, in accordance with Article 35 of Regulation (EU) No 1095/2010 establishing ESMA.

⁶⁷ Articles R. 621-31 and R. 621-32 of the Monetary and Financial Code.

⁶⁸ Article L. 621-9-1 of the Monetary and Financial Code and Article 144-1 of the AMF General Regulation.

⁶⁹ Article R. 621-33 of the Monetary and Financial Code.

⁷⁰ Article R. 621-33 I of the Monetary and Financial Code.

⁷¹ Article R. 621-33 II of the Monetary and Financial Code.

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not assign the inspection to this person if, during the period in question, he supervised or advised the persons concerned regarding the services or transactions in question.⁷²

b) Professional secrecy with regard to information gathered during an investigation

Article L. 621-4 II of the Monetary and Financial Code stipulates as follows: *“The members, staff and officers of the Autorité des Marchés Financiers [...] are bound by professional secrecy under the conditions and subject to the penalties provided for in Article L. 642-1 [of the Monetary and Financial Code].”*⁷³

Professional secrecy applies to facts, acts and information that may come to the attention of investigators when performing their duties. It also applies to documents and information obtained in the course of their investigation, which may not be divulged in any way unless otherwise provided by law.

However, *“such secrecy cannot be used as grounds for not disclosing information to the judicial authorities acting within the scope of criminal proceedings or in connection with judicial liquidation proceedings instituted against persons referred to in paragraph II of Article L. 621-9 [of the Monetary and Financial Code]”* who are under the authority of the AMF.⁷⁴

Neither may professional secrecy be used as grounds for not disclosing information to the national financial intelligence unit⁷⁵ (TRACFIN) in the performance of its duties. The professional secrecy requirement may also be lifted vis-à-vis other domestic authorities⁷⁶ in the performance of their duties. Lastly, the professional secrecy requirement may also be lifted vis-à-vis equivalent foreign authorities.⁷⁷

B. Rights and obligations of persons asked to cooperate

The fundamental principles of law form the general framework applicable to investigations. However, attention may be drawn to certain rights and obligations that are specific to persons asked to cooperate.

1. Rights of persons asked to cooperate with an investigation

a) Verification of investigators’ identity

The AMF’s Secretary General or his representative issues investigation orders naming the persons tasked with conducting investigations.⁷⁸ Investigators also carry an official card bearing the AMF logo and their photograph. They present the card to persons asked to cooperate, together with a investigation order made out in their name.

⁷² Article R. 621-33 II of the Monetary and Financial Code.

⁷³ Article L. 642-1 of the Monetary and Financial Code refers to Article 226-13 of the Criminal Code, which stipulates as follows: *“The disclosure of secret information by a person entrusted with such a secret, either because of his position or profession, or because of a temporary function or mission, shall be punished by one year’s imprisonment and a fine of €15,000.”*

⁷⁴ Article L. 621-4 II of the Monetary and Financial Code.

⁷⁵ Articles L. 561-30 and L. 561-31 of the Monetary and Financial Code.

⁷⁶ Authorities referred to in Article L. 631-1 of the Monetary and Financial Code.

⁷⁷ Under the conditions laid down in Articles L. 632-1 to L. 632-11-2 and L. 632-16 of the Monetary and Financial Code.

⁷⁸ Article L. 621-32 IV of the Monetary and Financial Code.

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Persons under investigation may ask to see the investigation order⁷⁹ and may obtain a copy of it.

b) Information about the purpose of the investigation

The purpose of an investigation is set out in investigation orders issued by the AMF's Secretary General. These investigation orders, in which investigators are designated by name, are valid for the duration of each investigation.

The scope of an investigation may be extended if circumstances so require, by decision of the Secretary General. In such cases, a supplemental investigation order setting out the new scope is drawn up and signed under the same conditions.

Investigators may gather information relating to a period prior to that covered by the investigation if such information helps clarify the facts being investigated.

c) Assistance by an adviser

Persons summoned for an interview have the right to be assisted by counsel of their choosing.⁸⁰ This right is reiterated in the summons, which is sent out at least eight calendar days before the interview,⁸¹ unless the right to such notice period is explicitly waived by the person concerned. Persons whose explanations are gathered by investigators during an on-site visit conducted under their own powers or during a home visit authorised by the courts may also be assisted by an adviser.⁸² In both cases, the person in question must be expressly reminded of this right.

d) Investigation minutes

Investigators keep minutes concerning the exercise of their right to access business premises, gather explanations, obtain documents and note any facts that may be of use in the investigation. The purpose of these minutes is to describe the conduct of the investigation and related observations, draw up a list of documents collected and, as the case may be, record explanations, comments and unprompted statements made by the persons interviewed. These persons are given a copy of these minutes, and they keep the originals of all evidence collected.

They also minute the explanations gathered by the investigators during their interviews as well as documents presented by them and/or by the person concerned. The investigators keep the original of the minutes of the hearing, and copies are not given to the persons interviewed.

Minutes are always signed by the investigators and the person concerned. If the person concerned refuses, this is noted in the minutes.⁸³

⁷⁹ First subparagraph, Article R. 621-34 of the Monetary and Financial Code.

⁸⁰ Article L. 621-11 of the Monetary and Financial Code.

⁸¹ Second subparagraph, Article R. 621-34 of the Monetary and Financial Code.

⁸² Fourth subparagraph, Article R. 621-34 of the Monetary and Financial Code.

⁸³ Article R. 621-35 of the Monetary and Financial Code.

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e) Right of potential respondents to present their observations before the investigation is concluded

Before the final investigation report is written, points of fact and law gathered by the investigators are brought to the attention of any person who may subsequently be a respondent by sending them a detailed letter.⁸⁴

This letter is accompanied by a list of the principal materials that the investigators consider necessary for it to be properly understood. This list, which is not intended to exhaustively catalogue all items that will ultimately be included by the investigators in the investigation file, includes:

- items gathered by the investigators in the course of their investigations of which the person to whom the detailed letter is addressed is not aware: such items are enclosed with the detailed letter; and/or
- items provided by the person to whom the detailed letter is addressed and which the AMF intends to add to the investigation file: such items are not systematically attached to the detailed letter, since the person concerned is already aware of them.

The persons to whom the detailed letter is addressed have one month to submit their written comments and, if needed, to request that additional items handed over by them be included in the investigation file. The AMF may agree to review this deadline on receipt of a justified request.

The final investigation report takes into account any observations received, after any additional inquiries that may have been necessary in light of responses received.

The detailed letter and the response to it are appended to the investigation report presented to the specialised Board committee responsible for deciding on any further action. If the committee decides to instigate proceedings before the Enforcement Committee, a statement of complaint is sent to each respondent, in compliance with the provisions of Article L. 465-3-6 of the Monetary and Financial Code and its implementing decree.⁸⁵

This statement of complaint, not the detailed letter, marks the beginning of the adversarial procedure during which the respondent will have access to the entire investigation file.

f) The investigation file

The investigators put together the investigation file to meet four main objectives:

- **Ensure that the file is consistent and understandable** for the members of the specialised Board committee, who need access to the investigation report with its annexes and the entire investigation file before they meet. Regarding evidence included in investigation files, decisions made by the AMF Enforcement Committee⁸⁶ and upheld by the Paris Court of Appeal and the Court of Cassation⁸⁷ have confirmed the

⁸⁴ Article 144-2-1 of the AMF General Regulation.

⁸⁵ Decree 2016-1121 of 11 August 2016, published in issue 0189 of the Official Journal of the French Republic of 14 August 2016.

⁸⁶ The investigation must be fair so as not to cause irreparable harm to the rights of defence of the persons to whom objections are finally notified. Provided they abide by this principle of fairness, the investigators are free to determine which items they intend to annex to the file and use in their investigation report. – AMF Enforcement Committee, 27 October 2014, SAN-2014-20.

⁸⁷ The adversarial principle, which is fully applicable from such time as the objections are notified, is a requirement of the proceeding and not the investigation, which must only be fair so as not to irretrievably compromise the rights of the defence. As such, the investigators can decide what happens to action taken and documents examined in the course of the investigation, provided the latter has not been unfair and has not led to a misplaced conviction on the part of the Enforcement Committee. – Judgement by the Court of Cassation, Commercial Chamber, 1 March 2011, no. 09-71252 – Paris court of appeal, 27 November 2014, no. 13/16393.

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investigators' right to select the documents that are useful to the case, provided this does not infringe the principles of fairness and equality of arms and does not materially impair the rights of the defence.

- **Comply with the principle of transparency**, by including in the investigation file a detailed summary of the materials it contains.
- **Ensure legal certainty**, by verifying that investigative acts are honest, lawful and traceable, especially with regard to international applications. The investigation file must contain all evidence – both for and against – that contributed to the investigation, regardless of the medium on which it is stored.
- **Ensure the confidentiality of all information gathered, when it is used in connection with the investigation:**
 - by taking into account, without prejudice to investigations, constraints relating to business secrecy and personal privacy; and
 - by respecting the professional secrecy of officers of the law (in particular lawyers, bailiffs and agents of the court), which, notwithstanding Article L. 621-9-3 of the Monetary and Financial Code, constitutes valid grounds for not disclosing information to the AMF.

With this in mind, any person who has handed over electronic mailboxes to the investigators is informed of which items the latter have retained and intend to add to the investigation file. Media containing electronic mailboxes collected by investigators when exercising their own powers, together with any copies of these media that may have been made in this context, will be destroyed by the AMF.

Media containing electronic mailboxes seized during home visits that are no longer useful for establishing the truth, together with any copies of these media that may have been made in this context, will be returned to the occupant of the premises, pursuant to Article L. 621-12 of the Monetary and Financial Code, by any means that can be used to verify the date of receipt of this information and, insofar as possible, within a period of six months from the end of the investigation.

g) Information about follow-up action

The findings of the investigation are the subject of a written report which indicates, in particular, *“any facts that may constitute a breach of the European regulations, [the Monetary and Financial Code], the Commercial Code, the General Regulation of the Autorité des Marchés Financiers and rules approved by that Authority, a breach of other professional requirements or a criminal offence”*.⁸⁸

The Board reviews the investigation report drawn up by AMF staff.⁸⁹ If it decides to instigate enforcement proceedings, it notifies the respondents of the complaints against them and forwards the statements of objections to the AMF's Enforcement Committee, in compliance with the provisions of Article L. 465-3-6 of the Monetary and Financial Code and its implementing decree.⁹⁰

⁸⁸ Article R. 621-36 of the Monetary and Financial Code.

⁸⁹ In accordance with Article L. 621-15 I of the Monetary and Financial Code.

⁹⁰ Decree 2016-1121 of 11 August 2016, published in issue 0189 of the Official Journal of the French Republic of 14 August 2016. Furthermore, Article L. 621-20-1 of the Monetary and Financial Code specifies that if, in the performance of its duties, the AMF becomes aware of a crime or an offence, it must inform the Public Prosecutor without delay.

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Persons served with a statement of complaint may access the investigation file as soon as sanction proceedings commence.

In compliance with the provisions of Article L. 465-3-6 of the Monetary and Financial Code and its implementing decree, if the Board decides not to pursue a person who has been under investigation, the AMF duly informs that person by letter after the meeting of the specialised Board committee. However, the rapporteur may refer the matter to the Board if he or she believes that one or more persons other than the respondents could be notified of the complaints.⁹¹

h) Right to access and rectify data

The AMF keeps files on the persons encountered in connection with its investigations. The rules governing the constitution of such files and access by authorised AMF personnel to the information they contain are governed by an authorisation from the Commission nationale de l'informatique et des libertés (CNIL). In accordance with Articles 15 and 16 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data ("GDPR Regulation"), any person concerned by an investigation whose personal data are processed in such files has a right to access the personal data contained therein and a right to rectify any personal data concerning them that are inaccurate or incomplete.

These rights to access and rectify data are exercised by writing to the AMF at the following address: AMF - Data Protection Officer - 17 Place de la Bourse, 75082 Paris Cedex 2; or by email: accesdopers@amf-france.org.

The AMF Personal Data Protection Policy can be accessed from the following link:
https://www.amf-france.org/fr/donnees-personnelles#Champ_dapplication.

2. Obligations of persons asked to cooperate with an investigation

a) Not to obstruct the investigation

Where the proper performance of an AMF investigation has been hindered, this fact is mentioned in the investigation report or in a special report setting out these difficulties.⁹²

Obstructing investigations conducted by AMF investigators may further incur administrative and/or criminal penalties.

As such, the AMF Enforcement Committee may impose penalties *"on any person who, during an investigation or inspection conducted pursuant to paragraph I of Article L. 621-9 [of the Monetary and Financial Code], at the request of the investigators or inspectors, and subject to the maintenance of legally protected secrecy that may be invoked against the Autorité des Marchés Financiers, refuses to provide access to a document, regardless of the*

⁹¹ Article R. 621-39 1° of the Monetary and Financial Code.

⁹² Article 144-3 of the AMF General Regulation.

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*medium on which that document is stored, and to provide a copy thereof, to disclose information, to answer a summons or to allow access to business premises”.*⁹³

Furthermore, *“persons who obstruct an inspection or investigation of the Autorité des Marchés Financiers carried out as determined in Articles L. 621-9 to L. 621-9-2 or who provide it with inaccurate information, shall incur a penalty of two years’ imprisonment and a fine of €300,000”.*⁹⁴

b) Not to invoke professional secrecy against AMF investigators

Within the scope of investigations conducted by the AMF in the performance of its duties, information may not be withheld from the AMF on grounds of professional secrecy by officers of the law.⁹⁵

Officers of the law means any professional whose primary and habitual occupation is to administer justice, in particular lawyers, court bailiffs and agents acting for the court (court-appointed administrators and agents).

Act no. 71-1130 of 31 December 1971 introducing reforms to certain judiciary and court-related occupations extends the scope of the lawyer’s professional secrecy to include correspondence between a lawyer and his client.⁹⁶

Lastly, statutory auditors are expressly released from professional secrecy with regard to the AMF.⁹⁷

⁹³ Article L. 621-15 II f) of the Monetary and Financial Code resulting from Act 2013-672 of 26 July 2013 on the separation and regulation of banking activities, which introduced the notion of obstruction as a breach of administrative law into the Monetary and Financial Code.

⁹⁴ Article L. 642-2 of the Monetary and Financial Code.

⁹⁵ First subparagraph, Article L. 621-9-3 of the Monetary and Financial Code.

⁹⁶ Article 66-5 of Act 71-1130 of 31 December 1971.

⁹⁷ Second subparagraph, Article L. 621-9-3 of the Monetary and Financial Code.

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II. PRINCIPLES OF GOOD CONDUCT

By complying with principles of good conduct, both the AMF's investigators and the legal entities or individuals involved in an investigation will help ensure that the investigation proceeds satisfactorily and in compliance with the rights of all parties.

A. Principles applicable to investigators

1. Comply with the principles governing investigatory proceedings

The principle of fairness means investigators must carry out their duties in such a way as to assemble evidence both for and against the person or persons concerned. They must collect factual evidence, documents and arguments that could confirm a breach of regulations but that could also reduce its scope or rule out its existence. These materials are added to the investigation file or report. Investigators are free at all times to interview any person who might help them progress with their investigation, but they can also take evidence from anyone who asks to be interviewed. Where possible, investigators interview any person who may be called into question in the investigation report, to allow that person to provide explanations and, where applicable, any additional evidence relating to the actions discovered by the inspection.

Investigators abide by the presumption of innocence and, as such, do not behave as if they automatically harbour suspicions.

The principle of proportionality means that operational, technical and professional constraints will be taken into account, except where this may be detrimental to the investigation. Respect for privacy is also an issue. As far as possible, the investigators endeavour to limit the effects of their activities on the privacy of the individuals and entities concerned.

2. Explain the context and framework of the investigation

As far as possible, notably in light of their professional secrecy obligations, the investigators explain the background to the investigation and the framework within which they are acting. The aim is to give the persons or entities concerned a better understanding of information that may be useful to the investigation, enabling them to behave accordingly.

Once the investigation report has been filed, however, investigators cannot divulge any information about how the case is progressing. Only the Secretary General and, where appropriate, the specialised Board committees and the Enforcement Committee are entitled to do this.

3. Behave professionally, impartially and courteously

The investigators proceed with due care and professionalism to ensure that the requirements and time frame of the investigation do not violate the constraints of the people with whom they are dealing. Any difficulties that may

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hinder their work must be reported immediately to their superiors at the AMF, as well as any difficulties they encounter and any events that might undermine the investigation.

When exercising their powers, especially as regards access to information and documents, they behave impartially and courteously with regard to the persons or entities concerned. They thus refrain from expressing personal opinions or considerations.

Both during interviews and in the conduct of on-site investigations, investigators make every effort to give the persons concerned enough time to acquaint themselves with the information they are given, understand its impact, answer questions relevantly and reread – and, where necessary, propose corrections to – the investigators’ minutes before signing them.

The persons responsible for the investigation may not receive any invitation, gift or benefit from the persons being investigated.⁹⁸

4. Be diligent

Where there is no regulatory or statutory deadline, investigations are not limited in time. They last as long as necessary to complete the investigations. However, various factors may extend the time required, including the complexity of the investigations, the time needed for international cooperation requests and delays by the persons or entities concerned in submitting documents or comments.

However, investigators strive to carry out their work diligently and try, wherever possible, to limit the time between the signing of the investigation order, which signals the start of the investigation, and the presentation of the investigation report to the Board. The AMF’s management pays close attention to these time frames.

B. Behaviour expected of persons asked to cooperate with an investigation

To ensure that the investigation proceeds smoothly, the individuals and entities asked to cooperate (including their employees and persons for whom they are responsible) must behave as follows:

1. Answer the investigators’ questions fairly and diligently

The individuals or employees of entities asked to cooperate with an investigation should answer questions or requests for information diligently, fairly and clearly.

They must endeavour to answer comprehensively, accurately and as quickly as possible. They must also provide substantiating evidence to the investigators and refrain from providing incomplete or misleading documents.

⁹⁸ Article 3.1.4 of the AMF’s rules of procedure, published in issue 0177 of the Official Journal of the French Republic of 30 July 2017.

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2. Cooperate with the investigators

Persons asked to cooperate with an investigation provide the investigators with contact details for any third party (statutory auditor, member of the audit committee or board of directors, external consultant or service provider, former employee, counsel retained for the investigation, etc.) whom the investigators consider it necessary or helpful to contact or meet with.

Regarding access to business premises, a representative of the entity may be named as the investigators' primary contact person. Such representatives must be empowered, either personally or by way of delegation, to commit the entity and sign any records of findings and document submissions.

During the subsequent course of the investigation, such representatives are likely to be the investigators' main contact when requesting information. They will pass on such requests to the relevant departments, collate the information and issue reminders, where necessary, to ensure that the investigators' questions are answered as quickly as possible.

Where the entity under investigation is an investment services provider, the investigators will consider – unless expressly informed to the contrary – that their correspondent is the compliance officer. The investigators take particular care to inform the correspondent of any difficulties encountered when performing their duties.

3. Supply documents, files and explanations as quickly as possible

Pursuant to Article L. 621-10 of the Monetary and Financial Code, *“Investigators [...] may, for the purposes of the investigation [...], require the submission of any documents on whatever medium”*. The AMF's investigators may exercise their right of access against all persons and entities likely to be able to provide them with information or documents related to the investigation.

Requests for information should be answered as quickly as possible, allowing enough time to prepare answers without unnecessarily slowing down the investigation. It is in everyone's interest to ensure that the investigation does not last too long. All documents and files requested must be sent in a format that is easy to process, to be determined with the persons interviewed.

4. Remain impartial, professional and courteous throughout the investigation

Persons asked to cooperate with an investigation are expected to adopt a professional, impartial and courteous attitude in their dealings with the investigators, as the investigators themselves are expected to do.

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In the event of any difficulties, persons asked to cooperate with an ongoing investigation can contact the secretariat of the AMF's Investigations Directorate (Tel: +33 (0)1 5345 5872), which will pass on the request to the relevant individual within the AMF hierarchy. The AMF's Investigations Directorate is part of the Inspection and Investigations Directorate, which in turn reports to the Managing Director for Investigations and Inspections and the AMF's Secretary General.

References:

AMF organisation chart (updated 1 December 2020):

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